

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES HAGAN,

APPELLANT

APPELLATE CASE NO. 2013-001806

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2013-GS-26-00268

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

August 14, 2013

JAMES HAGAN,)

August 15, 2013

Defendant.)

August 16, 2013

B E F O R E:

Honorable Roger L. Couch
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Joshua D. Holford, Esquire
Attorney for Plaintiff

Melinda Knowles, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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BY THE COURT

8

1 August 14, 2013 - 3:34 P.M.

2 THE COURT: All right. We're about to begin the trial of
3 the State of South Carolina versus James Hagan. Is the State
4 ready to go forward with the jury selection at this time?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Defense ready?

7 MS. KNOWLES: Yes, sir.

8 THE COURT: All right. Let's bring the jury pool in.
9 We're going to need to clear out some room back here. Maybe
10 if -- move up in front of the bar, please, so that we can have
11 the jury panel sit back in the gallery. Thank you.

12 (REPORTER'S NOTE: The jury panel enters courtroom. 3:44 P.M.)

13 THE COURT: Good afternoon, ladies and gentlemen, I want
14 to thank you for your patience this afternoon.

15 We're about to begin the trial of the State of South
16 Carolina versus James Hagan. Before we begin that trial, we
17 are going to go through jury selection. The first thing that
18 I'm going to do is to go over with you the indictment that's
19 before the Court. The purpose of my doing that is so that
20 you'll understand what the charge is and what the allegations
21 are so that you can more fully answer the questions I'm about
22 to ask you concerning this case. The indictment that I've
23 been presented with in this case is Case Number 2013-GS-26-
24 268. The indictment is for burglary second degree. The
25 indictment states that James Hagan did in Horry County, State

State v. James Hagan - 2013-GS-26-00268
BY THE COURT

9

1 of South Carolina on or about August 16 of 2012 enter without
2 consent and with the intent to commit a crime therein the
3 dwelling of Dana Enzor located at in Nichols in
4 violation of Section 16-11-312 of the Code of Laws of South
5 Carolina, 1976 as amended, against the peace and dignity of
6 the State and contrary to the statute and such case made and
7 provided.

8 Now, that document is the indictment that brings the case
9 before the Court. Indictments cannot be used by a jury in any
10 fashion in determining the guilt or the innocence of a
11 defendant charged therein. That simply is the document that
12 informs this Court of the charge to be tried, it informs the
13 Defendant of the charge that has been lodged against him.

14 And again, the only reason I'm going over that with you
15 is so that you can more fully answer some questions that I
16 have about this case. Before I begin my questioning, I'm
17 going to ask that the attorneys involved in this case
18 introduce themselves to you.

19 First of all, for the State.

20 MR. HOLFORD: My name is Joshua Holford. I'm an
21 Assistant Solicitor here in Horry County, that's the
22 prosecutor.

23 THE COURT: Thank you. Is the alleged victim in the
24 courtroom?

25 MR. HOLFORD: Yes, Your Honor.

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BY THE COURT

10

1 THE COURT: All right. Ms. Dana Enzor, if you'll stand
2 and face the jury panel so they can put a face with the name.
3 Thank you very much, ma'am.

4 MR. HOLFORD: Your Honor, we also have another victim in
5 the case who was actually present at the time.

6 THE COURT: All right. And can you introduce that person
7 to the jury?

8 MR. HOLFORD: Zack.

9 THE COURT: His name is?

10 MR. ELLIOTT: Zachary Elliott.

11 THE COURT: I'm sorry.

12 MR. ELLIOTT: Zachary Elliott.

13 THE COURT: Thank you, Mr. Elliott.

14 Now, for the Defense, if the Defense attorney would
15 introduce herself and the Defendant.

16 MS. KNOWLES: My name is Melinda Knowles; I'm an
17 Assistant Public Defender. This is my client James Hagan.

18 THE COURT: Sir, stand and face the jury panel so they
19 can put a face with the name. Turn all the way around, sir.
20 Thank you. All right. You can be seated.

21 Now, ladies and gentlemen, it's important that the
22 information that you give to me in answer to my questions is
23 truthful, honest and complete information. Again, I'm going
24 to ask that the Clerk swear you concerning the responses that
25 you're about to give in this case.

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VOIR DIRE

11

1 Madame Clerk.

2 CLERK: Please stand and raise your right hand. Do you
3 solemnly swear or affirm to truthfully answer the questions
4 asked of you by the Court, so help you God?

5 (REPORTER'S NOTE: Jury panel unanimously complies.)

6 THE COURT: Please be seated.

7 Now, if there was any member of the jury panel who either
8 failed or refused to take the oath just administered by the
9 Clerk, please stand.

10 The record will reflect that all jurors have been sworn
11 concerning the responses that you're about to give.

12 As I ask the questions, I'll be asking that if you have a
13 response to stand. I will need to get your name and juror
14 number on the record before I discuss your response to my
15 questions.

16 JURY VOIR DIRE:

17 THE COURT: Now, as to this case, has any member of the
18 jury panel ever been related by marriage or are you related by
19 blood to the Defendant, Mr. Hagan, or the alleged victims, Mr.
20 Elliott or Ms. Enzor? If that's true, please stand.

21 (REPORTER'S NOTE: No response.)

22 THE COURT: Has any member of the jury panel ever had a
23 close personal or a social relationship with either the
24 Defendant and/or the alleged victims in the case? If that's
25 true, please stand.

State v. James Hagan - 2013-GS-26-00268
VOIR DIRE

12

1 (REPORTER'S NOTE: No response.)

2 THE COURT: I'm going to go over a list of potential
3 witnesses in this case. Listen carefully to the names that
4 I'm about to call out because I'll be asking questions about
5 these individuals in just a moment. First of all, Lance
6 Corporal Terry Elliott, with the Horry County Police
7 Department; of course, Ms. Enzor, you have met; Mr. Zack
8 Elliott you have met; Officer Tabitha Smith, with Horry County
9 Police Department; Lance Corporal Michael Hilburn with the
10 Horry County Police Department; Sergeant Jeff Gause, with the
11 Spartan -- with the Horry County Police Department; Ms. Kay
12 Richardson, a court reporter; Tommy Kleepsie, a witness;
13 Michael Collins, a witness; William Alexander, Jr., a witness;
14 Charles Hagan, Jr., a witness; Jeanette Andrews, a witness;
15 Debra Chaffin, it's C-H-A-F-F-I-N, it would be Chaffin, I'm
16 sorry; Ashley Hagan; Tonya Bowles; Debbie Chaffin; and
17 Jeanette Andrews. As to the individuals I have named as
18 possible witnesses, has any member of the jury panel ever been
19 related by marriage, are you related by blood, or have you
20 ever had a close social or a personal relationship with any of
21 the individuals I've named as possible witnesses? If that is
22 true, please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: Now, as to the attorneys involved in this
25 case, either of the attorneys ever represented any member of

State v. James Hagan - 2013-GS-26-00268
VOIR DIRE

13

1 the jury panel or have they ever appeared on the other side of
2 a legal matter from you? If that is true, please stand.

3 (REPORTER'S NOTE: No response.)

4 THE COURT: If there is any member of the jury panel who
5 has ever related by marriage or if you're related by blood or
6 if you've ever had a close social or a personal relationship
7 with any of the attorneys that are involved in this case,
8 please stand.

9 (REPORTER'S NOTE: No response.)

10 THE COURT: Has any member of this jury panel either
11 received or gotten any information concerning this case
12 outside of this courtroom such that it would've caused you to
13 either form or express an opinion concerning any issue that
14 might be involved in this case? If that's true, please stand.

15 (REPORTER'S NOTE: No response.)

16 THE COURT: Is there any member of the jury panel who is
17 aware of any bias or prejudice that you might have either for
18 or against either the State or the Defense in this case? If
19 that is true, please stand.

20 Ma'am, your name and number?

21 JUROR 73: Susan Davis, Number 73.

22 THE COURT: Yes, ma'am. Your situation?

23 JUROR 73: I served as a victim advocate for about twenty
24 years prior to being a teacher.

25 THE COURT: Yes, ma'am.

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VOIR DIRE

14

1 JUROR 73: I don't know if that a cause of bias or not?

2 THE COURT: Well, I'm going to ask you, if you were to be
3 selected as a juror in this case and were sitting on this
4 trial, would the fact that you'd been involved in that line of
5 work in the past, would that cause you somehow to feel that
6 you couldn't be fair and impartial to either the State of the
7 Defense?

8 JUROR 73: Probably so.

9 THE COURT: It would affect your impartiality?

10 JUROR 73: Yes, yes, sir.

11 THE COURT: All right, ma'am, then I'm gonna excuse you
12 from the trial of this case. Please remain seated, you no
13 longer have to answer my questions.

14 JUROR 73: Thank you.

15 Anyone else?

16 THE COURT: Your number, I'm sorry, we didn't ---

17 JUROR 73: 73.

18 THE COURT: Thank you, ma'am.

19 I don't believe that this would be the case. The Grand
20 Jury that issued the indictment issued that indictment this
21 year; so probably none of you have served on the Grand Jury
22 that issued the indictment, but if that were true, please
23 stand.

24 (REPORTER'S NOTE: No response.)

25 THE COURT: Is there any member of the jury panel who is

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VOIR DIRE

15

1 a member of or a contributor to any group that has as its
2 primary concern the promotion of law enforcement or victim's
3 rights? Those groups would include but not be limited to such
4 groups as Mothers Against Drunk Driving, Students Against
5 Drunk Driving, Citizens Against Violent Crime, The South
6 Carolina Troopers Association, The South Carolina Sheriff's
7 Association or other similarly oriented organizations. So, if
8 you're a member of or a contributor to such a group, please
9 stand.

10 (REPORTER'S NOTE: No response.)

11 THE COURT: Is there any member of this jury panel who
12 knows of any reason whatsoever why he or she should not serve
13 as a juror in this case with particular emphasis being placed
14 upon your ability to be both fair and impartial to both the
15 State and the Defense? If that's true, please stand.

16 (REPORTER'S NOTE: No response.)

17 THE COURT: Does the State have additional questions for
18 the jury panel?

19 MR. HOLFORD: None from the State, Your Honor.

20 THE COURT: Any from the Defense?

21 MS. KNOWLES: No, sir.

22 THE COURT: All right. The Clerk has already gone
23 through your numbers and there is a list of individuals that
24 have been chosen by computer in a random fashion. We're going
25 to call your name in the order in which those names were

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JURY SELECTION

16

1 chosen. If your name is called, I'm going to ask that you
2 come forward right up here beside the podium, stand and face
3 the door at the back of the courtroom. At that point in time,
4 the attorneys should be in a position to exercise their
5 strikes. In this case, the State will have five strikes; the
6 Defense will have ten. We will pick one alternate with the
7 State having one strike and the Defense having two strikes.

8 Madame Clerk, you can begin that process.

9 JURY SELECTION:

10 CLERK: Juror Number 141, Iva Heckman.

11 THE COURT: Right down here beside the podium, ma'am, and
12 then face the doors at the back. Thank you, ma'am.

13 CLERK: What say the State?

14 MR. HOLFORD: Please excuse this juror in this particular
15 case.

16 CLERK: You are excused from this particular case.

17 THE COURT: You can have a seat back in the gallery,
18 ma'am. Thank you.

19 CLERK: 282, Marilyn Ramage.

20 What say the State?

21 MR. HOLFORD: Please present this juror.

22 CLERK: Defense?

23 MS. KNOWLES: Please seat this juror.

24 CLERK: Please be seated in the jury box.

25 THE COURT: Ma'am, right over here where the Bailiff is.

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JURY SELECTION

17

1 Thank you.

2 CLERK: 260, Kelly Redick.

3 What say the State?

4 MR. HOLFORD: Please present this juror.

5 CLERK: Defense?

6 MS. KNOWLES: Please excuse this juror.

7 CLERK: You are excused from this particular case.

8 201, Christopher Mazeika.

9 What say the State?

10 MR. HOLFORD: Please present this juror.

11 CLERK: Defense?

12 MS. KNOWLES: Please seat this juror.

13 CLERK: Please be seated in the jury box.

14 60, Kharmisa Conyers.

15 What say the State?

16 MR. HOLFORD: Please excuse this juror in this particular

17 case.

18 CLERK: You are excused from this particular case.

19 25, Deborah Blanton.

20 What say the State?

21 MR. HOLFORD: Please present this juror.

22 CLERK: Defense?

23 MS. KNOWLES: Please excuse this juror.

24 CLERK: You are excused from this particular case.

25 227, Jerry Norris.

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JURY SELECTION

18

1 What say the State?

2 MR. HOLFORD: Please present this juror.

3 CLERK: Defense?

4 MS. KNOWLES: Please excuse this juror.

5 CLERK: You are excused from this particular case.

6 318, Bruce Sutzer.

7 What say the State?

8 MR. HOLFORD: Please present this juror.

9 CLERK: Defense?

10 MS. KNOWLES: Please excuse this juror.

11 CLERK: You are excused from this particular case.

12 309, Donna Snoke.

13 What say the State?

14 MR. HOLFORD: Please present this juror.

15 CLERK: Defense?

16 MS. KNOWLES: Please excuse this juror.

17 CLERK: You are excused from this particular case.

18 32, Christopher Bradey.

19 What say the State?

20 MR. HOLFORD: Please present this juror.

21 CLERK: Defense?

22 MS. KNOWLES: Please seat this juror.

23 CLERK: Please be seated in the jury box.

24 152, Peter Hughes.

25 What say the State?

State v. James Hagan - 2013-GS-26-00268
JURY SELECTION

19

1 MR. HOLFORD: Please present this juror.
2 CLERK: Defense?
3 MS. KNOWLES: Please seat this juror.
4 CLERK: Please be seated in the jury box.
5 168, Pamela Kelly.
6 What say the State?
7 MR. HOLFORD: Please present this juror.
8 CLERK: Defense?
9 MS. KNOWLES: Please seat this juror.
10 CLERK: Please be seated in the jury box.
11 167, James Kelly.
12 What say the State?
13 MR. HOLFORD: Please excuse this juror in this particular
14 case.
15 CLERK: You are excused from this particular case.
16 110, Judith Fowler.
17 What say the State?
18 MR. HOLFORD: Please present this juror.
19 CLERK: Defense?
20 MS. KNOWLES: Please seat this juror.
21 CLERK: Please be seated in the jury box.
22 243, Hung Pham.
23 What say the State?
24 MR. HOLFORD: Please excuse this juror in this particular
25 case.

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JURY SELECTION

20

1 CLERK: You are excused from this particular case.
2 146, Ashley Hoffman.
3 What say the State?
4 MR. HOLFORD: Please excuse this juror in this particular
5 case.
6 CLERK: You are excused from this particular case.
7 THE COURT: I have five strikes for the State. Any
8 future strikes will be for cause.
9 MR. HOLFORD: Yes, Your Honor.
10 CLERK: 44, Susan Cameron.
11 What say the State?
12 MR. HOLFORD: Please present this juror.
13 CLERK: Defense?
14 MS. KNOWLES: Please seat this juror.
15 CLERK: Please be seated in the jury box.
16 222, Michael Nangle.
17 What say the State?
18 MR. HOLFORD: Please present this juror.
19 CLERK: Defense?
20 MS. KNOWLES: Please excuse this juror.
21 CLERK: You are excused from this particular case.
22 57, Nancy Collins.
23 What say the State?
24 MR. HOLFORD: Please present this juror.
25 CLERK: Defense?

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JURY SELECTION

21

1 MS. KNOWLES: Please seat this juror.
2 CLERK: Please be seated in the jury box.
3 330, Tammy Vance.
4 What say the State?
5 MR. HOLFORD: Please present this juror.
6 CLERK: Defense?
7 MS. KNOWLES: Please excuse this juror.
8 CLERK: You are excused from this particular case.
9 338, Ryan Weatherwax.
10 What say the State?
11 MR. HOLFORD: Please present this juror.
12 CLERK: Defense?
13 MS. KNOWLES: Please seat this juror.
14 CLERK: Please be seated in the jury box.
15 226, Barbara Norris.
16 What say the State?
17 MR. HOLFORD: Please present this juror.
18 CLERK: Defense?
19 MS. KNOWLES: Please excuse this juror.
20 CLERK: You are excused from this particular case.
21 69, Kimball Davis.
22 What say the State?
23 MR. HOLFORD: Please present this juror.
24 CLERK: Defense?
25 MS. KNOWLES: Your Honor, may I inquire if she's married

State v. James Hagan - 2013-GS-26-00268
JURY SELECTION

22

1 or not?

2 JUROR 69: Single.

3 MS. KNOWLES: Okay. Please seat this juror.

4 CLERK: Please be seated in the jury box.

5 273, Angela Roberts.

6 What say the State?

7 MR. HOLFORD: Please present this juror.

8 CLERK: Defense?

9 MS. KNOWLES: Please seat this juror.

10 CLERK: Please be seated in the jury box.

11 98, Jorge Eusse.

12 What say the State?

13 MR. HOLFORD: Please present this juror.

14 CLERK: Defense?

15 MS. KNOWLES: Please seat this juror.

16 CLERK: Please be seated in the jury box.

17 THE COURT: All right. We are now selecting the
18 alternate.

19 CLERK: 40, Ralph Bryant.

20 What say the State?

21 MR. HOLFORD: Please present this juror.

22 CLERK: Defense?

23 MS. KNOWLES: Please excuse this juror.

24 CLERK: You are excused from this particular case.

25 36, Cynthia Bright.

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JURY SELECTION

23

1 What way the State?

2 MR. HOLFORD: Please present this juror.

3 CLERK: Defense?

4 MS. KNOWLES: Please seat this juror.

5 CLERK: Please be seated in the jury box.

6 THE COURT: Any objections to the jury selection process
7 from the State?

8 MR. HOLFORD: None, Your Honor.

9 THE COURT: Any from the Defense?

10 MS. KNOWLES: No, sir.

11 THE COURT: All right. Those of you who were not
12 selected on the jury panel, at this time, I'm going to release
13 you to go back to the Assembly Room. I believe you'll be
14 calling in after 6:00 P.M. this evening for additional
15 instructions. Thank you for your cooperation with me today.
16 You are free to go back downstairs.

17 (REPORTER'S NOTE: Remaining jury panel exits courtroom. 4:07
18 P.M.)

19 THE COURT: Ladies and gentlemen, you've been selected as
20 jurors in this case. Now, we're actually gonna start the
21 trial of the case in the morning, so I'm going to release you
22 for the rest of the afternoon and I'll ask that you be back --
23 the bailiffs will show you where you need to go. I assume it
24 will be downstairs. You'll be showing -- coming downstairs.
25 I'd ask that you be there by 9:30 in the morning and we should

State v. James Hagan - 2013-GS-26-00268
JURY SELECTION

24

1 be able to start shortly thereafter.

2 While you're away from the courthouse, let me explain
3 just a couple of things to you. When you come back in front
4 of the Court tomorrow, you will be taking an oath to decide
5 this case based upon the law and the evidence. The only place
6 you will hear evidence about this case is in this courtroom
7 from witnesses who sworn to tell the truth will testify from
8 the witness stand. The other evidence in the case will come
9 into the record through that testimony, be it documents or
10 objects of things of that nature. For that reason, under your
11 oath as jurors, it would be improper for you to try to gather
12 information about this case on your own from any other source.
13 It would be a violation of your oath to do so. So, when you
14 come back to the courtroom, I'll be asking you as to whether
15 or not you have violated my instructions and, of course, will
16 be inquiring into that before we begin the trial of the case.
17 Also, I'll caution you not to listen to, watch or read any
18 media reports concerning this case. Should you hear such a
19 report, see such a report or pick up a newspaper and see an
20 article starting about it, don't read it, don't watch it, turn
21 it off, don't listen to it. Those reports more than likely
22 contain information that are -- that would not be admissible
23 under the rules that govern the admissibility of evidence in a
24 trial; therefore, you should not consider that information
25 either. You've been selected as fair and impartial jurors

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1 with an open mind in the case. Don't discuss this matter even
2 what it is about or the people involved or the place it
3 happened or the date it happened with anyone. Even the most
4 innocent conversation you might have with someone about the
5 personalities or issues that might be involved in this case
6 might begin to color your ultimate decision and you haven't
7 heard the first word of testimony yet. So, if someone asks
8 you about the case, tell them you can discuss it when it's
9 over, that should be the end of your discussion. It's okay to
10 tell someone you've been selected on a jury but don't talk
11 about the case or what it's about or who is involved.

12 Now, the last thing I'll tell you is if someone tries to
13 contact you about your service on the jury, I will tell you
14 that jury tampering is a crime in this state. I consider it a
15 serious matter. So, if someone tries to contact you about
16 your service on this jury, please report that. I can assure
17 you I'll see that the appropriate investigations are begun
18 concerning those matters.

19 Now, again, you're free to go for the evening but be back
20 in the jury room downstairs at 9:30 in the morning. We should
21 be in a position to start thereafter. You're free to go at
22 this time.

23 (REPORTER'S NOTE: The jury is excused for the day and exits
24 courtroom. 4:11 P.M. The following takes place outside the
25 presence of the jury.)

1 THE COURT: Any objections to my instructions to the jury
2 from the State?

3 MR. HOLFORD: None from the State, Your Honor.

4 THE COURT: Any from the Defense?

5 MS. KNOWLES: No, sir.

6 THE COURT: All right. I've got a question in the case
7 that I have out, so I'm gonna take that question before we
8 begin to discuss pretrial motions in your case. So, stay in
9 the courtroom but if you'd step back, I'd like the attorneys
10 in the case that the jury is out to come forward at this time
11 so I can entertain the questions.

12 MR. HOLFORD: Yes, Your Honor.

13 (REPORTER'S NOTE: Recess at 4:11 P.M.)

14 *****OFF THE RECORD*****

15 (On the Record. 4:30 P.M.)

16 THE COURT: All right. I believe there were some
17 pretrial motions that the attorneys wanted me to consider.
18 I'll start for the State. Any motions on behalf of the State?

19 MOTIONS:

20 MR. HOLFORD: Yes, Your Honor. On behalf of the State,
21 the State seeks to introduce into evidence as a self-
22 authenticating document under Rule 903, there was a guilty
23 plea by the Defendant to malicious injury to a house, trespass
24 on property or injury valued 2,000 or less. That was injury
25 to the door which the Defendant kicked in, in connection with

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1 this burglary. It happened on the same date, the same time,
2 the same location, the same victim, the same officer took out
3 the warrant and this Defendant pled in Magistrate's Court
4 admitting that he was there. Therefore, the State would seek
5 to introduce that and read it into the record that this
6 Defendant has already admitted to being present at the crime
7 and kicking the door in. He did plead guilty to that.

8 THE COURT: All right. Let's hear what the Defense has
9 to say about that.

10 MS. KNOWLES: Your Honor, I would object to that. He did
11 not have counsel at that time. In addition to that there is
12 no court reporter present for a transcript. He tells me and
13 based upon my investigation, he is correct, he had requested a
14 jury trial in that matter. He misplaced a notice. He arrived
15 at the courthouse late. The jury had already been selected;
16 the case had already been heard and the jury was actually
17 deliberating. He approached the Judge, the Judge then told
18 him, sir, you have one of two options, either you can let the
19 jury decide this case and accept their verdict or you can
20 chose to plead guilty and I will sentence you to a time-served
21 sentence. At that time, he chose the lesser of the two evils
22 and pled guilty but that conviction should in no way be
23 relevant here to meeting the elements of the burglary.

24 THE COURT: Counselor?

25 MR. HOLFORD: Your Honor, under oath in a Magistrate's

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1 Court, this Defendant admitted to being at the scene of the
2 crime and to be the one that kicked the door in. That not
3 only shows identification of him being present but it also
4 shows he was present at the scene of the crime.

5 THE COURT: Is there a transcript of that proceeding?

6 MR. HOLFORD: Your Honor, I don't know if there is a
7 transcript, there may be a audio recording. I do not have a
8 transcript.

9 THE COURT: Do you have a copy of that warrant?

10 MR. HOLFORD: Yes, Your Honor, I have a copy of the
11 warrant as well as the Central Jury Court case history.

12 THE COURT: What is that, the case history?

13 MR. HOLFORD: It's just -- it's what they keep in Central
14 Jury Court. It shows who the Defendant is, who the officer
15 was ---

16 THE COURT: It's like a ledger card they keep up with
17 what happens in the case?

18 MR. HOLFORD: The bond entity, the victim, other party to
19 the case, the address and the charge and the sentence. Pled
20 guilty to jail time served.

21 MS. KNOWLES: Your Honor, in fairness, that public index
22 also reflects that a jury trial was requested on 10/22 of last
23 year.

24 MR. HOLFORD: Your Honor, in any case, if a jury trial is
25 requested, the defendant does not have to present. The trial,

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1 as you well know, can happen in his absence. Just because the
2 Defendant failed to show up on time and then he later showed
3 up and decided to plead guilty doesn't matter; he still pled
4 guilty and said under oath to a judge, I'm the one who did it.

5 THE COURT: Can I see the warrant?

6 MR. HOLFORD: Yes, Your Honor.

7 MS. KNOWLES: And, Your Honor, without a transcript, I do
8 not know that he even knew the ramifications of a guilty plea
9 to a Magistrate level offense.

10 MR. HOLFORD: Your Honor, it goes to show his presence
11 that he was still there, he was the one who committed the
12 crime. The ramifications are not relevant in this matter.
13 He's gonna try and say he wasn't there and he can't do that if
14 he's already told a Magistrate Judge under oath that he was
15 there.

16 MS. KNOWLES: And Your Honor, in connection with this
17 too, I filed a notice of intention to offer an alibi. I have
18 not received a response from the State at all. This is the
19 first that I have heard that this is their intention. The
20 rules require that he provide me with notice of who he intends
21 to introduce as witnesses to rebut that alibi within ten days.

22 THE COURT: Well, I don't know that he's introducing a
23 witness. What he's trying to introduce is a court record; is
24 that what I'm hearing?

25 MR. HOLFORD: Yes, Your Honor, there is no witness

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1 necessary. It's a self-authenticating document.

2 MS. KNOWLES: The court reporter is the witness that I'm
3 referring to.

4 MR. HOLFORD: Your Honor, the court -- I don't even know
5 if there is a court reporter in Magistrate's Court.

6 THE COURT: There was one listed on the witness list, I
7 have no clue what that person is for.

8 MR. HOLFORD: That's Ms. Richardson and that's for a
9 separate matter. She took a court reporter -- she was the
10 court reporter in the codefendant's plea up here where he
11 allocuted against the Defendant and said the Defendant was
12 with him.

13 MS. KNOWLES: But I'll save that for later on, Your
14 Honor.

15 THE COURT: All right. Well, again, I don't know that
16 he's presenting a witness, he's presenting a court document
17 which has an affidavit and a warrant that says that Mr. Hagan
18 -- Charles Hagan and James Hagan went to a residence located
19 at the same one in our indictment and that they did conspire
20 to break-in to the residence and did damage the door by
21 forcefully entering and doing damage.

22 MS. KNOWLES: Your Honor, I would argue that that would
23 overly prejudicial to my case to allow that in. It is not
24 evidence of a burglary and that is ---

25 THE COURT: What was -- there's a good bit of law and I'm

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1 gonna look it up and read it on, you know, people being
2 estopped from going into two different courts and giving two
3 different versions of what happens; you can't do that.

4 MS. KNOWLES: And I don't know without a transcript what
5 was said.

6 THE COURT: That's the reason I asked for the indictment
7 because if he pled guilty to this indictment, I mean the
8 warrant, he pled guilty to this warrant, a judge can't accept
9 the plea unless he admits to the allegations. I can't accept
10 a plea unless the people say they did what they say they did.

11 MS. KNOWLES: Yes, sir.

12 THE COURT: So, I -- without a record, I would at least,
13 I think, take judicial notice that if he plead guilty to that
14 warrant, he admitted what was in that affidavit before a
15 judge.

16 MS. KNOWLES: Yes, sir.

17 THE COURT: That's the reason I wanted to see what it
18 said. Okay.

19 MR. HOLFORD: Your Honor, as to the more prejudicial,
20 it's certainly more probative in this case than it is
21 prejudicial to a jury, that he's already admitted to being the
22 one that kicked the door in at the place that he claims he
23 wasn't there.

24 THE COURT: Well, I understand that. I'm gonna take a
25 look at it and I'm gonna look up those cases. There's been a

1 couple of recent cases on this where people have gone into one
2 court and given a version of a story and then tried to go in
3 another court and change it. And I know they generally are
4 estopped from doing so, judicial estoppel, and we'll see what
5 this -- what effect this might have. I'll take a look at it.

6 MS. KNOWLES: Okay. And, Your Honor, it's just -- it
7 puts me at a disadvantage because I wasn't present and he
8 didn't have counsel to advise them of the consequences of
9 that.

10 THE COURT: Oh, I understand, ma'am, but you know, if --
11 I'm not sure that that allows him then to change his story.

12 MS. KNOWLES: Yes, sir.

13 THE COURT: Do you follow what I'm saying? I mean, I
14 understand what you're saying, that -- and I'll take a look at
15 it from that angle if there's some -- if you have a case or
16 something that would indicate that he's not bound by his
17 representations in other courts ---

18 MS. KNOWLES: I can certainly do my best to find one.

19 THE COURT: All right.

20 MR. HOLFORD: Your Honor, further, I would argue if you
21 do allow it then the Defense would not be able to raise a
22 defense that he was not present at this crime.

23 THE COURT: Well, again, I will take a look at all that
24 and see what the ramifications of that might be.

25 MR. HOLFORD: Yes, Your Honor.

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1 THE COURT: You know, he's not -- he's not required to
2 prove anything here.

3 MR. HOLFORD: I understand, Your Honor. He doesn't have
4 to prove anything.

5 THE COURT: I'm not gonna say he's got to prove where he
6 was or where he wasn't. Now, if he raises an affirmative
7 defense such as an alibi, then there is some requirement that
8 he present some evidence on that.

9 MR. HOLFORD: Well, we were served with an alibi witness.

10 THE COURT: I understand that. And you apparently have
11 not responded with any witness to the contrary concerning that
12 alibi?

13 MR. HOLFORD: No, Your Honor.

14 THE COURT: Okay. I think I understand where we are.

15 MR. HOLFORD: Yes, sir.

16 THE COURT: All right. Any other motions from the State?

17 MR. HOLFORD: Nothing further from the State, Your Honor.

18 THE COURT: All right. Now, for the Defense?

19 MS. KNOWLES: Your Honor, as I mentioned earlier and you
20 just noted, I have not received a response from the State with
21 regard to my intention to offer the alibi. I just would like
22 to know who he intends, just for clarification purposes,
23 introducing to rebut that.

24 THE COURT: Well, I -- maybe I missed the point, but I
25 think I got the point is that what he's saying is if you're

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1 client is estopped from asserting the claim in this court that
2 would be contrary to a claim that he took in another court,
3 then he doesn't have to put anybody up.

4 MS. KNOWLES: Okay.

5 THE COURT: I think that's his position. Am I ---

6 MR. HOLFORD: Yes, Your Honor. Further, I have other
7 witnesses that will testify in my case in chief ---

8 THE COURT: As to?

9 MR. HOLFORD: As to where he was at the time.

10 THE COURT: Well, you need -- you've got to serve her
11 with notice of witnesses that are going to be on that issue,
12 don't you?

13 MR. HOLFORD: Your Honor, she has discovery of those
14 witnesses and their statements that say that they saw him.
15 She's had that discovery since ---

16 THE COURT: When the discovery was delivered, was it made
17 clear to her that they were going to be testifying on the
18 alibi issue?

19 MR. HOLFORD: No, Your Honor, it was made clear that
20 they'd be testifying on the statements they gave which say
21 that they saw someone who looked like this male walking,
22 matching the same description, and getting in the car.

23 THE COURT: All right.

24 Yes, ma'am?

25 MS. KNOWLES: The other issue that I felt needs to be

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1 addressed is the identification of the witnesses that I think
2 that he's referring to. I believe that we need to have a
3 hearing on that, the reliability of that identification is at
4 issue and it would be the Defense's position that it was
5 unreliable and needs to be suppressed, both identification.

6 THE COURT: It was what?

7 MS. KNOWLES: Unreliable and needs to be suppressed as
8 such.

9 THE COURT: All right. I don't know what efforts were
10 made to identify this individual. Was it a photo line-up, was
11 it a show-up line-up, was it ---

12 MR. HOLFORD: Your Honor, two individuals working at a
13 independent company saw a white male, bald, semi-muscular
14 build with a blue shirt and khaki shorts; that's how they
15 describe him to the police.

16 THE COURT: They saw him committing the crime or they
17 just ---

18 MR. HOLFORD: No, no, they saw him being picked up by the
19 white Ford Taurus his codefendant was driving.

20 THE COURT: I see. On the date that this occurred ---

21 MR. HOLFORD: On the date that this occurred.

22 THE COURT: In the vicinity of where is was ---

23 MR. HOLFORD: Less than -- about half a mile.

24 THE COURT: Okay.

25 MR. HOLFORD: So, they would be able to identify him

1 being in court but that's the description that they are gonna
2 say and that's the description that was turned over to the
3 Defense in their voluntary statements. They didn't know James
4 Hagan.

5 THE COURT: Have they otherwise identified him other than
6 from ---

7 MR. HOLFORD: They did later identify him based on a --
8 on a jail photo from Horry County Detention Center, which the
9 State would not introduce.

10 MS. KNOWLES: Your Honor, what happened was over a month
11 after the crime had been committed, they took it upon
12 themselves to do some independent research.

13 THE COURT: You say they?

14 MS. KNOWLES: These two witnesses.

15 THE COURT: Okay.

16 MS. KNOWLES: They had heard that a Hagan boy was
17 responsible for this burglary so they looked up this name on
18 the internet, they located my client's mugshot which was from
19 three years ago and, like I said, a month and a half, it was
20 about thirty-three days after the crime, and they then turned
21 this information over to police when the investigator is there
22 investigating another crime. It's not like they sought out
23 him at the police department when they made this
24 identification.

25 THE COURT: All right. Let me get some more information

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1 so that I kind of understand what happened. So, this was not
2 an effort by the police to show, to go out and have them
3 identify someone from a photo lineup or just a single photo.
4 They did this themselves by going on the internet and pulling
5 up a photo themselves.

6 MS. KNOWLES: After hearing through the grapevine that
7 my client was responsible.

8 THE COURT: I understand that. But you're not claiming
9 State action in this. In other words, the police didn't
10 sponsor this identification, didn't conduct the
11 identification; is that what I'm hearing?

12 MS. KNOWLES: The only police involvement would be that
13 the investigator had them sign off on the mugshot that they
14 used ---

15 THE COURT: After they'd pulled this up on the internet?

16 MS. KNOWLES: Yes, sir.

17 THE COURT: Okay. Well, you know, there's cases about
18 witnesses having seen mugshots on -- even on T.V. or in the
19 newspaper and that did not make those identifications per se
20 unreliable and they were not sponsored by the police or the
21 state. I don't know -- I haven't looked up this specific
22 situation yet. I just tried a case in Spartanburg where that
23 happened, where a witness was watching television and saw the
24 mugshot come up on T.V. and called the police and said, you've
25 got the guy, that's him.

1 MS. KNOWLES: Yes, sir.

2 THE COURT: So, I mean, that happens. And you know, when
3 the police don't sponsor it it's less of a problem when people
4 just -- it's like if I were walking down the street and I'd
5 seen a crime five days ago and I spot the guy who did it and
6 say, police, that's him. You follow me?

7 MS. KNOWLES: Yes, sir. And the description that they
8 gave was very general as well, and like I said, when they made
9 the I.D. it was thirty-three days after the crime.

10 THE COURT: All those things go to the weight.

11 MS. KNOWLES: So, you're, you're ---

12 THE COURT: Oh, I'm not ruling yet.

13 MS. KNOWLES: Okay.

14 THE COURT: I'm just saying all those things do go to the
15 weight of it, I understand that. I'm willing to take
16 testimony on it. I'm not telling you you can't have a
17 hearing.

18 MS. KNOWLES: Okay. Okay.

19 THE COURT: All right.

20 MS. KNOWLES: But that was my next issue.

21 THE COURT: Okay. You want to present testimony on that
22 issue?

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: She's challenging the -- so, you're gonna let
25 it go as it is?

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1 MR. HOLFORD: Your Honor, the -- their identification
2 based on the website and based on that picture, I don't even
3 think it's necessary.

4 THE COURT: So, you don't intend to put that in or use
5 that identification in any way?

6 MR. HOLFORD: No, Your Honor.

7 MS. KNOWLES: So, he's not calling either of those
8 witnesses?

9 MR. HOLFORD: No, I'm certainly calling those witnesses
10 and they'll identify like they did in the voluntary statement
11 that was turned over to counsel in the initial discovery that
12 they observed ---

13 THE COURT: I think she's -- are you planning on having
14 an in-court identification?

15 MR. HOLFORD: Yes, Your Honor. They'll be able to
16 identify him in court.

17 THE COURT: I guess you can reserve your objection until
18 that time when they attempt to do that.

19 MS. KNOWLES: Okay. And I need to make a motion to
20 sequester all witnesses, too.

21 THE COURT: All right. Any reason why we should not
22 sequester witnesses?

23 MR. HOLFORD: No, Your Honor, as long as my lead
24 investigator and victim would be allowed to stay.

25 THE COURT: Victims are allowed to be present. Who --

1 designate the lead investigator, who is that gonna be?

2 MR. HOLFORD: Lance Corporal Michael Hilburn.

3 THE COURT: All right. That particular officer and the
4 alleged victims, I think there were two of them identified?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: They will be allowed to be present, be
7 present for the trial. Any other witnesses at this time
8 should leave the courtroom. I will admonish them not to
9 discuss their testimony at any time during the trial until
10 they are released by the Court.

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: So, please leave the courtroom if you're
13 gonna be a witness other than the victims or the lead
14 investigator.

15 So, I have granted your motion.

16 MS. KNOWLES: Thank you and that's it at this point.

17 THE COURT: All right. Then we'll be in recess. I will
18 rule concerning the effect of the guilty plea in Magistrate's
19 Court in the morning. I will be here at nine o'clock, I'd
20 like for the attorneys to be present. If you'd like to submit
21 any authority on that issue, be ready at nine o'clock.

22 MR. HOLFORD: Yes, Your Honor.

23 THE COURT: All right. We're in recess in this case at
24 this time and we'll begin again at nine o'clock.

25 Now, the Defendant has been on bond?

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1 MS. KNOWLES: He's actually on electronic monitoring
2 right now.

3 THE COURT: All right. Any objection to him staying on
4 that status?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: All right. That'll be fine.

7 Sir, let me caution you, we'll start the trial of your
8 case in the morning at nine o'clock in this courtroom. If you
9 fail to appear at that time, you will be tried in your absence
10 and a bench warrant would be issued for your arrest. Do you
11 understand that, sir?

12 MR. HAGAN: Yes, sir.

13 THE COURT: Thank you. All right, we're in recess in
14 this case.

15 MR. HOLFORD: Thank you, Your Honor.

16 MS. KNOWLES: Thank you very much.

17 (REPORTER'S NOTE: Recess at 4:49 P.M.)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 AUGUST 15, 2013 - 9:15 A.M.

21 (REPORTER'S NOTE: The following takes place outside the
22 presence of the jury.)

23 MOTIONS:

24 THE COURT: All right. I want to go over a couple of the
25 things that we talked about yesterday during the motion

1 period. First of all, the issue came up concerning, I guess,
2 alibi testimony to be offered in the case. The State took the
3 position that the Defendant had pled guilty in Magistrate's
4 Court to a related offense stemming out of the same factual
5 situation that existed in this particular case. Specifically,
6 I believe that plea was to a charge of malicious injury to
7 real property.

8 MR. HOLFORD: Yes, sir.

9 THE COURT: And that involved a damage to a door on the
10 property that allegedly was burglarized in this case. Has --
11 does either party wish to offer any additional information
12 concerning that issue as to whether or not -- and the way I
13 analyze this is from the point of view -- I take it that the
14 State's position is that judicial estoppel would apply in this
15 case because of a prior inconsistent statement having been
16 made in another court on the same or similar circumstances.

17 MR. HOLFORD: Yes, Your Honor, it would be judicial
18 estoppel which addresses the fact that they cannot take
19 inconsistent statements of the facts. They can certainly
20 offer different legal avenues but cannot say something
21 different factually occurred.

22 THE COURT: All right.

23 MR. HOLFORD: And where he said, factually, he was there
24 and he kicked the door in, he couldn't then come in court and
25 say he wasn't there.

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1 THE COURT: All right. And you wish to offer anything to
2 me on that issue?

3 MR. HOLFORD: Yes, Your Honor. I have the -- just the
4 overview of judicial estoppel from the Trial Lawyers Handbook
5 as well as New Hampshire v. Maine, that was a Supreme Court
6 decision from the United States; Carrigg v. Cannon, which was
7 a Court of Appeals case from South Carolina; State v McCall,
8 which is a Court of Appeals case from South Carolina; in the
9 Fourth Circuit of the United States Courts of Appeal Lowery v.
10 Stovall; and the South Carolina Supreme Court, Hayne Federal
11 Credit Union v. Bailey; as well as Court of Appeals from South
12 Carolina State v Snowden. I thought those were the most
13 relevant cases that dealt with judicial estoppel.

14 THE COURT: All right. Pass those up to me, please.

15 MR. HOLFORD: And I've also handed a copy of those to the
16 Defense counsel.

17 THE COURT: Thank you. I'll hear from the Defense on the
18 issue.

19 MS. KNOWLES: Your Honor, it's my understanding that a
20 warrant is just a notice document. And as such, it should not
21 be allowed to be introduced as evidence. There are different
22 procedures in Magistrate Court as there are in General
23 Sessions. My client did not have the benefit of counsel and
24 that is a fundamental right. The waiver of that right needs
25 to be on record and we don't know that that was done. The

1 United States Supreme Court case of Baldasar v. Illinois, the
2 Court held that while an uncounseled misdemeanor conviction is
3 constitutionally valid, if the offender is not incarcerated,
4 subject conviction may not be used under an enhanced penalty
5 statute to convert a subsequent misdemeanor into a felony with
6 a prison term and that's essentially what the State is doing
7 by their actions. He was not counseled. Had we been notified
8 of this per their response to an alibi notice that we gave
9 them, then maybe we would have a different proceeding
10 altogether here.

11 THE COURT: Well, looking at the alibi rule, which is in
12 Rule 5 ---

13 MS. KNOWLES: Yes, sir.

14 THE COURT: What the State is required to disclose is
15 within ten days after you serve notice of your intent to use
16 an alibi defense, they would need to serve names and addresses
17 of witnesses whom the State intends to rely. In this case,
18 they're relying on a court record, they're not relying on any
19 witness.

20 MS. KNOWLES: Yes, sir, but the purpose -- I take the
21 purpose of that rule to be to allow both parties to prepare
22 their case for trial.

23 THE COURT: Or to allow you to be in a position to cross
24 examine the witnesses or to find out what they've got to say.
25 And here, it's a court record, I mean, I don't know how you

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1 prepare a court record -- I understand what you're saying but
2 the rule doesn't address evidentiary matters or matters that
3 are in a court record already that -- before you even gave
4 notice of the alibi. I -- the rule doesn't address it. I
5 mean, I don't see it says anything about anything other than
6 witnesses names and addresses. There's no name or address for
7 what he's trying to do.

8 MS. KNOWLES: Well, it would've been the Magistrate
9 Office at the very least. I could've had some sort of notice.

10 THE COURT: Well, the public -- I understand that you're
11 saying you should've had some notice of what he's raising; I
12 understand that. But the rule doesn't talk -- I wish the rule
13 said that but it -- I can't read anything into it.

14 MS. KNOWLES: Well, and Your Honor, it takes my defense
15 away from me completely. It changes the ballgame altogether.

16 THE COURT: Well, it potentially has that effect but
17 again -- and I'm not arguing with you that perhaps he
18 should've told you in the interest of fairness but I'm not
19 gonna argue that point with you, I'm just saying that the rule
20 really doesn't address this fact. If it does address it, show
21 me.

22 MR. HOLFORD: Your Honor, for the record ---

23 THE COURT: Just a second, let me talk to her.

24 MS. KNOWLES: And, Your Honor, I can tell you that there
25 is an audio recording of that proceeding, I know that there

1 is.

2 THE COURT: Okay.

3 MS. KNOWLES: And that way, if we had that ---

4 THE COURT: I'll subpoena it if you want me to get it
5 here.

6 MS. KNOWLES: I just would like to know that he knew what
7 he was getting himself into.

8 THE COURT: Well, I understand that. Let's talk about
9 the rule of judicial estoppel for just a minute. In reviewing
10 that rule, there are five elements to that rule before the
11 State can use it. And it's questionable that the State can
12 use it. In South Carolina, I think was it State vs. McCall,
13 am I stating that correctly? Yeah, State vs. McCall, 2005
14 case with the Court of Appeals.

15 MR. HOLFORD: That is one that addressed it, Your Honor.

16 THE COURT: Well, that's the only criminal case that's
17 addressed so far and that's where we are, we're in a criminal
18 case. And State vs. McCall, the State noted that the State of
19 North Carolina has refused to apply judicial estoppel in
20 criminal cases at all. Now, in State vs. McCall, the State
21 Court of Appeals did fail or refuse to take that position one
22 way or the other. They refused to decide it. And the reason
23 they refused to decide it is that even if you applied the rule
24 to criminal cases, they said that the facts in McCall did not
25 fit those five elements under judicial estoppel. And so,

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1 we're gonna look at those five elements and see if, based on
2 what I've heard so far, the situation that the State is urging
3 on us fits those five elements. The five elements are that
4 there were two inconsistent positions taken by the same party.
5 And if you take a guilty plea as an admission of whatever was
6 in the allegations, which was in the warrant, it's arguable
7 that there's two inconsistent positions being taken in these
8 two cases.

9 Number two, the positions must be taken in the same or
10 related proceedings involving the same party or parties. In
11 this case, the same Defendant, same facts, they are similar
12 and related cases.

13 Number three, the party taking the position must have
14 been successful in maintaining that position and must have
15 received some benefit. In this case, he pled, he got time-
16 served sentence rather than the Magistrate, what I heard
17 yesterday offered him a verdict and get whatever you get when
18 that happens. So, in that case, he did receive some possible
19 benefit by pleading rather than taking the verdict.

20 The problem that I have is number four, the inconsistency
21 must have been part of an intentional effort to mislead the
22 court. Now, in this particular case, so far the information I
23 have received is that the Defendant arrived late for a jury
24 trial. He did not have an opportunity to present his defense.
25 He was not represented by counsel. He was offered an

1 alternative by the Magistrate, plead and get time-served or
2 take your chances with the jury and I'll give you whatever I
3 think you ought to get. I have not heard any evidence that
4 would indicate that this was part of a plan to mislead the
5 Court.

6 MR. HOLFORD: Your Honor ---

7 THE COURT: Now, if that evidence exists, I'm asking the
8 State for it now.

9 MR. HOLFORD: Your Honor, the inconsistency to mislead
10 the Court could be in either court. The State argues that his
11 inconsistent statement now would be to mislead this Court, not
12 to mislead the other Court.

13 THE COURT: Well, but he's given -- he's given a
14 plausible explanation. You know sometimes people plea, they
15 either -- you know, he wasn't sophisticated enough he could've
16 perhaps pled Alford or something of that nature while he was
17 there. He did not have -- I have to recognize he did not have
18 counsel at that time.

19 MR. HOLFORD: But an Alford plea ---

20 THE COURT: I would have to think that the purpose of the
21 misleading would've been to gain an advantage at that time and
22 I'm not sure that there's any evidence or I feel that there's
23 any evidence that at the time he made that statement he's
24 thinking, well, I can -- I can say it here and I can take a
25 different position there. I'm not sure I've heard of that

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1 level of sophistication involved in this situation.

2 MR. HOLFORD: But if he did give the evidence in this
3 case that he wasn't there, that would be misleading this
4 Court.

5 THE COURT: Well, again, I've been doing this long enough
6 to know that people sometimes offer pleas when otherwise they
7 feel that they are not guilty, they do it in order to get a
8 certain sentence or a certain arrangement, plea arrangement,
9 that happens, I understand it happens. I'm sure you probably
10 recognize it -- you may have seen it happen. So, I'm just
11 saying I don't see here an overt effort on the part of a
12 defendant to mislead a court. I understand what you're saying
13 that it would have the appearance of doing that.

14 MR. HOLFORD: I believe he will mislead this Court and
15 mislead Your Honor and mislead this jury ---

16 THE COURT: Well, the remedy of that may be a good cross
17 examination or other evidence to show that what he's presented
18 is incorrect. That's what trials are about!

19 MR. HOLFORD: But I ---

20 THE COURT: Again, if -- if judicial estoppel even
21 applies to criminal cases, which our sister state says it
22 doesn't. If it does, the facts on that point are at least
23 debatable. I think there's a fair debate as to whether or not
24 there was an intentional effort to mislead the Court either by
25 taking the position he took in the Magistrate's Court or

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1 taking the position he's taking here.

2 MR. HOLFORD: But he's taking two completely inconsistent

3 ---

4 THE COURT: But counselor, if I were to look at the
5 situation from where I'm sitting ---

6 MR. HOLFORD: Yes, Your Honor.

7 THE COURT: In this case apparently, he has other
8 witnesses who will substantiate the story he's offering in
9 this case.

10 MR. HOLFORD: He has one witness that says that he was
11 with her working and we have two witnesses we provided long
12 before that say he wasn't.

13 THE COURT: Well, again, there is some evidence to
14 substantiate his story. It's not just him giving a different
15 story; there is an independent witness who apparently is
16 willing to get on the stand and swear that he was somewhere
17 else.

18 MR. HOLFORD: Yes. But does that preclude --- but does
19 that preclude me from introducing a warrant where he said he
20 already did it?

21 THE COURT: Well, if it's based on judicial estoppel it
22 very well could if, if again, and I think it's the person
23 asserting judicial estoppel who has to establish the factors
24 that I'm going over.

25 MR. HOLFORD: Yes, Your Honor.

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1 THE COURT: If -- let me get over here and be sure I
2 state it correctly. The inconsistency must be part of an
3 intentional effort to mislead the Court.

4 MR. HOLFORD: And I believe he would be intentionally
5 misleading this Court by telling you he wasn't there when he
6 already swore under oath that he was.

7 THE COURT: And the two positions must be totally
8 inconsistent and limited to the ---

9 MR. HOLFORD: Whether he was there or not there are
10 totally inconsistent.

11 THE COURT: Yes, ma'am. Anything else?

12 MS. KNOWLES: Your Honor, I think it's just quite clear
13 based on this warrant itself, if you look at the back, it
14 looks like the Judge didn't even really know what was going
15 on.

16 THE COURT: I'm not sure what you're referring to.

17 MS. KNOWLES: I can show you. It has indicated here,
18 trial in absence, guilty, and then some portions marked
19 through as far as the disposition goes.

20 MR. HOLFORD: Your Honor, what happened was he was tried
21 in his absence because he failed to appear for his court
22 appearance, which is his right to do so. A jury was
23 deliberating, he came in and he said, no, I wish to plead
24 guilty. And in pleading guilty, you waive your constitutional
25 rights, you admit under oath that you did what the warrant

1 alleges. The Judge goes through all of those issues with him.

2 MS. KNOWLES: We don't know that ---

3 MR. HOLFORD: If we say -- if we say that uncounseled
4 pleas can't be allowed then ---

5 THE COURT: I didn't say that. I didn't -- that's not
6 what I said. Listen to me carefully what I'm saying here.
7 There has to be a showing on your part of an intentional
8 effort to mislead the Court. Now, the bare fact that the
9 positions are inconsistent does not show me that there is some
10 intentional effort to mislead the Court. When you take into
11 consideration all of the -- the totality of the circumstances
12 involved in the situation, which in this case was he appeared
13 late, the trial had already taken place, the evidence was in
14 the can and he was not in the position to present any evidence
15 himself. He did not have a lawyer to advise him of his plea
16 options or what he could've done. He was apparently, and this
17 is what's before me, the Judge gave him a choice, plead and
18 take time-served or take your chances with the jury and you
19 get what you get. And he took one of the choices, probably
20 the lesser of the two evils.

21 MR. HOLFORD: Your Honor, he was facing a 30-day offense
22 ---

23 THE COURT: I understand that but he ---

24 MR. HOLFORD: He'd already done 14 days.

25 THE COURT: I'll make a ruling. I'm not gonna allow it.

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1 MR. HOLFORD: Yes, sir.

2 THE COURT: For the reasons I just stated.

3 Number one, I have my doubts wither judicial estoppel
4 will even apply to a criminal case since North Carolina
5 doesn't allow it and I've looked at that case and there's very
6 rationale reasons why they don't do that. Our Court of
7 Appeals didn't go that far but they sure indicated that they
8 were leaning in that direction. And when you look at the
9 elements, I don't think that I have received any evidence
10 other than the fact the positions are inconsistent to show
11 that there was an intentional effort to mislead the Court.
12 That means he set out -- the purpose of that, doing that was
13 to mislead the Court. And I don't see that. I've ruled.

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: I'm just explaining my ruling.

16 MR. HOLFORD: Yes, Your Honor.

17 THE COURT: All right. Now, let's talk about the alibi
18 situation.

19 MR. HOLFORD: Can I note my objection for the record?

20 THE COURT: Oh, it's -- I think you have.

21 MR. HOLFORD: Yes, Your Honor.

22 THE COURT: Now, let's talk about the alibi situation.
23 Where are we on that?

24 MR. HOLFORD: Your Honor, the last we -- this plea took
25 place in March, March 13th, 2013. Defense counsel as well as

1 myself has the ability to look up public records, should know
2 more than myself what her own client is doing, why she didn't
3 represent him in Magistrate's Court, I don't know. That's not
4 up to the State to decide. But I, in my own investigation,
5 found out about a week ago, maybe a week and a half, and at
6 that time, I presented that to Ms. Knowles and I told her, you
7 know, your client has already pled guilty to this. And she
8 said she would get around it by prior bad acts. And I told
9 her that that wasn't the case, it was a consistent act not a
10 prior bad act. So, she's been on notice for at least a week.

11 THE COURT: As to what?

12 MR. HOLFORD: As to him pleading guilty.

13 THE COURT: Oh, I understand that but I'm not gonna allow
14 that to come in as judicially estopping him from asserting
15 that particular defense.

16 MR. HOLFORD: Right.

17 THE COURT: All right. So, are there witnesses that you
18 intend to present that place him somewhere else other than
19 what his alibi would indicate?

20 MR. HOLFORD: Yes, Your Honor, the same witnesses that
21 were provided in the initial discovery along with their
22 voluntary statements. There are two witnesses from Anderson
23 Oil Company that saw a male matching his description that will
24 be able to identify him in court at a different location at
25 that time. Furthermore, the people that he was saying he was

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1 working with, Jeanette Andrews the supervisor, says that she
2 never saw a male in the car with the two females that claim
3 that he was with them. And the other lady said he may've been
4 scheduled that day but can't say that he was actually there.
5 That was all provided in the initial discovery. And those
6 four people will be here to testify.

7 THE COURT: All right. I'll hear from the Defense.

8 MS. KNOWLES: Your Honor, he was actually paid. I have a
9 copy of paycheck that I've provided to the State indicating
10 this week in question. So, he did receive a paycheck. It's
11 his position he was at work when all this took place. He has
12 witnesses that will vouch for him in that regard. And that's
13 what we intend to introduce are those witnesses.

14 THE COURT: Well, the -- I thought your objection
15 yesterday was that you were objecting to any witnesses who
16 would testify concerning his presence or not presence at the
17 scene of the crime when it occurred?

18 MS. KNOWLES: Yes, sir.

19 THE COURT: You're -- I thought you were objecting to
20 presentation of any evidence that would go against your alibi
21 witness -- my alibi defense.

22 MS. KNOWLES: I'm sorry. I was lost. You're correct.
23 You are correct, Your Honor.

24 THE COURT: All right. That's what I -- I assume we're
25 talking about the alibi defense now.

1 MS. KNOWLES: Yes, Your Honor.

2 THE COURT: Okay. I'm listening.

3 MS. KNOWLES: I never received notice of who he was ---

4 THE COURT: Well, what did you get? He says that there
5 were witnesses who were identified and their statements were
6 given to you in discovery earlier, even before you raised the
7 alibi defense which would indicate that they were going to say
8 that this gentleman was at the scene of the crime or was not
9 at work? I don't have the discovery, I don't know exactly
10 what they said, so I need a little help here.

11 MS. KNOWLES: Those witnesses put him near the scene of
12 this residence, and not necessarily him, somebody matching his
13 description. It was a very vague description that they gave,
14 a bald man, young, wearing a blue shirt and khaki shorts.
15 That could fit a number of people. In addition to the fact
16 that their observation was gleaning at best, it was within a
17 couple of minutes at the very most, he was never stopped and
18 actually looking at them.

19 THE COURT: You're going to the identification question.

20 MS. KNOWLES: Yes.

21 THE COURT: All right. Let's go over there then, if
22 that's what you want to argue. I wanted to talk about the
23 alibi witnesses and whether you want the State to present any
24 alibi witnesses against your defense. But if you want to talk
25 about I.D. I'll talk about that now. Let's talk about the

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1 I.D. issue, I'm ready on that one, too, so let's go ahead and
2 talk about the I.D. issue.

3 MS. KNOWLES: Well, I'm a little confused because ---

4 THE COURT: Well, I am too.

5 MS. KNOWLES: --- I haven't received notice of who he
6 intended to call.

7 THE COURT: That's the point I wanted to talk about.
8 There we go.

9 MS. KNOWLES: I did receive the discovery but never the
10 particulars of who he intended to rely upon.

11 THE COURT: Well, again, my question to you was, let's
12 get back to where I was. He says or he asserts that he's
13 provided discovery responses to you. And those discovery
14 responses included witnesses and statements from those
15 witnesses which would be contrary to your alibi defense. And
16 he says he provided that to you early on in the litigation.

17 MS. KNOWLES: If he's referring to these two employees of
18 Anderson Oil Company, yes.

19 THE COURT: You see because the reason I'm asking this is
20 the rule says that when you serve notice that you're going to
21 present an alibi defense that he has ten days in which to
22 serve you with notice or names and addresses of people that
23 he's going to use against that defense.

24 MS. KNOWLES: Yes, sir.

25 THE COURT: And then the rule goes on, it's a little

1 strange because it says that -- let me get over here and talk
2 about it -- It says that the duty to identify witnesses
3 continues up until the time of trial. So, in effect, it says
4 while he has a duty to notify you within a certain length of
5 time, that duty continues up until the time of trial. And, in
6 fact, since we have not technically started the trial by
7 swearing a jury, I guess he still has the duty of notifying
8 you up until this point in time. And that may satisfy the
9 rule because the rule says that it's a continuing duty. Do
10 you see what I'm saying? So, then I've got to look at, I'm
11 thinking from my own point of view whether or not this would
12 be a surprise or work of prejudice towards your defense of the
13 case. Now, what would go toward that to my mind would be
14 whether or not he had identified these people long ago and
15 told you what they were going to say that would've been
16 contrary to your defense. Are you following me?

17 MS. KNOWLES: Sort of but he never specifically stated in
18 a written response these are the witnesses I intend to provide
19 for ---

20 THE COURT: I understand that. I understand that. But
21 his duty to do that, while it says you've got to do it within
22 ten days of getting notice, it says that duty continues up
23 until the time of trial. And so, we haven't started the trial
24 -- haven't sworn the jury yet, so I haven't started the trial.

25 MS. KNOWLES: It says that in no event less than ten days

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1 before trial, in no event less than ten days.

2 THE COURT: I understand it says that but he is taking
3 the position that he had given you notice of these people and
4 their stories long ago.

5 Now, I'll hear from you, Mr. Holford.

6 MR. HOLFORD: Yes, Your Honor. On October 23rd, 2012,
7 discovery was prepared and mailed and received by Defense
8 counsel. All that discovery contains the four voluntary
9 statements of the four witnesses I wish to call. Furthermore,
10 on March 5th, 2013, the Codefendant pled guilty to these
11 charges and during that he gave a full allocution on the
12 record that it was himself and this Defendant. I've provided
13 that transcript on May 6th, 2013 and notified Defense counsel
14 that I intended to use that against this Defendant. I have it
15 right here.

16 MS. KNOWLES: Your Honor, that is absolutely a lie.

17 MR. HOLFORD: May 6, 2013, transcript, supplemental
18 discovery was mailed.

19 MS. KNOWLES: No, sir. We received that disc that he is
20 referring to August 5th.

21 MR. HOLFORD: It's not on a disc.

22 THE COURT: Now, I'm not going to let y'all argue with
23 each other.

24 MR. HOLFORD: It's a transcript.

25 THE COURT: If you want to talk to me, I'll listen to

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1 you; otherwise, if you want to argue with each other, I'll put
2 you both out in the hall or in a jail cell.

3 MR. HOLFORD: Your Honor, it was a transcript taken of
4 Charles Hagan's guilty plea. Charles Hagan is the Codefendant
5 in this case. The transcript of that guilty plea, which he
6 admitted under oath in General Sessions Court, right next door
7 ---

8 MS. KNOWLES: Where's the transcript ---

9 THE COURT: Ma'am, let him finish his argument ---

10 MS. KNOWLES: I'm sorry.

11 THE COURT: And then I'm gonna give you an opportunity.
12 I always give both sides a chance to talk.

13 MR. HOLFORD: This transcript, which is a full allocution
14 that says that I, Charles Hagan, along with James Hagan, my
15 nephew, were at the scene of the crime, that James Hagan went
16 into the house, that he had the intent to commit a crime and
17 that Charles knew it beforehand. That was provided back in
18 May. Defendant counsel had to know I wish to rely upon an
19 allocution against the Defendant by the Codefendant. I mean,
20 the Codefendant has been called to testify as a witness.

21 I've provided her with all the information before she
22 even provided me with an alibi. Since she's provided me with
23 an alibi there are no additional witnesses that need to be
24 called.

25 THE COURT: Yes, ma'am?

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1 MS. KNOWLES: Your Honor, with regard to this allocution,
2 as long as that witness is here and I have the opportunity to
3 cross examine that witness, I don't have a problem with
4 referring to that testimony. My only issue is I didn't have
5 the opportunity to cross examine at the time that he entered
6 into this guilty plea.

7 THE COURT: Well, he hasn't offered the allocution
8 itself, I don't know how he intends to introduce it.

9 MR. HOLFORD: Your Honor, I'll call the witness.

10 THE COURT: He says he's gonna call the witness.

11 MS. KNOWLES: Okay.

12 THE COURT: So, you'll have the right to confront that
13 witness.

14 Now, as to the other witnesses, did you receive -- let me
15 get down to specifics, did you receive discovery giving you
16 the names of these individuals, their addresses and the
17 statements that would've been inconsistent with your client's
18 alibi defense?

19 MS. KNOWLES: I've received witness statements, voluntary
20 statements, their addresses are blacked out; so, as far as
21 addresses go, no. But their statements, their written
22 statements, I did receive.

23 THE COURT: All right. When?

24 MS. KNOWLES: That was within -- whenever he sent
25 discovery.

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1 THE COURT: Yes, ma'am. When?

2 MS. KNOWLES: Let's see, whenever it was received. It
3 looks like October 23rd was whenever it was received.

4 THE COURT: Of last year?

5 MS. KNOWLES: Yes, sir.

6 THE COURT: All right. Who are we talking about here?
7 What individuals?

8 MR. HOLFORD: Jeanette Andrews, Debra Chaffin, who were
9 the employers at the time, who he allegedly was working for at
10 the time, both will say that they never saw him on that day.
11 Michelle Collins and William Alexander, two employees at the
12 Anderson Oil Company who can identify the Defendant as being
13 .5 miles from the residence that day around that time. All of
14 that was provided in the initial discovery.

15 THE COURT: Did you provide addresses?

16 MR. HOLFORD: Your Honor, it's our typical practice to
17 blackout addresses of witnesses.

18 THE COURT: Isn't that a problem?

19 MR. HOLFORD: I --

20 THE COURT: In alibi cases.

21 MR. HOLFORD: Your Honor, I don't believe so. It's ---

22 THE COURT: What's the rule say?

23 MR. HOLFORD: Your Honor, I don't believe that when an
24 alibi defense is given that it requires me to then go back and
25 provide the exact same information and ---

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1 THE COURT: What kind of information?

2 MR. HOLFORD: The information of the witnesses that I
3 intended to call and their statements.

4 THE COURT: I'm looking at disclosure of prosecution,
5 within ten days after the defendant serves his notice but in
6 no event less than ten days before trial or at -- as the Court
7 may otherwise direct. The prosecution shall serve upon the
8 defendant or his attorney the names and addresses of witnesses
9 upon whom the State intends to rely to establish the defenses
10 presence at the scene of the alleged crime -- defendant's
11 presence at the scene of the alleged crime.

12 MS. KNOWLES: Your Honor, if you would like to see the
13 actual statements that I'm referring to.

14 THE COURT: Apparently, what the statements do is to say
15 that the person was somewhere else or was somewhere around,
16 was not somewhere else I guess is what the State would say.

17 MS. KNOWLES: I have nothing else, Your Honor.

18 THE COURT: All right. Now, why is it we haven't told
19 them addresses and things? The rule says you got to give them
20 that information. I'm just going by the rule.

21 MR. HOLFORD: Yes, Your Honor. The reason ---

22 THE COURT: You know, the Court has the right to
23 otherwise direct so that gives me some discretion here.

24 MR. HOLFORD: Your Honor, the reason the addresses
25 weren't given is because normally they're blacked out when

1 they're given the initial statements. That's to protect the
2 witness. And then after notice of alibi was served, I did not
3 think to go back and look at the discovery we sent to her.
4 The discovery I have has addresses. Additionally, two of the
5 witnesses, the ones that he claims he was working for at the
6 time, the witnesses that Ms. Knowles intends to call,
7 certainly she would know their addresses.

8 THE COURT: Are they listed on your witness list?

9 MS. KNOWLES: Two, two are but two aren't.

10 THE COURT: Okay. Yes, ma'am?

11 MS. KNOWLES: I mean, I have no address for Mr. Alexander
12 or is it Ms. Collins or Mr. Collins?

13 MR. HOLFORD: Michelle Collins.

14 MS. KNOWLES: Okay, Ms. Collins.

15 MR. HOLFORD: I believe we did not block out the fact
16 that they worked at Anderson Oil Company.

17 MS. KNOWLES: It says my address is -- and it is blank.

18 MR. HOLFORD: Right, their personal address was blacked
19 out.

20 THE COURT: But you gave a business location?

21 MR. HOLFORD: But I gave the business location and that's
22 the location .5 miles from the residence that ---

23 THE COURT: I take it, is that where the Defendant
24 worked?

25 MR. HOLFORD: No.

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1 THE COURT: That's someplace else?

2 MR. HOLFORD: I don't know if he even worked.

3 THE COURT: Okay. All right. I'm misunderstood.

4 MS. KNOWLES: Not where he works, no.

5 THE COURT: Now, ma'am, have you had an opportunity to --
6 so, you had these names of all of these witnesses in October
7 of last year; is that what I understood?

8 MS. KNOWLES: Your Honor, I had -- yes, these names, by
9 way of their statements.

10 THE COURT: And their statement and their statements that
11 would've been inconsistent with your alibi defense, in October
12 of last year?

13 MS. KNOWLES: Yes, sir.

14 THE COURT: Okay. All right. So, the issue here is the
15 failure to serve you with formal notice that their statements
16 were contrary to your alibi defense?

17 MS. KNOWLES: Yes, sir.

18 THE COURT: And to give names and addresses when that
19 occurred?

20 MS. KNOWLES: Yes, sir.

21 THE COURT: All right. Have you had an opportunity to
22 interview these witnesses if you chose to do so?

23 MS. KNOWLES: No, sir.

24 THE COURT: Well, two of them are going to be your
25 witnesses, so you're telling me you haven't talked with those

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1 witnesses?

2 MS. KNOWLES: Well, those two I have.

3 THE COURT: Now, come on now, have you had an opportunity
4 to interview these witnesses?

5 MS. KNOWLES: And, Your Honor, to be frank, I have ---

6 THE COURT: Oh, please do be frank.

7 MS. KNOWLES: I've reached out to those witnesses and I
8 have not been able to get a response outside of my
9 investigator was able to speak with Ms. Chaffin and she
10 provided some documentation but I have not had an actual one-
11 on-one conversation with these witnesses, my investigator has.

12 THE COURT: All right. I'm gonna direct the State to
13 make those addresses available at this time to the Defense.
14 It's gonna be my finding that the information that would
15 indicate that these witnesses were contrary to the Defense's
16 alibi defense were afforded to the Defense in October of last
17 year. That two other witnesses are listed as Defense
18 witnesses in the case. So, obviously, the Defendant intends
19 to call them in spite of the fact that their story might be
20 contrary to the alibi defense that she's -- that the Defendant
21 is presenting.

22 So, since I have the right to otherwise direct, give the
23 addresses to her at this time. And it's my finding that the
24 fact that the State has technically not complied with serving
25 the names and addresses after the notice, the information was

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1 afforded before the notice, therefore I am not going to
2 exclude the witnesses from testifying.

3 MR. HOLFORD: Your Honor, would you like me to give the
4 addresses of the witnesses that the ---

5 THE COURT: Whatever you blacked out, give it to her.

6 MR. HOLFORD: Debra Chaffin, Drive.

7 MS. KNOWLES: I have ---

8 MR. HOLFORD: You should have Ms. Chaffin since she was
9 your witness.

10 MS. KNOWLES: Right, the two Anderson Oil Company
11 witnesses.

12 MR. HOLFORD: Jeanette Andrews, ;
13 Michelle Collins, , Mullins,
14 South Carolina.

15 MS. KNOWLES: -- repeat that for me.

16 MR. HOLFORD: Mullins, South Carolina. And
17 William Alexander, Jr., , South
18 Carolina .

19 Your Honor, do I also need to give an address for the
20 victim in this case? I believe that would've been turned over
21 any way since he is the victim and that would've been listed.

22 THE COURT: Do you have the victim's address?

23 MS. KNOWLES: The address that I have for the victim is
24 ---

25 MR. HOLFORD: It would've been in the warrant, Your

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1 Honor.

2 MS. KNOWLES: , but I don't have the
3 address for Zachary Elliott, which is the complainant.

4 MR. HOLFORD: Zachary Elliott lives at that address. He
5 was the one who confronted the Codefendant and saw the
6 Defendant run.

7 THE COURT: All right. Okay.

8 All right. The last issue that I have to deal with, I
9 believe in this case, is the question of identification that
10 was raised yesterday. My understanding, now I didn't receive
11 any testimony on this but my understanding is that perhaps at
12 least one, maybe two witnesses learned from some source the
13 possible identify of the -- of the person that was arrested or
14 the person who had become the center of the investigation --
15 which is it -- when they went to the internet and looked up
16 the ---

17 MS. KNOWLES: They had heard within the community by way
18 of gossip that a Hagan boy was responsible for this.

19 THE COURT: Okay. So, there was a rumor in the community
20 that somebody named Hagan was involved in the case. And at
21 that time, either one or two witnesses -- is it one or two;
22 what is it?

23 MS. KNOWLES: Two.

24 THE COURT: Two. Can you identify those individuals for
25 me?

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1 MS. KNOWLES: Mr. Alexander and Ms. Collins.

2 THE COURT: Went to the internet and apparently looked up
3 a prior mugshot of the Hagan boys?

4 MS. KNOWLES: Well, I don't know if they ever came across
5 Charles Hagan but they came across my client.

6 THE COURT: All right. The Defendant in this case. And
7 by that, looking at that mugshot on the internet they made an
8 identification.

9 MS. KNOWLES: And this was done thirty-three days after
10 the crime.

11 THE COURT: I understand, okay. Now, the purpose of the
12 rule in Neil vs. Biggers, my understanding is, is -- and that
13 has to do with the unnecessary suggestiveness of
14 confrontations in order to obtain identifications. The
15 primary purpose is to remedy is -- is to serve as a police
16 deterrent from setting up suggestive identification procedures
17 and kinds of things that they have found to be illegal is
18 single photos, lineups in which only one person fits the
19 description of the person that they're seeking, things of that
20 nature, where the police have set up an identification process
21 that would be suggestive in some fashion. In this particular
22 case, I have not heard any allegation that the police or the
23 State was in any way involved in these individuals on their
24 own going on the internet and seeking photographs of people
25 that they had heard may have been involved in the crimes.

1 There are cases in South Carolina, however, where people have
2 made identifications based on media reports, television
3 reports, things of that nature and in those cases, the courts
4 have allowed those identifications or they have not excluded
5 those identifications.

6 Now the question of reliability of an identification is
7 always a subject that the State has to prove and the Defense
8 has the right to challenge during the trial by a cross
9 examination and by presenting evidence to indicate that the
10 identification is not reliable in some fashion. So, and I'm
11 in no way limiting either side's right to either prove
12 reliability of the identification or to disprove reliability
13 of the identification. But I'm not going to exclude it simply
14 because of the way in which it occurred. So, I think the
15 State has a burden of putting a witness on the stand, going
16 through the indicia of reliability with that witness; in other
17 words, setting the foundation for the reliability of the
18 identification. You have the right to object when the
19 identification is sought. I would then have to make a ruling
20 as to whether it appears to be sufficiently reliable so as to
21 allow it to occur if there's going to be an in-court
22 identification. And then, of course, the Defense still has
23 the right if I allow it to cross examine on that subject and
24 also to argue against the reliability of the identification.
25 So, as far as excluding the identification per se simply

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1 because it occurred by someone going on the internet and
2 seeking a photo of someone that they had heard were involved
3 in a crime, I'm not going to exclude it for that reason. But
4 I'll allow you to go forward in trial and we will make a
5 ruling as the matters come up.

6 MR. HOLFORD: Yes, sir.

7 THE COURT: All right. I think that covers the rulings
8 that I was asked to make yesterday.

9 MS. KNOWLES: There was one other one that I just wanted
10 some clarification on.

11 THE COURT: Yes, ma'am.

12 MS. KNOWLES: That was with regard to a video that I had
13 received. The Codefendant's interrogation, I received this, I
14 believe it was August 5th. I was just curious to know
15 clarification of whether or not the State intends on
16 introducing that.

17 THE COURT: I don't know. Is this an interrogation or
18 the allocution?

19 MR. HOLFORD: No, that was the interview that initially
20 took place between the police and the Codefendant.

21 THE COURT: You don't intend to introduce that?

22 MR. HOLFORD: I never intended to introduce it because
23 I'm gonna call the Codefendant and then ---

24 THE COURT: Okay. I think that solves that situation.

25 MS. KNOWLES: Yes, sir.

1 THE COURT: All right. Anything else?

2 MS. KNOWLES: I think that's it.

3 MR. HOLFORD: Your Honor, can I get clarification ---

4 THE COURT: Yes, sir.

5 MR. HOLFORD: I know that judicial estoppel does not
6 apply.

7 THE COURT: Uh-huh (affirmative response).

8 MR. HOLFORD: But I can certainly bring it up from the
9 officer who was present at the guilty plea and ask him about
10 that to dispute the fact that ---

11 THE COURT: What you can do is if there is a prior
12 inconsistent statement that was made by a Defendant, then you
13 certainly would have the right to ask the Defendant if he had
14 made a prior inconsistent statement. If he acknowledges that
15 he did, that's the end of the inquiry. If he denies that he
16 made a statement previously that's inconsistent with his in
17 court assertions, then you have the right to put up evidence
18 to show that an inconsistent statement was in fact made.

19 MR. HOLFORD: May I also do that if the alibi witness
20 claims that he was somewhere that he ---

21 THE COURT: Any witness, that's the general rule for
22 inconsistent statements having been made out of court. You
23 have to first of all identify the time, the place, where it
24 was made, then you could ask whether or not they said, made
25 the statement. If they say yes, I did, end of inquiry.

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1 MR. HOLFORD: Yes, sir.

2 THE COURT: You've impeached them for that reason. If
3 they deny having ever made a statement such as that, then you
4 have the right to bring in extrinsic evidence to show that
5 they did.

6 MR. HOLFORD: Yes, Your Honor.

7 THE COURT: We'll see how that works out. I don't know
8 what the answers to the questions will be. We'll see.

9 All right. I have a question from the jury that's
10 currently out. Let me just be sure. Have I covered
11 everything I need to cover thus far in this case?

12 MR. HOLFORD: Yes, Your Honor.

13 THE COURT: From the Defense?

14 MS. KNOWLES: I think so.

15 THE COURT: If you'll step back, please, I'll need to get
16 the other attorneys in place.

17 (9:59 A.M.)

18 *****OFF THE RECORD*****

19 (On the Record.)

20 (10:50 A.M.)

21 (REPORTER'S NOTE: The following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. State ready to proceed at this
24 time?

25 MR. HOLFORD: Yes, Your Honor.

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1 THE COURT: Defense ready?

2 MS. KNOWLES: Yes, sir.

3 THE COURT: All right. Let's bring the jury panel in.

4 MS. KNOWLES: And, Your Honor, just for clarification,
5 all witnesses -- I told mine to go outside?

6 THE COURT: Yes, all but the -- I see now -- we've just
7 got the investigating officer and the two alleged victims.

8 MR. HOLFORD: Yes, Your Honor.

9 MS. KNOWLES: Okay.

10 THE COURT: That's right. They are sequestered.

11 (REPORTER'S NOTE: The jury returns to the courtroom at 10:53
12 A.M. The following takes place in the presence of the jury.)

13 THE COURT: All right. Ladies and gentlemen, first I'm
14 going to ask you if any of you had any difficulty in complying
15 with my instructions concerning your behavior outside of the
16 courtroom, please stand.

17 All right. The record will reveal that all jurors have
18 been able to comply with the Court's instructions thus far.

19 I want to first of all thank you for your patience this
20 morning. I have the jury still deliberating in the case that
21 I tried before this one. We had some questions come up with
22 that jury that I had to deal with and that's delayed us
23 getting started this morning; so I apologize to you. I didn't
24 realize that was gonna happen but that's -- sometimes things
25 happen that way. So, thank you for your patience this

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1 morning.

2 I told you that upon your return to the courthouse, you
3 would be taking an oath concerning your responsibilities as
4 jurors in this case. And at this time, I'll ask the Clerk to
5 please swear the jury panel concerning their duties.

6 (REPORTER'S NOTE: Jury is duly sworn.)

7 THE COURT: Be seated. Thank you.

8 Now, if any of you either failed or refused to take the
9 oath that was just administered by the Clerk, I'd ask that you
10 now please stand.

11 All right. The record will reflect that all jurors have
12 been sworn concerning their duties in this case and before we
13 begin the trial, there's some things that I would like to go
14 over with you. Perhaps to make you aware of some things you
15 might expect as the trial goes along as well as to make you
16 aware of what your duties and responsibilities are in trying
17 this case today. I would expect or suspect that for most of
18 you, this is your first experience in actually serving on a
19 jury in the trial of a criminal case. And for those of you
20 for whom this is your first experience, I want to go over some
21 things to make you aware of what we're involved in and what's
22 going on. If you've never been in Court before, never served
23 on a jury specifically, probably most of what you know about
24 what juries do or how courts work, you might've learned from
25 television shows you've watched or movies that you've seen,

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1 maybe books you've read, things of that nature. And I'll tell
2 you that while those sources of information are always
3 interesting, in the case of television, movie and books, they
4 always have a good plot, a good story line, something that --
5 a message they want to deliver to you either by way of --
6 sometimes even comedy or drama. And it never ceases to amaze
7 me that on television you can have an event occur and the case
8 be tried and the whole matter is ended within an hour's time
9 and of course, they even have time to stop about five times
10 for commercials. So, it might tell you that when you're
11 watching television, that's intended to entertain you, what
12 they're trying to do is keep your attention so that you'll
13 watch those commercials and you'll see the things they want
14 you to see, the messages that they want to deliver will be
15 delivered to you. So, they're -- those things are intended to
16 entertain you as a movie or a book would be intended to
17 entertain you.

18 Just one second. You want to bring that up while we --
19 just one second, I'm again dealing with something on that
20 other case.

21 All right. As I told you that -- the things I mentioned
22 to you are intended to entertain you. Now, I'm going to tell
23 you that the trial that you're about to be involved in is
24 intended for anything but your entertainment. Actually, what
25 you're involved in this morning is a fundamental part of our

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1 democracy. I hope you realize that in most of the countries
2 in this world today, citizens are not allowed to participate
3 in the judicial processes of those countries. Our country is
4 in the minority in the world and that is that we have a
5 constitution, both in the State and in the United States that
6 guaranties each citizen a right to a trial by a jury. That
7 tradition goes back to a document called the Magna Carta.
8 That document was signed in England between the Nobles and the
9 King in the year 1215. So, in just a couple of years, two
10 years to be exact, it will have its 800th birthday. You know,
11 a system that's been in existence and use for a period of
12 time, as long as 800 years has been tried and tested. And
13 many people in the world believe that our system is one of the
14 better systems that you can have in deciding issues in courts.
15 It's not a perfect system, no system that's run or created by
16 man or operated by men will ever be a perfect system but it's
17 an honest and a sincere effort to see that justice is done
18 between the parties that are before the Court. In this case,
19 the State of South Carolina and one of its citizens has been
20 charged with the commission of a crime. You see this
21 courtroom is a place of honor. It's dedicated to the
22 preservation of citizens' rights through the Constitution and
23 the laws that I've just described to you. Your participation
24 in this process, as I've told you, it's my belief is probably
25 the second highest service that a citizen can render to one's

1 government. The first highest, of course, would be service in
2 the active military. We're not asking anyone to carry a
3 weapon or risk their lives today but we are asking you to
4 perform a duty for your country and your state and I want to
5 thank you very much for your willingness to accept that
6 obligation in this process.

7 Now, the attorneys that are involved in this case are
8 here to represent their clients' interest. They're here to
9 present their clients' cases to you during this trial. But
10 first and foremost, those lawyers are also officers of this
11 Court. At some point in time, they appeared before a court in
12 this state and they took an oath just like you did this
13 morning. That oath is to -- and part of that oath is to
14 assist you in your search for the truth. It's referred to
15 under the law as the attorney's oath and it's prescribed by
16 court rules that every attorney must take that oath. Part of
17 that oath is that they will assist you in your search for the
18 truth during this trial. You can expect from them that they
19 will act in a reasonable and ethical and a professional manner
20 in the presentation of their client's cases. I'll remind you,
21 too, that you've come in front of this Court and you've taken
22 an oath to decide this case based upon the law and evidence.
23 You, too, are now expected to act in a reasonable, a
24 professional and an ethical manner in the discharge of your
25 duties as jurors. Again, thank you for your willingness to

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1 accept the obligation. I know you've got a subpoena, I know
2 you're required to be here but you've appeared voluntarily and
3 thank you for your willingness to assist us in this effort.

4 Now, I told you earlier that in this case, there is an
5 indictment. The indictment is the document that brought the
6 case before the Court and the indictment indicates to me that
7 the charge to be tried in this case is burglary in the second
8 degree. Now, to that indictment, the Defendant has pled not
9 guilty. That plea under the law and the Constitution of this
10 State places the burden of proof in this trial solely upon the
11 State. It's the State's obligation to prove the allegations
12 contained in the indictment by proof beyond a reasonable
13 doubt. At the close of the trial, it'll be your obligation to
14 determine whether or not the State has met its burden of proof
15 in that regard. And I will go over the obligations of proof
16 and the level of proof more fully later on when I charge you
17 concerning the law in this case. Your purpose as jurors in
18 this trial is to find and determine the facts in this case.
19 And in every case tried in this Court in front of a jury, the
20 jury is the sole and exclusive judge of the facts in this
21 case.

22 I'm gonna serve as the presiding officer. It'll be my
23 job to rule on questions of evidence that might be presented
24 during the trial or the appropriateness of questions that are
25 being asked. I will tell you that you should not take from

1 anything that I say or do in the discharge of my duties as a
2 presiding officer in the trial, to indicate to you in any
3 manner as to how you ought to determine the facts in this
4 case. You see, the law doesn't allow me an opinion concerning
5 how you determine the facts and I can assure you I have no
6 opinion as to how you determine the facts in this case. You
7 are the sole and exclusive judges of the facts. Now that same
8 law that makes you the sole and exclusive judges of the facts
9 makes me the sole and exclusive judge of the law. At the
10 close of the trial, I'll charge you concerning the law that
11 you're to apply in this case and under the oath you've taken
12 as jurors, it's your obligation to take that law as I give it
13 to you and apply that law to the facts as you determine those
14 facts to be, that should put you in a position to fully and
15 adequately discharge your duty as jurors in this case. You
16 are to determine the facts from the testimony that you hear
17 and from the other evidence that goes into the record during
18 the trial. It's up to you determine the inferences that you
19 feel that can be properly drawn from the evidence. It's
20 important that you perform your duty as jurors conscientiously
21 and diligently because under our system of justice,
22 ordinarily, there's no means by which an erroneous
23 determination of facts made by a jury can ever be corrected.

24 Now, on the -- as I said, I am the sole judge of the law
25 in this case and I will tell you that if you came into the

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1 courtroom with an opinion or an idea as to what the law is or
2 you have an opinion as to what the law ought to be, you should
3 leave those notions outside of the jury room before you begin
4 your deliberations. Again, it's your obligation to take the
5 law as I give it to you and then apply it to the facts as you
6 determine those facts to be.

7 Now, from time to time, I've told you I'm going to be
8 ruling on questions of evidence or appropriateness of
9 questions that are asked. If I believe that the discussion
10 I'm going to have with the lawyers about that issue might go
11 into the direction that we'll discuss some matter or some fact
12 that's not admissible under the rules of evidence that governs
13 the admission of evidence in trials, if I think the discussion
14 is going to go in that direction, I will ask you to leave the
15 courtroom while we have the discussion. When I finish, we'll
16 bring you back into the courtroom and I'll make my ruling and
17 we'll proceed with the trial after I've made my ruling. Don't
18 take from the fact that I've asked you to leave the courtroom
19 while those discussions take place to indicate that I have an
20 opinion as to how you determine the facts. You see, it's my
21 job to see to it that you only use evidence that's been
22 properly admitted under the rules of evidence that govern
23 those things in reaching your decision. And I do not want you
24 to be influenced by a discussion concerning some matter that
25 may not be admissible under those rules. So, I'll ask you to

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1 leave while I have that discussion and I'll bring you back
2 later on once I've made that decision. I sometimes call that
3 jury aerobics. Sometimes, juries are up and down and out of
4 the courtroom and get a lot of exercise coming and going but I
5 don't know if that'll happen in this case but be aware that
6 could happen and hopefully you'll understand what I'm doing
7 when that does occur.

8 I instructed you about discussing the case yesterday;
9 I'll just touch on that briefly. Don't discuss the case or
10 what's said during the trial until you've heard all the
11 evidence, you've heard the arguments by the lawyer and you've
12 heard my charge on the law. The reason is, I don't want you
13 to begin to make up your mind on partial information or what
14 one witness may've said as opposed to another witness. I want
15 you to hear all of the evidence. I want you to hear all the
16 arguments by the lawyers and I want you to hear all of my
17 charge on the law. Only then begin discussions about this
18 case in trying to decide this case because only then will you
19 have all of the tools you need to make a proper decision in
20 the case. So, don't discuss the case with anyone and again,
21 don't ever try to gather information on your own. You'll be
22 given information, plenty of information from the lawyers and
23 the witnesses during the trial.

24 Now, I've told you that it'll be your responsibility to
25 determine the facts in this case and, in doing so, it will be

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1 necessary for you to determine the credibility of the
2 believability of the testimony that you hear. That's what
3 credibility means; it just means believability. I'm going to
4 ask you to use your common sense doing that. Every single day
5 of your life, you make decisions as to what you chose to
6 believe and what you chose not to believe. Today and perhaps
7 tomorrow that decision won't be any different because you're
8 on a jury. I want you to use your commons sense and make
9 decisions as to the credibility and the believability of the
10 testimony that you hear during the trial. You have the right
11 as the sole judges of the facts to believe all of what a
12 witness tells you, part of what a witness tells you or you
13 have the right to believe none of what a witness tells you.
14 You have the right to believe one witness against all the
15 others or you could believe all the others against one.
16 You're the sole judges of the facts and that makes you the
17 sole judges of the credibility of the witnesses. It also
18 makes you the sole judges of the weight that you choose to
19 assign to the testimony that you hear. For that reason, I
20 want you to pay close attention to what's being said during
21 the trial. I want you to be in a position at the close of the
22 trial to discuss those matters with your fellow jurors, the
23 testimony that you've heard and what testimony you believe and
24 what testimony you don't believe. So, try not to let your
25 thoughts wonder during the trial, try to pay attention to

1 what's going on during the trial so that you can have those
2 discussions with your fellow jurors at the close of the case.

3 Now, when we start the trial, I'm going to allow the
4 attorneys to talk directly to you. The attorneys get to talk
5 directly to the jury on two occasions. One is the beginning
6 of the trial in what we call opening statements and they'll
7 tell you what the case is about, perhaps what they intend to
8 prove. At the close of the trial, they'll be given another
9 opportunity to talk directly to you and, at that time, they'll
10 do a summation or a closing argument and at that time they'll
11 sum up the evidence that you've heard from their client's
12 perspective and urge you to take certain inferences from the
13 evidence that you've heard. I'm going to tell you now that
14 the statements made by lawyers during a trial are not evidence
15 in the case. The only evidence you hear is the testimony of
16 witnesses who are sworn to tell the truth and testify from the
17 witness stand and whatever comes into the record through that
18 testimony. But the statements of the attorneys will serve to
19 tell you their client's position both at the beginning of the
20 trial and the close of the trial. But again, it's not
21 evidence and can't be used directly by you in making a
22 decision in this case.

23 Now, in deciding credibility of witnesses, I will tell
24 you that using your common sense, you have the right to
25 consider such factors as whether or not a witness has a bias

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1 or a prejudice one way or the other, whether or not a witness
2 has a stake in the outcome of the trial, whether or not the
3 witness actually had the ability to know the facts about which
4 the witness testified and we always put the witness chair in
5 front of the jury box so that you can observe the witness
6 directly, how they testify, and the way that they deliver
7 their testimony.

8 You have the right to consider anything in the record
9 that you care to consider in reaching a verdict in this case,
10 again; so I want you to pay close attention to what's being
11 said from the jury stand.

12 Now, I do not appoint a foreperson of the jury until I
13 charge you on the law. I want all of you to think that you
14 might be the foreperson because I will tell you that when you
15 reach a verdict in this case, it must be unanimous. All of
16 you must agree upon it, so all of you must participate in
17 reaching the verdict in this case. The foreperson does
18 nothing but preside over the jury during deliberations, submit
19 questions to the Court as the deliberations take place and
20 then write the verdict once it's finished. I'll make that
21 appointment at the close of the trial. Until then, if any of
22 you have any problems or difficulties that you think the Court
23 ought to be aware of, let the Bailiff know and they'll let us
24 know about those problems should you have those problems but
25 I'll make that appointment at the close of the trial once I

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1 charge you concerning the law.

2 Now, I want to be sure I haven't violated anyone's right
3 in my opening comments to you. Does the State have an
4 objection to my opening comments?

5 MR. HOLFORD: None, Your Honor.

6 THE COURT: Defense have any objections?

7 MS. KNOWLES: None.

8 THE COURT: All right. Ladies and gentlemen, I've told
9 you the State has the burden of proof. The State will be
10 going first with its argument followed by the Defense, then we
11 will have evidence presented. Again, the State goes first
12 followed by any evidence the Defense wishes to put up. Once
13 all the evidence is in, then the lawyers will be given that
14 last chance to argue to you. Then I'll charge you concerning
15 the law and then the case will be turned over to you for your
16 deliberations and verdict. So, that's the process we'll
17 follow.

18 Now, as you noticed, I got a question from the jury
19 that's out and so I'm going to ask you to step back into the
20 jury room while I deal with this. Once I've completed back,
21 then I'll have you back to begin the trial. Every time you
22 leave the courtroom, I'll ask you, don't discuss this case
23 until I ask you to do so.

24 You may retire. Thank you, sir.

25 (REPORTER'S NOTE: The jury retires to the jury room. 11:11

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1 A.M.)

2 THE COURT: All right. We'll take a short recess in this
3 case while I deal with the other jury. Thank you. Sorry for
4 all the inconvenience.)

5 *****OFF THE RECORD*****

6 (On the Record.)

7 (11:24 P.M.)

8 THE COURT: All right. State ready to proceed?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: Defense ready to proceed?

11 MS. KNOWLES: Yes, sir.

12 THE COURT: All right. Bring the jury in.

13 (REPORTER'S NOTE: The jury returns to the courtroom. 11:26

14 A.M. The following takes place in the presence of the jury.)

15 THE COURT: All right. The record will reflect the jury
16 has returned to the courtroom. I told you once I'd completed
17 my opening comments, the attorneys would be allowed to make
18 their opening statements in the case.

19 You may proceed for the State.

20 MR. HOLFORD: Thank you, Your Honor. May it please the
21 Court?

22 THE COURT: Yes, sir.

23 OPENING STATEMENT BY MR. HOLFORD:

24 MR. HOLFORD: Good morning, almost afternoon, ladies and
25 gentlemen of the jury. My name is Josh Holford. I am a

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1 prosecutor for the Fifteenth Circuit. That means I represent
2 the State in this case.

3 What we have today is a case of burglary second,
4 nonviolent. All that means is it was a burglary or breaking
5 and entering into a dwelling during the daytime. The
6 Defendant here, James Hagan, along with his Codefendant who
7 you will hear from today, Charles Hagan, went to the house of
8 Dana Enzor and Zack Elliott at in Nichols,
9 South Carolina, that's here in Horry County. At that time,
10 Charles Hagan was in the carport in a white Ford Taurus,
11 license plate . Zack Elliott will tell you, he saw the
12 license plate, saw the car, confronted Charles Hagan, heard
13 someone else in the house, the other person ran out the back
14 and escaped, two people. Now, what you're gonna hear is that
15 Charles Hagan has already pled guilty to this charge. He
16 admitted, yes, I was there; yes, I was in a white Ford Taurus.
17 And guess, what, I was there with James Hagan; he was the guy
18 inside the house. Zack Elliott will tell you that when he
19 went inside the house that the backdoor was stacked up some
20 electronics, some other things, looked like someone was about
21 to take those items. Fortunately, Zack came home, middle of
22 the day, about 12:00, 12:30 and stopped this burglary in
23 process. If he had not come home, it's likely that Charles
24 Hagan and James Hagan would've got away with it. He would've
25 got in the white Ford Taurus and would've drove off and no one

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1 would've known. Now, usually in a burglary or a breaking and
2 entering, you don't have to break a door down, you just have
3 to not be invited. Even if the door is unlocked and you turn
4 the knob and go in, if you're not invited, not allowed to be
5 there, it is still breaking and entering. In this case, we do
6 have breaking in. This Defendant, James Hagan, kicked the
7 door, he did break the door, went inside with the intent to
8 commit a crime. He was intending to steal items from the
9 house and in the process, Zack came home and he ran off. Zack
10 will be able to identify the Codefendant Charles Hagan and
11 Charles Hagan will be able to identify this Defendant James
12 Hagan who happens to be his nephew. It's not going to be a
13 very pleasant situation for him to be in. As you can imagine,
14 he probably won't be too happy that I called him to be here
15 today. He's not gonna want to sit here and agree that he's
16 the one that gave up his nephew but he's gonna have to be here
17 because he's already pled guilty and he's already allocuted on
18 the record, that just means he told another judge during that
19 plea that, yes, I drove there; yes, I was in a white Ford
20 Taurus; yes, it was James Hagan in the house.

21 You'll hear from two other witnesses who work about a
22 half mile away at Anderson Oil Company. They'll tell you that
23 they saw a white male, bald head, with a blue shirt either in
24 his hand or around his waist, in khaki shorts walking down the
25 road on his cell phone. Now, that description could match a

1 number of people. It just so happens that they had been
2 dispatched, the police had been dispatched to look for a white
3 male, semi-muscular build, bald head, blue shirt and khaki
4 shorts. That's circumstantial evidence; that's not direct
5 that they can say we know for a fact it was James. Later on,
6 about a month or so later, they'd been checking to see if
7 someone got arrested on these charges. They find on the
8 website, James Hagan's picture and they say -- they go to the
9 police, the police didn't initiate it, and they say that's the
10 guy who did it. That's James; that's the one we saw. And we
11 saw him get picked up in a white Ford Taurus. When Charles
12 Hagan was interviewed by Lance Corporal Hilburn, he drove up
13 in the exact same white Ford Taurus, tags . It was
14 described at the scene of the crime. The witnesses will tell
15 you it's the car that picked up this Defendant. And so, I
16 submit to you that this Defendant was the one that was inside
17 the house. He did break in and he did intend to commit a
18 crime and he came this close to actually committing the crime.
19 He doesn't have to take anything out but he did intend to
20 commit that crime. And that's burglary in the second degree,
21 ladies and gentlemen and that's the case that the State will
22 prove today. At the end of this trial, I'll ask you to return
23 a verdict of guilty. Thank you.

24 THE COURT: Thank you, sir.

25 You may proceed for the Defense.

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OPENING BY MS. KNOWLES

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1 OPENING STATEMENT BY MS. KNOWLES:

2 MS. KNOWLES: Good morning, ladies and gentlemen. My
3 name is Melinda Knowles and I represent the accused in this
4 case, Mr. James Hagan.

5 Now, you just heard what the Solicitor has charged my
6 client with and I want you to remember that these are just
7 accusations, these are just charges; they are not facts. It's
8 simply a claim of what the State intends to prove, what they
9 believe that they can prove; it's not proof beyond a
10 reasonable doubt. In order to find my client guilty of this
11 charge, you have to be in a position to condemn him based upon
12 suspicion, speculation and guesses, because if you're looking
13 for solid evidence in this case, you aren't going to find it.

14 I submit to you that the twelve of you are ministers of
15 fairness on a great ship called justice. You must guide that
16 great ship toward the port of truth. Do not cut loose and
17 launch out into the broad ocean of surmise and conjecture,
18 which the State would have you to do as that's what their case
19 consists of.

20 I have to tell you that there's nothing more terrifying
21 than being in my shoes today. And I say that because I find
22 myself representing a man who I believe is truly innocent.
23 This is a man who lost both of his parents at a very young
24 age, the age of fourteen. Despite that loss, he's risen above
25 and sought to better himself. He's now married with two small

1 children and works extremely hard to support them. This is a
2 man that wouldn't be here today but for his uncle's desire to
3 save himself. He buckled at the pressure and coercion that
4 law enforcement placed upon him. The police phrase this as
5 him telling the truth, why don't you tell us the truth. I
6 submit to you that you can substitute those words for tell us
7 what we want to hear because that's one in the same.

8 Thankfully, our criminal justice system need more from
9 both the police and prosecutors office, more than just mere
10 speculation, conjecture and guessing. We need solid evidence
11 not simply hearsay because a person's freedom and liberty is
12 at stake. I challenge you to not be fooled here. At the end
13 of this trial, make the right decision based upon what the
14 evidence shows and I thank you and appreciate your time here
15 today.

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

17 MR. HOLFORD: Yes, Your Honor, the State calls Officer
18 Tabitha Smith to the stand.

19 THE COURT: Come forward, please, ma'am, to my right to
20 be sworn.

21 OFFICER TABITHA SMITH, HAVING BEEN
22 SWORN, TESTIFIED AS FOLLOWS:

23 THE COURT: Ma'am, have a seat in the witness stand,
24 please. Once you're seated, please state your name.

25 MS. SMITH: My name is Tabitha Smith.

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TABITHA SMITH - DIRECT BY MR. HOLFORD

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1 THE COURT: Thank you.

2 Counselor, your witness.

3 MR. HOLFORD: Thank you, Your Honor.

4 DIRECT EXAMINATION OF TABITHA SMITH BY MR. HOLFORD:

5 Q: Officer Smith, please introduce yourself to the jury.

6 A: My name is Tabitha Smith and I work with the Horry County
7 Police Department and I've been there since 2008.

8 Q: Is this your first law enforcement job?

9 A: No, I policed in Ohio for approximately two years and then
10 I moved to South Carolina.

11 Q: So, if I can do the math correctly, you've been a law
12 enforcement officer for seven years?

13 A: Yes, sir.

14 Q: Let's move into this case. On August 16th, 2012, were you
15 dispatched to crime scene?

16 A: Yes, I was.

17 Q: And what scene was that?

18 A: It was a burglary.

19 Q: And do you know the address?

20 A: I don't remember the numbers. It was on .

21 Q: Would it help if I approach you with your report to
22 refresh your recollection?

23 A: Yes, sir.

24 MR. HOLFORD: Your Honor, may I approach?

25 THE COURT: You may do so.

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TABITHA SMITH - DIRECT BY MR. HOLFORD

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1 BY MR. HOLFORD:

2 Q: I'm handing you a copy of your police report to help
3 refresh your recollection as to the exact address.

4 A: Okay. It was

5 Q: And who lived at that address?

6 A: The victims, Dana Enzor and Zack Elliott.

7 Q: When you arrived what did you observe?

8 A: I originally arrived on the scene and I saw Zack Elliott
9 standing under the carport. We confirmed what we were looking
10 for as far as the suspect vehicle and then I left looking for
11 a white Ford Taurus with South Carolina tag

12 Q: And did you tell anyone else about what vehicle you were
13 looking for?

14 A: Actually I didn't have to. On the way to the call, the
15 victim had already advised our dispatcher which gave it to us
16 on the radio on the way there.

17 Q: And did you advise over the radio as to a male subject you
18 were looking for?

19 A: A short time later, yes. It was a white male, bald with a
20 blue shirt and khaki shorts.

21 Q: And what further involvement did you have in this case?

22 A: Not much actually. I stayed in the area for a while. We
23 attempted to locate the suspects based on the description we
24 were given. Unfortunately, we weren't able to do that that
25 very moment. So, I collected witness statements and wrote the

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TABITHA SMITH - CROSS BY MS. KNOWLES

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1 report.

2 Q: And were you looking for one or two suspects?

3 A: We were looking for two.

4 Q: Thank you, Officer Smith. I have no further questions,
5 Your Honor.

6 THE COURT: You may cross examine.

7 MS. KNOWLES: Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 CROSS EXAMINATION OF TABITHA SMITH BY MS. KNOWLES:

10 Q: Officer Smith, how are you?

11 A: Good. How are you?

12 Q: Good. What was the time of this offense, to your
13 recollection?

14 A: According to my report it says August 16th at 12:25 P.M.

15 Q: And just so we're clear, I want to make sure that I'm
16 looking at the same thing you are.

17 A: Sure.

18 Q: Okay. And you responded and spoke with the complainant
19 Mr. Elliott, correct?

20 A: Yes, ma'am.

21 Q: And what information did he provide you again?

22 A: He provided me with vehicle description, which was the
23 original vehicle that was at the residence. It was a white
24 Ford Taurus with a South Carolina tag

25 Q: And who did you connect that vehicle to?

1 A: I didn't connect it with anybody.

2 Q: And what did he tell you, Mr. Elliott, as far what had
3 happened?

4 A: According to Mr. Elliott, on scene, he said he had come
5 home for lunch. There was a gentleman standing with his
6 vehicle in his driveway and when he confronted him, asked him
7 what he was doing, he said he was lost. Apparently, there was
8 a noise that was made that got Mr. Elliott's attention and he
9 realized someone was inside the house.

10 Q: Okay. But the only information that he could provide to
11 you that was solid was the description of the vehicle and the
12 tag number. He did not see anyone inside the home, did he?

13 A: No, he only heard them.

14 Q: Okay. And that could've very well been the door that was
15 just left unsecure, correct?

16 A: I don't know, I mean ---

17 Q: Did you dust for fingerprints?

18 A: Did I ask for fingerprints?

19 Q: Did you dust for fingerprints?

20 A: I did.

21 Q: And did you find any?

22 A: I do not believe so because there's none attached to the
23 report.

24 Q: Okay. But you are the one that did that?

25 A: Yes, ma'am.

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TABITHA SMITH - CROSS BY MS. KNOWLES

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1 Q: Okay. To your recollection, how many points of entry and
2 exit were at this residence? How many doors?

3 A: I believe there's a front door and a back door.

4 Q: And also a side door, right?

5 A: I only recall two doors. There may have been more, I
6 don't know.

7 Q: Okay. And Mr. Elliott told you that he pulled into the
8 driveway and noticed someone in his carport; is that right?

9 A: The car was parked under the carport.

10 Q: Okay. And then he used the driveway, I would assume to
11 block that person in?

12 A: I do not believe he blocked him in because he left.

13 Q: Okay. And was anything actually stolen?

14 A: That day there was nothing that could be located as
15 missing. The house was a disaster, I mean, it had been torn
16 apart. There were things everywhere. The victims couldn't
17 find anything at that very moment.

18 Q: Okay. And did they find anything after the fact?

19 A: Not to my knowledge.

20 Q: Okay. Tell us a little bit about the training that you
21 have to go through to be qualified to collect evidence such as
22 fingerprints.

23 A: I went through the Academy in Columbus, Ohio, six months
24 long. You are taken in and you are showed how to dust for
25 prints. They give you, I think it was like a week-long class,

1 where they explain all the different types of fingerprints and
2 then they give you the dust and the brush and you have to go
3 through and actually -- you have practical exams. I had to go
4 through all that week-long class.

5 Q: And there was forcible entry made into this residence; is
6 that right?

7 A: Yes.

8 Q: And you weren't able to find any prints that were viable,
9 not even a partial print?

10 A: Not to my knowledge.

11 Q: And you say the residence was in disarray, correct?

12 A: Yes.

13 Q: And you weren't able to locate any prints inside the
14 residence at all?

15 A: No.

16 Q: Okay. Do you recall how long that you -- that you
17 investigated this, that you researched and dusted for prints,
18 how long was that? Was that fifteen minutes, thirty minutes?

19 A: How long was I on scene at the house; is that your
20 question?

21 Q: Right.

22 A: I was there for, I would say, maybe two hours.

23 Q: Two hours. Okay. And then you were present for an
24 interview as well with Mr. Charles Hagan, weren't you?

25 A: Correct.

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TABITHA SMITH - REDIRECT BY MR. HOLFORD

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1 Q: Okay. Do you recall what time that occurred?

2 A: I do not recall.

3 Q: Okay. But to your recollection, there was no physical
4 evidence that you were able to collect that tied anyone to
5 this crime, most importantly my client?

6 A: No.

7 Q: Okay. Thank you, ma'am.

8 THE COURT: Redirect, Mr. Holford?

9 MR. HOLFORD: Yes, Your Honor, briefly.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION OF TABITHA SMITH BY MR. HOLFORD:

12 Q: Officer Smith, this address, what county is it in?

13 A: It's in Horry County.

14 Q: And with something like a door or an object that multiple
15 people touch, is it rare that you wouldn't find a usable
16 print?

17 A: No, it's actually very normal.

18 Q: And why is that normal?

19 A: Because there are so many individuals that do touch it,
20 fingerprints can kind of become one especially with the victim
21 being home at the time if he pushed the door open to go inside
22 and it was the same spot the suspect may've touched it and
23 then the only fingerprint I would be able to get would be
24 whoever touched it last which would've been the victim.

25 Q: And if it was a forcible entry, enough to break the door,

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TABITHA SMITH - RECROSS BY MS. KNOWLES

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1 do you think someone would do that by pushing?

2 A: No, sir. Generally speaking, they would kick it or use
3 some sort of tool

4 MR. HOLFORD: No further questions, Your Honor.

5 THE COURT: Recross.

6 MS. KNOWLES: Just briefly.

7 THE COURT: Yes, Ms. Knowles.

8 RECROSS EXAMINATION OF TABITH SMITH BY MS. KNOWLES:

9 Q: Officer, the victim wasn't home whenever this crime took
10 place, were they, the victims?

11 A: The victim Zack Elliott came home in the process of the
12 crime being committed.

13 Q: That's what he suspects?

14 A: He ---

15 Q: He never actually saw anyone do anything as far as a
16 burglary goes, did he?

17 A: I'm not sure.

18 Q: Weren't items -- you spoke with the victim, correct?

19 A: Correct.

20 Q: And weren't -- didn't he tell you that items were moved
21 and placed near a door?

22 A: They were items moved, correct.

23 Q: And he didn't do that, did he?

24 A: Not to my knowledge.

25 Q: So, somebody had to?

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TERRY ELLIOTT - DIRECT BY MR. HOLFORD

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1 A: That is correct.

2 Q: And they would have to pick the items up, you would assume
3 with their hands, correct?

4 A: Correct.

5 Q: Thank you.

6 THE COURT: All right, ma'am. You may step down. Thank
7 you very much.

8 State may call its next witness.

9 MR. HOLFORD: State calls Lance Corporal Terry Elliott.

10 THE COURT: Thank you.

11 Do you wish to excuse the witness who just testified?

12 MR. HOLFORD: Yes, Your Honor. May she be excused?

13 THE COURT: Any objection?

14 MS. KNOWLES: No objection.

15 THE COURT: You're free to go. Thank you very much,
16 ma'am.

17 Sir, come forward to my right and be sworn, please.

18 LANCE CORPORAL TERRY ELLIOTT, HAVING
19 BEEN SWORN, TESTIFIED AS FOLLOWS:

20 THE COURT: Sir, once you're seated in the witness stand,
21 I'll ask you to state your name for me.

22 MR. ELLIOTT: Terry Elliott.

23 THE COURT: Thank you. Mr. Holford, your witness.

24 DIRECT EXAMINATION OF TERRY ELLIOTT BY MR. HOLFORD:

25 Q: Lance Corporal, how are you today?

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1 A: Fine.

2 Q: Will you introduce yourself to the jury and tell them a
3 little bit about what you do?

4 A: I'm Terry Elliott and I work with the Horry County Police
5 Department.

6 THE COURT: You can be seated. There we go.

7 Q: Just pull the mic up.

8 THE COURT: Why don't you move a little closer to the
9 mic, there we go. Thank you, sir.

10 A: Terry Elliott and I work with the Horry County Police
11 Department and have -- this coming November, I have worked
12 with them for twenty-eight years. And at this time, I'm
13 working in CID as a detective.

14 Q: And so you've been with them twenty-eight years. Were you
15 with law enforcement before that?

16 A: No, I wasn't.

17 Q: What kind of training and experience have you had over
18 those twenty-eight years?

19 A: Any kind that you might imagine.

20 Q: And in conjunction with this case, the burglary on August
21 16th, 2012, do you know where that occurred?

22 A: Yes, I do.

23 Q: Where was that?

24 A: That was at -- on Alma Road. I don't have the paperwork
25 with me for the exact address.

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TERRY ELLIOTT - DIRECT BY MR. HOLFORD

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1 Q: If I approach you with a report would you be able to
2 refresh your recollection?

3 A: Yes, I would.

4 THE COURT: You may approach the witness.

5 A:

6 Q: And where is that located?

7 A: That's in the Spring Branch section of Horry County.

8 Q: And who lives there?

9 A: Dana Enzor, Dana Enzor and Zack Elliott.

10 Q: And how are they related?

11 A: Mother and son.

12 Q: Now, dealing with this case, what involvement did you
13 have?

14 A: I was called in kindly after the fact to assist Officer
15 Hilburn in the interviewing of Mr. Charles Hagan.

16 Q: And during that interview, what vehicle did Charles drive?

17 A: He drove a white Taurus up to meet myself and Officer
18 Hilburn at the judge's office in Loris.

19 Q: And do you recall what the license plate number was?

20 A: I don't recall but it's in this report if I can look.

21 THE COURT: You can use that to refresh your memory, sir.

22 A: South Carolina

23 Q: And is that the same car that they were looking for from
24 day one?

25 A: Yes, sir; it was.

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TERRY ELLIOTT - CROSS BY MS. KNOWLES

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1 Q: And you said you interviewed Charles Hagan, correct?

2 A: Myself and Officer Hilburn did; yes, sir.

3 Q: And how is he related to this Defendant?

4 A: It's the Defendant's uncle.

5 MR. HOLFORD: No further questions, Your Honor.

6 THE COURT: Ms. Knowles, your witness.

7 MS. KNOWLES: Thank you.

8 THE COURT: Yes, ma'am.

9 CROSS EXAMINATION OF TERRY ELLIOTT BY MS. KNOWLES:

10 Q: Detective Elliott, how are you?

11 A: I'm good.

12 Q: Good. Now, let's clarify, when did you become involved in
13 this case again? Do you remember the date?

14 A: 16th of -- August the 16th, 2012.

15 Q: You weren't actually assigned on the 16th to the case,
16 were you?

17 A: Well, I reckon this is one case I just kindly assigned
18 myself to. I was -- I just got tied up on it.

19 Q: Now, I have to ask you and I don't mean any ill will with
20 this but just by the nature of your last name alone, are you
21 related in any way to Zack Elliott?

22 A: No, I'm not.

23 Q: Okay. Or the Enzors at all?

24 A: No.

25 Q: Did you know them prior to this?

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TERRY ELLIOTT - CROSS BY MS. KNOWLES

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1 A: Yes, yes, I did.

2 Q: Okay. And what was the relationship?

3 A: Just knew them. I mean, there was no relationship.

4 Q: Okay. How long have you known them?

5 A: Probably all their life.

6 Q: So, would you say that relationship maybe would have made
7 you bias in any way?

8 A: It would not.

9 Q: Okay. Now, to your knowledge, any physical evidence tying
10 my client to this crime? Any physical evidence?

11 A: No, there's no physical evidence.

12 Q: So, essentially, it's just hearsay, isn't it? No physical
13 evidence?

14 A: Just witnesses saw him there.

15 Q: No one saw him there, did they?

16 A: There is no physical evidence.

17 Q: Thank you. You stated that you were present whenever Mr.
18 Charles Hagan, my client's uncle was interrogated, correct?

19 A: That's correct.

20 Q: Interviewed. And do you recall making any promises to
21 him?

22 A: I don't recall.

23 Q: Do you recall having any discussion with him about his
24 child? Do you recall him telling you that he needed to get
25 home to his child?

1 A: I don't recall no conversation about his child.

2 Q: Do you recall any discussion about allowing him to come
3 back in the following week if he just cooperated and turned
4 himself in?

5 A: I don't recall that.

6 Q: Okay. And there's no question that Charles was present at
7 this crime scene, correct?

8 A: According to his interview.

9 Q: Correct. And wouldn't you say that it's quite possible
10 that he himself could've been the only person involved?

11 A: I don't know.

12 Q: Didn't you investigate this case?

13 A: I did.

14 Q: Okay. But you don't know?

15 A: Well, he couldn't have been the onliest one there
16 according to -- according to my investigation.

17 Q: But no physical evidence tying my client ---

18 A: You asked me did I investigate it and my investigation he
19 couldn't have been the onliest one there.

20 Q: Let me ask you, what's that based upon?

21 A: My investigation.

22 Q: Which is what?

23 A: My interview.

24 Q: What did you find during your investigation that led you
25 to that conclusion?

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TERRY ELLIOTT - CROSS BY MS. KNOWLES

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1 A: The interview of different witnesses in the ---

2 Q: But no one actually saw this crime take place, did they?

3 A: Well, noises was heard.

4 Q: Now, you spoke with the witnesses from Anderson Oil

5 Company, correct? Did you speak with them? I believe Ms.

6 Collins ---

7 A: I did.

8 Q: And Mr. Anderson? Is that his name?

9 A: Mr. Anderson owns the Oil Company.

10 Q: And what was the description that they gave you of the
11 person that they saw? It was very general, the description
12 that they gave, wouldn't you agree? I'll just ask it that
13 way.

14 A: Well, I personally wouldn't think so.

15 Q: Okay.

16 A: It'd be very helpful if I was looking.

17 Q: Okay. And did you ever speak with my client?

18 A: I did.

19 Q: And you asked him his whereabouts on this particular day?

20 A: I'm sure I did.

21 Q: And what did he tell you?

22 A: He told me he had a job he was working.

23 Q: So, he said he was at work?

24 A: He did.

25 Q: No further questions. Thank you.

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MOTIONS

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1 THE COURT: Redirect?

2 MR. HOLFORD: Your Honor, may I approach?

3 THE COURT: You may. Counsel? Ms. Knowles, if you'll
4 step up, too.

5 (REPORTER'S NOTE: A bench conference was held off the record
6 in the presence of the jury but out of hearing of the jury.)

7 THE COURT: Ladies and gentlemen, this is one of the
8 occasions that I need to take up a matter with the attorneys
9 without you being present. So, I'm gonna ask you to step back
10 to the jury room and as always, I'm gonna instruct you not to
11 discuss anything about the case until I've asked you to do so.
12 You may retire to the jury room.

13 (REPORTER'S NOTE: The jury retires to the jury room. 11:59
14 A.M. The following takes place outside the presence of the
15 jury.)

16 THE COURT: All right, Mr. Holford, you wanted to raise
17 an issue before the Court?

18 MR. HOLFORD: Yes, Your Honor. Defense counsel opened
19 the door when she asked Mr. Elliott what her Defendant said
20 where he was on the day and Officer Elliott testified that the
21 Defendant told him he was working. Detective Elliott was
22 actually there present in Central Jury Court. He was trying
23 the case for the malicious damage to personal property where
24 he heard this Defendant testify under a guilty plea that he
25 was the one that kicked the door in. The Defense opened the

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1 door giving a inconsistent statement by the Defendant and I
2 wish to on redirect ask the officer if he's heard different
3 where he was and how he heard that.

4 MS. KNOWLES: Your Honor, the only thing that I asked him
5 was simply if he spoke with my client and what my client told
6 him where he was with regard to that day in question. That's
7 the only question that I asked.

8 MR. HOLFORD: And that's inconsistent with other evidence
9 that this officer knows.

10 THE COURT: All right. I'm going to ask you to make a
11 proffer to begin with as to his presence and what he might've
12 heard, exactly what he might testify to and I'll give you a
13 chance to cross examine on that and then we'll make a decision
14 as to how we proceed.

15 MR. HOLFORD: Thank you, Your Honor.

16 THE COURT: So, you may make the proffer.

17 PROFFER DIRECT EXAMINATION OF TERRY ELLIOTT BY MR. HOLFORD:

18 Q: Lance Corporal Elliott, on March 13th, 2013, were you
19 present at a guilty plea?

20 A: Yes, I was.

21 Q: And who was that?

22 A: Mr. -- the Defendant Mr. James Hagan.

23 Q: And what warrant was that for?

24 A: It was for malicious damage to the door at Ms. Enzor's
25 residence.

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1 Q: And why were you present at this?

2 A: Because I was the -- I got the warrants. I was the
3 investigating officer.

4 Q: Is it typical for an investigating officer to present the
5 charges to a Magistrate Court?

6 A: Yes, it is.

7 Q: Without a prosecutor?

8 A: Yes.

9 Q: And is that what you did on that day?

10 A: That is, it is, correct.

11 Q: And what did Mr. Hagan say at that time?

12 A: Mr. Hagan pled guilty to kicking the door.

13 Q: And what door was that?

14 A: That was the door at , Nichols -- the
15 Nichols section of Horry County at 8/16/2012 at around 12:30.

16 Q: And would you recognize a copy of that warrant if I showed
17 it to you?

18 A: Yes, sir, I would.

19 MR. HOLFORD: May I approach?

20 THE COURT: You may.

21 BY MR. HOLFORD:

22 Q: Is this the warrant that you're talking about?

23 A: That is the warrant.

24 Q: And is that a true and certified copy of that warrant?

25 A: Yes, sir; it is.

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1 Q: And does Central Jury Court keep a case history for each
2 case?

3 A: I'm sure they do. I don't personally acknowledge but I'm
4 sure they do.

5 MR. HOLFORD: No further questions, Your Honor.

6 THE COURT: You may cross examine.

7 PROFFER CROSS EXAMINATION OF TERRY ELLIOTT BY MS. KNOWLES:

8 Q: Detective Elliott, do you recall being present -- you said
9 you were present whenever he pled guilty, what were you
10 originally called there for? Wasn't it a jury trial?

11 A: Yes.

12 Q: That he had requested?

13 A: That's right.

14 Q: And moments ago, the only thing that I asked you was
15 whether or not you had spoken with my client, correct, whether
16 you had spoken with him?

17 A: That's correct.

18 Q: And if he had told you where he was on this particular day
19 in question and you stated that he did, correct?

20 A: He did.

21 Q: No further questions.

22 THE COURT: All right. I'll hear from you, Mr. Holford.

23 MR. HOLFORD: Yes, Your Honor. Clearly in the answers
24 that Lance Corporal Elliott gave after being asked by Defense
25 counsel of where he was that day, he indicated that the

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BY THE COURT

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1 Defendant said he was working. That's clearly inconsistent
2 with what this officer knows after the fact.

3 THE COURT: Yes, ma'am.

4 MS. KNOWLES: Your Honor, I believe that we've already
5 covered this. I don't believe that the one question that I
6 asked him opened the door to your Court's prior ruling on
7 this. We're going to offer evidence of an alibi. There's no
8 secret there.

9 THE COURT: Yes, ma'am. My prior ruling was that the --
10 you would not be estopped from presenting that alibi testimony
11 or evidence because of the prior plea. The question was
12 judicial estoppel and I ruled in your favor on that and I'm
13 still ruling in your favor on that. However, in this case,
14 you asked the witness what your client said to him concerning
15 his presence. This gentlemen was present, was the prosecuting
16 officer, would've had -- would've been present when the plea
17 was taken and this has to do with whether or not he's heard a
18 prior inconsistent statement from your client. Different
19 issue than whether or not they're estopped or you would be
20 estopped from presenting alibi evidence.

21 MS. KNOWLES: I would just ask that that warrant not be
22 introduced if you're going to allow it in for the same
23 reasons. I don't have a problem necessarily with him being
24 asked ---

25 THE COURT: Well, I'm -- right now, the question is

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BY THE COURT

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1 whether I'm going to allow him to ask about this and my ruling
2 is that, yes, I will allow him to ask about that. Now, as to
3 the introduction of the warrant, it is a public document, a
4 court document whether it meets the rules of relevance and
5 admissibility, you can object when he presents it, if he
6 presents it, in front of the jury.

7 MS. KNOWLES: And Your Honor, I take issue too with -- I
8 don't know what was said because we don't have a transcript.

9 THE COURT: This gentleman was present there and is gonna
10 testify -- your question was had your client ever told him
11 where he was that day. And he answered, yes, he told him he'd
12 been at work but the State has pointed out that he was present
13 and heard your client also state in a courtroom where he was
14 present and to him that he admitted guilt to that warrant.
15 Now, you asked what he'd said, I'm gonna let him get into it.
16 I've made my ruling.

17 MS. KNOWLES: Yes, sir.

18 MR. HOLFORD: Thank you, Your Honor.

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

20 (REPORTER'S NOTE: A bench conference was held off the record
21 outside the presence of the jury.)

22 THE COURT: All right. Let's bring the jury in.

23 (REPORTER'S NOTE: The jury returns to the courtroom. 12:10
24 P.M. The following takes place in the presence of the jury.)

25 THE COURT: All right. The record will reflect the jury

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1 has returned to the courtroom. You may proceed with your
2 redirect examination.

3 MR. HOLFORD: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION OF TERRY ELLIOTT BY MR. HOLFORD:

6 Q: Lance Corporal Elliott, in the Defense's cross
7 examination, she asked you if the Defendant told you where he
8 was on the day of the incident; is that correct?

9 A: That's correct.

10 Q: And what response did he give you?

11 A: That he was working with his job.

12 Q: And do you have knowledge to show otherwise?

13 A: Yes, sir, I do.

14 Q: And what knowledge is that?

15 A: That's a warrant where he had jury trial at Central Jury
16 Court on -- I think it was March 13th of 14th.

17 Q: And if I handed you that warrant, would you recognize it?

18 A: Yes, sir, I would.

19 Q: And why would you recognize it?

20 A: Because he pled guilty to that charge.

21 MS. KNOWLES: Your Honor, I would just make an objection
22 for the record.

23 THE COURT: Objection is noted. I'll make my same
24 ruling.

25 MR. HOLFORD: May I ---

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1 THE COURT: You can approach the witness and show him the
2 document.

3 BY MR. HOLFORD:

4 Q: Will you read the warrant number for me?

5 A: Warrant Number M930070.

6 Q: And who is the officer that signed out this warrant?

7 A: I did.

8 Q: And what is the warrant for?

9 A: For malicious damage to real property.

10 Q: And will you read the body of it?

11 A: It says on 8/16/2012 at approximately 12:30 P.M., Charles
12 Hagan, Jr. and James Hagan went to the residence of Dana
13 Elliott located at in the Spring Branch Section
14 of Horry County. Upon arrival, they did conspire to break
15 into the residence and did damage the door by forcibly
16 entering and doing damage of approximately \$500.

17 Q: And is that the same day as the burglary that we're trying
18 today?

19 A: Yes, sir; it is.

20 Q: Does that involve the exact same Defendant that's on trial
21 today?

22 A: Yes, sir, it does.

23 Q: And what happened with that warrant?

24 A: On this day, he pled guilty.

25 Q: So, he pled guilty to breaking the door in of the house of

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1 the victim on the same day that he's charged with burglarizing
2 the house?

3 A: Yes, sir.

4 Q: And would he have been placed under oath?

5 A: Sir?

6 Q: Would he have been placed under oath?

7 A: Yes, sir; he would have.

8 Q: And would he have appeared in front of a judge?

9 A: Yes, sir, he would.

10 Q: So, during the guilty plea, he told the judge that on 8/16
11 at about 12:30, he broke the door of the victim's house?

12 A: Yes, sir; he did.

13 Q: And you were present?

14 A: Yes, sir.

15 Q: And you heard all of his testimony?

16 A: Yes, sir.

17 Q: And he admitted to it?

18 A: Yes, sir.

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

20 THE COURT: You may cross examine subject to your prior
21 objections.

22 MS. KNOWLES: Thank you, Your Honor.

23 RECROSS EXAMINATION OF TERRY ELLIOTT BY MS. KNOWLES:

24 Q: Detective Elliott, do you recall the discussion that was
25 had between the judge and my client on this day?

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1 A: Well, it's the normal thing they always ask them two or
2 three times is he sure he wants to admit to he done it.
3 They'll ask them usually two or three times they'll ask him
4 and then -- before he pleads guilty.

5 Q: Okay. Do you recall if he arrived late?

6 A: Yes.

7 Q: And what was the discussion between the Judge and my
8 client at that point in time?

9 A: That the jury was getting ready to deliberate because he'd
10 been tried in his absence.

11 Q: And didn't the Judge tell him you have one of two options,
12 you can either give this case to the jury, let them continue
13 deliberating or you can plead guilty and I will issue you a
14 time-served sentenced?

15 A: I don't recall that.

16 Q: You don't recall that?

17 A: I don't recall.

18 Q: But you recall everything else?

19 A: Well, the normal proceeding, as much as I've heard to say
20 I remember the exact words ---

21 Q: What did my client receive as far as the sentence goes for
22 that?

23 A: What did he receive?

24 Q: Yes. Time served?

25 A: Time served and restitution of \$500.

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1 Q: And ---

2 A: And the restitution of \$500 has been paid.

3 Q: Okay. And malicious damage to property, is that burglary?

4 A: Do what now?

5 Q: Is malicious damage to property a burglary?

6 A: No.

7 Q: Okay. And again, he received a time-served sentence and
8 had initially requested a jury trial, correct?

9 A: That's correct.

10 Q: And was he represented by counsel?

11 A: No, he wasn't.

12 Q: And he's not an attorney, is he?

13 A: Not that I know of.

14 Q: Thank you.

15 THE COURT: Anything further from this witness?

16 MR. HOLFORD: No, Your Honor.

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

18 Do you wish to excuse the witness?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: Any objection to his being excused?

21 MS. KNOWLES: No, sir.

22 THE COURT: You may leave, sir; thank you.

23 All right. Ladies and gentlemen of the jury, at this
24 point in time, I'm going to stop the trial so that you can go
25 have lunch. As you leave the courthouse, I'll give you the

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1 same instructions that I have given you before. Don't try to
2 gather any information about the case, don't discuss the case
3 with anyone, don't allow anyone to discuss it with you. And
4 if anyone tries to do so, please report that incident when you
5 return.

6 I'm gonna ask that you be back in the jury room by 1:30.
7 We should be in a position to resume at that time. Hope
8 everyone has a good lunch. You're free to go. Thank you.
9 (REPORTER'S NOTE: The jury exits courtroom and is released
10 for lunch. 12:16 P.M. The following takes place outside the
11 presence of the jury.)

12 THE COURT: Now, any objection to the Defendant remaining
13 on bond during the trial?

14 MR. HOLFORD: No, Your Honor. I believe he's on home
15 detention.

16 THE COURT: I think he is already. I learned that
17 yesterday.

18 Sir, I will caution you though that you should be back in
19 the courtroom at 1:30. We'll resume the trial at that point
20 in time. If you fail to appear, you'll be tried in your
21 absence and I'll issue a bench warrant. Do you understand
22 that, sir?

23 MR. HAGAN: Yes, sir.

24 THE COURT: All right. We'll resume at 1:30. Thank you
25 very much. We're in recess.

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1 (REPORTER'S NOTE: Recess at 12:17 P.M.)

2 *****OFF THE RECORD*****

3 (On the Record. 1:35 P.M.)

4 THE COURT: State ready to go forward?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Defense ready?

7 MS. KNOWLES: Yes, sir.

8 THE COURT: All right. Let's bring the jury in.

9 (REPORTER'S NOTE: The jury returns to the courtroom. 1:36
10 P.M.)

11 THE COURT: All right. The record will reflect the jury
12 has returned to the courtroom. I hope everyone had a good
13 lunch. If anyone had any difficulty in complying with my
14 instructions during your absence from the courthouse, please
15 stand. It appears that all jurors have been able to comply
16 with my instructions.

17 At this time, the State will be calling its next witness.
18 Yes, sir.

19 MR. HOLFORD: The State calls Charles Hagan, Jr. to the
20 stand.

21 THE COURT: All right. Come forward, sir, to be sworn.

22 CHARLES JOSEPH HAGAN, JR., HAVING
23 BEEN SWORN, TESTIFIED AS FOLLOWS:

24 THE COURT: Have a seat in the stand, sir. Once you're
25 seated, state your name.

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1 MR. CHARLES HAGAN: Charles Joseph Hagan, Jr.

2 THE COURT: Thank you. Counselor, your witness.

3 MR. HOLFORD: Thank you.

4 DIRECT EXAMINATION OF CHARLES JOSEPH HAGAN, JR. BY MR.

5 HOLFORD:

6 Q: Mr. Hagan, would you please introduce yourself to the jury
7 and tell them where you live.

8 A: My name is Charles Joseph Hagan ---

9 THE COURT: Move closer to the microphone.

10 A: Charles Joseph Hagan and I live in Loris, South Carolina,
11 and I'm a single father.

12 Q: And how are you related to the Defendant in this case?

13 A: He is my nephew.

14 Q: And would it be safe to say that this is not a comfortable
15 situation for you?

16 A: Absolutely not. Both our lives have been -- it's
17 something that I'm sure both of us regret doing. Desperate
18 times calls for desperate measures. It is no excuse to do
19 what we have done.

20 Q: And how was your case resolved?

21 A: My case was resolved, I was charged with burglary. I had
22 probation and I had restitution and lost my kid, lost my
23 Medicaid, lost my food stamps, lost my prescriptions all due
24 to the fact of the way they went about the investigation.

25 Q: And on August 16th, 2012, where were you?

1 A: I was at a particular home.

2 Q: And do you remember on what road that was?

3 A: No, sir.

4 Q: Do you remember whose residence it was?

5 A: No, I believe it was related to a detective here in the
6 courtroom somehow, some way.

7 Q: So you don't know what home you were at?

8 A: No, sir.

9 Q: What were you driving at that time?

10 A: I was driving a white Ford Taurus.

11 Q: And where were you at the incident location?

12 A: In the car.

13 Q: And did anyone ever approach you?

14 A: I believe somebody in his family came up to the vehicle
15 asked me what I was doing there.

16 Q: And were you the only one in the car at the time?

17 A: Yes, sir.

18 Q: And who was inside the house?

19 A: Before I go any further, James is a good person. He's a
20 good father. I don't care what you've heard prior to me
21 coming in here. We both regret what we've done. He's looking
22 at a lot of time if he goes any further with this.

23 MS. KNOWLES: You know, I would object to this line ---

24 THE COURT: I'm gonna ask that you be responsive to the
25 questions, sir.

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CHARLES JOSEPH HAGAN, JR. - DIRECT BY MR. HOLFORD

1 A: Yes, sir. I can plead on the mercy of the Court, please?

2 THE COURT: For what?

3 A: For his sake as well as for mine.

4 THE COURT: Well, sir, you have -- I'm instructing you to
5 be responsive to the question.

6 A: Yes, sir.

7 BY MR. HOLFORD:

8 Q: Who was inside that residence that day?

9 A: James Hagan.

10 Q: And was anyone else with the two of you?

11 A: No, sir.

12 Q: And did you go inside the residence?

13 A: No, sir.

14 Q: And who broke the door that day at the residence?

15 A: I wasn't out of the vehicle, so I'm assuming James broke
16 the door.

17 Q: And did you later pick James up?

18 A: Yes, sir.

19 Q: And where did you pick him up?

20 A: On the road somewhere down the way.

21 Q: And what were you driving at that time?

22 A: A white Ford Taurus.

23 MR. HOLFORD: I have no further questions, Your Honor.

24 THE COURT: Counselor, your witness.

25 MS. KNOWLES: Thank you, sir.

1 THE COURT: Yes, ma'am.

2 CROSS EXAMINATION OF CHARLES JOSEPH HAGAN, JR. BY MS. KNOWLES:

3 Q: Mr. Hagan...

4 A: Yes, ma'am.

5 Q: You were also charged in this case, weren't you?

6 A: Yes, ma'am.

7 Q: What were you charged with?

8 A: I was charged with burglary.

9 Q: And what else?

10 A: Malicious damage.

11 Q: What happened with that charge?

12 A: What do you mean, I was charged with both of them and I
13 had to go to jail for it.

14 Q: Did you plead guilty or what happened?

15 A: I pled guilty to both, yes, ma'am.

16 Q: And received what sentence?

17 A: I had probation and I had restitution.

18 Q: As far as the Magistrate charge goes as well?

19 A: Yes, sir.

20 Q: Okay. And received probation for both?

21 A: Yes, ma'am.

22 Q: In exchange for your testimony today?

23 A: Pretty much, yes, ma'am; and to keep my child.

24 Q: Do you recall making a statement to law enforcement
25 whenever they arrested you?

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CHARLES JOSEPH HAGAN, JR. - CROSS BY MS. KNOWLES

1 A: Excuse me?

2 Q: Or interrogated you, interviewed you; did you make a
3 statement, a written statement, do you recall that?

4 A: Do I recall a written statement; yeah, I recall a written
5 statement.

6 Q: And do you recall what you said in that statement?

7 A: I recall me telling something on the lines, Mr. Hagan
8 never got in the vehicle or anything.

9 Q: If I showed you a copy of the statement, would you be in a
10 position -- in a better position to ---

11 A: Recall, sure.

12 Q: Remember.

13 A: Yes, ma'am.

14 Q: Can you read that statement?

15 A: I never knew James Hagan breaking and entering homes. I
16 also that Mr. Elliott had been asked to state this -- never
17 sold anything.

18 Q: So, which is it?

19 A: I never knew James to break in any homes.

20 Q: Do you recall providing me a statement was well?

21 A: You a statement?

22 Q: Uh-huh (affirmative response).

23 A: Not necessarily, but if I did, I might have; yes, ma'am.

24 Q: Would you recognize your handwriting?

25 A: Absolutely; yes, ma'am. What did I give you here? I,

1 Charles Hagan, have said and think that ---

2 THE COURT: Sir, don't read it out loud, just look at it
3 and see if you can identify it, please.

4 Q: Is that your handwriting? Is that something that you are
5 the author of?

6 A: Yep.

7 Q: And the back as well?

8 A: Yes.

9 MS. KNOWLES: Your Honor, at this time, I would ask the
10 him -- the witness to read those statements.

11 THE COURT: No, ma'am, I'm not going to allow him to read
12 the statement into record. You can ask him if he ---

13 MS. KNOWLES: Can I offer this as evidence?

14 THE COURT: If you're trying to impeach him by prior
15 inconsistent statements, you must first ask him whether he
16 made the statements and ---

17 MS. KNOWLES: He's acknowledged that he made them.

18 THE COURT: Well, once he acknowledges he made the
19 statement, that's the end of the proof. He's acknowledged he
20 made a prior inconsistent statement.

21 BY MR. KNOWLES:

22 Q: What is in that statement? Thank you. Sorry.

23 MR. HOLFORD: Your Honor, I would ask that she ---

24 THE COURT: You can't ask him the entire statement.

25 Q: In summary, what is ---

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CHARLES JOSEPH HAGAN, JR. - CROSS BY MS. KNOWLES

1 THE COURT: I'd ask the attorneys to approach, please.

2 (REPORTER'S NOTE: A bench conference was held off the record
3 in the presence of the jury but out of hearing of the jury.)

4 THE COURT: You may proceed.

5 BY MS. KNOWLES:

6 Q: And in the statement that you made to law enforcement,
7 this voluntary statement, you acknowledge what in that?

8 A: James never got in the car with anything.

9 Q: And also -- I'm gonna show this to you again.

10 A: That I've known him not to break into any homes.

11 Q: Yes. And do you remember being interrogated by police?

12 A: Yes, ma'am, I do.

13 THE COURT: Move close to the microphone.

14 A: Yes, ma'am, I do.

15 THE COURT: Thank you, sir.

16 Q: Tell us a little bit about that, that ---

17 A: I just told you, I lost my child, I lost my prescriptions,
18 I lost my Medicaid, I lost my food stamps, I lost my life.

19 Q: Well, did you feel in any way pressured whenever you were
20 ---

21 A: You're always pressured when you're being interrogated,
22 ma'am.

23 Q: Okay. Did you speak with anyone today prior to coming up
24 here to testify?

25 A: No, ma'am.

1 Q: Okay. So, you never spoke with law enforcement or
2 anything?

3 A: No, ma'am.

4 Q: And did you feel like they had -- the police had sort of
5 zeroed in ---

6 A: I'm not gonna answer any questions -- my only question is
7 I am not going to lose my child again over any circumstances.
8 I am not going to jail for anybody and I'm going to do what I
9 have to do to keep my child in my custody. And this today
10 will keep my child in my custody by showing up here today will
11 keep my child in my custody to where this will be no longer go
12 on or be prolonged or have to come back to haunt me.

13 Q: So, in other words, were you threatened?

14 A: I'm not gonna say I was threatened, no, ma'am, not in
15 Horry County, not with the police department today, I am not
16 gonna say I was threatened in any way shape or form; no,
17 ma'am. I gave all voluntary and willing statements.

18 Q: And those were very conflicting statements, weren't they?

19 A: I wouldn't necessarily say they're conflicting. I was
20 confused, I was upset, I was hurt, I was distraught; yes,
21 ma'am. I was, I was not in the correct frame of mind from
22 time to time, yes, ma'am. You'd be feel -- in that position,
23 might've felt the same way.

24 Q: I don't understand this business about your child. What
25 does your testimony have to do with your child?

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CHARLES JOSEPH HAGAN, JR. - CROSS BY MS. KNOWLES

1 A: The law works in funny ways.

2 Q: And you are under oath, let me remind you of that.

3 A: I am under oath; yes, ma'am.

4 Q: So, explain to me what you mean by that.

5 A: I can't -- I don't know how to even elaborate than say the
6 law works in funny ways. One thing resolving to another,
7 resolving to another. I don't know how it all -- how it all
8 came about but this particular incident took place, next thing
9 you know I had no kid and DSS at my door; the next thing I
10 know I had no food stamps; the next thing I know I had no
11 Medicaid; the next thing you know, I was told if I showed up
12 here today that this would all be put behind me and I'm
13 showing up here today to put all this behind me to keep my
14 child in my custody. I'm pleading on my nephew's behalf, he's
15 a good person and I would want ---

16 Q: That's all I needed to hear. That's all I needed to hear,
17 sir.

18 A: --- and I don't want him to go to jail for a long period
19 of time. You made a mistake ---

20 Q: That's all I need to hear.

21 A: Yes, ma'am.

22 Q: Is your mistake putting someone else, someone else's
23 freedom at risk; is that your mistake?

24 A: My kid.

25 Q: Mr. Hagan, have you ever used drugs?

1 A: In the past twenty years, yes, ma'am, I have and there's
2 record of it but I have no criminal record other than a CDV.

3 Q: And I don't mean any ill will, I'm not trying to attack
4 you ---

5 A: That's fine. That's fine. And I've got help for
6 everything I have and if you have proof there, I've gone
7 through the Lighthouse and you're talking over fifteen years
8 ago. Other than that, there is no proof of any drug use in my
9 life whatsoever. Fifteen years is a long time to be clean and
10 stay away from drugs.

11 Q: And were you under the influence of drugs at the time this
12 happened?

13 A: Absolutely not and none of this had anything to do with
14 drugs. It was all being the economy, bad timing and money
15 needed to pay bills, car payments, electric and put food on
16 the table.

17 Q: That's enough now. Thank you.

18 A: Yes, ma'am.

19 THE COURT: I'm gonna let him complete his answers. If
20 you ask a question, he has the right to finish his answers.
21 Don't cut him off.

22 MS. KNOWLES: Yes, sir.

23 THE COURT: If you think he's being unresponsive to the
24 question, call on the Court, I'll make -- I'll discipline the
25 witness.

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1 MS. KNOWLES: Okay. Thank you.

2 THE COURT: Thank you.

3 BY MS. KNOWLES:

4 Q: Have you ever known my client to steal anything?

5 A: To my knowledge, no, and I put that in the tes -- in the
6 statement.

7 Q: And just to follow up, whenever you were interviewed, did
8 you feel pressured in any way?

9 A: You always feel pressure when you're being interviewed.

10 Q: Did you feel that your child was maybe at risk?

11 A: I'm not answering those questions because I told you,
12 Horry County works in very particular ways, Your Honor. The
13 law works in funny ways, Your Honor, is all I have to say.
14 Repercussions are repercussions; that's all I can honestly
15 say, Your Honor.

16 THE COURT: Okay.

17 A: And the repercussion was, yes, I lost my child; yes, I
18 just got her back; no, I don't want to jeopardize her again.
19 Whether it was law enforcement or higher powers, things came
20 about.

21 Q: Okay. Thank you.

22 A: If there wasn't a child involved, I wouldn't be here
23 today.

24 THE COURT: Sir, I don't want you to volunteer
25 statements.

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CHARLES JOSEPH HAGAN, JR. - REDIRECT BY MR. HOLFORD

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1 A: Yes, sir, I apologize, Your Honor.

2 THE COURT: I want you to be responsive to the question.

3 A: I apologize to the jury, I apologize.

4 THE COURT: Thank you, sir.

5 A: Yes, sir.

6 BY MS. KNOWLES:

7 Q: Immediately upon be questioned by police, did they focus
8 in on my client?

9 A: Not necessarily; they were on top of both of us.

10 Q: Okay. But you don't have any knowledge of him committing
11 any crime, is that your testimony?

12 A: Prior to, no.

13 Q: On this day.

14 A: On this day, yes.

15 Q: Your testimony is that he -- you saw this, a minute ago it
16 wasn't.

17 A: I was in a car. Never left the vehicle, ma'am.

18 Q: Thank you. Thank you, Mr. Hagan.

19 A: Thank you for your time.

20 THE COURT: Redirect?

21 MR. HOLFORD: Briefly, Your Honor.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION OF CHARLES JOSEPH HAGAN, JR. BY MR.

24 HOLFORD:

25 Q: Mr. Hagan ---

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CHARLES JOSEPH HAGAN, JR. - REDIRECT BY MR. HOLFORD

- 1 A: Yes, sir.
- 2 Q: When you testified at your guilty plea ---
- 3 A: Yes, sir.
- 4 Q: --- who did you implicate was with you at that time?
- 5 A: My nephew.
- 6 Q: And how long ago was that that you gave that guilty plea?
- 7 A: Seven months ago.
- 8 Q: Back in maybe March?
- 9 A: Something like that, yes, sir.
- 10 Q: And today, under oath in this courtroom, you're telling
- 11 this jury that you drove this Defendant ---
- 12 A: Both of us did.
- 13 Q: --- to that location?
- 14 A: Both of us went there, yes, sir.
- 15 Q: And you didn't -- never left the car?
- 16 A: No, sir. But I'm just as guilty.
- 17 Q: And that's why you pled guilty?
- 18 A: That's why I pled guilty.
- 19 Q: But he was with you?
- 20 A: Yes, sir.
- 21 Q: And he went in the house?
- 22 A: Yes, sir.
- 23 Q: And you later picked him up down the road?
- 24 A: Yes, sir.
- 25 Q: No further questions.

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CHARLES JOSEPH HAGAN, JR. - RECROSS BY MS. KNOWLES

1 A: Please find mercy on him.

2 THE COURT: Yes, ma'am.

3 RECROSS EXAMINATION OF CHARLES JOSEPH HAGAN, JR. BY MS.

4 KNOWLES:

5 Q: Mr. Hagan ---

6 A: Yes, ma'am.

7 Q: In exchange for your testimony here today, you received
8 what sentence?

9 A: Two years probation and restitution. And if I didn't come
10 today, I'd be looking at a five-year sentence.

11 MS. KNOWLES: Thank you, Your Honor. No further
12 questions.

13 THE COURT: You may step down, sir. Thank you very much.

14 A: Thank you, Your Honor. I appreciate the jury's time.

15 THE COURT: Any objection to his being excused?

16 MR. HOLFORD: Your Honor, I'd just ask him to remain in
17 the courtroom just briefly.

18 THE COURT: All right, sir. You need to have a seat in
19 the back of the courtroom, sir.

20 A: Yes, sir.

21 THE COURT: Thank you.

22 MR. HOLFORD: The State calls Zack Elliott to the stand.

23 THE COURT: Sir, come forward. Be sworn right over here
24 to my right. Thank you.

25 ZACHARY ELLIOTT, HAVING BEEN SWORN,

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ZACHARY ELLIOTT - DIRECT BY MR. HOLFORD

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1 TESTIFIED AS FOLLOWS:

2 THE COURT: Sir, have a seat in the witness stand and
3 once you're seated, state your name, please.

4 MR. ELLIOTT: My name is Zackary Elliott.

5 THE COURT: Thank you.

6 Counselor, your witness.

7 DIRECT EXAMINATION OF ZACHARY ELLIOTT BY MR. HOLFORD:

8 Q: Mr. Elliott, will you explain to the jury who you are and
9 where you live?

10 A: My name is Zack Elliott and I stay at
11 Nichols, South Carolina.

12 Q: Is that the location we've been talking about in this
13 burglary?

14 A: Yes, sir, it is.

15 Q: And what happened on that day?

16 A: I was coming home for a lunch break and noticed a
17 suspicious car in front of my carport and I then asked the
18 gentleman what he was doing. And when I was talking to him, I
19 heard the door open and close and noticed that there was
20 somebody else in the house.

21 Q: And what gentleman was sitting in that car?

22 A: Mr. Charles.

23 Q: And do you recognize Charles Hagan?

24 A: Yes, sir.

25 Q: And where is he now?

- 1 A: He's sitting right there at the back.
- 2 Q: Is he the one that just testified?
- 3 A: Yes, sir, he is.
- 4 Q: And you confronted him face-to-face?
- 5 A: I talked to him.
- 6 Q: What was he driving?
- 7 A: A white Ford Taurus.
- 8 Q: Was there anyone else in the car at the time?
- 9 A: Not at the time.
- 10 Q: But you said there was someone else in the house?
- 11 A: I know for a fact that there was someone in there.
- 12 Q: How was the door that day?
- 13 A: I had went in the front door, the front door was unlocked,
- 14 which I know wasn't right. And I made my way to the back and
- 15 I noticed that it was kicked in.
- 16 Q: And what did you notice by the door?
- 17 A: Jewelry box, gaming devices, anything that, I mean, all by
- 18 the door.
- 19 Q: And did you call the police?
- 20 A: I did. I did.
- 21 Q: And did they respond?
- 22 A: Yes, sir, they did.
- 23 Q: And who did you talk to?
- 24 A: As far as police?
- 25 Q: Uh-huh (affirmative response).

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ZACHARY ELLIOTT - CROSS BY MS. KNOWLES

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1 A: I talked to Mr. Hilburn and Ms. Smith.

2 MR. HOLFORD: Your Honor, no further questions.

3 THE COURT: Your witness, counselor.

4 CROSS EXAMINATION OF ZACHARY ELLIOTT BY MS. KNOWLES:

5 Q: Mr. Elliott ---

6 A: Yes, ma'am.

7 Q: Are you the owner of this residence?

8 A: No, ma'am; I'm not.

9 Q: Who is the owner?

10 A: Harriett Enzor. We actually rent the place.

11 Q: Is that -- what's the relationship there?

12 A: No relationship.

13 Q: Okay. You said the front door was unlocked?

14 A: Yes, it was.

15 Q: Did you actually see anyone inside the residence?

16 A: No.

17 Q: Okay. But you said you know for a fact someone was in
18 there?

19 A: He opened the door, looked out, seen me, shut the door and
20 ran out the back door.

21 Q: Wait a minute. So, you did see someone?

22 A: I seen the door open and close, ma'am, I know -- there
23 ain't -- I mean, I know I seen the door close.

24 Q: Okay. I'm just trying to ---

25 A: Right, we don't have ghosts or nothing, right, right.

1 Q: Okay. And you made a statement, a voluntary statement as
2 well, in writing?

3 A: I did.

4 Q: And in your statement, do you remember what you said?

5 A: I sure do.

6 Q: What was that?

7 A: That I came home on a lunch break around 12:30, noticed a
8 car under my carport that was not supposed to be there,
9 approached the gentleman and then heard somebody in my house.

10 Q: So, you heard you the front door slam?

11 A: I heard the front door slam because we had a metal box on
12 it and heard the door slam.

13 Q: But the entry was made at the back of the house?

14 A: Yes.

15 Q: But whoever left from the front?

16 A: No, they left out the back door. I went in the front
17 door.

18 Q: You said you heard the front door slam, is that ---

19 A: Ma'am, I'm up under the carport, okay, there's a door up
20 under the carport. When I was talking to Mr. Charles, the ---

21 Q: Give me one second, this might be easier. Let me show you
22 this picture of your ---

23 A: Hey, I'm more of a -- you see this carport here, there's
24 actually a door right there. Okay?

25 Q: Uh-huh (affirmative response).

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ZACHARY ELLIOTT - CROSS BY MS. KNOWLES

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1 A: He was here, I was here. When I heard this door slam,
2 okay, there's a door under this carport -- you're talking
3 about this door -- when I heard this door slam, I went in the
4 house. Okay? The back door was kicked in.

5 Q: But you didn't see anyone inside?

6 A: No.

7 Q: Okay. And the only person that you can identify is Mr.
8 Charles Hagan?

9 A: Right.

10 Q: And you called 911?

11 A: I did.

12 Q: And what -- where did he leave from? Did he leave your
13 residence and go to the left or right?

14 A: He as in who?

15 Q: Mr. Charles Hagan.

16 A: To the -- if you're looking at the house, it's to the
17 left.

18 Q: Okay.

19 A: But facing the highway, it's to the right.

20 Q: Okay. And you came home about 12:30?

21 A: Around and about, 12:15, 12:30; it was lunchtime.

22 Q: How then were you able to write a statement with a time of
23 12:27?

24 A: Ma'am, I don't -- I didn't look at my watch when I called,
25 I just called.

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ZACHARY ELLIOTT - REDIRECT BY HOLFORD/RE CROSS BY KNOWLES

1 Q: But again, you can only identify Charles Hagan?

2 A: Right.

3 Q: And items were moved within the residence?

4 A: Were moved; yes, ma'am.

5 Q: Is there any way possible that what you heard was actually
6 an unsecured door?

7 A: Not at all.

8 Q: Okay.

9 A: Not at all; no chance.

10 Q: But you never saw my client, right?

11 A: Never seen him.

12 Q: Thank you.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION OF ZACHARY ELLIOTT BY MR. HOLFORD:

15 Q: Was that back door broken when you left that morning?

16 A: No, sir; it wasn't.

17 Q: It was only broken when you came back that afternoon?

18 A: Right.

19 MR. HOLFORD: No further questions.

20 THE COURT: Do you wish to ask any questions concerning
21 that, ma'am?

22 RE CROSS EXAMINATION OF ZACHARY ELLIOTT BY MS. KNOWLES:

23 Q: But the person that was in your home left from the front
24 door?

25 A: Ma'am, they left out the back door.

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DEBRA CHAFFIN - DIRECT BY MR. HOLFORD

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1 Q: Your statement says front.

2 A: No. They were at the front door. The front door slammed.

3 Q: Okay. Thank you.

4 THE COURT: You may step down, sir.

5 MR. HOLFORD: Thank you, Your Honor. At this time, I'd
6 ask that Mr. Charles Hagan be excused.

7 THE COURT: Any objection to his being excused, ma'am?

8 MR. KNOWLES: No, sir.

9 THE COURT: You're free to go, sir. Thank you.

10 MR. CHARLES HAGAN: Thank you, Your Honor.

11 THE COURT: State may call its next witness.

12 MR. HOLFORD: Your Honor, the State calls Debbie Chaffin.

13 DEBRA CHAFFIN, HAVING BEEN SWORN,

14 TESTIFIED AS FOLLOWS:

15 THE COURT: Ma'am, have a seat in the witness stand and
16 once you're seated, state your name for me.

17 MS. CHAFFIN: Debra Chaffin.

18 THE COURT: All right. You don't have to get right up on
19 the microphone but stay pretty close to it. Thank you, ma'am.

20 Yes, sir, your witness.

21 DIRECT EXAMINATION OF DEBRA CHAFFIN BY MR. HOLFORD:

22 Q: Ms. Chaffin, where you do work?

23 A: I own Platinum Plus Cleaning Services in Myrtle Beach.

24 Q: And what is that?

25 A: We clean condos and departure cleans for tourism.

1 Q: And on the 16th of August, 2012, who was employed for you?

2 A: I had about fifty employees and then I have supervisors
3 and managers.

4 Q: Connected to this case, do you know Jeanette Andrews?

5 A: Yes. She is one of my supervisors and currently one of my
6 supervisors.

7 Q: Was Mr. Hagan, the Defendant, working for you that day?

8 A: I cannot verify whether he had shown up or not. I was not
9 on site. They met in location in North Myrtle Beach. I was
10 at the office in South Myrtle Beach. He met -- if he did show
11 up, he would've met my supervisor Jeanette who would've met
12 all the employees there that day to give them the keys and
13 their orders.

14 Q: So, if he would've been at work that day, he would've met
15 Jeanette.

16 A: That's correct.

17 Q: You never saw him?

18 A: I never seen anybody that day.

19 Q: No further questions.

20 THE COURT: Ms. Knowles, your witness.

21 MS. KNOWLES: I just have a couple of questions for her.

22 CROSS EXAMINATION OF DEBRA CHAFFIN BY MS. KNOWLES:

23 Q: Mr. James Hagan worked for you, correct?

24 A: Ashley and Tonya came in first on August 10th. They were
25 employed by me by themselves. Then Ashley asked if he could

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DEBRA CHAFFIN - CROSS BY MS. KNOWLES

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1 join them cleaning, which is commonly done when they want to
2 clean as teams and I approved it.

3 Q: And you paid him?

4 A: Ashley submitted her hours and usually the teams will tell
5 me how to go ahead and split that up because some of them
6 don't always show up, sometimes they do and it's on a seven-
7 day work week. But he did receive a check from me as per
8 Ashley saying to split it up three ways that week.

9 Q: But you wouldn't pay someone unless they actually work,
10 would you?

11 A: Again, in this kind of cleaning company, cleaners can fall
12 out last minute, partners can fall out last minute. When they
13 submit their hours, they usually list next to that day it was
14 three of us, the two of us, one of us, I left early, so I can
15 distribute the units -- pay per unit to each individual
16 cleaner.

17 Q: But you acknowledge that he was paid by your company?

18 A: I gave him a check for one week and it was a year ago so I
19 don't remember the exact dates but on the bottom of the check
20 should say the pay period.

21 Q: Yes, ma'am, I have a ---

22 A: --- during that, that time, yes.

23 Q: Just so you can take a look at it.

24 A: Yes, that's correct.

25 Q: And, again, you wouldn't pay someone unless they worked,

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DEBRA CHAFFIN - REDIRECT BY MR. HOLFORD

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1 would you? You wouldn't have much of a business if you
2 operated in that way.

3 A: And this, again, the pay -- the cleaners submit me their
4 hours and distribute exactly who should be paid for per unit
5 whether they did it as a partnership or they did it as a
6 single.

7 Q: And Mr. Hagan was paid?

8 A: He was paid as per instructions from their email from
9 Ashley to distribute that week three ways.

10 Q: Thank you, ma'am.

11 THE COURT: Your witness, counselor.

12 REDIRECT EXAMINATION OF DEBRA CHAFFIN BY MR. HOLFORD:

13 Q: Ms. Chaffin, who is Ashley?

14 A: At that time, they weren't married or anything like that,
15 so I guess girlfriend, fiancé' of James Hagan.

16 Q: Of the Defendant?

17 A: Yes.

18 Q: And she told you that James was working that week?

19 A: Yes.

20 Q: James never told you he was working that week?

21 A: No. Because the night before when I asked them to show up
22 to work, I did not communicate with anybody but Ashley, I sent
23 her a text.

24 Q: And the check that Ms. Knowles just showed you, what's the
25 pay period on that?

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DEBRA CHAFFIN - RECROSS BY MS. KNOWLES

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1 A: It is from 8/13/2012 to 8/19/2012.

2 Q: And that's for an entire week?

3 A: Yes.

4 Q: Does that mean he worked on the 16th?

5 A: No, he could've worked on the 13th, he could've worked on
6 the 19th, it could've been any day that week.

7 Q: Thank you. No further questions.

8 THE COURT: Counselor?

9 MS. KNOWLES: One question.

10 THE COURT: Yes, ma'am.

11 RECROSS EXAMINATION OF DEBRA CHAFFIN BY MS. KNOWLES:

12 Q: Ms. Chaffin, the pay period in question includes August
13 16th, doesn't it?

14 A: It is within that week.

15 Q: Thank you, ma'am.

16 THE COURT: All right, ma'am. You may step down. Thank
17 you very much.

18 Do you wish to excuse the witness?

19 MR. HOLFORD: I wish that she be excused, Your Honor.

20 THE COURT: Any objection to her being excused?

21 MS. KNOWLES: No, sir.

22 THE COURT: Ma'am, you're free to go. Thank you for
23 coming today.

24 MS. CHAFFIN: Thank you.

25 THE COURT: Yes, ma'am.

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JEANETTE ANDREWS - DIRECT BY MR. HOLFORD

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1 MR. HOLFORD: The State calls Jeanette Andrews.

2 THE COURT: Ma'am, if you would, come forward to my right
3 and be sworn, please. Thank you.

4 JEANETTE ANDREWS, HAVING BEEN SWORN,
5 TESTIFIED AS FOLLOWS:

6 THE COURT: Ma'am, have a seat in the witness stand and
7 once you're seated, I'd ask that you state your name, please.

8 MS. ANDREWS: Okay. Jeanette Andrews.

9 THE COURT: All right. You don't have to put your mouth
10 right up by the microphone but stay close.

11 MS. ANDREWS: Okay.

12 THE COURT: Thank you.

13 You may proceed, sir.

14 MR. HOLFORD: Thank you, Your Honor.

15 DIRECT EXAMINATION OF JEANETTE ANDREWS BY MR. HOLFORD:

16 Q: Ms. Andrews, please introduce yourself to the jury and
17 tell them a little bit about yourself, where you're from.

18 A: I'm from Conway. My name is Jeanette Andrews and I'm a
19 supervisor from Platinum Plus Services, it's a cleaning
20 company.

21 Q: And you know the lady who just left out, right?

22 A: Yes, my boss.

23 Q: That's your boss?

24 A: Uh-huh (affirmative response).

25 Q: On August 16th, 2012, where were you?

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JEANETTE ANDREWS - DIRECT BY MR. HOLFORD

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1 A: I was in North Myrtle Beach at the property working. I
2 was a supervisor.

3 Q: And what would you do as a supervisor at that property?

4 A: I work -- I walk the units, I check the units after they
5 are cleaned. I met the cleaners in the morning and I give
6 them out their keys and then they'll call me when their unit
7 is clean and I walk the unit.

8 Q: In relation to this case, do you remember who you gave the
9 key to?

10 A: Yes.

11 Q: Who was that?

12 A: Ashley and Tonya.

13 Q: Ashley and Tonya?

14 A: Uh-huh (affirmative response).

15 Q: Who are they?

16 A: They are cleaners that worked with us last year.

17 Q: Do you know if either of them has a relation with the
18 Defendant James Hagan?

19 A: Yes.

20 Q: And who is that?

21 A: Ashley.

22 Q: What relationship is that?

23 A: She was his girlfriend last year.

24 Q: On that day, are they the only two that you met with?

25 A: They're the cleaners that came that morning.

1 Q: And did you ever see the Defendant James Hagan that day?

2 A: No.

3 Q: He was not with Ashley and Tonya that day?

4 A: No.

5 Q: You're sure of that?

6 A: I'm sure. Ashley was driving and Tonya was in the
7 passenger seat.

8 Q: And there was -- was there any male with them that day?

9 A: No.

10 Q: Just the two of them?

11 A: Just the two of them.

12 MR. HOLFORD: Your Honor, I have no further questions.

13 THE COURT: Ms. Knowles, your witness.

14 CROSS EXAMINATION OF JEANETTE ANDREWS BY MS. KNOWLES:

15 Q: Ms. Andrews, you don't in fact see all these cleaners
16 whenever you meet up in certain locations?

17 A: No, I see them all.

18 Q: You see them all. Do you check them in?

19 A: Yeah, because Ms. Debbie will call me and let me know who
20 is coming and then I meet with them in the morning and hand
21 out their keys and their locations of where they're gonna be.

22 Q: So, you meet with every single one of them?

23 A: Yes.

24 Q: Okay. And do you recall some incident involving a hermit
25 crab on the day that this happened?

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JEANETTE ANDREWS - CROSS BY MS. KNOWLES

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1 A: No.

2 Q: You don't? Okay. One second.

3 (REPORTER'S NOTE: Ms. Knowles confers with Defendant.)

4 Q: And you met with Ashley Hagan or Ashley Henry at the time
5 and gave her the key?

6 A: Yes. I met with Ashley and Tonya.

7 Q: Okay.

8 A: They both pulled up in the morning.

9 Q: And are there several employees on scene?

10 A: There's different employees on the scene. We all meet at
11 one location.

12 Q: Okay. And you clean in crews, don't you?

13 A: We clean in crews of two and we clean also as singles as
14 well.

15 Q: Okay. But Mr. Hagan, my client, was in fact hired by your
16 company during the month of August, wasn't he?

17 A: That I am not sure of.

18 Q: So, you're saying that you have never seen him? To your
19 recollection, this is the first you've seen of him?

20 A: No, I have seen him on one of the properties before but it
21 was not in the north that day.

22 Q: Okay. So, you checked all of the employees in in the
23 morning?

24 A: Uh-huh (affirmative response).

25 Q: Do you have a copy of that day of -- a copy of a list of

1 who you checked in?

2 A: Debbie should.

3 Q: Okay. And that's how someone would be paid?

4 A: Uh-huh (affirmative response).

5 Q: And Debbie doesn't pay someone if they haven't worked,
6 correct?

7 A: She will go -- what happens is the employee fills out a
8 timesheet, they turn their timesheets in and they are to list
9 who they work with.

10 Q: Gotcha.

11 A: If they work in a team of two.

12 Q: But my client was hired and worked with both Ms. Bowles
13 and his wife, correct?

14 A: Not on the north end that day.

15 Q: Okay. And do you recall making a statement to police?

16 A: I made a statement to the detective that came by the
17 office.

18 Q: And do you remember what you said?

19 A: I remember briefly what I said.

20 Q: That you really couldn't -- you couldn't really testify as
21 to whether or not my client was present or not.

22 A: I know he was not present. I'm very aware of who works on
23 my properties per my job.

24 Q: Thank you, ma'am.

25 (REPORTER'S NOTE: Ms. Knowles confers with Defendant.)

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JEANETTE ANDREWS - REDIRECT BY MR. HOLFORD

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1 THE COURT: She has not completed her questioning.

2 MR. HOLFORD: Sorry, Your Honor.

3 THE COURT: Thank you.

4 BY MS. KNOWLES:

5 Q: Okay. Ma'am, were you at the parking lot location
6 whenever my client's wife arrived?

7 A: Yes.

8 Q: You were? She didn't have to come find you?

9 A: No.

10 Q: Thank you.

11 THE COURT: Does that complete your questioning, Ms.
12 Knowles? Ms. Knowles, does that complete your questioning?

13 MS. KNOWLES: Yes, sir.

14 THE COURT: Yes, sir, you may proceed with redirect.

15 MR. HOLFORD: Yes, Your Honor, briefly.

16 REDIRECT EXAMINATION OF JEANETTE ANDREWS BY MR. HOLFORD:

17 Q: Ms. Andrews, Defense counsel just referenced a statement
18 you made to police and it sounded like she insinuated you
19 couldn't remember if you saw him or not. I'm going to hand
20 you a document. Can you identify that?

21 A: Yeah, it's what I wrote.

22 Q: And, Your Honor -- is that a true and accurate copy of
23 what you wrote that day?

24 A: Yes.

25 Q: Have there been any alterations or deletions?

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JEANETTE ANDREWS - REDIRECT BY MR. HOLFORD

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1 A: No.

2 MR. HOLFORD: Your Honor, I'd ask that it be entered in
3 evidence.

4 THE COURT: Can I see it, please?

5 MR. HOLFORD: Yes, Your Honor.

6 THE COURT: Any objection?

7 MS. KNOWLES: Your Honor -- no, sir.

8 THE COURT: All right. It'll be admitted as State's
9 Exhibit. Have it marked, please.

10 STATE'S EXHIBIT NUMBER ONE

11 ADMITTED INTO EVIDENCE

12 MR. HOLFORD: May I publish it to the jury?

13 THE COURT: You may.

14 BY MR. HOLFORD:

15 Q: Ms. Andrews, will you please read that statement in its
16 entirety?

17 A: On the 16th of August, I was waiting at Crescent Sands
18 parking lot for our employees to come get keys. My other
19 employees pulled up and I waited on Ashley to come and she
20 pulled in. I don't remember her car, what it looked like or
21 only that she told me she was Ashley. I handed her the two
22 keys and she got back in the car. I only remember seeing her
23 and another in the car, which was a female, not a male.

24 Q: Anywhere in there do you say you don't remember if you saw
25 him?

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JEANETTE ANDREWS - RECROSS BY MS. KNOWLES

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1 A: I just stated that I saw her and another female in the
2 car, not a male.

3 Q: Thank you. No further questions.

4 THE COURT: Anything further from this witness in cross
5 examination?

6 MS. KNOWLES: One question.

7 RECROSS EXAMINATION OF JEANETTE ANDREWS BY MS. KNOWLES:

8 Q: This was a parking lot, correct?

9 A: Correct.

10 Q: So, you can't safely assume who is in this parking lot?

11 A: The parking lot was empty. I was waiting on the
12 employees. When we pull in the parking lot is empty, the
13 employees pull in.

14 Q: All right. Is it not a hotel?

15 A: No. It's a parking lot.

16 Q: Crescent Sands is a parking lot?

17 A: Crescent Sands Hotel is across the street, across the
18 street is an abandoned parking which we pull in and wait.

19 Q: And there are other businesses, other places around that
20 area?

21 A: No.

22 Q: And have you rehearsed your testimony here today?

23 A: No.

24 Q: Thank you, ma'am.

25 THE COURT: All right, ma'am. You may step down.

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1 Do you wish to excuse the witness?

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Any objections?

4 MS. KNOWLES: No, sir.

5 THE COURT: You may step down and you're free to go.

6 Thank you, ma'am.

7 MS. ANDREWS: Thank you.

8 THE COURT: You may call your next witness.

9 MR. HOLFORD: The State calls Dana Enzor to the stand.

10 THE COURT: Ma'am, come forward and be sworn over here to
11 my right, please.

12 DANA ENZOR, HAVING BEEN SWORN, TESTIFIED AS
13 FOLLOWS:

14 THE COURT: Ma'am, once you're seated in the witness
15 stand, state your name, please.

16 MS. ENZOR: Dana Enzor Elliott.

17 THE COURT: Thank you. Counselor, your witness.

18 MR. HOLFORD: Thank you.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION OF DANA ENZOR ELLIOTT BY MR. HOLFORD:

21 Q: Ms. Enzor or Ms. Elliott, which do you prefer?

22 A: Ms. Enzor, preferably.

23 Q: Ms. Enzor, will you please introduce yourself to the jury?

24 A: I am Dana Enzor. I am a resident of Horry County for over
25 forty years.

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1 Q: And where do you reside now?

2 A: I live at , Nichols, which is in Horry
3 County.

4 Q: And is that the address we've been talking about that was
5 burglarized?

6 A: Yes, it is.

7 Q: Would you recognize a map of that area if I showed it to
8 you?

9 A: Yes, sir.

10 Q: I'm gonna approach you with what's been marked for ID as
11 State's Exhibit Two. Do you recognize what that is?

12 A: Yes.

13 Q: And what is it?

14 A: Okay. This is the Spring Branch area where I live.

15 Q: Is this a true and accurate reflection of what that is?

16 A: Yes.

17 MR. HOLFORD: Your Honor, I'd ask that State's Two be
18 entered in evidence.

19 MS. KNOWLES: May I see it?

20 THE COURT: Please show it to the Defense counsel,
21 please.

22 MS. KNOWLES: Okay.

23 THE COURT: Any objection?

24 MS. KNOWLES: No objection.

25 THE COURT: Without objection, it'll be received into

1 evidence as it's been marked. You may proceed.

2 STATE'S EXHIBIT NUMBER TWO

3 ADMITTED INTO EVIDENCE

4 MR. HOLFORD: Ma'am I publish?

5 THE COURT: You may.

6 BY MR. HOLFORD:

7 Q: Looking at this map, where is your house located?

8 A: Here (indicating).

9 Q: At the beginning of this red line?

10 A: Yes.

11 THE COURT: Can everyone on the jury see that?

12 You may want to step down over to the front of the jury
13 box.

14 Ma'am, you can step down in front of the jury box so that
15 everyone can see. I didn't think the gentleman in the back
16 corner could see it.

17 Looking at this map, where is your house located?

18 A: Here (indicating).

19 Q: At the beginning of this red line?

20 A: Yes.

21 THE COURT: Can everyone on the jury see that?

22 You may want to step down over to the front of the jury
23 box.

24 Ma'am, you can step down in front of the jury box so that
25 everyone can see. I didn't think the gentleman in the back

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1 corner could see it.

2 BY MR. HOLFORD:

3 Q: So, this is a map of where you live?

4 A: Yes.

5 Q: And you indicated you live here?

6 A: Yes. That's my home (indicating).

7 Q: That's your home. And that's ?

8 A: Yes, , yes.

9 Q: Do you have any further connection with this case?

10 THE COURT: Ma'am, you can be seated again in the box.

11 Thank you.

12 Q: Were you there that day?

13 A: No, I was not. I went -- I came later after I received a
14 call that the house had been broken into.

15 MR. HOLFORD: No further questions, Your Honor.

16 THE COURT: Your witness.

17 MS. KNOWLES: One question.

18 CROSS EXAMINATION OF DAND ENZOR ELLIOTT BY MS. KNOWLES:

19 Q: You didn't see anything or anyone on August 16th, did you?

20 A: I was at work.

21 Q: Thank you, ma'am.

22 THE COURT: Any further questions, counselor?

23 MR. HOLFORD: No, Your Honor.

24 THE COURT: You may step down.

25 The State may call its next witness.

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1 MR. HOLFORD: The State calls Lance Corporal Hilburn to
2 the stand.

3 THE COURT: Come forward, sir, and be sworn please.

4 LANCE CORPORAL WILLIAM MICHAEL HILBURN,
5 HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

6 THE COURT: Sir, once you are seated in the box, please
7 state your name.

8 MR. HILBURN: William Michael Hilburn.

9 THE COURT: Thank you.

10 Counselor, your witness.

11 DIRECT EXAMINATION OF WILLIAM HILBURN BY MR. HOLFORD:

12 Q: Lance Corporal, will you please identify yourself to the
13 jury, just tell them who are you and where you've been, where
14 you live now and who you work for?

15 A: My name is William Hilburn. I've been working with Horry
16 County Police Department. I've been working with Horry County
17 since 2005. Prior to that, I worked with the City of Conway
18 from 2000 to 2005. And prior to that, I worked at the jail
19 and served in the Navy before that. And I'm from Loris, born
20 and raised, still live in Loris.

21 Q: So, you've been a police officer for about thirteen years?

22 A: Yes, sir.

23 Q: And then you worked at the jail before that?

24 A: Yes, sir.

25 Q: About how long was that?

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1 A: Two years.

2 Q: And then you served in the Navy for how long?

3 A: Four years.

4 Q: As a law enforcement officer, what kind of training do you
5 go through?

6 A: You go through your basic training when you apply and then
7 you have yearly training every year to update new laws and new
8 techniques and new skills that's done on a yearly basis.

9 Q: And you're a Lance Corporal. Explain -- what is that?

10 A: When you're hired on, you're hired on as a PFC. When you
11 attain five years of service, you go to a Lance Corporal. And
12 then you can test up from there.

13 Q: So, it's a step up ---

14 A: Yes, sir.

15 Q: --- from just road officer?

16 A: Yes, sir. But I'm -- that's still my primary function.

17 Q: And on August 16th, 2012, did you have a reason to
18 investigate a crime?

19 A: Yes, sir. We had a report of a burglary in progress.

20 Q: And what were you dispatched to?

21 A: I was dispatched to the and given the
22 information reference to the White Ford Taurus with South
23 Carolina tags.

24 Q: And what tag was that?

25 A:

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1 Q: Now, you've been in the courtroom and you heard James and
2 heard Charles Hagan testify. Is that the same white Ford
3 Taurus he was driving?

4 A: The -- it was the same Ford Taurus that he met with me
5 later that that day in, yes.

6 Q: So, you met with Charles later that day?

7 A: Yes, sir.

8 Q: And he was driving the same white Ford Taurus that was at
9 the residence?

10 A: Yes, sir. And also prior to meeting with him, I spoke
11 with him on the phone and he advised he was in the white Ford
12 Taurus at that time also.

13 Q: How did you have a chance to speak with him on the phone?

14 A: After receiving the information on the tag, I was familiar
15 with the registered owner of the vehicle. I made contact with
16 that owner while in the process of searching the area and he
17 stated that the vehicle was usually in the possession of Mr.
18 Hagan.

19 Q: And were you only searching for Mr. Hagan, for Charles?

20 A: No, sir. We were searching for the vehicle at the
21 original point but once Officer Smith arrived on scene, we
22 learned that there was possibly another suspect also.

23 Q: And what was the description of that suspect?

24 A: White male, shaved head, regular build, muscular build,
25 khaki shirts, blue shirt.

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1 Q: And what did you do after that?

2 A: We searched the area, didn't locate the vehicle. Spoke
3 with some people at the Oil Company, which is right up the
4 road. Got information from them that the white Ford Taurus
5 had picked up a male matching the description of the male we
6 were looking for and headed up into North Carolina or toward
7 North Carolina.

8 Q: We've heard testimony today, you've been in the courtroom
9 the whole time, that James Hagan was possibly working on
10 August 16th, 2012.

11 A: Yes, sir.

12 Q: And do you have knowledge and belief that that was a
13 contrary statement to one he's already made?

14 A: Yes, sir.

15 Q: How do you know that?

16 A: I was in court when he pled guilty to the malicious damage
17 at the same residence at the same time on the same day.

18 MR. HOLFORD: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 STATE'S EXHIBIT NUMBER THREE

21 MARKED FOR IDENTIFICATION

22 BY MR. HOLFORD:

23 Q: I'm handing you what's been marked as State's Exhibit
24 Three. Can you identify what that is without reading into,
25 just identify it?

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1 A: It was the warrant or charging document charging Mr.
2 Hagan, Mr. James Hagan, with the malicious damage at the
3 residence.

4 Q: And how are you familiar with that document?

5 A: I was there the day that the court trial, the trial was to
6 be held.

7 MR. HOLFORD: Your Honor, at this time, the State offers
8 State's Exhibit Three into evidence.

9 MS. KNOWLES: I object, Your Honor.

10 THE COURT: What's the objection.

11 MS. KNOWLES: For the reasons stated earlier. He's -- is
12 this the warrant he's trying to put in? I don't know what
13 he's trying to put in.

14 THE COURT: Show her the document, please.

15 MR. HOLFORD: Yes, Your Honor.

16 MS. KNOWLES: I would ask the jury be excused.

17 THE COURT: All right. Ladies and gentlemen of the jury,
18 if you would step back to the jury room. Don't begin any
19 discussions about this case until I ask you to do so. You may
20 retire. Thank you very much.

21 (REPORTER'S NOTE: The jury retires to the jury room. 2:28.
22 The following takes place outside the presence of the jury.)

23 THE COURT: Yes, ma'am.

24 MS. KNOWLES: Your Honor, prior statement, I get, but
25 this warrant is nothing but hearsay and is -- shouldn't be

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1 allowed to be introduced into evidence.

2 THE COURT: Sir?

3 MR. HOLFORD: Your Honor, as to hearsay, it is obviously
4 a public record, it's a court document. Not only that, it's
5 been sealed, certified true copy. I believe it comes in under
6 -- if not under a hearsay objection, under 903 self-
7 authenticating.

8 MS. KNOWLES: Your Honor, this was sworn out by Terry
9 Elliott, not this ---

10 THE COURT: I understand that but he's saying -- I
11 haven't seen it, I haven't looked at it -- from the
12 perspective that it is a certified copy. Is it a certified
13 copy of the court record?

14 MR. HOLFORD: Yes, Your Honor. May I approach?

15 THE COURT: Please, sir.

16 MR. HOLFORD: It's certified on the front and the back by
17 a court official in the Magistrate's Court to be a true and
18 accurate copy of the warrant. And in such, I believe it's
19 self-authenticating.

20 THE COURT: Just one second.

21 All right. Yes, ma'am? I'll hear from you. I think
22 you're bringing -- you're suggesting under Rule 803 -- is it
23 8?

24 MS. KNOWLES: And ---

25 THE COURT: Is that right? Is that what you're offering

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1 it under, counsel?

2 MR. HOLFORD: Me, Your Honor?

3 THE COURT: Yes, sir. I'm asking you, Mr. Holford. I
4 think it's 803(8), it a public record or report?

5 MR. HOLFORD: Yes, Your Honor.

6 MS. KNOWLES: Your Honor, this is a charge that is
7 completely different than what we're here for. This is -- it
8 happened in a separate court. The penalty that was at issue
9 there is a lot less than what is at issue here. It is
10 prejudicial. It's more prejudicial than it is probative. I
11 don't see the necessity for it, I really don't.

12 THE COURT: Well, it's already been testified to by a
13 previous witness that he was present at the plea and that the
14 gentleman pled guilty to it. That evidence is already in the
15 record. He's seeking to put in the document, the warrant,
16 under that particular exception to the hearsay rule. And
17 there is an exception that would seem to apply.

18 MS. KNOWLES: I just think that it would cause confusion,
19 it would be misleading and I just think that it is more
20 prejudicial than probative.

21 THE COURT: All right. I'm gonna find that the probative
22 value outweighs any prejudicial effect given the fact that
23 it's already been testified to. The jury is already aware
24 that there was a guilty plea to the charge in question. And
25 it is a court record and it does establish exactly what the

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1 charge was and I -- therefore, I find that the probative value
2 does outweigh any prejudicial effect. It does, it does come
3 in under the public records exception. I'm gonna let it come
4 in.

5 MR. HOLFORD: And Your Honor, just to clarify, I believe
6 I misstated 903 -- 902 is self-authentication.

7 THE COURT: It's 803 ---

8 MR. HOLFORD: 803(8) is the exception to hearsay.

9 THE COURT: Yes, sir.

10 MR. HOLFORD: And 902, which I previously said 903, it is
11 self-authenticating document.

12 THE COURT: All right. Just one second. Let me be sure
13 I looked at that. Yes, sir. It is self-authenticating. I
14 would make that finding.

15 MR. HOLFORD: Thank you, Your Honor.

16 THE COURT: All right.

17 MS. KNOWLES: Just for the record, I would note my
18 objection.

19 THE COURT: Your objection is noted.

20 MS. KNOWLES: Okay.

21 THE COURT: Yes, ma'am.

22 STATE'S EXHIBIT NUMBER THREE

23 ADMITTED INTO EVIDENCE

24 THE COURT: All right. Why don't we take about a -- just
25 a couple of minute break while we've got the jury out. The

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1 Court will be in recess for about five minutes.

2 MR. HOLFORD: Yes, Your Honor.

3 THE COURT: Sir, you can step down but do not discuss
4 your testimony with anyone during the break.

5 MR. HILBURN: Yes, sir.

6 THE COURT: Thank you, sir.

7 (REPORTER'S NOTE: Recess at 2:33 P.M.)

8 *****OFF THE RECORD*****

9 (On the Record. 3:37 P.M.)

10 THE COURT: State ready to proceed?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MS. KNOWLES: Yes, sir.

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

15 (REPORTER'S NOTE: The jury returns to the courtroom. 3:38
16 P.M.)

17 THE COURT: All right. The record will reflect the jury
18 has returned to the courtroom. I've been apologizing to you
19 all day, I'll do it again. I'm sorry you were out so long but
20 the other jury that I had out did reach a verdict and I had to
21 deal with that and issue a sentence in the case, so it took a
22 little while and I appreciate your patience in regard to this
23 matter.

24 At this point in time, I have overruled an objection by
25 the Defense as to the evidence that was being presented and

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1 the State may continue to question this witness.

2 MR. HOLFORD: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. HOLFORD: So, State's Exhibit Three is in evidence?

5 THE COURT: Well, I have -- over the objection of the
6 Defense, I have admitted that into evidence. You may ---

7 MR. HOLFORD: Yes, Your Honor. Thank you.

8 BY MR. HOLFORD:

9 Q: All right. Officer Hilburn, I'm gonna hand you this
10 again. Now, can you tell me is that a true and accurate copy
11 of the warrant?

12 A: Yes, it is.

13 Q: How can you tell that?

14 A: It's certified on front and back.

15 Q: And is it signed?

16 A: Yes, sir.

17 Q: Now, in that warrant, what is it stating?

18 A: It states that on 8/16/2012 approximately 12:30 P.M.,
19 Charles Hagan, Jr. and James Hagan went to the residence of
20 Dana Elliott located at in the Spring Branch
21 Section of Horry County. Upon arrival, they did conspire to
22 break into the residence and did damage the door by forcefully
23 entering and doing damage of approximately \$500.

24 Q: Now, is that the exact same residence we're talking about
25 in this burglary?

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1 A: Yes, sir.

2 Q: Is it the exact same victim we're talking about in this
3 burglary?

4 A: Yes, sir.

5 Q: Now, when Lance Corporal Elliott was testifying earlier,
6 he explained a little bit about the procedures. Could you
7 explain a little bit more about what happened that day when
8 this Defendant pled guilty to kicking that door in?

9 A: The Defendant had requested a jury trial.

10 Q: Uh-huh (affirmative response).

11 A: He did not arrive on time. He was given an amount of
12 time, I don't remember the exact amount of time but it was
13 over ten or twenty minutes, thirty minutes. He was tried in
14 his absence. Upon his arrival, the jury had already been
15 released to go for the verdict. Upon his arrival, he was
16 advised that the jury had already been released to go for the
17 verdict and that his options were to wait on the jury or enter
18 a guilty plea.

19 Q: Do you know how many days an offense like this carries?

20 A: Thirty, maximum.

21 Q: And how many days -- can you tell on that sheet how many
22 days he got for time served?

23 A: It was 500 or thirty days and suspended to fourteen days
24 time served.

25 Q: So, he spent fourteen days in jail already on that?

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1 A: Prior, yes.

2 Q: Now, do you know if someone sentenced to thirty days, do
3 they do the full thirty?

4 A: It all depends on the circumstances.

5 Q: What -- how much time would someone normally spend on a
6 thirty-day charge?

7 A: If they were sentenced to thirty days and could get work
8 credits, fifteen.

9 Q: So, he'd about maxed out even though it was time served?

10 A: Generally, yes.

11 Q: So, if the jury had come back and they'd given him the
12 full thirty days, he might've done one more day?

13 A: Not necessarily because when you're sentenced you get day
14 work credits. You work a day and get a day. So, he would've
15 only have had actually fourteen days. So, he could've
16 probably done a few more, maybe, yeah.

17 Q: But he wouldn't have done thirty on top of ---

18 A: No, no, no.

19 Q: Now, in pleading guilty to this, you were there, weren't
20 you?

21 A: Yes, sir.

22 Q: And what did he say to the Judge under oath?

23 A: He pled -- the Judge made sure that he was not coerced in
24 any way, he was not promised anything for pleading guilty and
25 at which time he pled guilty and the Judge asked him,

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1 basically you are pleading guilty because you are guilty and
2 he said yes.

3 Q: Guilty of...

4 A: The malicious damage, the charge that was posted.

5 Q: Are you familiar with Anderson Oil Company?

6 A: Yes, sir.

7 Q: Do you know where it's located?

8 A: Yes, sir.

9 Q: I'm gonna show you what's been entered as State's Exhibit
10 Two. If you -- Your Honor, can he step down?

11 THE COURT: He can step down, yes; uh-huh (affirmative
12 response).

13 Q: On this map, can you show me where Anderson Oil Company
14 is? (Indicating.) And about how far is that from the
15 location of the burglary?

16 A: If I had to guess, it was less than a mile. I'm not
17 exactly sure, it's less than a mile.

18 Q: Now, during your investigation what else did you find out?
19 What did you do further?

20 A: We spoke -- I went to the residence, spoke with the
21 individuals at Anderson Oil Company that identified a subject,
22 a description of a subject. Went back to the residence,
23 assisted Officer Smith. Was able to speak with the owner of
24 the vehicle and get a phone number to call Mr. Hagan.
25 Contacted Mr. Hagan who stated to me that he was in Florence

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1 and arranged a time for him to meet with me later on that
2 evening.

3 Q: And did you meet with him later?

4 A: Yes, sir. I called Lance Corporal Elliott and asked him
5 to assist with the interview of Mr. Hagan.

6 Q: And what car was Mr. Hagan driving at the time?

7 A: He was driving the white Ford Taurus that had been with
8 the South Carolina , which had been identified as the
9 vehicle at the residence when he arrived at the Loris
10 Magistrate's Office.

11 Q: And who identified that vehicle with that license plate
12 number?

13 A: The victim. Prior to the -- when he was on-scene prior to
14 our arrival, that's what we'd been given.

15 Q: Now, prior to your arrival, you were on the lookout for
16 not only the white Ford Taurus but for who?

17 A: A male subject.

18 Q: Matching what description?

19 A: Bald head, blue shirt, khaki pants.

20 Q: What, black, Hispanic?

21 A: White male.

22 Q: Thank you. I have no further questions, Your Honor.

23 THE COURT: Your witness, Ms. Knowles.

24 MS. KNOWLES: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 CROSS EXAMINATION OF WILLIAM HILBURN BY MS. KNOWLES:

2 Q: Officer Hilburn, you participated in the interrogation of
3 Mr. Charles Hagan, didn't you?

4 A: I interviewed Mr. Hagan; yes, I did.

5 Q: And you provided a copy of that interview to the State and
6 the State in turn turned that over to me in discovery,
7 correct?

8 A: A copy was provided; I didn't personally provide it but I
9 believe it was provided.

10 MS. KNOWLES: At this time, Your Honor, I would ask that
11 that audio be submitted into evidence.

12 THE COURT: It's an audio of what?

13 MS. KNOWLES: The interview that he did of my client.

14 MR. HOLFORD: Your Honor ---

15 A: I never interviewed your client.

16 MR. HOLFORD: Your Honor, it is not an interview of James
17 Hagan; it was an interview of Charles Hagan, the Codefendant.

18 MS. KNOWLES: I apologize, Charles.

19 THE COURT: Ladies and gentlemen of the jury, I'm gonna
20 ask you to step back to the jury room at this time and please
21 don't begin any discussions until I ask you to do so. Thank
22 you, very much.

23 (REPORTER'S NOTE: The jury retires to the jury room. 3:47
24 P.M. The following takes place outside the presence of the
25 jury.)

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1 THE COURT: Is there an objection?

2 MR. HOLFORD: Your Honor, it's an audio of the
3 Codefendant. It's not a statement made by this Defendant and
4 the Codefendant has already taken the stand and already
5 testified and was already questioned about that interview.

6 THE COURT: I'm trying to find out what the purpose of
7 this is.

8 MS. KNOWLES: It details his ---

9 THE COURT: Are you trying to enter introduce that
10 recording or statement made by another person through this
11 witness?

12 MS. KNOWLES: This is the witness that actually ---

13 THE COURT: Who conducted the interview?

14 MS. KNOWLES: Yes, sir. And I misspoke earlier, it's
15 Charles Hagan not my client.

16 THE COURT: I understand that but I'm trying to find out
17 what is the relevance of that.

18 MS. KNOWLES: He gave the details of what happened
19 according to Charles Hagan on this date.

20 THE COURT: Well, ma'am ---

21 MR. HOLFORD: Your Honor, Mr. Hagan was ---

22 THE COURT: Mr. Hagan's already testified.

23 MR. HOLFORD: And subject to cross examination.

24 MS. KNOWLES: Your Honor, it also shows the prejudice or
25 the bias that ---

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1 THE COURT: Well, maybe you ought to tell me in what way
2 it shows that.

3 MS. KNOWLES: Well, you can clearly tell by the
4 conversation that they are coercing this man to say certain
5 things.

6 THE COURT: More information, please.

7 MS. KNOWLES: Like for example, where have you been; I
8 believe -- let me see here -- Charles Hagan initially says he
9 was with no one that day and then he goes on to say -- doesn't
10 know where he ended up. And then, I believe it's this officer
11 says, so you were not with James earlier? He said, no, sir,
12 not today. It goes on to say that he was in Florence at the
13 time.

14 THE COURT: Ma'am, so far, you've all -- you've talked
15 about the responses given by the other Mr. Hagan, Charles --
16 was that his name?

17 MR. HOLFORD: Yes, Your Honor.

18 THE COURT: Charles Hagan. If it's being offered for the
19 purpose of showing the police officer's coercion, I need to
20 hear about that.

21 MS. KNOWLES: He kept just repeating, putting --
22 basically, he put my client's name in the mix, this officer
23 did, and kept referring to my client, kept pushing and pushing
24 and pushing with his line of questioning ---

25 THE COURT: Well, I'm gonna let you ask him how many

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1 times he asked about your client or how often he did that. I
2 don't have a problem with you doing that but to put the entire
3 tape in, that puts in the statement of a Codefendant when he's
4 already testified and was subject to cross examination and it
5 wasn't introduced through his testimony. I just ---

6 MS. KNOWLES: It wasn't but this officer was present and
7 conducted the interview.

8 THE COURT: Yes, ma'am, I understand that.

9 MS. KNOWLES: I mean, to me -- maybe I'm just naive in
10 thinking that it is totally relevant ---

11 THE COURT: Well, out-of-court statements can be
12 introduced if they were inconsistent in some fashion, to try
13 to impeach someone -- I'm trying to -- I'm not sure I
14 understand the purpose for it as far as this witness. Maybe
15 we ought to do a proffer. I guess we're gonna have to.

16 MS. KNOWLES: Well, prejudice, coercion, I mean I -- I
17 don't see how it's not relevant through this -- through this
18 witness. I really don't.

19 THE COURT: So, you're saying it's not being offered for
20 the truth of what's contained in it or the inaccuracy of
21 what's contained in it, you're offering it for the methodology
22 that's being used.

23 MS. KNOWLES: To display the conversation that was had
24 that led the police to my client.

25 THE COURT: I'll hear from you, counsel.

1 MR. HOLFORD: Yes, Your Honor. I believe on the cross
2 examination of Charles Hagan, the Defense counsel asked him
3 multiple times about his original statement in which he said
4 that he doesn't know and that James wasn't there. So, she's
5 already shown that the Defendant initially said that or that
6 the Codefendant initially said that and then showed that he
7 later changed his statement. So, I fail to see the relevance
8 of bringing it in through this witness. It's not to impeach
9 this witness. The statement doesn't go towards this witness'
10 statement, it goes towards Charles Hagan's statement who was
11 here, who did appear, who was called as a witness and was
12 cross examined thoroughly on the facts, even on the facts of
13 did the police coerce you and he said no, on the record. The
14 only thing he could say is law enforcement has their ways.
15 So, she questioned the Codefendant on the tactics that were
16 used and he answered those questions as best he could. I
17 don't believe this audio is relevant to come in through Lance
18 Corporal Hilburn.

19 MS. KNOWLES: And, Your Honor, if you'll just note my
20 objection?

21 THE COURT: Oh, I'm -- I haven't ruled on it yet. I'm
22 trying to figure out exactly what you're doing. It's very
23 unusual what you're doing, what you're asking the Court to do
24 because in any relevant -- I know you're arguing relevance,
25 that it has some relevance as to why this Codefendant may've

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1 said what he said but any time there's relevant evidence, I
2 also have to weigh the -- you know, whether or not the
3 probative value outweighs its prejudicial effect. I don't
4 know what all is on that tape. I don't know what it says. I
5 don't know where it goes and you -- and you're -- and I think
6 what you're arguing -- although maybe I'm articulating your
7 argument for you -- but I think what you're arguing is that
8 you're not introducing it for the truth of any matter that's
9 been asserted in it. What you are introducing it, I think,
10 for is to show the methodology that was used and how that
11 may've affected the statements made in court by Mr. Charles

12 ---

13 MS. KNOWLES: Hagan.

14 THE COURT: --- Hagan.

15 MS. KNOWLES: And you stated that more articulately than
16 I did but that's exactly what I'm trying to do and I apologize
17 in advance for -- this is only like my sixth trial, so the
18 procedures, I haven't gotten the hang of.

19 THE COURT: I understand that but I'm trying to get to
20 where we are because see normally when you introduce
21 statements of witnesses, it's usually to impeach them because
22 they've changed their statement in some fashion. This is a
23 little different. Now, what all is on this recording? I --
24 since I haven't heard it, I don't know where it goes or what
25 it talks about, so maybe you ought to -- maybe somebody ought

1 to help me with that.

2 MR. HOLFORD: Your Honor, it's an hour-long interview
3 that starts just as Charles Hagan testified that initially he
4 denied James Hagan being with him and then later he says that,
5 yes, James Hagan was with me in the car. So, it implicates
6 the Defendant again in his initial interview.

7 MS. KNOWLES: And it's only after the persistence of law
8 enforcement that he finally changes his story.

9 THE COURT: Well, they do, they do that quite often. I'm
10 not -- it's not unusual for law enforcement to ask the same
11 question more than once. I've seen it done before. In fact,
12 they're probably trained to do it, I don't know.

13 MR. HOLFORD: Well, he tells a lie at first and then
14 after law enforcement continues on, he comes forward with the
15 truth, the truth that he's told in another courtroom already
16 and the truth he told today.

17 THE COURT: You know, if I was to lock up every lawyer
18 that was repetitive in his questioning, I wouldn't have a jail
19 big enough to do that would I, so they -- lawyers seem to ask
20 the same questions over and over also but anyway. That's just
21 my observation.

22 MS. KNOWLES: And they also have some discussion about
23 his child and about his being able to leave and come back.

24 MR. HOLFORD: He already talked about his child.

25 THE COURT: Well, I understand that but she's saying

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BY THE COURT

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1 she's trying to put it in for the purpose of showing somehow
2 that the police coerced Mr. Charles Hagan into saying what he
3 said. I may have to listen to it first to see if it does
4 that. How long is it?

5 MR. HOLFORD: An hour.

6 MS. KNOWLES: Fifty-seven minutes.

7 THE COURT: Okay. You want to make a proffer? You want
8 to continue the objection?

9 MR. HOLFORD: Yes, Your Honor.

10 THE COURT: All right. I'm gonna have to see what it
11 says, hear what it says.

12 BY MS. KNOWLES:

13 Q: Officer Hilburn, did you participate in ---

14 THE COURT: Just a second. We've got a jury here and
15 they're gonna be sitting there for an hour and then we're
16 gonna be a five o'clock. So, why don't I just go ahead and
17 release the jury for the evening so they don't sit in that
18 room by themselves and not hearing anything and we just start
19 again in the morning, once we finish this exercise.

20 MS. KNOWLES: Yes, sir.

21 THE COURT: Bring the jury in.

22 (REPORTER'S NOTE: The jury returns to the courtroom. 3:59
23 P.M. The following takes place in the presence of the jury.)

24 THE COURT: Ladies and gentlemen of the jury, in my
25 consideration of the questions concerning the evidence that's

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1 being offered before the Court at this time, it's become
2 apparent to me that the hearing in regard to that matter is
3 going to take at least an hour and I'm looking at the clock
4 and it's already four o'clock. And so, rather than have you
5 sit back there for an hour and then me bring you in and send
6 you home, I'll just send you home at this point in time and
7 then we'll start with you folks in the morning. So, I'm not
8 gonna need your services the rest of the day.

9 I will caution you as the leave the courthouse, again,
10 not to try to gather information concerning this case from any
11 source outside of the courthouse. Don't listen to, watch or
12 read media reports. Don't discuss the case with anyone, don't
13 allow anyone to discuss it with you and please report anyone
14 who might do that upon your return to the courthouse.

15 We're gonna start at nine o'clock in the morning. I'll
16 ask that you be in the jury room by that time. We'll try to
17 get an early start and maybe we can get this case moving at
18 that point in time. So, be here at nine o'clock and I'll be
19 inquiring concerning your ability to comply with my
20 instructions before we begin in the morning. I hope you have
21 a good evening and we'll see you at that time. Thank you very
22 much.

23 (REPORTER'S NOTE: The jury exits courtroom and is excused for
24 the day. 4:00 P.M. The following takes place outside the
25 presence of the jury.)

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WILLIAM HILBURN - PROFFER DIRECT BY MS. KNOWLES

1 THE COURT: All right. Just for my information, Ms.
2 Knowles, do you intend to offer any witnesses concerning
3 whether or not the police during this interrogation followed
4 proper police practices or somehow did something outside of
5 the norm for police officers?

6 MS. KNOWLES: No witnesses.

7 THE COURT: None like that. Okay. I'll let you make your
8 proffer.

9 MR. HOLFORD: Your Honor, can I excuse my witnesses who
10 are waiting then?

11 THE COURT: Yes, you may. You tell them we'll start at
12 nine o'clock in the morning. Please caution them not to
13 discuss their testimony; we're under a sequestration order.

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: Thank you very much.

16 MR. HOLFORD: Thank you, Your Honor.

17 THE COURT: Ms. Knowles, I'm sorry. You may proceed with
18 your proffer.

19 MS. KNOWLES: Thank you, Your Honor.

20 THE COURT: Yes, ma'am.

21 PROFFER DIRECT OF WILLIAM HILBURN BY MS. KNOWLES:

22 Q: Officer Hilburn, you participated in the interrogation of
23 Mr. Charles Hagan?

24 A: Yes, ma'am.

25 Q: And a copy of that audio recording was given to the State

1 by yourself?

2 A: Yes, ma'am. Not by me, it was given to them by the
3 Department.

4 Q: And it's in evidence?

5 A: Correct.

6 Q: Or within the discovery?

7 A: Yes, ma'am.

8 MS. KNOWLES: Your Honor, at this time, I'd ask to
9 introduce.

10 THE COURT: All right. Well, I'm gonna ask you to play
11 it. I'll decide whether it's introduced later on.

12 MS. KNOWLES: We'll play it, Your Honor.

13 THE COURT: Thank you.

14 (REPORTER'S NOTE: Audio recording is played for the Court
15 outside the presence of the jury. Recording not transcribed
16 herein.)

17 MS. KNOWLES: Your Honor, that is the audio in its
18 entirety.

19 THE COURT: Yes, ma'am.

20 MS. KNOWLES: And you can hear several times that the
21 officer is stating: Your talking determines your charges; tell
22 the truth; you know you've been had; lying is the hard way,
23 the truth is the simple way. Repeatedly, he tells the officer
24 that no one was with him and later changes his story after the
25 officer essentially spoon feeds him his account of what

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1 happened. I think that's clear by the audio.

2 THE COURT: So, you want to introduce that to try to
3 establish perhaps the ---

4 MS. KNOWLES: Coercion.

5 THE COURT: --- motivation for the testimony?

6 MS. KNOWLES: Yes, sir.

7 THE COURT: All right. I'll hear from you, counsel.

8 MR. HOLFORD: Yes, Your Honor. In the statement, I
9 didn't hear coercion; all I heard was them -- they kept asking
10 him to tell the truth, tell the truth, don't lie, the truth is
11 the easy way. I don't think that's coercing anyone. I think
12 that's getting him to tell what is true. As Charles already
13 took the stand and stated he gave a different statement before
14 and now he's later come forward and told the truth. They said
15 he could help himself; that's true. If you tell the truth,
16 usually you help yourself. The Codefendant took the stand and
17 was cross examined about the tactics the police took. I don't
18 think this audio shows any coercion on the police behalf.

19 Furthermore, about half the interview was done by Lance
20 Corporal Hilburn and the other half was done by Lance Corporal
21 Elliott. Part of it was probably done by Officer Smith. So,
22 to introduce it through Lance Corporal Hilburn I think would
23 be inappropriate.

24 THE COURT: Well, I'm going to -- what I will do, ma'am,
25 is I'm going to allow you to lay as much of a foundation for

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1 this with this witness as you can when the jury comes in. I
2 don't know who all was participating in the interview. I
3 don't know how much he participated, if he was present the
4 entire time. Somebody is going to have to authenticate that
5 it's an accurate recording of the entire interview in order
6 for me to let it in. I don't know how much he can vouch for
7 and how much he can't vouch for.

8 Now, is there other evidence besides this recording that
9 you intend to introduce on this subject?

10 MS. KNOWLES: No, sir.

11 THE COURT: Okay. I -- you know, if the question that
12 was before the Court was whether or not the, the interviewee
13 was coerced, if would be the finding of the Court that he
14 wasn't coerced. The question of whether or not their tactics
15 influenced his statement or not, I think that's for a jury to
16 decide. So, I'm going to allow it to come in but it's gonna
17 have to be authenticated that it's accurate and that it is a
18 direct recording and it will have to be -- I will let it in
19 only after instructing the jury it's not being allowed in for
20 the truth of anything that's stated therein, simply to show
21 the methods by which the statement was obtained. And then the
22 jury can decide whether or not that's -- that affects the
23 validity or the credibility of the Codefendant or not. It's
24 up to them to decide.

25 MR. HOLFORD: Your Honor, I would ask, a large portion of

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1 that deals with other burglaries where the Codefendant dropped
2 this Defendant off, is that gonna come in too?

3 THE COURT: Well, again, I'm not allowing it in for the
4 truth of anything that's stated in it. That's not the purpose
5 of allowing it in. The purpose is to allow the Defendant to
6 -- he's had a witness testify against him, put him in the
7 house. I think he's got a right to try to attack the
8 credibility of that statement. So, I think it's relevant.
9 I'm not allowing it in to prove anything that's stated in it,
10 simply to show -- and quite frankly, the Codefendant made
11 statements to the effect that the only reason he was here was
12 to protect his daughter and that's why he was testifying.

13 MR. HOLFORD: The Codefendant already testified and was
14 cross examined.

15 THE COURT: Oh, I understand that but this goes to the
16 methods that were used in order to get him to make his
17 statement.

18 MR. HOLFORD: Yes, Your Honor. I understand.

19 THE COURT: You put him up; I didn't.

20 MR. HOLFORD: I ---

21 THE COURT: And that's -- I'm just saying that they have
22 the right to allow the jury to determine the credibility of
23 the statement that was made against this individual. And
24 there's other evidence in the case, I'm not deciding the case.
25 What I'm deciding is whether or not this is relevant and it's

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1 not being allowed in for the truth of anything that's stated
2 in it.

3 MR. HOLFORD: But you said that you would rule there's no
4 coercion and that ---

5 THE COURT: On a legal -- if the question was whether or
6 not the -- legally the State would not be allowed to present
7 that as a coerced statement, there's a whole list of things
8 that you go through in order for a Court do decide whether or
9 not a statement is voluntary or not and it starts off with,
10 was it in custody, how long did it last, whether you deprived
11 him of water or food, and you go through that whole litany of
12 things you go through and I don't find that they in anyway, he
13 never did say, I'm hungry, can I leave, I got to have
14 something to eat, I need to go to the bathroom; I didn't hear
15 any of that stuff where he was being coerced. I don't think
16 he was sitting in a room with a light hanging over his head.
17 So, legally, that statement would be allowed to come into a
18 court of law. Now, whether or not their tactics influenced
19 what he in fact said is a question for the jury to decide.
20 That's what I'm saying.

21 MR. HOLFORD: Yes, Your Honor. Can I ask ---

22 THE COURT: So, that's a factual question for the jury to
23 decide.

24 MR. HOLFORD: Yes, Your Honor. Can I ask that one
25 portion be redacted, the part where he says something about a

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1 one-year or a thirty-year charge. I don't think there is a
2 thirty-year charge ever involved in this case or a one-year
3 and I think that goes to -- I think that's overly prejudicial
4 when we start talking about sentence ranges.

5 THE COURT: Again, in testing the credibility or the
6 admissibility of statements made, the law says if a police
7 officer lies to a person being interviewed, that doesn't make
8 it not voluntary, I mean, that comes in. So, if someone
9 talked about a charge that doesn't exist, they did, I'm not
10 gonna redact it. I'm gonna leave it just like it is.

11 MR. HOLFORD: Thank you, Your Honor.

12 THE COURT: Let the jury decide whether or not that had
13 any influence on the story that the witness told. That's what
14 they're here for.

15 MR. HOLFORD: Thank you, Your Honor.

16 THE COURT: All right. Start in the morning at nine
17 o'clock.

18 MR. HOLFORD: Yes, sir.

19 COURT REPORTER: Can we mark that as a Court's Exhibit.

20 THE COURT: Oh, I'm going to. That disc needs to be
21 identified, marked and left with the court reporter.

22 COURT'S EXHIBIT NUMBER ONE

23 MARKED FOR IDENTIFICATION

24 MR. HILBURN: Can I step ---

25 THE COURT: Yes, sir. You can step down but, again, same

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1 instructions, don't discuss your testimony while we're on
2 break.

3 MR. HILBURN: Yes, sir.

4 (REPORTER'S NOTE: A bench conference was held off the record
5 and outside the presence of the jury.)

6 THE COURT: Sir, stand right there. Please swear this
7 gentleman for me.

8 JOHN STEVEN WARREN, HAVING BEEN SWORN,
9 TESTIFIED AS FOLLOWS:

10 THE COURT: Your name is?

11 MR. WARREN: John Steven Warren.

12 THE COURT: Mr. Warren, the Bailiffs have come to me with
13 a complaint from a witness in this trial that you in the
14 hallway outside of the courtroom may have made some gesture
15 such as a gun pointing at someone -- now, let me finish -- we
16 have reviewed the security tapes and those tapes do reveal
17 that you may have made such a gesture to someone. Do you
18 acknowledge having done that?

19 MR. WARREN: I do, Your Honor. I did do it.

20 THE COURT: And who did you make that gesture toward?

21 MR. WARREN: I made it toward Ashley Henry who has come
22 to my home repeatedly, threatening me, banging on my door. I
23 don't have anything to do with this case. I'm ---

24 THE COURT: Well, you do now.

25 MR. WARREN: Charles Hagan, I've been letting him and his

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JOHN STEVEN WARREN - BY THE COURT

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1 daughter stay at my home while they've been homeless and
2 basically I wasn't -- I have no intention to hurt the woman, I
3 was basically saying, you guys are going down today, because
4 she had threatened me on numerous occasions.

5 THE COURT: All right, sir. Well, let me just bring this
6 to a close as far as you're concerned.

7 MR. WARREN: Okay. Yes, sir.

8 THE COURT: All right. I am putting you under an order
9 not to have contact with anyone who is a witness in this case
10 or may have been identified as a potential witness in this
11 case.

12 MR. WARREN: Okay.

13 THE COURT: I am going to give you a list of those people
14 to take with you.

15 MR. WARREN: Yes, sir.

16 THE COURT: Now, let me explain to you what I mean by no
17 contact because I have a lot of problems with this back home
18 and I won't -- I don't anymore.

19 MR. WARREN: Okay.

20 THE COURT: When I say no contact, that means any
21 contact, direct or indirect. That means if you send one of
22 these people a text message, if you send them an email, if you
23 send them a letter, if you have a friend go deliver a message
24 for you ---

25 MR. WARREN: Right.

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1 THE COURT: If you do anything to contact them
2 indirectly, it's a violation of the order that I'm giving you.

3 MR. WARREN: Yes, sir.

4 THE COURT: If you were to contact them directly in
5 person in any fashion, that's an obvious violation of my
6 order.

7 MR. WARREN: Yes, sir.

8 THE COURT: Now, let me explain something else to you.

9 MR. WARREN: Yes, sir.

10 THE COURT: If you were to ride up on the street beside
11 one of these people and you recognized who it was, you should
12 turn your car and go in the opposite direction. If you're in
13 a store having a hamburger and they walk in, pick it up and
14 leave without saying a word to them. If they call your house
15 to threaten you, as soon as you hear their voice, you hang up
16 the phone, don't say another word. If they came to your door
17 and knocked at your door, through the closed door, you order
18 them to leave your property and if they don't leave you call
19 the police immediately and have them arrested for trespassing.

20 MR. WARREN: Yes, sir.

21 THE COURT: Do you understand what I mean by no contact?

22 MR. WARREN: Yes, I do.

23 THE COURT: Now, let me explain something else to you.
24 If you violate an order, a no-contact order that I've issued,
25 you can call any lawyer in Spartanburg County and they'll tell

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JOHN STEVEN WARREN - BY THE COURT

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1 you I'll put you in jail for every day I can put you there
2 for.

3 MR. WARREN: Yes, Your Honor.

4 THE COURT: Do you understand what that is?

5 MR. WARREN: I sure do.

6 THE COURT: That means up to one year for contempt of
7 court, no good time. You'll serve 365 days.

8 MR. WARREN: Okay.

9 THE COURT: Is there anything you don't understand about
10 that?

11 MR. WARREN: No, I understand fully.

12 THE COURT: So, you and I have got an understanding then,
13 don't we?

14 MR. WARREN: Yes, we do.

15 THE COURT: So, there won't be any problems about this,
16 will there?

17 MR. WARREN: No, Your Honor.

18 THE COURT: There probably shouldn't be for your benefit.

19 MR. WARREN: Yes, Your Honor.

20 THE COURT: Do you understand what I'm saying?

21 MR. WARREN: Yes, Your Honor.

22 THE COURT: Now, let me get the list of witnesses that's
23 been supplied to the Court, just one second. I'm going to ask
24 the Clerk to make a copy of it so there won't be any
25 misunderstanding who I'm talking about.

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JOHN STEVEN WARREN - BY THE COURT

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1 MR. WARREN: What can I do to prohibit her from ---

2 THE COURT: Just one second; I'm talking.

3 Here you go, ma'am.

4 Now, you have a question?

5 MR. WARREN: What can I do to prohibit her from
6 continuing to come to my home?

7 THE COURT: What did I just tell you?

8 MR. WARREN: Just call the police?

9 THE COURT: Absolutely, as soon as you see her set foot
10 on your property, you call them immediately, 911, stay on the
11 line with them, explain what she's doing. Don't be talking to
12 her.

13 MR. WARREN: Okay.

14 THE COURT: Then you've got a record as to what you did.

15 MR. WARREN: All right. Okay. I will.

16 THE COURT: The only communication you should have if she
17 came to your door would be, get off my property, I'm calling
18 the police. Don't say another word.

19 MR. WARREN: Yes, Your Honor.

20 THE COURT: Make that call.

21 MR. WARREN: I will.

22 THE COURT: It's not hard. I tell people, avoid them
23 like they've got the plague. If you knew somebody had the
24 plague, what would you do? You'd run from them.

25 MR. WARREN: Away from them.

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1 THE COURT: Okay. That's how simple it is. Don't
2 violate it; don't test me.

3 MR. WARREN: I won't violate it, Your Honor.

4 THE COURT: Okay. Then you and I have got an
5 understanding. I believe that adults in America control who
6 they have contact with.

7 MR. WARREN: Right. I apologize. It was a stupid
8 gesture.

9 THE COURT: I'm experienced at this. I don't mind
10 handling one of these if you want me to handle it.

11 MR. HOLFORD: Your Honor, I have one question.

12 THE COURT: Yes, sir.

13 MR. HOLFORD: I believe Charles Hagan currently lives
14 with this gentleman.

15 THE COURT: Yes, sir.

16 MR. HOLFORD: And he is on my witness list.

17 THE COURT: I'll -- we'll make an exception for Charles
18 Hagan since he lives in the house.

19 MR. HOLFORD: Thank you, Your Honor.

20 THE COURT: Anybody else, though...

21 MR. WARREN: Understood.

22 THE COURT: And I'm gonna be coming back for the next six
23 months, so don't think I won't deal with you myself.

24 MR. WARREN: Yes, Your Honor.

25 THE COURT: Your name, sir, again. Sir, give me your

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1 name.

2 MR. WARREN: John Steven Warren.

3 THE COURT: Give me an address.

4 MR. WARREN: , Loris.

5 THE COURT: And a phone number?

6 MR. WARREN:

7 THE COURT: Thank you. And one other thing I was gonna
8 mention to you, do not come to this courthouse tomorrow.

9 MR. WARREN: No, sir, I will not.

10 THE COURT: Do you set foot on the grounds.

11 MR. WARREN: No, sir, I will not.

12 THE COURT: Thank you. Wait one second and we've got
13 your list for you.

14 Why don't you make that a Court's Exhibit.

15 COURT REPORTER: Yes, sir.

16 COURT'S EXHIBIT NUMBER TWO

17 MARKED FOR IDENTIFICATION

18 THE COURT: All right. You can give that to him.
19 There's your list, sir.

20 All right. We're in recess until nine o'clock.

21 Thank you very much.

22 MR. HOLFORD: Thank you, Your Honor.

23 (REPORTER'S NOTE: Recess at 5:11 P.M.)

24 *****OFF THE RECORD*****

25 August 16, 2013 - 9:10 A.M.

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BY THE COURT

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1 (On the Record.)

2 THE COURT: State ready to proceed?

3 MR. HOLFORD: Yes, sir.

4 THE COURT: (To Officer Hilburn) I believe you need to
5 resume the stand, you were on the stand, sir.

6 MR. HILBURN: Yes, sir.

7 THE COURT: You're still under oath; you understand that?

8 MR. HILBURN: Yes, sir.

9 THE COURT: Thank you.

10 (REPORTER'S NOTE: The jury returns to the courtroom. 9:10
11 A.M.)

12 THE COURT: All right. The record will reflect that the
13 jury has returned to the courtroom.

14 Yesterday evening when you left, I gave you instructions
15 concerning how you were to conduct yourselves while you were
16 away from the courthouse. If anyone had any difficulty in
17 following those instructions, please stand.

18 It appears that all jurors have been able to comply with
19 my instructions thus far.

20 When we took our break yesterday, when you took your
21 break yesterday afternoon, we were in the process of allowing
22 the Defense to cross examine this witness.

23 Ma'am, you may continue.

24 MS. KNOWLES: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

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WILLIAM HILBURN - CROSS BY MS. KNOWLES

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1 CONTINUATION OF CROSS EXAMINATION OF WILLIAM HILBURN BY MS.

2 KNOWLES:

3 Q: Officer Hilburn, in your experience, have you ever seen or
4 heard of a person pleading guilty to a charge in Magistrate
5 Court or otherwise when they're not in fact guilty but they're
6 offered a good deal?

7 A: No, ma'am.

8 Q: Never seen that?

9 A: No, ma'am.

10 Q: You've been employed for how long?

11 A: Police officer thirteen years.

12 Q: Okay. You were present in Magistrate's Court whenever
13 this plea took place?

14 A: Yes, ma'am.

15 Q: And isn't it true that my client had requested a jury
16 trial?

17 A: Yes, ma'am.

18 Q: And misplaced his notice, arrived late for court.

19 A: I don't know if he misplaced it or not. He was late.

20 Q: He was late.

21 A: Uh-huh (affirmative response).

22 Q: The jury was deliberating?

23 A: Yes, ma'am, because he was not there on time; yes, ma'am.

24 Q: And what was the discussion between the Judge and my
25 client?

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WILLIAM HILBURN - CROSS BY MS. KNOWLES

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- 1 A: That the jury was deliberating and he had two choices. He
2 could wait on the jury or plead guilty to the charges before
3 him.
- 4 Q: And she would give what sentence?
- 5 A: Time served, I believe.
- 6 Q: Okay. And you interviewed Charles Hagan, didn't you?
- 7 A: Yes, ma'am.
- 8 Q: And you immediately centered your questions on my client,
9 didn't you?
- 10 A: I immediately centered on who was with him.
- 11 Q: Didn't he in fact tell you that no one was with him?
- 12 A: He -- yes, ma'am.
- 13 Q: Okay. Now, was there any evidence that you collected or
14 anyone collected from this scene that would lead you to
15 believe that my client was ever there, any physical evidence?
- 16 A: Physical, no, ma'am.
- 17 Q: No footprints leaving from the scene; is that right?
- 18 A: Not that I can recall; no, ma'am.
- 19 Q: But your recollection is that that is the way in which
20 this perpetrator fled the scene?
- 21 A: Through the back; yes, ma'am.
- 22 Q: Through the woods?
- 23 A: Yes, ma'am.
- 24 Q: No fingerprints?
- 25 A: Not that I recall.

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- 1 Q: Nothing left behind whatsoever?
- 2 A: No, ma'am; I didn't -- I didn't process the scene, so I
- 3 really can't testify to that.
- 4 Q: Okay. But you're the lead investigator?
- 5 A: Yes, ma'am.
- 6 Q: Did you question anyone from the gas station? I believe
- 7 I'll use the State's photo here.
- 8 A: You're talking about the oil company?
- 9 Q: No, sir. I'm talking about -- right here we go.
- 10 A: On the corner?
- 11 Q: Yes, there's a gas station. Did you speak with anyone
- 12 there?
- 13 A: I do not recall. I'm sure I did because of its close
- 14 proximity but I do not recall.
- 15 Q: Okay. Was there anyone else besides Charles Hagan that
- 16 you questioned?
- 17 A: No, ma'am.
- 18 Q: You never spoke with my client, did you?
- 19 A: No, ma'am; I did not.
- 20 Q: So, you never asked him where he was?
- 21 A: I did not; no, ma'am.
- 22 Q: Okay. Now, during this interview of Charles, there was
- 23 some discussion about him being able to leave and then return
- 24 later the following week if he cooperated. Do you recall
- 25 that?

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1 A: I recall there was some discussion, not by me but there
2 was discussion; yes, ma'am.

3 Q: Okay. And he made mention of his daughter and having to
4 get home to her; do you recall that?

5 A: Yes; yes, ma'am.

6 Q: And you even told him something to the effect of, you
7 don't have to say anything but that's not advisable.

8 A: Probably so; yes, ma'am.

9 Q: And you told him that it was up to him pretty much what he
10 was going to be charged with?

11 A: Uh-huh (affirmative response); yes, ma'am. I advised him
12 that he could help himself and possibly get less time or he
13 could just not say anything and go to trial.

14 Q: On more than one occasion he told you that my client
15 wasn't with him, didn't he?

16 A: He said no one was with him.

17 Q: And he gave you inconsistent statements, didn't he, on
18 several occasions?

19 A: Yes, ma'am.

20 Q: And isn't it possible based upon the evidence or lack of
21 evidence that was at the scene that Charles Hagan could've
22 been responsible for this?

23 A: Are you asking my opinion or ---

24 Q: Isn't it possible?

25 A: Due to all the circumstances, no, ma'am.

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WILLIAM HILBURN - CROSS BY MS. KNOWLES

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1 Q: But there's physical evidence ---

2 A: Yes, ma'am.

3 Q: --- pointing to anyone. So, isn't it possible?

4 A: Not in my opinion, no.

5 Q: Okay. So, sir, you relied upon the word of a desperate
6 man who told you that he had to get to his child, that you
7 made promises to, with regard to his charges and him being
8 able to leave ---

9 A: I never made him promises; no, ma'am, I didn't.

10 Q: --- and a witness identification, actually two, that were
11 done some thirty-three days after the incident took place?

12 A: No, ma'am. I relied on the witness that was on-scene that
13 heard the other subject -- someone else in the house, in the
14 home; I relied on the statements from Charles Hagan; I relied
15 on the statements that we received that day of the Charles
16 Hagan picking someone up just down the road.

17 Q: Yes, sir. But the description that was given that day was
18 -- and correct me if I'm wrong -- a white male -- a young
19 white male, bald, wearing a blue shirt and khaki shorts.

20 A: Uh-huh (affirmative response).

21 Q: How many people would you say would fit that description
22 in our population?

23 A: Quite a few.

24 Q: And again, no physical evidence left at the scene tying my
25 client to any of this?

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WILLIAM HILBURN - REDIRECT BY MR. HOLFORD

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1 A: Not that I know of; no, ma'am.

2 Q: Thank you, sir. No further questions.

3 MR. HOLFORD: Briefly, Your Honor.

4 THE COURT: Yes, sir; you may redirect.

5 REDIRECT EXAMINATION OF WILLIAM HILBURN BY MR. HOLFORD:

6 Q: Lance Corporal Hilburn, is it typical for someone you're
7 interviewing to tell a lie at first?

8 A: Yes, sir.

9 Q: And then when urged to tell the truth, do they sometimes
10 tell the truth?

11 A: Sometimes; yes, sir.

12 Q: And so at first, what did Charles tell you?

13 A: That he was by hisself and he was lost.

14 Q: And after you urged him to tell the truth and that it
15 would help him if he told the truth, what did he tell you?

16 A: He told me that he dropped James off at the house and that
17 James went into the home and he was to come back and pick him
18 up and that's when he was met by Mr. Elliott.

19 Q: And how many people were at that house that day?

20 MS. KNOWLES: Your Honor, I object to that, that's not
21 something he can testify to, he wasn't there.

22 THE COURT: Well, I'll ask you to set a foundation for
23 his knowledge of that. I don't think there's been any
24 testimony that would put him at the house when he ---

25 BY MR. HOLFORD:

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WILLIAM HILBURN - RECROSS BY MS. KNOWLES

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1 Q: Based on your interviews of the victim who was present,
2 how many people were at the home that day? If you know; if
3 you don't then say you don't.

4 A: All I know is Mr. Elliott said that he spoke with Charles
5 and he thought he heard someone in the house.

6 Q: And you heard Charles testify in court yesterday, correct?

7 A: Yes, sir.

8 Q: And what did he testify under oath who was in the house?

9 A: He testified that James was in the house.

10 MR. HOLFORD: No further questions, Your Honor.

11 THE COURT: Recross.

12 MS. KNOWLES: Two questions.

13 THE COURT: Yes, ma'am.

14 RECROSS EXAMINATION OF WILLIAM HILBURN BY MS. KNOWLES:

15 Q: Mr. Elliott thought he heard someone in the house?

16 A: His exact statements to me that day were there is a metal
17 box or something on the door and when the door closes, it
18 makes a certain noise and he heard that noise from the door as
19 it was being closed and that's what led him to think someone
20 was in the house.

21 Q: Did you include that in your report or anything that you
22 have documented?

23 A: I did not do the report, the report was done by officer
24 Smith.

25 Q: But you were the investigator?

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1 A: I did most of the interviewing so I was tasked as the
2 primary officer.

3 Q: Okay. And let me ask you this, Charles Hagan made a
4 written statement, didn't he?

5 A: Uh-huh (affirmative response).

6 Q: And do you recall what was in that written statement?

7 A: Not exactly but it was -- I'm not gonna generalize because
8 it's in writing so I'm sure someone has it.

9 Q: Well ---

10 A: I don't have it with me.

11 Q: Well, he testified yesterday?

12 A: Yeah.

13 Q: And you were present?

14 A: Uh-huh (affirmative response).

15 Q: And his testimony was that he -- let me get that statement
16 for you -- that he didn't know of James breaking into any
17 homes and that Detective Elliott had told him what to say
18 essentially.

19 A: I would have to see the statement before I could ---

20 Q: Hold on one second. I never know of any -- of James
21 breaking into any ---

22 THE COURT: No, ma'am, I'm not going to allow you just to
23 publish the statement. If you want to ask questions about it,
24 I'll allow you to do that.

25 MS. KNOWLES: I would like to do that.

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WILLIAM HILBURN - RECROSS BY MS. KNOWLES

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1 BY MS. KNOWLES:

2 Q: Do you recall that testimony of Charles?

3 A: Yeah, but nowhere does it say that Detective Elliott told
4 him that ---

5 Q: The second sentence says something about Detective
6 Elliott.

7 A: All it says, is that Detective Elliott just stated that he
8 never sold anything, not stole or broken into, just sold
9 anything.

10 Q: Okay. I knew there was something about Detective Elliott.

11 A: Yeah, Charles never sold anything, any stolen items, I'm
12 assuming.

13 MS. KNOWLES: No further questions, Your Honor.

14 THE COURT: Anything further from this witness,
15 Counselor?

16 MR. HOLFORD: Nothing further, Your Honor.

17 THE COURT: All right, sir. You may step down. Thank
18 you very much.

19 MR. HILBURN: State may call its next witness.

20 THE COURT: The state calls Michelle Collins. We're
21 gonna have to go out ---

22 THE COURT: Yes, sir. That'll be fine.

23 Ma'am, come forward to my right and be sworn, please.

24 MICHELLE COLLINS, HAVING BEEN SWORN,

25 TESTIFIED AS FOLLOWS:

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MICHELLE COLLINS - DIRECT BY MR. HOLFORD

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1 THE COURT: Please have a seat in the witness stand and
2 once you're seated, I'll ask that you state your name.

3 MS. COLLINS: Michelle Collins.

4 THE COURT: Move close to the microphone. You don't have
5 to put your mouth right up against it. That'll do fine.

6 MS. COLLINS: Michelle Collins.

7 THE COURT: Thank you very much.

8 Your witness, Counsel.

9 DIRECT EXAMINATION OF MICHELLE COLLINS BY MR. HOLFORD:

10 Q: Ms. Collins, will you introduce yourself to the jury and
11 tell them a little bit about who you are and where you work?

12 A: I'm Michelle Collins, I work at Anderson Oil of Nichols.
13 I'm a secretary.

14 Q: You're gonna have to speak up just a little bit.

15 A: I'm sorry. I'm a secretary for Anderson Oil of Nichols.

16 Q: And where is Anderson Oil located?

17 A: 76, like one mile from Fair Bluff.

18 Q: If I showed you a map of that area, would you be able to
19 identify Anderson Oil Company?

20 A: Yes.

21 MR. HOLFORD: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. HOLFORD:

24 Q: I'm showing you what's been entered as State's Exhibit
25 Two. Do you know where it is on here?

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MICHELLE COLLINS - DIRECT BY MR. HOLFORD

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1 A: I ain't so familiar with looking at maps. Never could
2 read one. We right over here, closer to 76.

3 Q: Okay. So, if this is Spring Branch and 76 came up and the
4 Fair Bluff was up here.

5 A: Right.

6 Q: Do you know where it would be?

7 A: I was looking for -- like right there (indicating).

8 MR. HOLFORD: Can she step down, Your Honor?

9 THE COURT: Yes, ma'am, step down in front of the jury so
10 that they can see what you're indicating.

11 BY MR. HOLFORD:

12 Q: Can you point out to the jury where Anderson Oil Company
13 is and where you work?

14 A: Right here (indicating).

15 Q: Thank you.

16 THE COURT: All right. Have a seat back in the witness
17 stand. Thank you, ma'am.

18 Q: Now, where were you working on August 16th, 2012?

19 A: I was working in my office.

20 Q: At Anderson Oil Company?

21 A: At Anderson Oil.

22 Q: And what do you remember about that day?

23 A: Well, I was doing my regular work and looked out the
24 window ---

25 THE COURT: May slide up again close to that. You've got

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1 a nice soft voice but we're having trouble, I believe, hearing
2 you.

3 A: I'm sorry. Can you heard me now?

4 THE COURT: That's much better; thank you.

5 A: I was at work doing regular -- my regular job. And where
6 I sit, you can see the windows, everything up front, somebody
7 coming in and going out. And I noticed a gentleman walking in
8 front of our building -- well, he was on the highway walking
9 towards the Spring Branch area and he was pacing back and
10 forth. He had on khaki shorts and a blue shirt; he didn't
11 have his shirt on, he was toting it, slinging it and he kept
12 walking back and forth. And I kind thought it was suspicious
13 because of the way he was walking. He was on the phone and
14 like he was trying to call someone and then I walked over to
15 the window so I could get a better look and I seen a white
16 Ford Taurus pull up, didn't even come to a complete stop and
17 he jumps in and they head off toward Fair Bluff.

18 Q: Now, do you know who this individual was?

19 A: I do not.

20 Q: But was he a black male, Hispanic ---

21 A: He was a white male and had a bald head. He looked like
22 he worked out, built.

23 Q: And that's all you know?

24 A: That's all I know.

25 Q: Thank you, no further questions.

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MICHELLE COLLINS - CROSS BY MS. KNOWLES

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1 THE COURT: Your witness, Counselor.

2 MS. KNOWLES: Thank you, Your Honor.

3 CROSS EXAMINATION OF MICHELLE COLLINS BY MS. KNOWLES:

4 Q: Ms. Collins, what are your duties and responsibilities at
5 Anderson Oil Company?

6 A: Well, I take in purchases of fuel, gallon grade fuel, farm
7 fuel. I do filing, you know...

8 Q: And you were busy working whenever you made this
9 observation?

10 A: Yes.

11 Q: And where -- if I show you a picture of your office
12 building, could you show me where your office is located?

13 A: I guess, yes. Right in front of the doors. If you --
14 like when you first walk in there's a counter and it has a
15 window and my desk that's right behind the door where I have a
16 direct view of the door entrance.

17 Q: Now, is there -- you said -- is it like a glass, you said
18 a counter?

19 A: There's like a counter -- when you walk in, there's a
20 counter and they got doors.

21 Q: Is there Plexiglas there?

22 A: Yeah. You can slide the glass open and shut and my desk
23 is behind that.

24 Q: Okay.

25 A: From where I'm sitting, I have direct view of the front

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1 door and anybody going in and out.

2 Q: And what about the windows? What are covered ---

3 A: No, those -- those are -- it's another office. I can't
4 see those.

5 Q: Okay. And you said you just looked out of this one door
6 here?

7 A: I come out my office and come walking around. I went to
8 the window here.

9 Q: So, you did use one of these windows?

10 A: Yeah.

11 Q: And what's covering those windows?

12 A: Nothing. Just the blinds. It's just -- I went out this
13 door and then I went -- walked to this window.

14 Q: And what's covering that window?

15 A: Just a blind.

16 Q: And is this in the same condition as it was on the 16th of
17 August, 2012?

18 A: Yes.

19 Q: Okay.

20 MS. KNOWLES: Your Honor, at this time, I would like to
21 publish these photos to the jury if I could.

22 MR. HOLFORD: Your Honor, I would ask that they be
23 introduced into evidence if she's gonna publish them.

24 THE COURT: Do you wish to introduce them?

25 MS. KNOWLES: Yes, sir.

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1 THE COURT: All right. Let's mark them separately,
2 please, so we can -- cause she said that I think two of the
3 photos were not the windows involved. So I want to make them
4 separately so I'm sure what we're talking about.

5 MS. KNOWLES: Okay. It would be One and Two.

6 THE COURT: Are you -- which ones are you introducing?

7 MS. KNOWLES: You said to separate them, I thought.

8 THE COURT: I just wanted them marked separately so that
9 when you refer to them you can refer to exhibit number and
10 we'll know which one she said she actually looked out of and
11 then we'll know which one she said she did not look out of.

12 MS. KNOWLES: Okay.

13 THE COURT: Are they marked separately already?

14 MS. KNOWLES: They are marked.

15 THE COURT: All right. What numbers are they?

16 MS. KNOWLES: One through Four.

17 THE COURT: All right. We'll then, without objection,
18 we'll admit Exhibits One through Four and if you'd refer to
19 them by number so that we know which one she's talking about.

20 MS. KNOWLES: Okay, okay.

21 THE COURT: Thank you.

22 MS. KNOWLES: Thank you.

23 DEFENDANT'S EXHIBITS ONE THROUGH FOUR

24 ADMITTED INTO EVIDENCE.

25 BY MS. KNOWLES:

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1 Q: So, Ms. Collins, you said that Exhibit One is what I'm
2 referring to here, your desk is behind this door.

3 A: Yeah, you have to go in -- yeah.

4 Q: And behind a Plexiglas ---

5 A: There's open area, like a front here. Like when you walk
6 in, there's like an open area and you go over to the window
7 and my desk is right here.

8 Q: And what's the distance from -- I'm gonna give these to
9 the jury -- what's the distance from your desk to the road?

10 A: Probably from me to the backdoors there.

11 Q: You would say less than fifty feet?

12 A: Yeah, not -- well, from here to -- I'm not good at
13 distance. I mean, I can look like where I sit out to maybe
14 the backdoors.

15 Q: Okay. And you have never seen my client before, have
16 you?

17 A: No, sir; not until -- I mean, I'm sorry -- no, ma'am; not
18 until that day.

19 Q: That's okay. And you made a written statement indicating
20 what you had observed on the 16th to law enforcement, correct?

21 A: Yes, ma'am.

22 Q: Do you remember what you said? I mean, I can show you a
23 copy if you ---

24 A: Okay. Cause I -- it's been almost a year, so ---

25 Q: To refresh your memory of. You actually made two, that's

1 the first one. If you could just let -- go through what the
2 description was that you had indicated in your statement, just
3 the description of the person.

4 A: A young man with a white -- with a blue shirt hanging
5 around his waist with khaki shorts was walking in front of our
6 office.

7 Q: And wouldn't you say that that description alone would fit
8 numerous people within the community?

9 A: I would say so.

10 Q: And you never estimated an age, a height ---

11 A: No, ma'am.

12 Q: And could you make out his eye color?

13 A: No, ma'am.

14 Q: You answered like I was -- why did you answer like that?
15 Is it too far?

16 A: I've -- no, it's too far. I mean, I can look and see a
17 white male, bald head, I mean, built ---

18 Q: Just nothing specific?

19 A: You can't see ---

20 Q: Right.

21 A: --- eye color from a long distance.

22 Q: Okay. And you didn't witness any crime take place, did
23 you?

24 A: No, ma'am.

25 Q: And you made another statement to law enforcement on

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MICHELLE COLLINS - CROSS BY MS. KNOWLES

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1 September 17th, do you recall that?

2 A: Yes, ma'am.

3 Q: Why did you make another statement?

4 A: Because I was looking up online, I have someone that was
5 locked up at the time, so I was looking online and I saw this
6 picture and he looked like the guy that I saw walking that
7 day.

8 Q: Had you heard some gossip too?

9 A: No, ma'am.

10 Q: So you were just looking through all of the people that
11 had been arrested ---

12 A: Right.

13 Q: --- within the last month?

14 A: Yes, ma'am.

15 Q: Was this at work?

16 A: No, ma'am.

17 Q: This was not at work?

18 A: No, ma'am. Like I said, I have -- I knew someone that was
19 locked up so I was looking through.

20 Q: So this was some thirty-three days after you made your
21 initial observation?

22 A: Right.

23 Q: And who did you tell -- who did you make your statements
24 to? Do you recall which detective?

25 A: Mr. Terry.

1 Q: Okay. Did you know him at all?

2 A: No, ma'am.

3 Q: You said Mr. Terry.

4 A: Mr. Terry Elliott, I just -- I'm not good with really last
5 names.

6 Q: Okay. And he was actually at your office on the date that
7 you made this second statement investigating another incident
8 altogether, wasn't he?

9 A: That's been awhile; yes, ma'am.

10 Q: I'm gonna give you a copy of your second statement so that
11 you can remember what you wrote down here.

12 A: Okay. That is correct. We had a lawnmower stolen from
13 us.

14 Q: So, he was there on another incident altogether.

15 A: Right, yes.

16 Q: And you decided to tell him this information at that point
17 in time?

18 A: Yes, ma'am.

19 Q: So, given the distance that you made your observation,
20 given the circumstances in which you made your observation,
21 you can't be certain as to who that person was that you saw,
22 can you?

23 A: Yes. I would know a build when I see one, I would know
24 the back of his head and I saw the side of his face. I
25 couldn't recognize him face forward until I saw it -- looked

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MICHELLE COLLINS - CROSS BY MS. KNOWLES

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1 on online, so, yes.

2 Q: So, you never got an actual look at him face-to-face.

3 A: Right.

4 Q: What you saw was a fleeting glance?

5 A: No, he was out there for a while in front -- back and
6 forth in front of the place while he was waiting on his ride,
7 I guess.

8 Q: And you said he was suspicious, did you call police?

9 A: No, ma'am, I didn't -- no, I didn't.

10 MS. KNOWLES: No further questions, Your Honor.

11 THE COURT: You may redirect the witness if you'd like.

12 MR. HOLFORD: Nothing further, Your Honor.

13 THE COURT: All right, ma'am. You may step down. Do you
14 wish to excuse the witness?

15 MR. HOLFORD: Yes, Your Honor.

16 THE COURT: Any objections?

17 MS. KNOWLES: No, sir.

18 THE COURT: You're free to go if you'd like, ma'am.
19 Thank you very much for coming.

20 You may call your next witness.

21 MR. HOLFORD: The State calls Billy Alexander, William
22 Alexander, Jr.

23 THE COURT: Sir come forward to the Clerk and be sworn,
24 please.

25 WILLIAM ALEXANDER, JR., HAVING BEEN SWORN,

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WILLIAM ALEXANDER, JR. - DIRECT BY MR. HOLFORD

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1 TESTIFIED AS FOLLOWS:

2 THE COURT: Have a seat in the witness stand, sir, and
3 once you're seated, please state your name.

4 MR. ALEXANDER: William Alexander.

5 THE COURT: Thank you.

6 Counselor, your witness.

7 DIRECT EXAMINATION OF WILLIAM ALEXANDER, JR. BY MR. HOLFORD:

8 Q: Mr. Alexander, can you tell the jury where you're from and
9 where you work?

10 A: I'm from just outside of Nichols. I work for Anderson Oil
11 Company.

12 Q: And if I showed you a map of that area, would you be able
13 to identify where Anderson Oil Company is?

14 A: Yes.

15 MR. HOLFORD: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 BY MR. HOLFORD:

18 Q: I'm going to show you first what's been entered as State's
19 Exhibit Two, could you show me where it is on here?

20 A: There (indicating).

21 MR. HOLFORD: Your Honor, I'd ask that the witness be
22 allowed to step down ---

23 THE COURT: Sir, if you'll step down by the jury box and
24 -- so they can see what you're indicating.

25 BY MR. HOLFORD:

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1 Q: Now, will you show the jury where Anderson Oil Company is
2 on this map?

3 A: Right here (indicating).

4 Q: And that's where you were?

5 A: Yes.

6 Q: Thank you.

7 (REPORTER'S NOTE: Juror returns to witness stand.)

8 Q: Now where were you working on August 16th, 2012?

9 A: At Anderson Oil Company, I was in the front office.

10 Q: And what do you remember about that day?

11 A: Messing around on the phone, I looked out the door and I
12 seen a man walking down the road and he was walking down this
13 way, turned around and walked back and got picked up in a car
14 which kind of seemed odd.

15 Q: What kind of car?

16 A: A white car, looked like a Ford Taurus.

17 Q: And what was the man you saw, what was he wearing, what
18 was his description?

19 A: He had some like khaki shorts on and at first he didn't
20 have a shirt on but he had it over his shoulder and then he
21 put it on and it was a blue, like a blue polo.

22 Q: And do you see that man in the courtroom today?

23 A: Right there (indicating).

24 MR. HOLFORD: Let the record reflect he's identified the
25 Defendant.

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1 THE COURT: The record shall so reflect. You may
2 proceed.

3 BY MR. HOLFORD:

4 Q: Now, after this day, did you have a chance to go online
5 and find someone that you thought was the person you saw
6 outside?

7 A: Yes, actually.

8 Q: Did the police ask you to do this?

9 A: No.

10 Q: Why -- why were you doing it?

11 A: Oh, I got family that gets in trouble all the time so I'm
12 always checking them out.

13 Q: And so you were just on the internet looking at the
14 website.

15 A: Yeah, and I came across it.

16 MR. HOLFORD: Your Honor, may I approach?

17 THE COURT: You may.

18 BY MR. HOLFORD:

19 Q: I'm handing you right now what's identified as State's
20 Exhibit Four. Can you identify what that is?

21 MS. KNOWLES: May I see that?

22 THE COURT: Yes. Show it to the Defense counsel first,
23 please. Thank you.

24 MS. KNOWLES: Okay.

25 THE COURT: You may proceed.

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1 BY MR. HOLFORD:

2 Q: Can you identify what this is?

3 A: Yeah, it's a picture from an incarceration record.

4 Q: And is that the same picture that you pulled up?

5 A: Yeah.

6 Q: And whose signature is on that?

7 A: Mine and what looks like to be my coworker Michelle's.

8 MR. HOLFORD: Your Honor, at this time, I'd enter State's
9 Exhibit Four into evidence.

10 THE COURT: Objections?

11 MS. KNOWLES: Your Honor, I would make an objection. I
12 would ask that the jury be excused.

13 THE COURT: All right. Ladies and gentlemen of the jury,
14 this is one of the times I'll ask you to step to the jury
15 room. Don't begin any discussions until I ask you to do so.
16 You may retire.

17 (REPORTER'S NOTE: The jury retires to the jury room. 9:41
18 A.M. The following takes place outside the presence of the
19 jury.)

20 THE COURT: Yes, ma'am.

21 MS. KNOWLES: I have some concerns about giving them a
22 mugshot copy. I feel like it's overly prejudicial. He's
23 already made an in-court identification of my client. I just
24 don't feel the necessity of giving them a mugshot to look at.

25 THE COURT: Can I see it?

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Thank you.

3 MR. HOLFORD: This is the same identification we were
4 talking about earlier that you ruled would be admissible.

5 MS. KNOWLES: It was done almost a month -- actually over
6 a month after this incident, this observation.

7 MR. HOLFORD: So, he recognized the Defendant a month
8 later.

9 THE COURT: All right. I understand what happened.
10 Ma'am, there's -- I think you've asked questions about the
11 fact that -- which alluded to the fact your client had been
12 arrested.

13 MS. KNOWLES: The identification was because they looked
14 online.

15 THE COURT: I know that. My point being, though, the
16 jury is aware of the fact, based on the questioning that's
17 already occurred in this case, that your client was arrested.

18 MS. KNOWLES: For this crime, yes, sir.

19 THE COURT: And so there's -- the fact that he may've
20 been custody or they may've published a photo of him on the
21 Sherriff's or the county's website would not be a surprise to
22 the jury, I don't think.

23 MS. KNOWLES: I don't think it's a surprise, I just feel
24 like it's overly prejudicial to hone in on that mugshot.

25 THE COURT: Well, I've got a feeling that -- in fact, I'm

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1 aware that you're challenging the identification that's made
2 by these individuals. I think it's highly probative for the
3 jury to be able to see exactly what they looked at which is a
4 print out -- I assume this is a printout of the photo that
5 they looked at off-line; is that correct?

6 MR. HOLFORD: Your Honor, this is something he printed
7 out, this witness printed out and then signed and said that's
8 the man I saw.

9 THE COURT: All right. So, I would find the probative
10 value concerning the -- their ability to identify the
11 Defendant would be -- would outweigh any prejudicial effect
12 since the jury is already aware your client had been arrested
13 and part of the arrest process has always been a booking photo
14 of someone.

15 MS. KNOWLES: Yes, sir, if you would just note my
16 objection.

17 THE COURT: Your objection is noted.

18 MR. HOLFORD: Thank you, Your Honor.

19 THE COURT: And when the jury comes back I would -- the
20 foundation has not been laid, counselor. I assume you haven't
21 misled the Court, I'm sure you haven't ---

22 MR. HOLFORD: No, Your Honor.

23 THE COURT: --- but be sure that you ask whether or not
24 he actually printed this photo out and whether it is an
25 accurate depiction of what he observed online.

1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: Before you offer it into evidence.

3 MR. HOLFORD: Yes, Your Honor.

4 THE COURT: I'd like that foundation to be laid assuming
5 that he answers the questions as I think he would, my ruling
6 would be that it would be admissible, as I've stated.

7 MR. HOLFORD: Yes, Your Honor.

8 THE COURT: All right. Bring the jury in.

9 Ma'am, you have the right to again make your objection
10 when he offers it for the record. Okay. So, I just want you
11 to be aware that ---

12 MS. KNOWLES: I'm trying to preserve the record, Your
13 Honor.

14 THE COURT: Well, I understand, that's the reason I'm
15 saying you -- it will not offend the Court if you renew your
16 objection. You have a right to.

17 (REPORTER'S NOTE: The jury returns to the courtroom. 9:46
18 A.M.)

19 THE COURT: All right. The jury has returned to the
20 courtroom. You may proceed.

21 BY MR. HOLFORD:

22 Q: Now, Mr. Alexander, as to State's Four, is that what you
23 printed out?

24 A: Yeah.

25 MS. KNOWLES: Your Honor, I would object ---

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1 THE COURT: Yes, ma'am. He hasn't offered it yet. He's
2 just asking if he printed it out.

3 MS. KNOWLES: Oh, okay; I'm sorry.

4 THE COURT: You may proceed.

5 BY MR. HOLFORD:

6 Q: No law enforcement officer came to you with this
7 photograph?

8 A: No.

9 Q: It was something you found on your own?

10 A: Yeah.

11 Q: And you printed it out?

12 A: Yes.

13 Q: And then why did you sign your name on it?

14 A: Oh, I actually contacted Mr. Wayne, Terry Wayne to tell
15 him that I think I seen who this guy was.

16 Q: And is this a true and accurate reflection of what you
17 printed out that day?

18 A: Yeah.

19 Q: Is that the same copy?

20 A: It's got some holes in it, but yeah.

21 MR. HOLFORD: Your Honor, at this time, I'd offer Exhibit
22 Four in evidence, State's Four.

23 MS. KNOWLES: I object.

24 THE COURT: All right. Objection is noted. I'll rule
25 that it is admissible. It is admitted. You may proceed.

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1 MR. HOLFORD: Thank you.

2 STATE'S EXHIBIT NUMBER FOUR

3 ADMITTED INTO EVIDENCE

4 BY MR. HOLFORD:

5 Q: And who is in that photograph?

6 A: James T. Hagan.

7 Q: And he's the same person you say you saw about a month
8 earlier outside Anderson Oil Company?

9 A: Yeah.

10 Q: And what was he picked up in?

11 A: A white Ford Taurus.

12 Q: And what was he wearing that day?

13 A: Khaki shorts and a blue shirt.

14 Q: And is he in the courtroom today?

15 A: Yes. He's sitting right there.

16 Q: The Defendant?

17 A: Yes, sir.

18 Q: Are you sure of this?

19 A: Positive.

20 MR. HOLFORD: Your Honor, may I publish State's Four to
21 the jury?

22 THE COURT: You may publish it.

23 Ladies and gentlemen, we've been talking about
24 publishing, that means they can show it to you, that's what we
25 say in court.

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1 You may show it to the jury.

2 MR. HOLFORD: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. HOLFORD:

5 Q: And why would you sign this? Why did you sign that?

6 A: To have my name that I done it.

7 MR. HOLFORD: Your Honor, I have no further questions.

8 THE COURT: Your witness, Ms. Knowles.

9 MS. KNOWLES: Thank you.

10 CROSS EXAMINATION OF WILLIAM ALEXANDER, JR. BY MS. KNOWLES:

11 Q: Mr. Alexander, when you made this identification, what
12 date was it; do you remember that?

13 A: I can't remember exactly. Let's see it was -- let's see
14 -- June, July -- somewhere around in July, August 7, something
15 like that.

16 Q: This happened on August 16th, this alleged burglary.

17 A: Well, this was over a year ago, so I mean, it's hard to
18 remember.

19 Q: Would it -- does it sound about right if it was September
20 17th?

21 A: It might've been but I'm on those sites all the time, so
22 it's hard to say.

23 Q: It was well over a month after you made your observation?

24 A: Uh-huh (affirmative response).

25 THE COURT: You have to answer verbally, sir.

1 A: Oh, sorry. Yes, ma'am.

2 THE COURT: Thank you.

3 Q: And you made a written statement to law enforcement where
4 you gave a description of your observation on the 16th of
5 August and I'm going to show you a copy of that, as you've
6 said, it's been some time, you can't remember. What was the
7 physical description of the person that you saw based upon
8 what you have there.

9 A: White man walking on the highway, blue shirt in his hands,
10 talking on his cell phone.

11 Q: That is a very general description, isn't it?

12 A: Well, they didn't ask for detail.

13 Q: And is that probably because you couldn't provide the
14 details?

15 A: Oh, no, I could provide details.

16 Q: Where were you standing in Anderson Oil Company? I've got
17 some pictures here. This Defense Exhibit One through Four,
18 I'm gonna get you to take a look at those and see if they help
19 you?

20 A: Oh, I don't need help. If you look through this door
21 right here ---

22 Q: Using this picture, Exhibit One, where?

23 A: About six foot past that front door inside.

24 Q: And Ms. Collins had just testified and indicated that she
25 was standing behind a counter.

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- 1 A: Uh-huh (affirmative response).
- 2 Q: Is that were you were?
- 3 A: Yeah.
- 4 Q: And what is on top of that counter?
- 5 A: Absolutely nothing.
- 6 Q: Isn't there a Plexiglas there?
- 7 A: No, there's a glass barrier but it's never closed.
- 8 Q: Okay. Interesting. Take a look at Defense Exhibit Number
- 9 Four, you can see that it looks to be a Plexiglas window of
- 10 some sort; is that right?
- 11 A: Not from this picture you can't tell.
- 12 Q: Okay. And you made your observations through -- behind
- 13 this door and behind that window?
- 14 A: Yeah.
- 15 Q: Okay.
- 16 A: Behind which window?
- 17 Q: The counter, we'll say that.
- 18 A: Yes, behind the counter.
- 19 Q: Okay. And how far is this counter from the side of the
- 20 road that you observed this person on?
- 21 A: No more than thirty yards.
- 22 Q: Let me give you a copy of your statement again and read it
- 23 and see if maybe you have a different answer.
- 24 A: It says about fifty foot.
- 25 Q: And you wrote that?

- 1 A: Uh-huh (affirmative response).
- 2 Q: And you wrote that the day that you made this observation?
- 3 A: Uh-huh (affirmative response).
- 4 Q: And you observed this person walking by.
- 5 A: Uh-huh (affirmative response).
- 6 Q: So they were never standing still facing you?
- 7 A: Well, they turned around.
- 8 Q: You said that they were on the phone?
- 9 A: Yeah, they're on the phone.
- 10 Q: So, wouldn't you say that if they're on the phone, their
- 11 face is blocked?
- 12 A: No.
- 13 Q: They're on the phone.
- 14 A: You have two ears, two sides of your face.
- 15 Q: And you're walking sideways, correct?
- 16 A: Uh-huh (affirmative response).
- 17 Q: Is what you observed, he's walking sideways. Okay. And
- 18 no visible markings on this person, no tattoos, did you get an
- 19 eye color?
- 20 A: Well, no, it's thirty yards away, of course, you can't get
- 21 an eye color.
- 22 Q: Is it thirty yards or is it fifty feet?
- 23 A: We're talking a whole ten feet here, its fifty foot,
- 24 thirty yards; it's all about the same.
- 25 Q: Okay. Would it surprise you to learn that I went to the

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1 scene and measured that ---

2 A: Okay.

3 Q: --- and it wasn't anywhere near fifty feet, it was well
4 over that.

5 A: Okay.

6 Q: Okay. And you indicated in the second statement that you
7 had learned -- or actually, do you recall making the second
8 statement to law enforcement?

9 A: Uh-huh (affirmative response).

10 THE COURT: You have to answer verbally, sir.

11 A: Yes.

12 THE COURT: Thank you.

13 Q: And in that statement, you made reference to someone that
14 you had heard was responsible for this.

15 A: Uh-huh (affirmative response); yes.

16 Q: And where did you hear this from?

17 A: Just from around.

18 Q: Okay.

19 A: I mean, no one in particular.

20 Q: So -- okay. And what were you doing at the time that you
21 found this picture online?

22 A: I was looking online at the pictures.

23 Q: You weren't working?

24 A: No, I didn't have nothing to do right then and there.

25 Q: Okay.

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1 THE COURT: I'm gonna ask you to get a little bit closer
2 to the microphone. They may have trouble hearing you on the
3 far end. Thank you, sir.

4 A: Yes, sir.

5 THE COURT: Appreciate it.

6 Q: And did you ever see any crime being committed?

7 A: No. I never said I did.

8 Q: No, and I'm not saying you did; I'm just asking. And
9 Detective Elliott is who you provided your written statement,
10 to, right?

11 A: Yes.

12 Q: And a minute ago, you said you had contacted him.

13 A: The second time.

14 Q: Okay. Wasn't he there to investigate another incident
15 altogether?

16 A: Oh, I have no idea about that.

17 Q: Let me give you -- let you take a look at this statement
18 again so you know what I'm referring to. The question that
19 I'm asking you is, he was there to investigate another matter
20 altogether? Just, yes or no.

21 A: Yeah.

22 Q: Okay. All right. Let me just -- No further questions,
23 Your Honor. Thank you.

24 THE COURT: Redirect?

25 MR. HOLFORD: Briefly.

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1 REDIRECT EXAMINATION OF WILLIAM ALEXANDER, JR. BY MR. HOLFORD:

2 Q: Mr. Alexander, you said no more than thirty yards; thirty
3 yards is ninety feet, correct?

4 A: Yeah, ninety feet.

5 Q: And so fifty feet would be not more than thirty yards?

6 A: Yes. It was just a quick estimate when I wrote my
7 statement.

8 Q: And then finally, on August 16th, 2012, the person you saw
9 you later identified a month later as James Hagan from a
10 photograph you pulled up?

11 A: Yes.

12 Q: And now, in court today, you can identify the same person
13 you saw on August 16th, 2012 in court here today?

14 A: Yes, sir.

15 Q: No further questions.

16 THE COURT: Anything ---

17 MS. KNOWLES: I have no further questions, Your Honor.

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

19 Do you wish to excuse the witness?

20 MR. HOLFORD: Yes, Your Honor.

21 THE COURT: Any objections?

22 MS. KNOWLES: No, sir.

23 THE COURT: You're free to leave the courthouse, sir.

24 Thank you very much.

25 State may call its next witness.

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1 MR. HOLFORD: Your Honor, at this time, the State rests.

2 THE COURT: Ladies and gentlemen of the jury, that
3 completes the presentation of evidence by the State.

4 At this time, there are some matters I have to take up
5 with the lawyers before we go on to the next phase of the
6 trial. So, again, I'm going to ask you to step into the jury
7 room. Don't begin any discussions about this case until I ask
8 you to do so.

9 You may retire, please.

10 (REPORTER'S NOTE: The jury retires to the jury room. 9:58
11 A.M. The following takes place outside the presence of the
12 jury.)

13 MOTIONS:

14 THE COURT: All right. Any motions from the Defense?

15 MS. KNOWLES: Yes, sir. At this time, the Defense would
16 make a motion for a directed verdict. Your Honor, I believe
17 that the State is relying on the same evidence for this crime
18 as it did the charge that he pled to Magistrate Court. We've
19 got the same date involved, the same witnesses, the same
20 factual acts, they have conclusively proven that he pled
21 guilty to that offense and heard the statute on double
22 jeopardy, Section 17-23-20, which I have a copy for the State
23 as well as Your Honor.

24 THE COURT: I'll get it, just give me second. You said
25 17?

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1 MS. KNOWLES: It's 17-23-20.

2 THE COURT: Yes, ma'am. I'm there.

3 MS. KNOWLES: It states whenever a municipal court or a
4 magistrate court shall have acquired jurisdiction by reason of
5 a person committing an act which is alleged to be in violation
6 of a municipal ordinance and which is in violation of the
7 criminal law, a conviction or an acquittal by the first court
8 acquiring jurisdiction shall be a complete bar to a trial by
9 another court for the same alleged unlawful act or acts. I
10 believe that that is what -- it's precisely on point and it's
11 what is at issue here is one act and he's already pled guilty
12 to that malicious damage charge. I just believe that double
13 jeopardy would preclude the State from going forward on this.

14 THE COURT: I'll ask the State to respond to that motion.

15 MR. HOLFORD: Thank you, Your Honor. As to double
16 jeopardy, I believe the Blockburger test applies and that's
17 whether the same elements are included in the crime.
18 Certainly for malicious damage to personal property, the same
19 elements do not apply because burglary implies that there was
20 a breaking and entering with an intent to commit a crime
21 therein. Those are not the elements of malicious damage to
22 personal property, malicious damage to personal property is
23 just the physical damage of property. Therefore, it's not ---

24 THE COURT: I think this was actually damage to real
25 property.

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1 MR. HOLFORD: Or real property.

2 THE COURT: Yeah, the same, same ---

3 MR. HOLFORD: Your Honor, the elements are not the same,
4 therefore it is not the same crime, therefore double jeopardy
5 would not attach.

6 THE COURT: It would be my finding, ma'am, that the
7 elements of the crime are not the same. In burglary second,
8 you have to have an entry without consent, you have to have
9 the intent to commit a crime inside of the dwelling that's
10 entered and the elements for malicious injury to real property
11 are different. So, I deny that motion.

12 MR. HOLFORD: Thank you.

13 MS. KNOWLES: Thank you, Your Honor.

14 And I think that I'm supposed to object or ---

15 THE COURT: Are you renewing your objections to the
16 evidence?

17 MS. KNOWLES: Take issue with your ruling.

18 THE COURT: Well, you're objection is noted. You did not
19 agree with my ruling.

20 MS. KNOWLES: And we just do not believe that the State
21 has established that my client was in fact inside this
22 residence, that is an element entry and an element to burglary
23 and therefore, a directed verdict would be appropriate.

24 THE COURT: I'll hear from the State.

25 MR. HOLFORD: Your Honor, if I may respond, the victim in

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1 this case, Zack Elliott, said that he met Charles Hagan
2 outside in a white Ford Taurus. That, at the time, someone
3 else was inside, someone fled out the back door. This
4 Defendant James Hagan has already admitted in court to
5 breaking into that back door. There was a jewelry box set by
6 the back door which was not set there by any of the victims.
7 Therefore, I believe the State has established that James was
8 inside as well as the testimony from his Codefendant Charles
9 Hagan who testified under oath that James did in fact go
10 inside the house.

11 THE COURT: Assuming my finding that there is sufficient
12 evidence to justify the case going to the jury on the charge
13 of burglary second degree. So, the motion is denied.

14 MS. KNOWLES: Thank you, Your Honor.

15 THE COURT: Any other matters that you'd like to take up
16 with the Court?

17 MS. KNOWLES: No, sir.

18 THE COURT: All right. I want to take up something with
19 your client. So, at this point in time, I'm going to ask the
20 clerk to please swear the defendant.

21 JAMES HAGAN, HAVING BEEN SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE COURT: You can be seated, sir. Mr. Hagan, at this
24 time, I'm going to explain certain rights that you have.
25 We've reached the stage of the trial where you have the right

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1 to present your defense in this case. As part of that
2 defense, you have the right to testify in this matter. You
3 also have the right not to testify. I'm going to refer
4 specifically to the Fifth Amendment to the United States
5 Constitution. That Amendment reads in part that no person
6 shall be compelled in any criminal case to be a witness
7 against himself. Now, what that means, that while you have
8 the right to testify, you also have the right not to testify.
9 The right to remain silent during the trial is a personal
10 right. That right belongs only to you. I will tell you that
11 if you decide to testify that your testimony will be governed
12 by the same rules that govern the testimony of any other
13 witness. That means you would be examined by your lawyer and
14 then cross examined by the State's attorney. During that
15 cross examination, the State would have the right to introduce
16 any convictions that you might have on your record to
17 challenge your credibility if those convictions involved
18 dishonesty or false statements or if the crimes carried a
19 penalty of more than one year and have occurred within the
20 last ten years. Those would be admitted only if the Court
21 makes a determination that the probative value of admitting
22 that evidence outweighs the prejudicial effect to you.

23 Now, I will tell you that if you decide not testify, that
24 I will instruct the jury that the fact that you did not
25 testify should not even be considered by them in reaching a

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1 verdict in this case. In fact, my instruction to them would
2 be that they could not even discuss that matter or that factor
3 in their deliberations.

4 Now, sir, do you understand the right that I just
5 explained to you?

6 MR. HAGAN: Yes, sir.

7 THE COURT: Do you have any questions about that right?

8 MR. HAGAN: No, sir.

9 THE COURT: Now, I will tell you that the decision as to
10 whether or not to testify is your decision and your decision
11 alone. You have the right to consult with your lawyer, with
12 family, friends or anyone else you'd like to talk to about
13 that decision but the ultimate decision is yours.

14 Now, sir, have you had an opportunity to consult with
15 people about whether or not you intend to testify?

16 MR. HAGAN: Yes, sir.

17 THE COURT: Do you need to consult any further concerning
18 that?

19 MR. HAGAN: No, sir.

20 THE COURT: Do you intend to testify in the case?

21 MR. HAGAN: No, sir.

22 THE COURT: Is that yes, sir?

23 MR. HAGAN: No, sir.

24 THE COURT: No, sir. All right. Thank you very much.

25 Is there anything else the State would like to take up

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JAMES HAGAN - BY THE COURT

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1 while the jury is out?

2 MR. HOLFORD: Nothing further from the State, Your Honor.

3 THE COURT: Defense have anything else you'd like to
4 discuss?

5 MS. KNOWLES: Your Honor, I just need a few minutes to
6 make sure that I have all my witnesses here.

7 THE COURT: I was gonna take a short break anyway. We're
8 about a -- an hour, little over an hour into our morning, so
9 ---

10 MS. KNOWLES: Okay.

11 THE COURT: We'll take about a five to ten-minute break.

12 MR. HOLFORD: Thank you.

13 (REPORTER'S NOTE: Recess at 10:07 A.M.)

14 *****OFF THE RECORD*****

15 (On the Record. 10:21 A.M.)

16 THE COURT: All right. Is the State ready to proceed at
17 this time?

18 MR. HOLFORD: Yes, Your Honor.

19 THE COURT: Defense ready?

20 MS. KNOWLES: Yes, sir.

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

22 (REPORTER'S NOTE: The jury returns to the courtroom. 10:22
23 A.M.)

24 THE COURT: All right. The record will reflect the jury
25 returned. At this time the Defense has the right to call

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ASHLEY AMANDA HENRY - DIRECT BY MS. KNOWLES

1 witnesses and you may call your first witness.

2 MS. KNOWLES: The Defense would call Ashley Hagan.

3 THE COURT: Come forward, please, ma'am, to my right to
4 be sworn.

5 ASHLEY AMANDA HENRY, HAVING BEEN
6 SWORN, TESTIFIED AS FOLLOWS:

7 THE COURT: Have a seat in the witness stand. State your
8 name.

9 MS. HENRY: Ashley Amanda Henry.

10 THE COURT: Thank you.

11 Your witness.

12 DIRECT EXAMINATION OF ASHLEY AMANDA HENRY BY MS. KNOWLES:

13 Q: Is it Hagan or Henry?

14 A: It's Henry; it hasn't been changed yet.

15 Q: Okay. Ms. Henry, you are married to my client, aren't
16 you?

17 A: Yes, ma'am.

18 Q: And how long have you two been together?

19 A: We met when James was fourteen right after his mom passed
20 away, so we've been together about fourteen years.

21 Q: And were you with him on the date of this alleged
22 incident, August 16th?

23 A: Yes, ma'am.

24 Q: Tell me a little bit about that day, what you did from
25 that morning on.

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ASHLEY AMANDA HENRY - DIRECT BY MS. KNOWLES

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1 A: Our coworker Tonya Bowles came and picked me up. Then we
2 went to the Defendant's house, picked him and my son up
3 because he had custody of my son at the time. We then took my
4 son to the babysitter and dropped him off and then we headed
5 to North Myrtle Beach to clean the three condos that we had to
6 do.

7 Q: And what time was this?

8 A: We got to North Myrtle Beach at about 8:30 in the morning.

9 Q: And Ms. Henry, I know the Solicitor is going to ask you
10 about this so I'm gonna go ahead and get this out the way. Do
11 you have a criminal record?

12 A: Yes, ma'am, I do.

13 Q: And tell us about that.

14 A: I had been fighting drug abuse for years and which
15 extended to my criminal record. 2009, I lost my mother and I
16 almost lost the Defendant to a very near death car accident
17 and I kind of lost control. Since then, I have been clean for
18 two years. I am a college student. I work for a highly
19 established car dealership. So, I've really turned my life
20 around since then.

21 Q: And what sort of sentence -- you said this was in 2009,
22 right?

23 A: Yes, ma'am.

24 Q: What sentence did you receive?

25 A: Well, in 2012 when I finally got sentenced, I have eight

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ASHLEY AMANDA HENRY - DIRECT BY MS. KNOWLES

1 years over my head with the completion of Drug Court.

2 Q: And tell us a little bit about Drug Court.

3 A: Drug Court is drug treatment program. I go to treatment
4 classes three times a week. I go to NA and AA four times a
5 week. I am drug tested four times a week. I have to be
6 employed. I work seven days a week, two jobs.

7 Q: And you said you've been clean and sober now for how long?

8 A: Two years.

9 Q: And you've got a lot at stake if you were to be found to
10 be committed perjury here today, wouldn't you?

11 A: Yes, ma'am.

12 Q: And did you ever feel threatened during the investigation
13 of this case at all?

14 A: I was told several times by Detective Elliott that if I
15 was caught lying -- no, he actually told me, I'm gonna have
16 you arrested for false statements. I've never given a false
17 statement. I told nothing but the truth. In fact, I have way
18 more to lose than my husband does in this. So, why would I
19 lie.

20 Q: And he rode to work with you and Ms. Bowles, correct?

21 A: Yes, ma'am.

22 Q: Okay. And you were cleaning where?

23 A: In North Myrtle Beach. We had all met in Crescent Sands
24 parking lot.

25 Q: You say we all met; who is that?

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1 A: Well, me and the other employees were actually parked in a
2 separate parking lot. We could not find Jeanette Andrews. I
3 had to go hunt her down.

4 Q: And Jeanette Andrews is who?

5 A: She is our supervisor. She's not the boss. She is our
6 supervisor of the company.

7 Q: And she hands you the keys to clean ---

8 A: She handed me the keys and then at that time is when Tonya
9 pulled up in the car because her and James had been at the
10 porta potty using the bathroom because we couldn't find her.

11 Q: And do you check in with her?

12 A: No, we do not check in. There's been plenty of times
13 we've been given keys the night before to go clean units the
14 next day. There's no -- she didn't come back to check the
15 units afterwards. I had to drop the keys off in Myrtle Beach
16 because nobody showed up.

17 Q: And you were paid for the week in question here and so was
18 James, correct?

19 A: Yes, ma'am. In fact, I couldn't get his check cashed
20 because he was incarcerated and Debbie told me that I would
21 just have to figure that out on my own; that she could not --
22 I, at first, asked her if she could rewrite his check in my
23 name and she said if I do that, then he didn't work that day.
24 So, she could not help me with that. I had to wait till he
25 was out of jail to get his check cashed.

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ASHLEY AMANDA HENRY.- CROSS BY MR. HOLFORD

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1 Q: But he was in fact working with you and Ms. Bowles on
2 August 16th from what time to what time again?

3 A: Well, we picked James up at 8:00 in the morning, so he was
4 with us from 8:00 till after 5:30 because that's what time we
5 dropped the keys off in Myrtle Beach at the office.

6 Q: Okay. Thank you, ma'am. If you'll answer any questions
7 the Solicitor has.

8 THE COURT: Mr. Holford, your witness.

9 MR. HOLFORD: Thank you, Your Honor.

10 CROSS EXAMINATION OF ASHLEY AMANDA HENRY BY MR. HOLFORD:

11 Q: Ms. Henry, Defense counsel went over your criminal record
12 just a little bit. Let me expand upon it in case you forgot.
13 In 2007, weren't you convicted of exploitation of a disabled
14 or elderly person?

15 A: That was a plea that I took; yes, sir.

16 Q: And you were sentenced to five to six months plus eighteen
17 months probation?

18 A: No, sir. It was eighteen months suspended to five to six
19 months in prison if I did not complete the probation.

20 Q: And then in 2010, you actually violated that probation, so
21 you did serve the five to six months?

22 A: I violated that probation by catching the charges that I'm
23 on Drug Court now for.

24 Q: In 2010?

25 A: Yes, sir.

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1 Q: But you didn't plead to the charges here in Drug Court now
2 until 2012?

3 A: Yes, sir. I was incarcerated for that length of time.

4 Q: So, from 2010, five to six months ran to 2012?

5 A: No, no, no. When I caught these charges that I'm on Drug
6 Court for now, I admitted to what I did. There was no finding
7 evidence on me; I told what I did and I asked for help. My
8 probation officer violated my probation, sent me to North
9 Carolina to serve my sentence. When I came back from North
10 Carolina for violating my probation, I had a failure to appear
11 for missing court. I was pulled over one day, I was arrested
12 for failure to appear and I remained in incarceration pregnant
13 until I was let back out and that's when I caught another
14 charge. I had a very bad drug habit.

15 Q: I agree. In 2012, you actually pled guilty to burglary in
16 second degree; isn't that right?

17 A: Yes, sir.

18 Q: So, you yourself are also a burglar.

19 A: Yes, sir.

20 Q: And also grand larceny more than \$5,000?

21 A: Yes, sir.

22 Q: And you are in Drug Court for those offenses?

23 A: Yes, sir.

24 Q: Now, you said you've done really well in Drug Court; is
25 that correct?

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1 A: Yes, sir.

2 Q: How about February 10th, 2012, when you failed to provide
3 a urine sample and that was your first positive drug test?

4 A: That was my first day in the program and I had never peed
5 in front of anybody before. That's how I got that positive.

6 Q: How about March 14th, 2012, when you were disruptive in
7 treatment?

8 A: I yawned and that's considered a disruption. You don't
9 know the extent of how strict Drug Court is.

10 Q: How about March 12th -- well, that was March 12th. How
11 about on March 14th when you were doing community service, you
12 were caught with a hat in your own personal bag?

13 A: That was a misunderstanding that I have yet to be able to
14 clear up.

15 Q: It was a misunderstanding -- somebody else had put in your
16 bag?

17 A: It wasn't my -- it wasn't my personal bag that that was
18 found in. I had bagged all the hats up to throw away. I
19 forgot that she resells the hats, even if they're moldy, and
20 when she seen the bag by the back door, she thought that it
21 was my stuff. I was just throwing them away. Why would I
22 steal a hat, a used hat at that?

23 Q: Well, you are charged with burglary and grand larceny.

24 MS. KNOWLES: Your Honor, I would object to relevancy. I
25 don't understand where this is going.

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1 MR. HOLFORD: Your Honor, she said she was a perfect
2 client in Drug Court.

3 A: No, I never said I was perfect. I said I'd been sober for
4 two years and I said I've been in Drug Court in for two years.
5 I'm not perfect, Mr. Holford, but I have changed my life.

6 THE COURT: Ma'am, I'm trying to deal with an objection.

7 A: Okay.

8 THE COURT: I don't want you to argue with a lawyer ---

9 A: Yes, sir.

10 THE COURT: --- while I'm trying to do that. Thank you,
11 ma'am.

12 Your objection is?

13 MS. KNOWLES: Just relevancy. I don't know how that's
14 relevant, these issues that he's raising.

15 THE COURT: Well, I'll let you argue it.

16 MR. HOLFORD: Your Honor, it's relevant because she is in
17 Drug Court in burglary and grand larceny. She said she's been
18 sober. Her community supervision record shows otherwise.
19 Also, at the same time, she is been accused of putting a hat
20 in her own personal bag, which she seems to explain away but
21 it still ---

22 THE COURT: I'll overrule the objection.

23 MR. HOLFORD: Thank you, Your Honor.

24 BY MR. HOLFORD:

25 Q: How about on July 11th, 2012, when you admitted to

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1 contacting another Drug Court client and inform them that
2 curfew checks were being held?

3 A: What I did was I had received a text in the middle of the
4 night and I said, I'm sorry, I just got your text because
5 Candy came by to curfew check me and I admitted to that. If I
6 was trying to break a rule, why would I tell on myself?

7 Q: I don't know.

8 A: Okay.

9 Q: How about August 11, 2012, when you weren't home for
10 another curfew check?

11 A: Yes, sir. I -- it's 11:30 at night, I work two jobs, I
12 had gotten home late and had missed a curfew check.

13 Q: How about September 15th, 2012, when you failed to report
14 for another drug test being your second positive drug test?

15 A: I did report for that drug test but I was late. You have
16 a certain time that you have to be there to drug test. I
17 showed up ten minutes late, I called Candy. She said that I
18 could not test late and I had to take my positive sanction.

19 Q: And right now, you're still in Drug Court; is that
20 correct?

21 A: Yes, sir. I'll be graduating in February.

22 Q: Actually, you have to advance to Phase II, do you not?

23 A: No, sir. I've already advanced to Phase II. I've already
24 advanced to Phase III. I have after-care and reentry left.

25 Q: Assuming you don't make any more mistakes.

1 A: Assuming, yes, sir.

2 Q: And assuming you don't perjury yourself here today.

3 A: I'm not perjuring myself, sir.

4 Q: Would it surprise you that your husband, James Hagan, has
5 already pled guilty to being at that scene on that day?

6 A: I know why he did that. I was incarcerated at the time
7 and he had nobody to watch our son. So, when the judge gave
8 him the two option of pleading guilty and going home, he took
9 that option because if not, who would take care of my son.

10 Q: So, he lied to a judge?

11 A: No, he didn't lie to a judge. He took the lesser of two
12 evils.

13 Q: So, he lied to a judge when he said he was there.

14 MS. KNOWLES: Your Honor, asked and answered.

15 THE COURT: I'm -- he's on cross examination and we give
16 greater latitude on cross examination. I'll allow him to ask
17 the questions.

18 BY MR. HOLFORD:

19 Q: So, when he said under oath to a judge that I was there on
20 August 16th, 2012 at 12:30 and I kicked the door in, that was
21 a lie?

22 A: I don't think those words came out of his mouth, sir. I
23 think that he was offered an option and he took the option
24 that he could go home.

25 Q: Were you there?

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- 1 A: No, sir. I was incarcerated.
- 2 Q: Do you know how a guilty plea goes?
- 3 A: Yes, sir, I do.
- 4 Q: Because you've been through multiple guilty pleas?
- 5 A: Yes, sir.
- 6 Q: And does the judge ask you whether the facts are true and
- 7 whether you actually did it?
- 8 A: I've always been asked if I was choosing to plead guilty
- 9 and if I had been threatened in any way to take that choice, I
- 10 don't remember being asked if the facts are true or not.
- 11 Q: You've never heard a solicitor stand at this stand ---
- 12 A: I've never had a solicitor stand up in a case, Your Honor,
- 13 or ---
- 14 Q: Even in your burglary second plea?
- 15 A: All he did was stand up and say the charges against me and
- 16 that they were offering me a plea.
- 17 Q: And you heard the charges against you?
- 18 A: Yes, sir.
- 19 Q: And you had to tell the Judge that you did that? You
- 20 admitted to the burglary and the grand larceny, did you not?
- 21 A: Yeah, I did.
- 22 Q: Because in every plea you have to admit to the charges you
- 23 are pleading guilty to or else the judge can't take the plea;
- 24 is that not correct?
- 25 A: I guess you are correct, sir.

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ASHLEY AMANDA HENRY - REDIRECT BY MS. KNOWLES

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1 Q: So, when he pled guilty, he would've had to say that the
2 charges were correct?

3 A: I guess he would've had to say that he was admitting to
4 the charges, yes.

5 Q: So, either you're lying that he was with you or he lied to
6 a judge in court. Which one?

7 A: He lied to a judge in court.

8 Q: Fair enough. No further questions.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION OF ASHLEY AMANDA HENRY BY MS. KNOWLES:

11 Q: Ashley, how long have you been clean and sober again?

12 A: Two years.

13 Q: And tell us a little bit about the Drug Court program as
14 far as the drug screening goes. If you can't urinate, what is
15 that ---

16 A: It's a positive.

17 Q: Okay.

18 A: And if you're late to test, that's a positive as well but
19 those are the only two positives I've ever had in Drug Court.

20 Q: And you've been in that program since when?

21 A: February of 2012.

22 Q: And you're set to graduate?

23 A: February of 2014.

24 Q: And have you ever known of a person to plead to a charge
25 because they are offered a time served sentence and they have

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TONYA BOWLES - DIRECT BY MS. KNOWLES

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1 to get home to their family ---

2 A: Yes, ma'am.

3 Q: --- take care of their family?

4 A: A lot of people take pleas because it means no jail time.

5 Q: And you weren't actually present when James entered into
6 this plea?

7 A: No, ma'am; I wasn't.

8 Q: No further questions.

9 MR. HOLFORD: Nothing further, Your Honor.

10 THE COURT: Ma'am, you may step down. Thank you very
11 much.

12 Any objection to the witness being excused if she wishes
13 to go? From the State?

14 MR. HOLFORD: No, Your Honor.

15 THE COURT: All right, ma'am. You're free to leave if
16 you'd like.

17 The Defense may call its next witness.

18 MS. KNOWLES: The Defense would call Ms. Tonya Bowles.

19 TONYA BOWLES, HAVING BEEN SWORN,

20 TESTIFIED AS FOLLOWS:

21 THE COURT: Ma'am, have a seat, please. Once you're
22 seated, state your name, please, ma'am.

23 MS. BOWLES: Tonya Bowles.

24 THE COURT: Thank you. Counselor, your witness.

25 MS. KNOWLES: Thank you.

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TONYA BOWLES - DIRECT BY MS. KNOWLES

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1 DIRECT EXAMINATION OF TONYA BOWLES BY MS. KNOWLES:

2 Q: Ms. Bowles, how are you?

3 A: Good.

4 Q: Could be better?

5 A: Little bit, yes.

6 Q: Now, you're currently in jail and tell us what that's all
7 about?

8 A: Oh, I had charges from a year ago and I was a Drug Court
9 client. I had terminated myself and decided to complete my
10 sentence.

11 Q: You terminated yourself?

12 A: Uh-huh (affirmative response).

13 Q: Okay. What does that mean exactly?

14 A: I have to -- I had a year sentence and I have to finish
15 out the year sentence.

16 Q: And what were you sentenced for?

17 A: Criminal conspiracy.

18 Q: And who did you conspire with?

19 A: My husband.

20 Q: And how do you know James and Ashley?

21 A: We worked together for two different companies.

22 Q: And were you working together on August 16th of 2012?

23 A: To be honest, I don't remember that specific date but when
24 this incident happened and I was questioned by the detective,
25 he stated that -- I told him I didn't know dates and times

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1 because I was a Drug Court client ---

2 Q: Right.

3 A: --- and that I had a hectic schedule. He said that he had
4 already spoken with our employer and that our employer
5 verified that that was first day of employment and based on
6 that then I would say that he worked that day because I was
7 their transportation back and forth to work.

8 Q: Okay. And so Detective Elliott, when you say he ---

9 A: The detective that questioned me, I don't know his name, I
10 wrote a statement for him.

11 Q: And what -- tell us again what he told you.

12 A: He told us that -- Ashley and I -- because he met Ashley
13 and I, we did our statements at the same time, he told us that
14 he'd already spoken with our employer at Platinum Plus
15 Services and that she verified that he had worked that day,
16 that that was his first day of employment, yet she did not
17 physically see him that day.

18 Q: And he was paid for that day?

19 A: Yes, ma'am.

20 Q: Okay.

21 A: So, even on my statement, I said, per the detective.

22 Q: Now, have you been threatened during the investigation of
23 this case at all?

24 A: No, ma'am.

25 Q: Okay. And your testimony is freely and voluntarily given

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1 today?

2 A: Yes, ma'am.

3 Q: You have nothing to gain, nothing to hide.

4 A: No, ma'am. I'm just trying to do my time and get it over
5 with.

6 Q: Right. And whenever you were working for Platinum Plus,
7 do you recall how you reported?

8 A: It depended. We worked in various locations from Myrtle
9 Beach to North Myrtle Beach and depending on where we were at
10 or what we had to do, sometimes we had to go to the office to
11 pick up keys, sometimes she would have someone come to meet us
12 in like North Myrtle Beach and bring us the keys for where we
13 had to work.

14 Q: Did she check in each and every employee?

15 A: No.

16 Q: Did you have like a login sheet?

17 A: No, ma'am.

18 Q: Okay. And whenever we're referring to she is Ms. Andrews?

19 A: Ms. --- I don't know her last name, Debbie ---

20 Q: There's Debbie Chaffin and Jeanette Andrews.

21 A: Debbie Chaffin.

22 Q: Okay. And you said that you were the driver of my client
23 and his wife ---

24 A: Uh-huh (affirmative response).

25 Q: --- for employment?

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TONYA BOWLES - CROSS BY MR. HOLFORD

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1 A: Yes.

2 Q: Their transportation?

3 A: They didn't have a -- we worked together at Sea Watch and
4 then we both -- Ashley and I started working for Platinum Plus
5 Services. James got hired on. Neither of them had
6 transportation and since I lived close to both of them, I
7 would pick them up and take them back and forth to work
8 because we all worked together.

9 Q: Okay. And once again, you would have no reason to not
10 tell the truth here today?

11 A: Absolutely not.

12 Q: Thank you, ma'am.

13 THE COURT: You may cross examine.

14 MR. HOLFORD: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION OF TONYA BOWLES BY MR. HOLFORD:

17 Q: Ms. Bowles, you just testified that you weren't sure if
18 James was with you that day, you just thought he was because
19 someone else told you that was his first day.

20 A: I said that I don't know specific dates. I can't remember
21 what I did two weeks ago much less you're asking me to
22 remember the date of a year ago but based on my -- what I
23 said, the detective said that date was his first date of
24 employment and I know when he started working, I carried them
25 back and forth to work.

- 1 Q: Did you give an affidavit in this case?
- 2 A: Yes.
- 3 Q: On July 2nd, 2013?
- 4 A: Yes.
- 5 Q: And that was about eleven months after the event?
- 6 A: Right.
- 7 Q: And you remembered pretty well then, right?
- 8 A: I remember, like I said, cleaning condos, you know, it's
- 9 -- not like it's -- anything stands out with it. But yes,
- 10 with my statement, it's based on the detective telling me that
- 11 our employer stated James worked that day.
- 12 Q: I'm going to hand you what's been marked as State's
- 13 Exhibit Five, can you identify what this document is without
- 14 reading it?
- 15 A: It is my statement.
- 16 Q: Is it your statement?
- 17 A: Yes.
- 18 Q: Is it true ---
- 19 MS. KNOWLES: Your Honor, could I see it just to make
- 20 sure I have a copy that he has.
- 21 MR. HOLFORD: You provided it to me.
- 22 MS. KNOWLES: She has two statements. Okay.
- 23 BY MR. HOLFORD:
- 24 Q: And did you write that?
- 25 A: I didn't write it but I stated it and it was typed and I

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1 signed it.

2 Q: Is that a true and accurate copy of your statement?

3 A: Yes, based on me being told that James Hagan was employed
4 and started work that day.

5 MR. HOLFORD: Your Honor, I'd ask that Exhibit Five be
6 entered in evidence.

7 MS. KNOWLES: No objection.

8 THE COURT: Without objection, it will be admitted as
9 marked.

10 STATE'S EXHIBIT NUMBER FIVE

11 ADMITTED INTO EVIDENCE

12 THE COURT: You may proceed.

13 BY MR. HOLFORD:

14 Q: Now, Ms. Bowles, in this sworn affidavit that you swore
15 before a notary public about a month ago, you said, On the
16 date of the incident, I, Toyona A. Bowles, did pick James Hagan
17 up from his home off Emery Road in Loris, South Carolina. The
18 time was approximately 7:00 A.M. We worked until
19 approximately 4:00 P.M. that day. I believe this was his first
20 day on the job.

21 A: Correct.

22 Q: Do you mention anywhere in there about being told that was
23 his first day and that's why you think that?

24 A: No, I said that in my original statement with the
25 detective.

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1 Q: But when you gave a sworn affidavit that you turned over
2 to Defense counsel, who then turned it over to me in this
3 case, did you mention any of that or did you say that you
4 picked James Hagan up on that day?

5 A: No, I -- when I made my statement, I told them the same
6 thing I just said now that based on what the detective had
7 told me when he interviewed our boss.

8 Q: Can you show me anywhere in this statement where it says
9 based on what the detective told you?

10 A: No, it doesn't say that. It says it in the original one.
11 I've never had to make a statement before, so I apologize if
12 that's an error.

13 Q: So, your sworn affidavit is incorrect?

14 A: No, the statements are true based on what I know.

15 Q: Based on what you know, you did pick James Hagan up at
16 7:00 ---

17 A: On his first day of employment with Platinum Plus
18 Services.

19 Q: And then if specific locations for the work day are
20 needed, feel free to contact your employer Debbie.

21 A: Correct.

22 Q: Would it surprise you -- Your Honor, may I publish this?

23 THE COURT: You certainly may.

24 Q: Would it surprise you if Debbie Chaffin has already
25 testified in this case today?

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1 A: I have no idea if she has or she hasn't. I've been
2 incarcerated, sir.

3 Q: Would it surprise you if her testimony was that she never
4 saw you or Ashley?

5 A: Yeah, I know she didn't see us.

6 Q: Would it surprise you if Jeanette Andrews, who you picked
7 the keys up from testified in this case? And would it
8 surprise you if she said she never saw a male, especially not
9 James Hagan that day?

10 A: I mean, like I said, what other people do or don't do, I
11 don't know what they saw. I can't tell you. I only know that
12 when he started working, we worked together. If that was his
13 first day, then he was with us. If it wasn't, then I don't
14 know.

15 Q: So, if it wasn't his first day, then he was with you but
16 you're not sure if it was on the 16th, like you said in your
17 sworn affidavit.

18 A: Exactly. Based on what I was told his date of employment
19 started.

20 Q: Ms. Bowles, you also have a criminal record like Ashley
21 Henry, don't you?

22 A: Yes, sir, I do.

23 Q: In 2008, you were convicted of receiving stolen goods?

24 A: Uh-huh (affirmative response).

25 Q: That means you had in your possession items from other

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1 people that weren't yours?

2 A: I had -- was driving a vehicle that had a license plate in
3 its trunk that was considered stolen.

4 Q: Why did you have someone else's license plate?

5 A: I didn't. I was driving a vehicle that didn't belong to
6 me that had it in the trunk.

7 Q: In 2009, you were convicted of grand larceny ---

8 A: Yes.

9 Q: --- which again is stealing, between the values of 1,000
10 and 5,000, correct?

11 A: Yes, sir.

12 Q: And you were given eighteen months plus ATU treatment.

13 A: Yes.

14 Q: And that's for addiction?

15 A: Yes.

16 Q: In 2012, you pled guilty to burglary second degree,
17 nonviolent.

18 A: Uh-huh (affirmative response).

19 Q: And also conspiracy?

20 A: Yes.

21 Q: So, you're also a burglar?

22 A: If you want to say that, yes.

23 Q: And you were given Drug Court in that case, correct?

24 A: Yes.

25 Q: We talked a little bit about Drug Court already. How did

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1 you do in Drug Court?

2 A: I was in it for fourteen months. I had a few relapses and
3 I missed a Saturday test and I was gonna be punished with jail
4 time and I had very little left on my sentence, so I got
5 terminated.

6 Q: A few relapses. How about January 22nd, 2013, you tested
7 positive for Oxycodone?

8 A: I had four positives; that's a few relapses.

9 Q: Also, March 12, 2013, you tested positive for Oxycodone.

10 A: Uh-huh (affirmative response).

11 Q: And April 17th, 2013, you tested positive for Oxycodone.

12 A: Uh-huh (affirmative response).

13 Q: And April 23rd, you didn't follow the Drug Court policy
14 and you tested positive for Oxycodone?

15 A: No, you'd be mistaken. They said -- I followed policy
16 that they said that I shouldn't have taken the medication that
17 the hospital gave me and that's how I tested positive.

18 Q: Would it surprise you if the report said Mr. Bowles went
19 to the hospital but did not follow the Drug Court medical
20 policy?

21 A: No, I've been terminated, I know exactly what this paper
22 says.

23 Q: But you just said you did follow it.

24 A: I followed what I was told to do. They said I didn't
25 follow it.

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TONYA BOWLES - CROSS BY MR. HOLFORD

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1 Q: And you were allowed to remain in the program after that,
2 weren't you?

3 A: Uh-huh (affirmative response).

4 Q: Then on July 20th, you failed to provide a urine sample;
5 that was considered a fifth positive test.

6 A: Yes.

7 Q: And then July 23rd, you didn't report to your required
8 treatment session; is that correct?

9 A: No, I reported, but I was late and so I turned myself in
10 because that would've been considered a missed treatment.

11 Q: How about the fact that you actually reported a day later
12 on July 24th, 2013 and that's when you were taken into
13 custody?

14 A: No, I reported that night but I had to sit outside and
15 wait.

16 Q: So, you waited ---

17 A: And I was told to return to court the next day.

18 Q: What time does court start?

19 A: Four o'clock.

20 Q: So, you waited from four o'clock until the next day?

21 A: I did but my drug director told me to do. She said be at
22 court at four o'clock.

23 Q: But this says you missed that particular ---

24 A: Yeah, I did -- I told you one minute late is a missed
25 treatment. It's a no-show.

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TONYA BOWLES - REDIRECT BY MS. KNOWLES

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1 Q: You're telling me one minute late is a no-show?

2 A: It's a new rule; yes, sir, it is.

3 Q: Is it not correct that fifteen minutes late, you can still
4 show up?

5 A: Not anymore; it's a new rule. Check with Drug Court.

6 Q: I will. And then on August 7, 2013, you were terminated
7 and discharged from Drug Court?

8 A: Correct.

9 Q: And that's why you sit here today?

10 A: Yes, sir.

11 MR. HOLFORD: Your Honor, I have no further questions.

12 THE COURT: Redirect.

13 MS. KNOWLES: Thank you, Your Honor.

14 REDIRECT EXAMINATION OF TONYA BOWLES BY MS. KNOWLES:

15 Q: Ms. Bowles, you can't remember exactly the date because of
16 your hectic schedule you stated?

17 A: Yes.

18 Q: But you did give a statement to law enforcement in August
19 of 2012 whenever this incident allegedly took place, didn't
20 you?

21 A: Yes, ma'am.

22 Q: You want to take a look at what you said in your
23 statement?

24 A: Sure.

25 Q: I think there was some confusion because you had made a

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1 second statement to me.

2 A: Yes. This is -- this is what I originally said because it
3 was fresh and after what this incident happened.

4 Q: And what was that?

5 A: That I worked for Platinum Plus Services; that James Hagan
6 worked with myself and Ashley Henry. We work as a team to
7 clean condos. We all ride together to and from work. Our
8 scheduled times and day varies so our job can provide dates of
9 our services. Our employer states that James Hagan started
10 work on August 16th per the detective. And the -- it's got --
11 Terry Elliott is the detective.

12 MS. KNOWLES: Your Honor, at this time, I would offer the
13 statement into evidence.

14 THE COURT: Any objection?

15 MR. HOLFORD: No objection, Your Honor.

16 THE COURT: Without objection it will be admitted. Has
17 it been marked?

18 MS. KNOWLES: No, it has not; sorry.

19 THE COURT: Please mark it.

20 DEFENDANT'S EXHIBIT NUMBER FIVE

21 ADMITTED INTO EVIDENCE

22 MS. KNOWLES: And can I publish it to the jury?

23 THE COURT: Yes, ma'am.

24 BY MS. KNOWLES:

25 Q: Now, Ms. Bowles, on August 16th, do you remember an

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TONYA BOWLES - REDIRECT BY MS. KNOWLES

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1 incident or -- on August 16th, an incident involving a hermit
2 crab and Ms. Andrews? Does that ring a bell?

3 A: I do not know that it was the August 16th but I do
4 remember that there was a day that we were cleaning in North
5 Myrtle Beach and there was a missing hermit crab in one of the
6 condos and we were instructed to find it.

7 Q: And who instructed you to do that?

8 A: Whoever our supervisor for that day was called us on the
9 phone.

10 Q: And again, you didn't always see Ms. Andrews and report to
11 her, did you?

12 A: No, once we got keys for our locations that we had to
13 clean, we didn't see anyone else throughout the day until we
14 turned in the keys and sometimes we turned the keys into a
15 drop box so we never saw anybody when we left.

16 Q: And sometimes, she would give the keys to you or different
17 individuals?

18 A: Yes, ma'am.

19 Q: And to your knowledge, has my client James always worked a
20 full-time job?

21 A: Yes, ma'am.

22 Q: And never -- was there a time throughout the investigation
23 of this case, did Detective Elliott or any other detectives
24 come to your home?

25 A: I met with Detective Elliott at Ashley Henry's house and

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1 then Detective Elliott actually arrived at my house on two
2 separate occasions to question me but I was not home.

3 Q: And who did he talk to?

4 A: My mother-in-law.

5 Q: And what did she say about what he said?

6 A: That he was there to question me, that he thought that I
7 was being dishonest and that he could get me for perjury.

8 Q: And that was after you had made a statement in writing?

9 A: Yes.

10 Q: And you were being fully cooperative?

11 A: Yes, ma'am.

12 Q: And as far as Drug Court goes, that is a strict program,
13 isn't it?

14 A: Yes, ma'am.

15 Q: Tell me how strict it is.

16 A: It's extremely strict. I had to do drug tests on Tuesday,
17 Thursdays, randomly on Saturdays. I had to attend two self-
18 help meetings, Monday -- I mean, Tuesdays and Thursdays and
19 because of my relapses, I had to attend a special class on
20 Wednesdays. We had to do three self-help meetings a week,
21 which was NAs or AA meetings. Because of my screw-ups, I had
22 a 9:30 curfew at night. I mean, it was very strict.

23 Q: Essentially, you had something to do every day of the
24 week?

25 A: Yes, ma'am, plus we had to work a full-time job.

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TONYA BOWLES - REDIRECT BY MS. KNOWLES

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1 Q: Okay. And you voluntarily left the program, correct?

2 A: Well, I -- I made my slip and so I told Candy that -- and
3 they ---

4 Q: You wanted to finish your sentence?

5 A: Yes. And so we terminated me.

6 Q: Okay.

7 A: Based on my violations.

8 Q: Because with Drug Court what happens, they suspend a
9 sentence; is that right?

10 A: I had a one-year sentence, it was suspended to completion
11 of Drug Court.

12 Q: Okay.

13 A: And I had 140 days in on the sentence. So, to me, having
14 a -- being bumped back again till February graduation, it was
15 easier to complete my sentence and then be able to have all
16 this behind me and start my future.

17 Q: And as far as you know, it's your testimony that my client
18 was with you and Ms. Henry cleaning condos per your statement
19 on August 16th?

20 A: Like I said, if that is his first date of employment -- I
21 don't know that, that's why I said you needed to check with
22 our employer but based on that, if they say that was his first
23 day, then yes, I know he was with us that day.

24 Q: Let me ask you like this, You made a statement on August
25 16th or the month of August ---

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1 A: Right.

2 Q: --- whenever this allegedly happened and your statement
3 would've been at that moment accurate?

4 A: Yes.

5 Q: Thank you. No further questions.

6 THE COURT: You may recross.

7 RECROSS EXAMINATION OF TONYA BOWLES BY MR. HOLFORD:

8 Q: You said your statement at that time would've been
9 accurate, correct?

10 A: Correct.

11 Q: But that's not your statement today, is it?

12 A: It -- my statement isn't changing. Maybe I'm not wording
13 it correctly. I don't understand but -- no, my statement
14 isn't changing. It's been the same the whole time through.

15 Q: So, he was with you on August 16th of 2012, because that's
16 what your sworn affidavit says.

17 A: Based on what I was told -- my employer stated his first
18 day of work was, yes, to my knowledge he worked that day.

19 Q: And so if both your employers came in and said that they
20 never saw him ---

21 A: Well, she said then she didn't see him. She told us then
22 she never physically saw him but she had that as his first day
23 of employment and he was paid for that day.

24 Q: He was paid for a week, actually, not a day.

25 A: Well, that was the first date of his employment is what

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1 she had stated and that he was paid for that day; that's all I
2 can say.

3 Q: The week he was paid for started on the 13th, correct,
4 August the 13th?

5 A: How would I know that, I mean, I'm not -- how would I know
6 that?

7 Q: If you don't; you don't. I have no further questions.

8 THE COURT: Ma'am, you may step down.

9 A: Thank you.

10 MR. HOLFORD: Your Honor, may we approach?

11 THE COURT: Yes.

12 (REPORTER'S NOTE: A bench conference was held off the record
13 in the presence of the jury but out of hearing of the jury.)

14 THE COURT: All right. The Defense may call its next
15 witness.

16 MS. KNOWLES: Your Honor, at this time, the Defense would
17 rest.

18 THE COURT: All right. Ladies and gentlemen, that
19 completes the presentation of evidence by the Defense.

20 Does the State have any motions at this time?

21 MR. HOLFORD: Your Honor, the State has no motions.

22 THE COURT: All right.

23 At this time, the State has the right to call witnesses
24 in reply if you wish to do so. Do you wish to call any
25 witnesses in reply?

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CANDY DEBUSK - REPLY DIRECT BY MR. HOLFORD

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1 MR. HOLFORD: Yes, Your Honor.

2 THE COURT: All right. You may call a reply witness.

3 MR. HOLFORD: Your Honor, the State calls Candy DeBusk.

4 THE COURT: Ma'am, if you would, come forward to be sworn
5 at the Clerk of up here. Thank you.

6 CANDY DEBUSK, HAVING BEEN SWORN,

7 TESTIFIED AS FOLLOWS:

8 THE COURT: Have a seat in the witness stand, ma'am, and
9 once you're seated, state your name for me.

10 MS. DEBUSK: Candy DeBusk.

11 THE COURT: Thank you.

12 Counselor, your witness.

13 DIRECT REPLY EXAMINATION OF CANDY DEBUSK BY MR. HOLFORD:

14 Q: Good afternoon, Ms. DeBusk -- or morning still.

15 A: Good morning.

16 Q: Will you introduce yourself to the jury.

17 A: Sure. I'm Candy DeBusk. I'm the Director for the
18 Fifteenth Circuit Drug Court here in Horry and Georgetown
19 County.

20 Q: And do you know Ashley Henry and Tonya Bowles?

21 A: Yes, I do. Tonya Bowles was a client in Drug Court and
22 Ashley Henry currently is a client.

23 Q: And you say Tonya was a client. Why would you say was?

24 A: Tonya was terminated from Drug Court I think maybe two
25 weeks ago. I can give you the exact date. But she is no

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1 longer in Drug Court.

2 Q: And why was she terminated?

3 A: A variety of reasons, testing positive -- I think she had
4 up to four positive tests -- not showing up for a required
5 treatment session, not being home for a curfew check. We had
6 a termination hearing and at that time it was her
7 noncompliance over her history in Drug Court, she was
8 terminated.

9 Q: And how about Ashley Henry, how has she been in Drug
10 Court?

11 A: Ashley had some problems earlier on. She had, I want to
12 say, two positive tests, I have -- there's -- I can get the
13 information if you need it -- but for not showing up. When
14 someone doesn't show up for a test, we have to consider that a
15 positive test. She's also had a curfew -- multiple curfew
16 violations.

17 Q: Ms. DeBusk, did you provide me with Community Supervision
18 Reports for both these individuals?

19 A: Yes, I did.

20 Q: And if I approach you and hand to you what you provided
21 me, would you be able to identify it?

22 A: Yes.

23 Q: Can you identify what I've just handed you as State's
24 Exhibit Six without reviewing the contents?

25 A: Sure. This is just a list of any noncompliance that a

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1 client has had while they've been in the program or any
2 sanctions that our judge has had to -- or any noncompliance
3 that our judge has had to issue any sanctions on.

4 Q: And did you compile this report for me?

5 A: Yes, I did.

6 Q: Is it a true and accurate reflection of the violations?

7 A: Yes, it is.

8 Q: Of who?

9 A: Both Ashley Henry and Tonya Bowles.

10 MR. HOLFORD: Your Honor, at this time, I'd offer State's
11 Six in evidence.

12 THE COURT: Any objection?

13 MS. KNOWLES: I just want to take a quick look.

14 THE COURT: All right. Please -- allow her to see that,
15 please. Thank you.

16 Any objection?

17 MS. KNOWLES: No objection.

18 THE COURT: Without objection, they'll be admitted as
19 they've been marked. You may proceed.

20 STATE'S EXHIBIT NUMBER SIX

21 ADMITTED INTO EVIDENCE

22 MR. HOLFORD: Your Honor, may I publish this to the jury?

23 THE COURT: You may.

24 BY MR. HOLFORD:

25 Q: Now, Ms. DeBusk, you obviously know Ashley and Tonya very

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1 well, don't you?

2 A: I would say so.

3 Q: Through the program?

4 A: Yes.

5 Q: They've been in it since ---

6 A: I think Ashley entered in February in 2008 -- not 2008 --
7 2012. I think Tonya was with us for about a year, so...

8 Q: And do you know how close Tonya and Ashley are?

9 A: I would say they are -- they were working together. They
10 also lived together for a period of time.

11 Q: So, they worked and lived together?

12 A: Uh-huh (affirmative response).

13 Q: Do you consider them friends?

14 A: Yes, I would say they both have said that they were
15 friends to me.

16 Q: And do you know Ashley's relationship to the Defendant in
17 this case?

18 A: They're married.

19 Q: Thank you, Ms. DeBusk. I have no further questions.

20 A: Okay.

21 THE COURT: You may cross examine.

22 REPLY CROSS EXAMINATION OF CANDY DEBUSH BY MS. KNOWLES:

23 Q: Ms. DeBusk, where were you on August 16th, 2012 -- in the
24 month of August last year?

25 A: I'm not sure.

1 Q: Presumably at work?

2 A: I would assume so.

3 Q: You weren't in the Nichols section of Horry County, were
4 you?

5 A: I don't think so.

6 Q: Okay. And Ashley has children, doesn't she?

7 A: Yes.

8 Q: And she also works?

9 A: Yes.

10 Q: So, could the combination of those two things have
11 factored into the curfew problems?

12 A: I don't know Ashley's reasons but I'm sure that could've
13 contributed to any noncompliance that she had.

14 Q: And she still in the program?

15 A: She is.

16 Q: And she's never had an actual positive drug screen?

17 A: Would it be okay to look at the sheet?

18 Q: Yes.

19 A: No, she -- the way we work with Drug Court is that if a
20 client doesn't show or they can't provide a urine, we have to
21 consider that a positive test.

22 Q: Okay. And as far as the requirements go, you require them
23 to report somewhere practically every day, don't you?

24 A: They're at the Drug Court office here in Conway initially
25 in the beginning, three times a week for treatment. They have

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CANDY DEBUSK - REPLY CROSS BY MS. KNOWLES

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1 self-help meetings that they attend and court sessions.

2 Q: So, then if you have children and you're working a job,
3 the stringent requirements of Drug Court, that could be a
4 problem?

5 A: It could be problem, it's just we don't allow -- we still
6 require them to be where they need to be. That's why we have
7 sanctions that we impose if they're not where they're suppose
8 to be.

9 Q: But she -- Ashley is still in the program?

10 A: Uh-huh (affirmative response).

11 Q: And didn't Ms. Bowles request to be terminated?

12 A: I -- I would have to look at the court record. Ms. Bowles
13 didn't report for a drug test and then didn't report for a
14 treatment session and wasn't home for a curfew check. And
15 then she came to court, I think she -- under the understanding
16 that she was gonna be taken into custody. I don't know if she
17 actually requested to be terminated but ---

18 Q: Okay. And back in August of 2012, was she in the program
19 at that time?

20 A: Tonya?

21 Q: Tonya.

22 A: I would have to check actually my records with her when
23 her entry date was. I -- August of 2012, I'm not exactly
24 sure. I think she was with us for a year when she was
25 terminated, so I would ---

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CANDY DEBUSK - REPLY REDIRECT BY MR. HOLFORD

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1 Q: When was her first problem in Drug Court

2 A: Tonya? January 1st, 2013 was her first issue.

3 Q: Okay. So, then August 2012, she was doing fine?

4 A: Tonya Bowles?

5 Q: Uh-huh (affirmative response).

6 A: If she was in Drug Court, she was. I just have to look
7 and see when she actually started.

8 Q: Okay. And I'll give this back them. Thank you, ma'am. I
9 have no further questions.

10 THE COURT: Anything further of the witness?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: All right.

13 REPLY REDIRECT EXAMINATION OF CANDY DEBUSH BY MR. HOLFORD:

14 Q: If Tonya Bowles pled guilty on June 12, 2012, how long
15 would it take her to enter the program?

16 A: She typically would start the following Wednesday.

17 Q: So, she would've been in either June or July of 2012?

18 A: I -- I can find out for sure but I would assume --
19 usually, if the client pleads, they report to Drug Court the
20 following Wednesday after the plea. So, it -- I would assume
21 that she would've been in in August.

22 Q: And if both Ashley and Tonya said in court today here that
23 James was with them on August 16th, 2012, when he in fact was
24 not, would that be perjury?

25 A: I would -- I would assume so.

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1 Q: If they're under oath in court?

2 A: I would think so.

3 Q: And would that be a violation of their Drug Court terms?

4 A: It would definitely be looked at and we would take that in
5 review. Any type re-arrest or new charges, we consider for a
6 review for termination. We would discuss that with the Drug
7 Court team and our judge.

8 Q: Thank you. No further questions.

9 THE COURT: Anything further?

10 REPLY RECROSS EXAMINATION OF CANDY DEBUSK BY MS. KNOWLES:

11 Q: You stated that Ashley and Tonya were living together?

12 A: They were.

13 Q: And why was that, do you know?

14 A: Tonya -- Ashley had some problems with her father and had
15 to move out and she moved in with Tonya.

16 Q: So, it was out of necessity, okay. All right. Thank you,
17 ma'am.

18 THE COURT: All right, ma'am; you may step down.

19 A: Thank you.

20 THE COURT: Thank you.

21 State wish to call additional witnesses in reply?

22 MR. HOLFORD: Nothing further, Your Honor.

23 THE COURT: All right. Ladies and gentlemen of the jury,
24 that completes the presentation of evidence in this matter.

25 At this time, I have to take up some matters with the

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MOTIONS

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1 attorneys and so I'm going to ask you again to step back to
2 the jury room and not begin any discussions about the case
3 until I've asked you to do so. You may retire to the jury
4 room.

5 (REPORTER'S NOTE: The jury retires to the jury room. 11:14
6 A.M. The following takes place outside the presence of the
7 jury.)

8 MOTIONS:

9 THE COURT: All right. Motions from the Defense? Do you
10 wish to renew your motions?

11 MS. KNOWLES: Yes, sir.

12 THE COURT: All right. The record will reflect then that
13 your motions have been renewed and the Court would make the
14 same rulings.

15 Now, normally, the State can open on the law and then
16 close after the Defense. How do you wish to proceed?

17 MR. HOLFORD: Your Honor, I'd just reserve for last ---

18 THE COURT: So, you're waiving your initial argument?

19 MR. HOLFORD: Yes, Your Honor.

20 THE COURT: All right. Do you want a few minutes before
21 we begin closing arguments?

22 MS. KNOWLES: Sure.

23 THE COURT: All right. We'll take about a five-minute
24 break and then we'll get started. Court's in recess.

25 *****OFF THE RECORD*****

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BY THE COURT

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1 (On the Record. 11:25 A.M.)

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Are there any specific requests
5 for the Court to charge from the State?

6 MR. HOLFORD: Nothing other than the normal charges, Your
7 Honor.

8 THE COURT: Any from the Defense?

9 MS. KNOWLES: No, sir.

10 THE COURT: Okay. Well, you reserve your rights to
11 object to the charge once I've completed it or ask for
12 additional charges, so we'll take that up at that time.

13 State ready to go forward at this time?

14 MR. HOLFORD: Yes, Your Honor.

15 THE COURT: Defense ready?

16 MS. KNOWLES: Yes, sir.

17 THE COURT: Bring the jury in.

18 (REPORTER'S NOTE: The jury returns to the courtroom. 11:27
19 A.M. The following takes place in the presence of the jury.)

20 THE COURT: All right. The record will reflect that the
21 jury has returned to the courtroom and when you left earlier,
22 we had completed the presentation of evidence in this case. I
23 told you when we began the trial that once we completed the
24 evidence that they attorneys would be again given an
25 opportunity to directly address you and at this time we'll

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CLOSING BY MS. KNOWLES

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1 proceed with the closing arguments or statements. The Defense
2 will be going first.

3 Ms. Knowles, you may proceed.

4 MS. KNOWLES: Thank you, Your Honor.

5 CLOSING BY MS. KNOWLES:

6 MS. KNOWLES: Ladies and gentlemen, I told you at the
7 very beginning of this trial that you were going to be twelve
8 ministers of fairness on a great ship called justice. I told
9 you to not let yourself get lost in the sea of surmise and
10 conjecture which is the State's case. I told you in order for
11 my client to be found guilty, you would have to be willing to
12 condemn him based upon suspicion, speculation and guesses.
13 And I think that the only thing that the State's -- I think
14 the only thing that the State's evidence has shown here today
15 was that I was right in making that assertion because let's
16 remember who has the burden of proof here. It's on the State.
17 It's not an easy one to bear. It's proof beyond a reasonable
18 doubt.

19 Let's take a look at what the elements are for burglary
20 in the second degree. The first is entering a dwelling of
21 another without consent; the second, with the intent to commit
22 a crime therein. I'm sorry, ladies and gentlemen, but I fail
23 to see where the State has proven beyond a reasonable doubt
24 that very first element of entry. There's no solid evidence
25 to support that my client ever entered that home. And without

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CLOSING BY MS. KNOWLES

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1 that very first piece of this puzzle, the case is closed, your
2 analysis is done.

3 Now, the State has seemed to have made a big deal about
4 my client's guilty plea in Magistrate's Court to malicious
5 damage to property but if that is a key piece of evidence for
6 the State, then it has a problem. Your decision should be an
7 easy one here today. Detective Elliott told you on the stand,
8 a man with twenty-eight years experience in law enforcement,
9 that that plea alone is no evidence of burglary. He told you
10 that my client received a time-served sentence and was ordered
11 to pay restitution which he knows was paid.

12 I think we all know that sometimes people make split
13 second decisions when they feel that they are left with very
14 little options or no options at all. I have to tell you in
15 all honesty, I may well have made the very same decision that
16 James made. If I were faced with the same situation and I was
17 proposed an outcome of no jail time and a guaranty that I
18 would be able to go home to my family, I probably would've
19 done the same thing. You heard the circumstances that
20 surrounded that plea. James had initially requested a jury
21 trial there in Magistrate Court. Unfortunately, he arrived
22 late after misplacing his notice for court and when he
23 arrived, he had already -- the case had already been handed to
24 the jury for deliberation. That meant he already missed his
25 opportunity to put up any argument, any cases -- or any

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CLOSING BY MS. KNOWLES

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1 argument and any defenses, excuse me. The Judge told him he
2 could choose between one or two options. He either could take
3 his chances with the jury without having had a chance to put
4 up his case or his defense and she would sentence him
5 accordingly or he could plead guilty and she would sentence
6 him to a time-served sentence and order restitution.
7 Ultimately, he chose the lesser of two evils and who could
8 blame him. James is not an attorney and he was without me
9 when he made that decision. He never imagined that would be
10 something that would come back to haunt him here today that
11 the State would use that as evidence against him. He just
12 wanted to make the right decision for himself and his family
13 choosing an option that would immediately send him home.

14 Let's not forget who was also charged with this same
15 crime, Charles Hagan, the same man that received a
16 probationary sentence, no jail time, for his testimony
17 yesterday. A man who testified he felt pressured and he felt
18 coercion from law enforcement to tell them what they wanted to
19 hear. He felt as if he had to come and testify yesterday or
20 he very well could lose his -- custody of his daughter.
21 When asked if he'd been threatened in any way, I believe his
22 words were something like this, the law works in mysterious
23 ways, they have their ways and no one is going to put my
24 daughter in jeopardy.

25 Let's look at his voluntary statement that was made

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1 shortly after August 16th, his written account of what
2 happened. It was, I never knew of James breaking into any
3 homes. I also, by Mr. Elliott, had been asked to state he
4 never sold anything. Ladies and gentlemen, if anyone
5 committed a burglary at this residence, it was this man. The
6 evidence is without question, the strongest against Charles
7 Hagan; certainly not my client James. Charles is the one
8 that's caught at the scene by the Complainant Zack Elliott.
9 Charles is the one who lies, tells him he was lost, looking
10 for Highway 9, only to peel out of that driveway and get away
11 from the scene as fast as he could. Remember, too, that Mr.
12 Elliott testified that items had been stacked near the rear
13 door. The same rear door of the carport that Charles Hagan's
14 vehicle was backed up into. Zack Elliott testified that he
15 thought he heard someone inside but never saw anyone.

16 I mean no disrespect to Mr. Elliott but there is no proof
17 to support his suspicion. What he heard could have very well
18 and could've very easily been one of two unsecured doors
19 slamming open and shut. He testified that the front door was
20 left unlocked and the forcible entry had been made to the rear
21 door.

22 What else did Charles tell you? You heard him yesterday
23 tell you that there was pressure to provide his nephew's name.
24 The police didn't seem to want to accept the original story
25 that he gave them that no one was with him. It was evident

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1 from the outset that the police did not want the evidence to
2 tell the story here to lead them to the real culprit, the
3 person who they could establish guilt beyond a reasonable
4 doubt based on solid evidence that was collected from the
5 scene. The little bit of evidence that they have here has
6 been shaped and molded to fit their version of what happened.

7 For example, let's look at the unreliable identifications
8 that were made by Ms. Collins and Mr. Alexander done some
9 thirty-three days after the alleged crime. Observations that
10 were made, a considerable distance from the person that they
11 claim to be my client and was done over the course of a couple
12 of minutes. How could those factors be considered reliable?

13 You heard Officer Smith testify she was well trained in
14 the area of fingerprint recovery. And she dusted the crime
15 scene for prints, she was unable to locate one single print,
16 not even a partial. I find that to be fascinating. And I say
17 that because she also testified that the place had been
18 ransacked. Items had been moved from one place within the
19 home to the rear door. The victims told her they weren't
20 responsible for that. Forcible entry was made. Items strewn
21 all about. These specific items stacked up near the rear door
22 and no physical evidence left behind whatsoever. I didn't
23 hear any testimony about footprints leaving the scene but
24 that's the manner in which this suspect fled the scene.

25 Essentially, what we have here is the word of a man who

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1 was sought out and who would've said anything that he could
2 and said anything that he thought the cops wanted to hear that
3 would get him out of the predicament he put himself in even if
4 that meant bringing down an innocent family member, my client.
5 You've heard testimony here today that he was on the job
6 whenever this happened. This is exactly where he told law
7 enforcement he was when the crime took place and they
8 questioned them. He has a paycheck to prove it. This is not
9 only his word but it's the word of his wife and Ms. Bowles.
10 You heard from both of those witnesses here today. Three of
11 them were working together cleaning condos in North Myrtle
12 Beach.

13 Now, what did Ashley Henry tell you, my client's wife?
14 She testified that she has way too much to lose here today if
15 she's found to be lying. She has two children to support.
16 She's told you that she's changed her life around since 2009
17 whenever she was convicted of the charges that she's in Drug
18 Court now for. She's been clean and sober for two years.

19 What did Tonya tell you? This is a witness that has no
20 stake in any of this. She has no reason to lie. James' first
21 day, according to her on the job, per her employer, was August
22 16th whenever this happened.

23 And finally, ladies and gentlemen, I have to make an
24 admission. I am not a seasoned trial attorney by any means.
25 So, James did not win the lottery in that respect. I have

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1 been working at the Public Defender's office for about six
2 years and during those six years, I have been in plea court
3 practically, probably ninety percent of my time if not ninety-
4 five. So, I've had the easy way out until today. But I say
5 that to say this, don't let my inexperience and lack of trial
6 experience influence your decision or cloud your judgment in
7 any way. Let the facts and evidence speak for themselves. I
8 may not be Johnnie Cochran, so to speak, for Horry County. I
9 definitely am not even as eloquently spoken as Mr. Holford,
10 but I hope that you have been able to see with my assistance
11 the problems that the case has -- that the State has in this
12 case. More importantly, I hope that I've shown you that this
13 case is riddled with reasonable doubt. And it is for that
14 reason that I ask you to do what is right and just here and
15 that is to return a verdict of not guilty.

16 Thank you.

17 THE COURT: Yes, sir, Mr. Holcomb. You may proceed for
18 the State.

19 MR. HOLFORD: Thank you, Your Honor. May it please the
20 Court?

21 THE COURT: Yes, sir.

22 CLOSING BY MR. HOLFORD:

23 MR. HOLFORD: Ladies and gentlemen, I normally don't do
24 this because I don't like for jurors to know how inexperienced
25 I am. Ms. Knowles said she's been the with the Public

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1 Defender's office for six years. I've been a prosecutor for
2 less than one but here's what I know. I know when the facts
3 point one direction to James Hagan, that he's guilty. And
4 that's what I'm gonna talk about. I'm gonna talk about the
5 facts.

6 So, what do we have? Let's start with his witnesses. He
7 had two witnesses testify on his behalf, both of which have
8 committed burglary, both of which have committed grand larceny
9 or stealing. So, what we have is two burglars testifying for
10 another burglar. Ashley Henry is married to the Defendant.
11 You want to talk about credibility and bias, why would she
12 take the stand and tell a story like that? She doesn't want
13 her husband to go to jail.

14 Tonya Bowles, a good friend of Ashley Henry, they met in
15 Drug Court after they both were convicted. They became
16 friends, they lived together. Tonya wrote a statement that
17 said, yeah, James was -- he was working with us that day. But
18 what you hear from two independent witnesses who have no stake
19 in this, none whatsoever. You heard from Michelle Collins and
20 William Alexander, employees at Anderson Oil Company, less
21 than half a mile from where the burglary
22 occurred. And what did they tell you? Michelle Collins said,
23 I can't say it's James Hagan, I don't know him. She's not
24 making up a story, but what did she tell you. She saw a white
25 male, semi-muscular build, shaved bald head, same as he's got

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1 today. He had a blue shirt which he was carrying at the time
2 and khaki shorts. Now, who does that match with, Billy or
3 William Alexander. He was working at the same oil company, he
4 didn't know James, has no reason to testify against him. But
5 what he does know is what he saw that day on August 16th, 2012
6 at about 12:30, he saw a white male, semi-muscular build, with
7 a shaved bald head. He did research on his own. He looks
8 through the computer, he says, he says, you know he has family
9 members who get in trouble, he didn't need to tell you that
10 but he said he looks through the computer on his own. Police
11 didn't contact him, didn't ask him to. And what did he find?
12 He found a picture of the man that he saw. He signed it
13 saying this is who I saw. That's James Hagan. And he brought
14 that to the police. And then what did he tell you in court
15 today? That man right there, the Defendant, that's the man I
16 saw. He's the one who was walking down the road with a blue
17 shirt and khaki shorts and got picked up in a white Ford
18 Taurus. Now, how does a white Ford Taurus come into play.
19 You heard from Zack Elliott who was at the scene of his home
20 living with his mother, Dana Enzor, that he walked up on a
21 lunch break, sometime around 12:00, 12:30. And what did he
22 see? He saw a white Ford Taurus, license plate . At
23 the time, he heard someone else inside. It couldn't have been
24 Charles, Charles was sitting in the car. Someone else inside,
25 opened the front door and shut it, a distinct sound because of

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1 the metal door. Someone ran out the back. The back door was
2 busted, broken in. Not something you can do with your hands.
3 It must've been kicked in, pried, I don't know.

4 This Defendant told the Judge in Magistrates Court under
5 oath that he was the one on August 16th, 2012, at 12:30, that
6 he kicked that door, not Charles Hagan. There were two people
7 at the scene. Charles was in the white Ford Taurus; James was
8 inside the house. When Zack came up, James ran out the back.
9 And where was he picked up? Happened to be right in front of
10 Anderson Oil Company where two independent witnesses testified
11 they saw someone who looks just like James Hagan. And then
12 later, William Alexander was able to say, that's the guy.
13 Today, he was able to say that's the guy I saw get in the
14 white Ford Taurus. Now, what car did Charles show up to the
15 interview in? Same white Ford Taurus, license plate HUT457.
16 White Taurus is connected to the actual incident by Zack
17 Elliott. Charles Hagan was identified in court by Zack
18 Elliott but he wasn't the only one there. Someone else was
19 there.

20 When you saw Charles up on the stand, did he seem very
21 with me? No. He committed a crime as well by being there
22 while the burglary occurred. He's taking responsibility for
23 it. He pled guilty.

24 Now, let's talk about guilty pleas for a second. Many of
25 you probably haven't seen a guilty plea. What happens in a

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1 guilty plea is a solicitor, like myself, stands before a judge
2 presents the warrant or the indictment and the Defendant sits
3 over here. Judge goes through a litany of questions. Is
4 this free? Is this voluntary? Are you giving this statement
5 under oath? Are you being truthful with me? Do you waive
6 your right to counsel? Do you waive your right to confront
7 the witnesses against you? Do you waive your right to a trial
8 by jury? All those answers have to be yes. They have to be a
9 definitive yes. Under oath, this Defendant appeared in front
10 of a judge and under oath he said, I committed that crime.

11 Now, Ms. Knowles is correct that doesn't mean that he
12 committed the burglary but what does it mean? It means he
13 kicked that door and he was there that day. It means that
14 Tonya Bowles and Ashley Henry lied to you when they said he
15 was working because the Defendant himself has said to another
16 judge under oath that I wasn't working. I was at

17 and I kicked that door in and I plead guilty to that.
18 That's what you have to say during a guilty plea. You can't
19 just say, nah, I'm just pleading guilty because I want to go
20 home and see my children. If he had told to a judge, a judge
21 would not accept a guilty plea. You have to say you did what
22 you're accused of. That's how guilty pleas work.

23 That whole mess about a jury being out deliberating,
24 Defendant's don't have to appear for trial. They have the
25 right to sit at home and be tried in their absence. They

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1 don't have to present anything. In this case, he didn't show
2 up. No one testified of whether he lost his notice of not; I
3 don't know if that's true. Maybe he did, maybe he didn't. He
4 knew to be there at Court because he did show up and when he
5 showed up, by that time, they had given him plenty of time at
6 the start of the trial, the jury was deliberating, they
7 could've come back with a maximum sentence of thirty days.
8 When you go to jail and you serve time -- a lot of people
9 don't understand, when you're serving time in jail, you get
10 credit for the time you serve. And so, a thirty-day sentence
11 is usually somewhere around fifteen days, maybe sixteen. So,
12 if he'd have been found guilty by that jury, he might've had
13 to spend one or two more days in jail if he was given a
14 thirty-day sentence, the max. But what did he do instead? He
15 said I'm guilty and he even paid the restitution. He's paid
16 the victim back for kicking their door in.

17 Now, how do we know he entered? The house was in
18 disarray. A jewelry box was moved to the back door. The
19 Taurus was pulled up to the back door. What do you think was
20 gonna happen? The person inside, this Defendant, went in,
21 kicked that door in, put the jewelry box by the back door was
22 gonna put it in the car and ride off with Charles. You know
23 what happened, the problem here? Zack Elliott was lucky
24 enough to come home, maybe unlucky in his shoes. He told you
25 he was there, didn't know who was there, didn't know who was

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1 in his house. And then what happens? Someone flees. The
2 description that the police have is a white male, bald head,
3 blue shirt, khaki shorts in a white Ford Taurus, . The
4 same white Ford Taurus, the same description as the two
5 independent witnesses.

6 Now, Ashley and Tonya testified that he was working that
7 day, he must've been working that day. Tonya kind of waffled
8 on that. First she's given a sworn affidavit saying, I
9 definitely picked him up and then today she said, well, if
10 that was his first day then I picked him up but she didn't
11 swear that under oath. She's told two different stories here.

12 Who hasn't told two different stories and who has
13 maintained their stories all along are their bosses, Debbie
14 Chaffin and Jeanette Andrews. Debbie says I don't know; I
15 never saw him. I was told by Ashley Henry, the Defendant's
16 wife, that he did work that week. So, I paid him from August
17 13th to August 19th. Everyone else has said his first day was
18 the 16th. So, does that mean he worked every single day?
19 Obviously not; he didn't start until the alleged 16th and was
20 paid for the 13th through 19th. She took the word of one of
21 her employees, Ashley Henry, the Defendant's wife. And she
22 paid him because Ashley said he was working, the same story
23 she told you today but it doesn't match up with the evidence.
24 It doesn't match up with everyone else's testimony. It
25 doesn't match up with what we've seen. Jeanette Andrews, the

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1 one who checks the keys out, said yes, they pulled up in a
2 car, we met in a parking lot. Ashley got the key and there
3 was one other female in the car. She didn't know it was
4 Tonya, she just knew it was one other female, no men
5 whatsoever, not even a different man, let alone this
6 Defendant. She doesn't know James. She's never seen James.
7 He was not working that day. He was inside the house with the
8 intent to commit a crime.

9 Now, it's not necessary that the crime actually be
10 committed, it's just the breaking and entering with the intent
11 to commit a crime. The intent was to steal. The stealing was
12 interrupted when Zack Elliott came home. Ladies and
13 gentlemen, that is a burglary in the second degree. And I ask
14 that you find this Defendant guilty of the offense he
15 committed, the offense that his uncle has already pled guilty
16 to. Thank you.

17 CHARGE TO JURY:

18 THE COURT: Ladies and gentlemen, that completes the
19 closing arguments or statements made by counsel and I told you
20 that once we had reached this stage of trial, it would be my
21 obligation or duty to charge you concerning the law to be
22 applied in this case.

23 Now, the first thing I'm going to do is to go over with
24 you the indictment in this case. The indictment is the
25 document that brings the case into this Court and it informs

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1 us of the charge to be tried, it informs the Defendant of the
2 charge that's been lodged against him. In this case, the
3 indictment is in case number 2013-GS-26-268. The indictment
4 is for the offense of burglary in the second degree. The
5 indictment states that James Hagan did in Horry County, State
6 of South Carolina on or about August 16 of 2012 enter without
7 consent and with the intent to commit a crime therein the
8 dwelling of Dana Enzor located at in Nichols in
9 violation of Section 16-11-2 -- excuse me, 312 of the South
10 Carolina Code of Laws, 1976 as amended, against the peace and
11 dignity of the State and contrary to the statute in such case
12 made and provided.

13 I'm going to remind you that the fact that a Defendant
14 has been arrested, charged and indicted in the case is not
15 evidence in the case and it cannot be considered by you, the
16 jury, as evidence of guilt in this case. Nor does the
17 indictment or the charge create any presumption or inference
18 of guilt. This document is again simply the formal written
19 instrument that contains the charge against the Defendant.
20 It's the formal document that brings this case into this
21 court.

22 The Defendant has pled not guilty to the indictment and
23 under the law and the Constitution of this state and of the
24 United States, that plea places the burden of proof upon the
25 State. And it's the State's burden to prove the allegations

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1 contained in the indictment by proof beyond a reasonable
2 doubt. Now, a person who has been charged with the commission
3 of a criminal offense in South Carolina is never required to
4 prove himself innocent. It's an important rule of law that a
5 Defendant in a criminal trial, no matter what the seriousness
6 of the crimes might be, is always presumed to be innocent of
7 the crime for which the indictment has been issued unless
8 guilt has been proven to you, the jury, by evidence that
9 satisfies you of that guilt beyond a reasonable doubt.

10 The presumption of innocence has been described sometimes
11 like the robe that judge's wear into the courtroom. That
12 presumption of innocence is about the Defendant's shoulders at
13 the beginning of the trial and it continues throughout the
14 trial to be on his shoulders. It remains about his shoulders
15 as you enter your deliberations. It stays about his shoulders
16 until such time as it has been stripped from him by evidence
17 that satisfies you of the Defendant's guilt beyond a
18 reasonable doubt. The presumption of innocence therefore is
19 not just a legal phrase and it's not just a legal theory.
20 It's a substantial right that every defendant is entitled to
21 unless you, the jury, are satisfied from the evidence of the
22 Defendant's guilt beyond a reasonable doubt.

23 Now, you've heard me mention the phrase or the standard
24 of proof beyond a reasonable doubt several times already in my
25 charge and you may ask yourself, well, just what is meant by a

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1 reasonable doubt. What is a reasonable doubt? The law has
2 defined a reasonable doubt as that kind of doubt that would
3 cause a reasonable person to hesitate to act and the State has
4 the burden of proving the Defendant guilty beyond a reasonable
5 doubt.

6 Now, I don't want you to be confused by one thing that
7 could possibly confuse you. In civil cases, cases that come
8 before this Court where someone is seeking the payment of
9 money and that can be for such things as someone failed to pay
10 a debt or someone has breached a contract or someone has
11 injured someone else. Those are cases in which someone seeks
12 monetary damages, payment of money. Those are called civil
13 cases and in civil cases, the standard of proof is proof by
14 the greater weight of the preponderance of the evidence. So,
15 if you've heard that phrase before in a legal setting, that's
16 referring to a civil case. That's where the scales of justice
17 tilt ever so slightly in favor of either a Plaintiff or a
18 Defendant entitling that party to a verdict. So, that doesn't
19 apply in this case.

20 In a criminal case, the standard of proof is more
21 powerful than that. The standard of proof again, is proof
22 beyond a reasonable doubt. I will tell you that proof beyond
23 a reasonable doubt, that's the kind of proof that would leave
24 you firmly convinced of the Defendant's guilt. Now, there's
25 very few things in this world that can be proven beyond any

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1 doubt whatsoever and the State doesn't have that burden. They
2 do not have the burden to overcome every possible doubt. I
3 will tell you that if after your consideration of the
4 evidence, if you are firmly convinced that the Defendant is
5 guilty of the crime charged beyond a reasonable doubt, then
6 you must find the Defendant guilty. However, on the other
7 hand, if you think there's a real possibility that the
8 Defendant is not guilty, you must give the Defendant the
9 benefit of that doubt and find the Defendant not guilty.

10 At the beginning of the trial, I tried to explain to you
11 that you and I have different duties to perform. As the Trial
12 Judge, it's been my responsibility to rule on the
13 admissibility of evidence or the appropriateness of questions
14 that were being asked. I will tell you that you should only
15 consider the evidence before you that's been placed into the
16 record. If there was anything that I overruled or ordered
17 stricken or did not allow into the record, you should not
18 consider those matters at all in reaching a verdict. You must
19 disregard that information in its entirety. You are to
20 consider only the testimony that was placed into the record
21 from the witness stand, any exhibits that went into the record
22 through that testimony, and any exhibits that were made a part
23 of the record through the agreement of the attorneys.

24 I have also the additional duty to charge you concerning
25 the law that's applicable in this case. I told you at the

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1 beginning of the trial, the same rule of law that makes you
2 the sole judges of the facts makes me the sole judge of the
3 law. It's your duty as jurors to accept the law and apply the
4 law as I now state it to you. So, if you had an idea again as
5 to what the law is or what it ought to be, you should leave
6 those notions outside of the jury room before you begin your
7 deliberations and take the law exactly as I give it to you,
8 apply it to the facts as you determine those facts to be.
9 That should put you in a position to carry out your duties as
10 jurors in reaching a verdict in this case.

11 Now, I told you also that you are the sole and exclusive
12 judges of the facts in this case, I will again caution you,
13 don't take from anything that I say or do in the discharge of
14 my duties as a presiding officer in this case, to somehow
15 indicate to you that I have a preference one way or the other
16 as to how you determine the facts. I don't have a preference;
17 I'm not allowed one. I have no opinion as to how you should
18 determine the facts in this case.

19 Now, so therefore, you should not infer from anything
20 that I say or do in the discharge of my duties, again, to
21 indicate somehow that you think I may have an opinion on that
22 subject. The questions of fact are matters solely for you the
23 jury to determine. It's your duty as jurors to determine the
24 effect, the value, the weight and the truth of the evidence
25 that's been presented at this trial.

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1 Now, in doing so, you have the right to consider two
2 types of evidence and you may say, well, what do you mean by
3 two types of evidence. The types of evidence I'm referring to
4 is the law divides evidence into two basic categories. The
5 first is what we refer to as direct evidence. The second is
6 what we refer to as circumstantial evidence. Now, direct
7 evidence is the testimony of a person who claims to have
8 actual knowledge and fact about which that person is
9 testifying such as someone who is an eye witness, a person who
10 actually experienced the facts about which that person is
11 testifying. It's evidence which immediately establishes a
12 fact which is sought to be proven in any instance.

13 Now, circumstantial evidence is different from that.
14 Circumstantial evidence is proof of a chain of facts or
15 circumstances that indicate the existence of some other fact.
16 It's been described under the law as evidence which
17 immediately establishes collateral facts from which a main
18 fact might be inferred. Now, circumstantial evidence is
19 therefore based on inference and not on personal knowledge or
20 observation.

21 Now, those are a lot of fancy words about what
22 circumstantial evidence is and I like to give a very simple
23 example as to what might be meant by proof of a fact by
24 circumstantial evidence. Let's say last night, before you
25 went to the bed, you walked to the window in your bedroom

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1 looked out and the stars were shining and it's a beautiful
2 night perhaps and so you went to bed and you slept well all
3 night, didn't wake up at all. The next morning you walked
4 over to that same window and looked out. Now, the sun might
5 be shining that morning but you notice that all the trees have
6 water dripping from them. You notice that the grass in front
7 of the house is wet. There's puddles in the road or driveway
8 outside of the house that weren't there the night before.
9 Now, you slept all night; you didn't see it rain, you didn't
10 hear it rain, so you didn't directly experience that. But
11 from the facts that you know to be true, those collateral
12 facts, you could reasonably infer that at sometime during the
13 night it in fact rained. So, that's what we mean by proof of
14 collateral facts from which you can reasonably infer some main
15 fact. Circumstantial evidence is proof of a chain of facts or
16 circumstances that indicate the existence of a fact. It's
17 evidence which immediately establishes, again collateral facts
18 from which a main fact could be inferred.

19 Now, the law makes no distinction between the value or
20 the weight that you can give as jury to either direct or
21 circumstantial evidence. There's not a greater degree of
22 certainty required of circumstantial evidence than that of
23 direct, as jurors, as the sole judges of the facts, you should
24 weigh all of the evidence in this case, both direct and
25 circumstantial. And I will tell you again, after weighing all

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1 of the evidence in this case, if you're not convinced of the
2 Defendant's guilt beyond a reasonable doubt, you must find the
3 Defendant not guilty. However, on the other hand, if you are
4 firmly convinced of the Defendant's guilt beyond a reasonable
5 doubt, you must find the Defendant guilty.

6 Now, in doing your job as the finders of fact, I told you
7 earlier, it's gonna be necessary for you to decide the
8 credibility of the testimony that you've heard and that's what
9 credibility means. It means believability. It's your duty as
10 jurors to analyze and evaluate the evidence, determine which
11 evidence convinces you of its truth. In determining the
12 believability of the witnesses who testified in this case, you
13 as sole judges of the facts can believe one witness against
14 every other witness. You can believe all the others against
15 one. You have the right to believe all of, part of or none of
16 what a witness may have testified to in the case. You have
17 the right to consider whether any witness has exhibited to you
18 some type of bias, prejudice or other motive in the case. You
19 also have the right using your common sense to consider the
20 appearance and the manner of a witness in testifying from the
21 witness stand. Again, you are the sole judges of the facts,
22 therefore you have to be the sole judges of the credibility or
23 the believability of the testimony that you've heard during
24 the trial.

25 Now, I'm going to instruct you and I'm going to emphasize

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1 to you that the fact that the Defendant did not testify in
2 this case is not a factor to be considered by you in any way
3 in your deliberations and in your consideration of the
4 question of the guilt or innocence of the Defendant. It must
5 not be considered by you in any manner whatsoever. A
6 defendant has a constitutional right to remain silent. The
7 assertion of that right must not be considered by you in your
8 deliberations. I repeat to you that under your oath as
9 jurors, you are to draw no conclusion whatsoever from the fact
10 that the Defendant did not testify in this case. I will
11 instruct you that the fact that the Defendant did not testify
12 should not even be discussed by you in the jury room. The
13 burden of proof, as I have told you, is upon the State and
14 only upon the State. The Defendant is not required to prove
15 his innocence. The burden of proof remains upon the State and
16 that burden is to prove guilt beyond a reasonable doubt.

17 Now, I'm going to charge you that a person who is present
18 at the scene of a crime and intentionally or through a common
19 plan aided, abetted or assisted in the commission of that
20 crime through some overt act is guilty as an accomplice. To
21 be liable as an accomplice, the Defendant must have knowledge
22 of the principle's conduct. Mere presence at the scene of a
23 crime however is not sufficient to establish guilt as an
24 accomplice. Now, intentionally means willfully, intending the
25 result which actually occurs, not accidentally or involuntarily.

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CHARGE TO JURY

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1 I will also tell you that if a crime is committed by two or
2 more people who are acting together in the commission of a
3 crime that the act of one, under the law, is the act of all.
4 A person who joins with another to commit an unlawful act is
5 criminally responsible for everything done by the other person
6 which happens as a probable or natural consequence of the acts
7 done in carrying out the common plan or purpose. For example,
8 two people can be guilty of killing another person when only
9 one had a bullet and one had a gun and only one person fired
10 the shot. If the two people are acting together and are
11 together assisting each other in committing the offense, then
12 the act of one is the act of all. Sometimes it's referred to
13 as the hand of one becomes the hand of all or is the hand of
14 all.

15 Prior knowledge that a crime is going to be committed
16 without more is not sufficient to make a person guilty of that
17 crime. Mere knowledge that another person is going to commit
18 a crime, even if the Defendant is present when the crime is
19 committed is not sufficient to convict that person as a
20 principle. Guilt as a principle is shown by actual or
21 constructive presence at the scene as a result of a prior
22 arrangement. Therefore, a finding of a prior arranged plan or
23 common scheme is necessary for a finding of guilt as a
24 principle. The State must prove beyond a reasonable doubt by
25 competent evidence the theory of the hand of one is the hand

1 of all. A principle in a crime is one who either actually
2 commits the crime or who is present aiding, abetting or
3 assisting in the commission of the crime. When the person
4 doesn't act in the presence of and with the assistance of
5 another, the act is done by both. Where two or more acting
6 with a common plan or intent are present at the commission of
7 a crime, it doesn't matter who actually commits the crime, all
8 are guilty. The hand of one is the hand of all. Present at
9 the commission of a crime means to be sufficiently near so as
10 to aid, abet and assist in the commission of the crime.
11 Again, however, mere presence at the scene of a crime is not
12 sufficient to convict one as a principle on the theory of
13 aiding and abetting.

14 Intent is also a necessary element for there must have
15 been a common design or intent to commit the crime and the
16 crime must've been committed pursuant thereto with the person
17 aiding, abetting by some overt act. And intent means
18 intending the result which actually occurs, not accidentally or
19 involuntarily. Intent can be shown by the acts and conducts
20 of the parties and the circumstances from which you may
21 naturally and reasonably infer intent and the State must prove
22 those elements beyond a reasonable doubt.

23 Now, moving on to another issue in the case and that
24 issue is the identification of the Defendant as the person who
25 committed the crime. And I will charge you, the State has the

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1 burden of proving identity beyond a reasonable doubt. You
2 must be satisfied beyond a reasonable doubt of the accuracy of
3 the identification of the Defendant before you can convict the
4 Defendant. Identification testimony is an expression or a
5 belief or an impression by -- impression by the witness. You
6 must determine the accuracy of the identification of the
7 Defendant. You must consider the believability of the
8 identification witnesses in the same way as you do any other
9 witness. You may consider whether the witness had an adequate
10 opportunity to observe the offender at the time of the
11 offense. This can be affected by things like how long or
12 short of time was available, how far or close was the witness,
13 lighting conditions, whether the witness had a chance to see
14 or know the person in the past. Once again I instruct you,
15 the burden of proof is on the State. As to every element of a
16 crime charged, this specifically includes the burden of
17 proving beyond a reasonable doubt the identity of the
18 Defendant as the person who committed the crime. I will
19 charge you again, if after examining the testimony you have
20 reasonable doubt as to the accuracy of the identification,
21 then you must find the Defendant not guilty.

22 Now, in this case there have been witnesses who testified
23 who had a prior criminal or a past criminal record. A person
24 who has a past criminal record is competent to testify during
25 a trial. A past record doesn't affect the ability of the

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1 witness to testify. The past record may be considered by you
2 the jury if at all in determining the witness' believability.
3 Remember, you are the sole judges of the facts in the case and
4 that includes the believability of any and all witnesses.
5 You've also heard testimony concerning the penalties that
6 persons might have to serve for crimes alleged in the case.
7 In determining the guilt or innocence of a defendant you
8 should not consider any possible penalty for any particular
9 crime. The punishment for the crime is a matter for me, the
10 Judge, to determine and should never be considered by you in
11 any way at arriving at an impartial verdict as to the guilt or
12 innocence of the Defendant.

13 A statement alleged to have been made by the Defendant
14 has been placed into evidence in this case and while the Court
15 has determined that the statement was admissible, I instruct
16 you that you make the ultimate decision as to whether or not
17 the Defendant made the statement and if he did make the
18 statement, you must determine whether it was -- excuse me --
19 done voluntarily or -- and freely of his own will. That means
20 that the statement was not caused by pressure, force, fear,
21 threats, coercion, intimidation or by the hope or promise of
22 leniency or reward of any kind in determining whether a
23 statement was voluntary, you should consider both the
24 characteristics of the Defendant and the details of the giving
25 of the statement. Some of the factors you must consider are

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1 the age of the Defendant, his lack or his education or lack
2 thereof; the Defendant's mental abilities or capacities,
3 intelligence, background, environment, the place and length of
4 the questioning, the nature of the questioning or the lack of
5 advice from a lawyer as to constitutional rights including but
6 not limited to the right to remain silent, that a statement
7 could be used against him in a court of law, the right to have
8 a lawyer present, that if he could not afford one a lawyer
9 could be appointed for him and that he could stop making a
10 statement at any time. You must carefully consider all of the
11 surrounding circumstances before giving weight to an alleged
12 statement. The State has the burden of proving beyond a
13 reasonable doubt that an alleged statement was voluntary. If
14 you determine that it was, then you may give the statement any
15 further consideration that you deem to be proper. You must
16 decide the weight, if any, that should be given to the alleged
17 statement. If you determine the alleged statement was not
18 free and voluntarily given by the Defendant you should not
19 consider the statement at all.

20 Now, in this case, the Defendant has been charged, as I
21 told you with second degree burglary. The Code Section in our
22 South Carolina Code that deals with that charge is Code
23 Section 16-11-312. Now, to prove second degree burglary, the
24 State must prove beyond a reasonable doubt that the Defendant
25 entered a dwelling without consent. Now, there are some other

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1 things that have to be proven but I'll discuss that particular
2 element first. A dwelling is a building or a portion of a
3 building in which a person ordinarily sleeps. It's a building
4 constructed as a dwelling. If it's constructed as a dwelling
5 that has never been occupied, it cannot be considered as a
6 dwelling but a building is a dwelling even if the residents
7 are temporarily absent from the building. In order to prove
8 that the Defendant entered the dwelling, the State does not
9 have to show that the Defendant's entry was the entire
10 Defendant's body, even the smallest entry can be sufficient to
11 constitute an entry into the building. In addition, the State
12 does have to prove that force was used to gain entry. The
13 second thing the State must prove, the State must prove beyond
14 a reasonable doubt that at the time of the entry, the
15 Defendant intended to commit a crime either a felony or a
16 misdemeanor. That would be again at the time of the entry of
17 the building. The mere entry of a building without consent is
18 not a burglary. If the intent to commit a crime is formed
19 after the entry, it's not a burglary. On the other hand, if
20 the Defendant intended to commit a crime at the time of the
21 entry, it is a burglary even if that intent was later
22 abandoned after the entry. It does not matter that the
23 intended crime was not completed. Intent may be shown by acts
24 and conduct of the Defendant in any other circumstances from
25 which you might reasonably infer intent.

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1 Now, ma'am, the lady in the grey sweater in the front
2 your; your name is?

3 JUROR 57: Nancy Collins.

4 THE COURT: You're gonna be the foreperson of the jury.
5 Now, what that means, Ms. Collins, is that you will be the
6 person who will be in charge of presiding, I guess, or
7 conducting the discussions of the jury. If the jury, during
8 deliberations has any question about deliberations, it will be
9 your job once the jury agrees on what the question is to write
10 it down on a piece of paper, pass it to the Bailiff, the
11 Bailiff will pass that question to me and I will determine
12 what the appropriate response should be. Also, I will be
13 giving you a verdict form in just a few minutes. It will be
14 on a separate sheet of paper and I will explain that one to
15 you, simple in this case, but I'll go over it with you to be
16 sure you understand it. Once the jury has reached a unanimous
17 verdict on the question presented on the verdict form, it will
18 be your job to check the appropriate verdict, sign it, date
19 it, again knock on the door, let the Bailiff know you've
20 reached a verdict, the jury will be brought back into the
21 courtroom for the delivery of the verdict.

22 Now, ladies and gentlemen, I emphasized to you at the
23 beginning of the trial, I'm going to do that again, your
24 verdict must be unanimous. Each and every one of you has to
25 agree upon the verdict before it's the verdict of the jury.

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1 Again, that means none of you has a greater say in the outcome
2 than any other juror. You all must agree before the jury can
3 act and reach a verdict in this matter. And, again, the
4 foreperson has no greater say in the outcome of the case than
5 anyone else serving on the jury panel.

6 I've gone over a lot of things with you. There's some
7 evidence that's been put into the record. So, I've got to do
8 some housekeeping matters. What I'm going to do is we're
9 going to send the evidence back to the jury room with you so
10 you can take a look at it as you deliberate. I'll be sending
11 the indictment back into the jury room so that you can read
12 the charge and so -- I have to be sure that only the properly
13 admitted evidence, though, goes back there with you. I'm
14 going to go over my charge with the attorneys to be sure I
15 haven't misspoken in some manner so there's some things that I
16 have to go over with you before I ask you to begin your
17 deliberations.

18 So, ma'am, I'm going to ask you, don't let the Jury begin
19 any discussions until I bring you back to the courtroom for
20 your final instructions. You may retire to the jury room at
21 this time.

22 (REPORTER'S NOTE: The jury retires to the jury room. 12:20
23 P.M. The following takes place outside the presence of the
24 jury.)

25 BY THE COURT:

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BY THE COURT

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1 THE COURT: Any objections to the charge from the State?

2 MR. HOLFORD: None from the State, Your Honor.

3 THE COURT: Any from the Defense?

4 MS. KNOWLES: I have one concern, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. KNOWLES: The portion of the charges that you read
7 regarding the statement made by my client.

8 THE COURT: Yes, ma'am. I was referring to the guilty
9 plea, that's the statement that's been put in.

10 MS. KNOWLES: Okay. Okay.

11 THE COURT: That was the statement that he made.

12 MS. KNOWLES: I didn't know if you were referring to the
13 warrant?

14 THE COURT: No, ma'am. I was referring to the guilty
15 plea. The gentleman testified he was present and heard what
16 he said.

17 MS. KNOWLES: Okay. I just wanted to clarify that.

18 THE COURT: And you brought in evidence to indicate that
19 perhaps he was under some duress or something of that nature.

20 MS. KNOWLES: Yes, sir. I just wanted to clarify.

21 THE COURT: That's the reason I brought that up.

22 MS. KNOWLES: Thank you.

23 THE COURT: Anything else?

24 MS. KNOWLES: Nothing else.

25 THE COURT: All right. I'm going to ask you step

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BY THE COURT

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1 forward. If you would set aside the evidence and be sure we
2 are in agreement as to what the jury will be viewing. I have
3 the indictment and the verdict form here. Once you've gotten
4 the evidence together, take a look at those and see if there's
5 any objections.

6 (REPORTER'S NOTE: Counsel confers on exhibits.)

7 THE COURT: All right. And take a look at the verdict
8 form and see if there's any objection to that, and the
9 indictment.

10 State have any objection to those documents?

11 MR. HOLFORD: No objection, Your Honor. His address has
12 changed since the ---

13 THE COURT: Well, that's not the -- that's not part of
14 the charge.

15 MR. HOLFORD: I just wanted to draw that to the Court's
16 attention.

17 THE COURT: And any objections, ma'am?

18 MS. KNOWLES: No, sir.

19 THE COURT: All right. Bring the jury in.

20 (REPORTER'S NOTE: The jury returns to the courtroom. 12:25
21 P.M.)

22 THE COURT: Mr. Bailiff, if you would, hand this to the
23 forelady for me. Thank you, sir.

24 Ma'am, I've handed you two documents there. The top one
25 is the verdict form, the next one is the indictment. The

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BY THE COURT

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1 verdict form, at the top, if you'll see, would have the State
2 and County in which we're in. It has the caption of the case,
3 State versus Mr. Hagan. It has over to the left, the case
4 that we're involved in, the number. There's only one question
5 on that form and that is as to the charge of burglary in the
6 second degree, this case number, the jury must determine
7 either not guilty or guilty. You would put a check on the
8 blank line beside the appropriate verdict, once it's been
9 reached, and then you'll sign the form on the line provided.
10 Now, please don't take from the fact that I've put those
11 choices in any order on that form to somehow indicate that
12 I've got a preference. I can tell you I've been doing this
13 about ten years and every one I've ever prepared and I've done
14 a lot of them are always in that same order. So, it's got
15 nothing to do with any preference on my part, that's just the
16 way I do it. So, again, once the unanimous verdict has been
17 reached, you'll record it and let us know that it's been
18 reached and we'll bring you in to receive the verdict. The
19 exhibits will be brought back by the bailiff, they'll be
20 available to you for your considerations.

21 Now, at this time, I see, you're Ms. Bright; is that
22 right.

23 JUROR 36: Yes, sir.

24 THE COURT: Ma'am, you remain seated, I'm going to
25 instruct the remainder of the jury panel to retire to the jury

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BY THE COURT

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1 room, begin your deliberations. Let me give you one other
2 mention. You're gonna be getting lunch served to you in the
3 jury room. If there's anyone in the jury room at any time
4 serving that to you or delivering it to you, just suspend your
5 discussions until that person has left the room. You should
6 only discuss the case with just jury members present. Do you
7 understand that, Madame Forelady?

8 JUROR 57: Yes.

9 THE COURT: You may retire. Thank you very much.

10 Ma'am, you remain seated.

11 (REPORTER'S NOTE: The jury retires to the jury room.
12 Deliberations begin 12:30.)

13 THE COURT: Now, Ms. Bright, you are the alternate in the
14 case and the law says that once the main jury has begun its
15 deliberations that your responsibility in this case has ended.
16 You were here in case something were to happen and somebody
17 couldn't serve or got sick or had an emergency, you would've
18 filled in for that person. So, I'm going to release you from
19 any further responsibility in the case. I've told you
20 throughout the case not to discuss it with anyone. You now
21 have the right to do so but you're not required to do so. A
22 citizen doesn't owe anyone an explanation for what you did or
23 heard or felt on a jury, so you don't have to talk about it
24 unless you wish to do that. Now, if anybody bothers you about
25 your service on the jury, let the clerk know and we will take

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BY THE COURT

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1 the appropriate action should that occur.

2 Now, I believe they've ordered lunch for you as well, so
3 we're gonna try to make arrangements for you to take care of
4 that. They should get you your pocketbook when you get
5 outside. If you need an excuse for work, the clerk will
6 provide that to you and I'm sure you'll be getting a voucher
7 soon for your pay on the jury panel. And I'll tell you,
8 ma'am, don't plan to retire on that check. It's the -- it's
9 all the law allows us to pay you; it's not enough for your
10 time but thank you very much for your assistance this week and
11 the bailiffs will show you out.

12 Thank you very much ma'am. You're free to go.
13 (REPORTER'S NOTE: Alternate juror released and exits
14 courtroom.)

15 Objections to my final charge from the State? Any?

16 MR. HOLFORD: None, Your Honor.

17 THE COURT: Are there any from the Defense?

18 MS. KNOWLES: None.

19 THE COURT: All right. We're in recess until we receive
20 a verdict. Thank you very much.

21 (REPORTER'S NOTE: Recess at 12:28 P.M.)

22 *****OFF THE RECORD*****

23 (On the Record. 1:30 P.M.)

24 (REPORTER'S NOTE: The following takes place outside the
25 presence of the jury.)

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VERDICT OF THE JURY

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1 THE COURT: I've been informed by the bailiff that a
2 verdict has been reached. Is the State ready to receive the
3 verdict?

4 MR. HOLFORD: Yes, Your Honor.

5 THE COURT: Defense ready?

6 MS. KNOWLES: Yes, sir.

7 THE COURT: Bring the jury in.

8 (REPORTER'S NOTE: The jury returns to the courtroom. 1:35
9 P.M.)

10 THE COURT: Madame Forelady, I've been informed by the
11 bailiff that a verdict has been reached; is that true?

12 JUROR 57: Yes, it is, Your Honor.

13 THE COURT: Pass the form to the bailiff, please. Thank
14 you.

15 Clerk may publish the verdict.

16 VERDICT OF THE JURY:

17 CLERK: State of South Carolina, County of Horry versus
18 James Hagan, We, the jury, unanimously find the Defendant
19 James Hagan concerning the offense of burglary second degree,
20 Indictment Number 2013-GS-26-268, guilty. Signed by
21 foreperson Nancy Collins, dated August 16th, 2013.

22 Ladies and gentlemen of the jury, if this is your
23 verdict, so signify by raising your right hand.

24 (REPORTER'S NOTE: Jury unanimously complies.)

25 CLERK: Thank you.

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VERDICT OF THE JURY

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1 THE COURT: Thank you. Anything further from the State
2 before I release the jury?

3 MR. HOLFORD: Nothing from the State, Your Honor.

4 THE COURT: Anything further from the Defense before I
5 release the jury?

6 MS. KNOWLES: (Indicates negatively.)

7 THE COURT: All right. Ladies and gentlemen of the jury,
8 throughout this trial I've told you not to discuss the case
9 with anyone. At this time, I'm going to release you from any
10 further responsibility in this case. You now have the right
11 to discuss it with anyone you'd like to discuss it with. You
12 also have the right not to do so. A citizen owes no one an
13 explanation for their service on a jury panel and so you're
14 not required to discuss this matter with anyone unless you
15 choose to do that. If anyone were to harass you or bother you
16 concerning your service on the jury panel, please report that
17 to the Clerk's Office or the police and the appropriate action
18 would be taken should that occur.

19 I want to thank you very much for your cooperation with
20 us this week in helping us get some work done. A lot goes on
21 here that you don't even understand or know about because
22 there's a lot of cases that get resolved simply because they
23 -- a jury is present and cases are being tried. So, thank you
24 very much for your appearance and your willingness to serve
25 and your service on this jury. As you're checked out, the

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VERDICT OF THE JURY

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1 bailiffs will check you out back in the jury room, you can get
2 an excuse for your work if you need that from the clerk.
3 They'll be sending you some information concerning your
4 payment. As jurors, it's not gonna be a large amount of money
5 but it's all the law allows and certainly not enough to pay
6 you for your time in this matter.

7 So, at this time, again, thank you. It's Friday
8 afternoon at two o'clock. We're not starting another case.
9 So, this ends your service on the jury this week. And again,
10 thank you for your cooperation.

11 Now, Madame Forelady, you're going to need to sign the
12 indictment for me before you leave and so we'll need to take
13 care of that and I'll ask the clerk to step back into the jury
14 room and you can take care of that with her back there. So,
15 don't leave, though, without having signed the indictment
16 document as well.

17 So, at this time, again, thank you. You're free to go.

18 You can attend sentencing if you wish to do so. The
19 bailiffs will tell you how to do that. You're not required
20 to. That would be optional on your part. Thank you.

21 (REPORTER'S NOTE: The jury is excused and exits courtroom.

22 1:40 P.M.)

23 THE COURT: All right. Is there anything from the State
24 before we proceed to sentencing?

25 MR. HOLFORD: No, Your Honor.

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MOTIONS

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1 THE COURT: Anything from the Defense?

2 MOTIONS:

3 MS. KNOWLES: Your Honor, I would just renew my previous
4 objections and my motion for directed verdict.

5 THE COURT: All right. All motions and objections are
6 considered to have been renewed and I would make the same
7 rulings I had made earlier. So, my rulings stand.

8 MS. KNOWLES: And a motion for a new trial at this time.

9 THE COURT: I'll note that motion. Having reviewed the
10 evidence in the case as it was tried, I would deny the motion.

11 MS. KNOWLES: Thank you.

12 THE COURT: All right. Do you have documents for
13 sentencing?

14 MR. HOLFORD: Yes, Your Honor. May I approach?

15 THE COURT: Yes, sir.

16 Madame Clerk, you want to step in there and see if there
17 is any of them wanting to come around.

18 Ms. Knowles, if you'll approach, I believe you are going
19 to need to sign the sheet as well as your client.

20 If you'll pass that back up to me, Ms. Knowles; thank
21 you.

22 All right. Please stand, Mr. Hagan.

23 MR. HAGAN: Yes, sir.

24 SENTENCE BY THE COURT:

25 THE COURT: Mr. Hagan, after having been found guilty by

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SENTENCE OF THE COURT

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1 a jury of your peers, at this point in time, the Court will
2 consider appropriate sentencing in your case. I'm going to
3 hear from your attorney first. You will have an opportunity
4 to speak to the Court concerning this and, of course, anyone
5 who the -- you'd like to have speak on your behalf will also
6 be given that opportunity. So, at this time, Ms. Knowles,
7 I'll hear from you on behalf of your client.

8 MS. KNOWLES: Thank you very much, Your Honor.

9 James is twenty-seven. He's married and has two
10 children. He lives in Horry County and has for some time now.
11 He is gainfully employed working in the logging industry.
12 Your Honor, he has two small children. He is the breadwinner
13 of the family. His wife, as you know, is here. I'm sure
14 she's like to address the Court.

15 He was offered eighteen months in this case. We felt
16 that the case -- that the State's case was very weak.
17 Obviously, I didn't get that point across. I just would ask
18 that you take some leniency, Your Honor.

19 THE COURT: All right. Mr. Hagan, it's your opportunity
20 to address the Court. Is there anything you'd like to say to
21 me?

22 MR. HAGAN: I'd like to say thank you for the chance and
23 opportunity of a fair trial and your time, Judge. And that I
24 do ask for leniency. I am the breadwinner and I wonder how
25 she's gonna do it without me but...

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SENTENCE OF THE COURT

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1 THE COURT: Thank you, sir.

2 MR. HAGAN: Thank you.

3 THE COURT: Does anyone else -- ma'am, come forward,
4 please. If you'll just stop at the bar right there. That's
5 good. Yes, ma'am. I need your name first. I know who you
6 are but on the record I have to establish who you are.

7 MS. HENRY: Ashley Henry. I have two small children, as
8 Ms. Knowles stated. My husband works seven days a week,
9 fourteen hours a day. He brings home considerable more money
10 than I do. He's not the person that you guys make him out to
11 be. We have done a lot to turn our lives around and I'm just
12 asking, please, I don't know how I'm gonna take care of two
13 kids by myself. Thank you, Your Honor.

14 THE COURT: Thank you, ma'am.

15 MS. KNOWLES: I'm sorry.

16 THE COURT: Yes, ma'am.

17 MS. KNOWLES: Your Honor, it's my understanding that the
18 victims have been compensated for their loss as well as he's
19 been on home detention since he was released out on bond. So,
20 that has been over a year and we just would ask for credit for
21 that time.

22 THE COURT: Now, the State, prior record for this
23 individual?

24 MR. HOLFORD: Yes, Your Honor, the prior record, North
25 Carolina, he was convicted in 2010 of two counts of conspiracy

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SENTENCE OF THE COURT

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1 to commit second degree burglary; a felony larceny, which in
2 our state is grand larceny, of burglary second degree; of
3 attempted arson, second degree; and of contributing to the
4 delinquency of a minor; in South Carolina, in 2004, possession
5 of a Schedule I to V drug; and then a violation of a city
6 ordinance in 2010. Since his convictions in 2010, he has been
7 under supervision of Probation and Parole here in South
8 Carolina. While on probation for burglary in the second
9 degree, he committed this other burglary which he's just been
10 convicted of. Your Honor, he has a significant prior record
11 and another burglary on it and a grand larceny. Your Honor,
12 Mr. Hagan is a thief. And the two witnesses that testified
13 for him are both burglars. That would be the State's position
14 based on his prior record and I do have a victim that would
15 wish to speak.

16 THE COURT: All right. The victim that wishes to speak,
17 if you'll come stand -- just come to the bar there, ma'am.

18 Your name?

19 MS. ENZOR: Dana Enzor.

20 THE COURT: Thank you. Yes, ma'am, I'll be happy to hear
21 from you.

22 MS. ENZOR: On the day of this incident, my son was faced
23 with these two gentlemen at our home. And since that time,
24 he's been fine but his momma hasn't because she realizes the
25 -- that we were literally blessed for him not to be hurt by

State v. James Hagan - 2013-GS-26-00268
SENTENCE OF THE COURT

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1 two people that he came up on in our yard, in our own private
2 property that they had no business being there. And, you
3 know, I just -- I'm thankful for his safety and but most of
4 all, there's -- there's just this peace that you don't have
5 any more. And I would just ask that you do necessary --
6 whatever be necessary for him at this point.

7 THE COURT: Thank you.

8 MS. ENZOR: Thank you.

9 THE COURT: Now, you indicated he's on probation at the
10 present time?

11 MR. HOLFORD: Yes, Your Honor.

12 THE COURT: It's being administered in South Carolina but
13 I would assume that's a North Carolina probationary sentence;
14 is that correct?

15 MR. HOLFORD: Yes, Your Honor. It's a North Carolina
16 probation but he's being overseen by South Carolina probation
17 agents at this time.

18 THE COURT: And it appears to me that this conviction
19 would constitute a violation of that probation as well?

20 MR. HOLFORD: It certainly would.

21 THE COURT: Okay.

22 MS. KNOWLES: And, Your Honor, all of those charges, most
23 of them, he pled to all at one time. I believe they occurred
24 after he had been involved in a car accident and was abusing
25 prescription medication, so he wasn't in his right state of

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SENTENCE OF THE COURT

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1 mind. I honestly do not think that Mr. Hagan is a thief, I
2 don't.

3 I think that had he had a better attorney maybe we would
4 have a different outcome. So, I just ask that you take that
5 into consideration.

6 THE COURT: Thank you, ma'am.

7 Did he serve any time already on this?

8 MS. KNOWLES: The home detention time.

9 THE COURT: Well, that's -- that was out on bond. Is
10 that a condition of his bond?

11 MR. HOLFORD: Your Honor, he served from August 24th to
12 September 7th, so ---

13 THE COURT: Fourteen days, two weeks?

14 MR. HOLFORD: Yes, Your Honor. And Your Honor, based on
15 his prior actions and his actions in this situation, I do
16 believe he's a thief and a pervert, contrary to Ms. Knowles
17 ---

18 THE COURT: I've heard all the argument I need to hear on
19 that. That's fine.

20 Mr. Hagan, it's the sentence of this Court that you be
21 confined in the State Department of Corrections for a period
22 of six years. I have suspended that to service of four with
23 probation for two. I've given you credit for fourteen days.
24 I've ordered payment of Public Defender's fees during the
25 period of your probation, that you be subject to random

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SENTENCE OF THE COURT

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1 alcohol and drug testing during that period of time as well.

2 God grant you a speedy delivery, sir. Thank you.

3 MS. KNOWLES: Your Honor, may I request waiver of that?

4 THE COURT: Waiver of what?

5 MS. KNOWLES: The Public Defender fee.

6 THE COURT: Ma'am, that's required by statute, I believe.

7 I'm gonna require it.

8 MS. KNOWLES: Okay.

9 MR. HOLFORD: Thank you, Your Honor.

10 THE COURT: All right. Court's adjourned. Thank you
11 very much.

12 All right. Court is adjourned for the week. Thank you
13 very much.

14 MR. HOLFORD: Thank you, Your Honor.

15 (3:00 P.M.)

16

17 (Adjourned.)

18

19

20

21

22

23

24

25

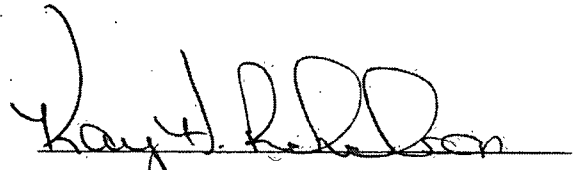
State v. James Hagan - 2013-GS-26-00268
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus James Hagan, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on August 14, 15 and 16, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson, CVR

Official Reporter

October 23, 2013.

BAIL set by

Judge C. Amick
on 8-26-12
Type and Amount: \$2000
Name of Surety: Atun

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge Mr. J. Smith
on 10-22-12 3/13/13
by Plea
(Indicate jury trial, bench trial, plea, not guilty, etc.)
Disposition: to City
Sentence: 500/30 days

Scrap to 14 days
time served + rest. of 500
in 30 days (4/13/13) to vic

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

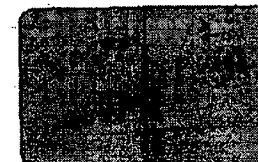
Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



Defenda
CERTIFIED



ARREST WARRANT

M-930070

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

12082869

against

James Thomas Hagan

Address:

Phone:

cell

160

DL State: or 01147C

DOB: Agency ORI #: SC0260400

Prosecuting Agency: Horry County Police Department

Prosecuting Officer: Terry Elliott - 1860

Offense: Malicious / Malicious injury to tree, house;
trespass upon real property, injury value \$2,000 or

Offense Code: 3428

Code/Ordinance Sec: 16-11-0520(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant James T. Hagan
on 08-21-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Mt. Olive Magistrate Court
5527 Hwy 9
Green Sea, SC 29545

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Terry Elliott

who

being duly sworn deposes and says that defendant James Thomas Hagan

did within this county and state on or about 8/16/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)

in the following particulars:

DESCRIPTION OF OFFENSE: Malicious / Malicious injury to tree, house; trespass upon real property, injury value \$2,000 or less

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:On 8-16-12 at approx. 12:30 PM Charles Hagan Jr. and James Hagan went to the residence of Dana Elliott located at
Road in the Spring Branch Section of Horry County. Upon arrival they did conspire to break into the residence and did damage the
door by forcefully entering and doing damage of approximately \$500.00.

Signature of Affiant

Terry Elliott

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main Street

Conway, SC 29526-

Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/16/2012 defendant James Thomas Hagan

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:

DESCRIPTION OF OFFENSE: Malicious / Malicious injury to tree, house; trespass upon real property, injury value \$2,000 or less

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me

8/23/2012

(L.S.)

Signature of Issuing Judge

Monte Lewis Harrelson

Judge Code: 5790

Judge's Address Post Office Box 153

Green Sea, SC 29545

Judge's Telephone (843)915-5294

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

FILED WITNESSES
Horry County Police Department

2013 AUG 20 PM 3:03

MELANIE HUBBINS-WARD
CLERK OF COURT

ARREST WARRANT NUMBER

M974106

CDR: 0080 16-11-0312

DOA: 8/24/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

JAN 31 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date:

8/16/2013

DOCKET NO. 2013-GS-26-00268

The State of South Carolina

County of Horry

Joshua D. Halford

CLERK OF COURT
HORRY COUNTY

COURT OF GENERAL SESSIONS

JANUARY, 2013 TERM

THE STATE

vs.

James Hagan

W/M

DOB:

ATTORNEY: Knowles, Melinda

Indictment for

**BURGLARY
SECOND DEGREE**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

FILED
HORRY COUNTY
2013 AUG 20 PM 3:03
MET-CLERK OF COURT
HARRIS-WARD

At a Court of General Sessions, convened on January 31, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY SECOND DEGREE

CDR: 0080 16-11-0312

That **James Hagan** did, in Horry County, State of South Carolina, on or about August 16, 2012, enter without consent and with the intent to commit a crime therein, the dwelling of Dana Enzor, located at _____ in Nichols, in violation of Section 16-11-0312, S. C. 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.

Jimmy A. Richardson, Jr.
JIMMY A. RICHARDSON, JR.
FIFTEENTH CIRCUIT SOLICITOR

CLERK OF COURT
HORRY COUNTY

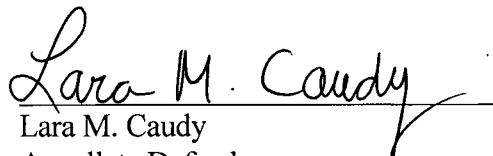
2013 AUG 20 PM 3:11

CERTIFIED COPY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 27, 2013


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

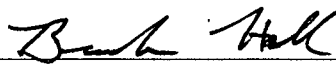
JAMES HAGAN,

APPELLANT

APPELLATE CASE NO. 2013-001806

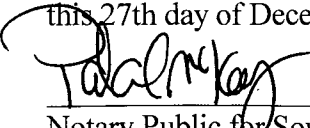
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of December, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of December, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

RECEIVED
DEC 27 2013
SC Court of Appeals