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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County

Honorable George M. McFaddin, Circuit Court Judge

WILLIAM J. BRUNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000522

APPENDIX

MOLLY M KEEGAN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina)	In Circuit Court of the
)	Fourth Judicial Circuit
County of Darlington)	2019-GS-16-01162

THE STATE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
WILLIAM J. BRUNSON,	)	
	)	
Defendant.	)	
	)	
	)	

Darlington, South Carolina
August 26 -28, 2019

B E F O R E:

The Honorable Thomas Russo

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

Ms. Elaine Cooke, Esquire
Mr. Monty Bell, Esquire
Attorneys for Plaintiff

Ms. Rachel Gainey, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

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1 Monday, August 26, 2019

2 (WHEREAS, this matter was scheduled for a trial, all
3 parties appeared along with their counsels of record,
4 however, Mr. Brunson, defendant did not appear. The
5 proceedings began at 11:45 a.m)

6 THE COURT: Ladies and gentlemen, I want to thank
7 you for your, well, I'm gonna thank you for you're your
8 patience but maybe you weren't patient. You may have been
9 out there thinking that sorry rascal told us to be back at
10 eleven and he's keeping us out here. I had a matter that I
11 had to take up and we're about to draw a jury and that
12 matter had nothing to do with this case, it was another
13 case that I had to resolve and was not, was not able to do
14 it as quickly as I thought. So I apologize for keeping you
15 out there longer than I said but we are, I did resolve that
16 matter. So now we're ready to proceed so I would recognize
17 the State for the call of the first case for trial.

18 MS. COOKE: Your Honor, this is indictment 2019-GS-
19 16-1162, State versus William Jonathan Brunson, burglary in
20 the first degree.

21 Voir Dire:

22 THE COURT: All right. Thank you, ma'am. Ladies
23 and gentlemen, you've heard the State call the first case
24 for trial the State of South Carolina versus William
25 Jonathan Brunson. Indictment 2019-GS-16-1162.

1 Now, that is the indictment number on the case.

2 Ladies and gentlemen, and indictment is basically it's a
3 piece of paper, it's a document. And what it does it has
4 and contained on it the allegations regarding the charge
5 that the State is making against the defendant. It is the
6 charging document. It is that -- it does carry the
7 allegations that the State has made against the defendant.
8 But it is not, in any case, evidence in this case. It is
9 merely the document that brings this case in to court. To
10 this indictment that I just, indictment number 1162, Mr.
11 Brunson has pled not guilty. And so that plea of not
12 guilty places upon him the presumption of innocence and
13 upon the State the burden of proof. I am going to read to
14 you what the allegations are that the State is making
15 against Mr. Brunson. So if you'll would please listen
16 carefully. To this indictment the State has charged Mr.
17 Brunson with the offense of burglary in the first degree
18 and the allegations are as follows: that William Jonathan
19 Brunson did in Darlington County on or about October 10,
20 2018, along with the co-defendant, did enter without
21 consent and with the intent to commit a crime therein.
22 entered the garage attached to a dwelling of Ashley Little
23 located at 1010 Ousleydale Road in Hartsville, South
24 Carolina while in violation of Section 16-11-311 (a) of the
25 South Carolina Code of Laws 1976, as amended. Those are

1 the allegations that the State has made against Mr. Brunson
2 to which he has pled not guilty.

3 Now, is there any member of the jury panel based on
4 what I've just shared with you who knows anything about
5 this case, if so, please stand?

6 (Whereupon, juror number 22 comes forward)

7 THE COURT: Your name, sir?

8 POTENTIAL JUROR #22: Ricky Brown.

9 THE COURT: All right. This is juror number 22.
10 Mr. Brown, let me get you to come around here and tell me
11 what you know. Yes, sir?

12 POTENTIAL JUROR #22: I know Jonathan. I know him.

13 THE COURT: Okay. All right. He's not related to
14 you, is he?

15 POTENTIAL JUROR #22: No. I just know who he is.

16 THE COURT: Okay. The fact that you know him would
17 that in any way affect your ability to give both the State
18 and the defense of fair trial?

19 POTENTIAL JUROR #22: No.

20 THE COURT: Okay. Now, you've indicated that you
21 know him, do you know anything about these charges ---

22 POTENTIAL JUROR #22: Uh, uh. Just what I've ---

23 THE COURT: Just that he has them?

24 POTENTIAL JUROR #22: yeah.

25 THE COURT: Nothing else?

1 POTENTIAL JUROR #22: Uh, uh.

2 THE COURT: All right. Thank you, sir, you may
3 have a seat.

4 (Whereupon, the juror returns to his seat)

5 THE COURT: Ladies and gentlemen, I'm going to, I'm
6 gonna ask the attorneys to introduce themselves if you'll
7 listen carefully, will start with the State. Ms. Cooke?

8 MS. COOKE: Hi, my name is Elaine Cooke and I'm the
9 assistant solicitor here in Darlington County and I work
10 for solicitor, Will Rogers, and I'll be prosecuting this
11 case for the State.

12 MR. BELL: Yes, I'm Monty Bell. I'm an assistant
13 solicitor as well for Darlington County and I work for Will
14 Rogers. I will not be assisting tomorrow but I will be
15 assisting today.

16 THE COURT: All right. Thank you, sir. Folks, is
17 there any member of the jury panel who is related by blood
18 or connected by marriage or who has any close business or
19 personal relationship with or who has ever been prosecuted
20 by or represented by either Ms. Cooke or Mr. Bell, if so
21 please stand?

22 (Whereupon, a juror stands)

23 THE COURT: All right. Sir, your name please?

24 POTENTIAL JUROR #34: Mailloyn Davis.

25 THE COURT: All right.

1 POTENTIAL JUROR #34: Juror number 34.

2 THE COURT: Yes, sir, Mr. Davis, juror number 34.

3 Who do you know, Mr. Davis?

4 POTENTIAL JUROR #34: Mr. Bell.

5 THE COURT: All right. And how do you know Mr.

6 Bell?

7 POTENTIAL JUROR #34: He represented me one time.

8 THE COURT: All right. Is that - - is that

9 representation over? Is that continuing?

10 POTENTIAL JUROR #34: Yes, sir, it's over.

11 THE COURT: Okay. The fact that at one point he
12 represented you in a matter would that in any way affect
13 your ability to give both the State and the defense a fair
14 trial?

15 POTENTIAL JUROR #34: No, sir.

16 THE COURT: Thank you very much, sir. You may have
17 a seat. All right. Ms. Gainey?

18 MS. GAINNEY: I'm Rachel Gainey and I represent
19 William Brunson today and I'm with the Darlington County
20 Public Defender's Office.

21 THE COURT: All right. Thank you, ma'am. Ladies
22 and gentlemen, is there any member of the jury panel who is
23 related by blood, connected by marriage or who has any
24 close personal business relationship with or who has ever
25 been represented by Ms. Gainey, if so please stand?

1 (Whereupon, a juror stands)

2 THE COURT: Sir, your name please?

3 POTENTIAL JUROR #12: Christopher Blackwell.

4 THE COURT: All right. This is ---

5 POTENTIAL JUROR #12: Twelve.

6 THE COURT: Juror number 12. Mr. Blackwell, how do
7 you know Ms. Gainey?

8 POTENTIAL JUROR #12: A friend, her and her family
9 also. Her mother is my daughter's middle school teacher.

10 THE COURT: All right. The fact that you know Ms.
11 Gainey socially in that fashion, with that in any way
12 affect your ability to give both the state and the defense
13 a fair and impartial trial?

14 POTENTIAL JUROR #12: Possibly.

15 THE COURT: All right. I'm gonna excuse you from
16 participation in this case but I'm going to get you to
17 remain with us because it may be that we can use you in
18 some of the matter.

19 POTENTIAL JUROR #12: Okay.

20 THE COURT: Thank you, sir.

21 POTENTIAL JUROR #12: So will excuse Mr. Blackwell
22 from the participation in this matter. All right. Ladies
23 and gentlemen, is there any member of the jury panel who is
24 related by blood, connected by marriage or who has any
25 close business or personal relationship with the defendant

1 in this case, William Jonathan Brunson, if so please stand?
2 (Whereupon, several jurors stand)

3 THE COURT: All right, sir, can I get your name
4 please?

5 POTENTIAL JUROR #112: Ervin McElveen.

6 THE COURT: All right. This is juror number 112.
7 Mr. McElveen, how do you know Mr. Brunson?

8 POTENTIAL JUROR #112: Could I approach?

9 THE COURT: Yeah, sure.

10 POTENTIAL JUROR #112: I'm not sure but three years
11 ago at a break-in my house and I don't remember the guys
12 name but I'm thinking Mr. Brunson. It might be him.

13 THE COURT: Would that affect your ability ---

14 POTENTIAL JUROR #112: It would, sir.

15 THE COURT: Let me do this. I'm gonna do you like
16 I did Mr. Blackwell, I'm gonna excuse you from
17 participation in this case but I'm going to get you to
18 remain with us because it may be that we can use you in
19 some of the matter.

20 POTENTIAL JUROR #112: Thank you, sir.

21 THE COURT: All right. Folks, I have a list of
22 names that I'm going to call out. These are people that are
23 possible witnesses. These folks may or may not appear
24 during the course of this trial and testify. I'm gonna
25 call these names out and that question that I just ask you

1 as it relates to, in other words, are you related by blood,
2 connected by marriage or have any close business or
3 personal relationship, that's the question I'll be asking
4 as it relates to these names. If you hear a name that I
5 call out and that question applies to you I would ask you
6 to go ahead and stand in just a few would if you do stand
7 please remain standing because it may be that you know more
8 than one of these individuals.

9 MS. COOKE: Your Honor, Can we approach?

10 THE COURT: Yeah.

11 (Whereupon, a bench conference was held off the record)

12 THE COURT: All right. And so as I said these are
13 folks that are possible witnesses. That may or may not
14 appear during the course of this trial. Listen carefully
15 and stand if you know any of these folks: Ashley Little,
16 Robert Little, Matthew Mueller, Neal Cusack, Nicole
17 Freeman, Michelle Norton, Crystal Johnson, Marilyn Winburn
18 and Adam Howell.

19 (Whereupon, several juror members stand)

20 THE COURT: Sir, your name please?

21 POTENTIAL JUROR #50: Lance Funderburk.

22 THE COURT: All right. Juror 50. Mr. Funderburk,
23 who on that list did you know, sir?

24 POTENTIAL JUROR #50: Well, a few of them. Neal,
25 Ashley ---

1 THE COURT: Robert Little, Ashley Little, Matthew
2 Mueller ---

3 POTENTIAL JUROR #50: Neal Cusack.

4 THE COURT: All right.

5 POTENTIAL JUROR #50: Adam Howell.

6 THE COURT: Okay. Well, let me ask you, Mr.
7 Funderburk, if any of those folks are all of them were to
8 appear and testify during the course of this trial, would
9 that in any way affect your ability to give both the state
10 and the defense a fair trial?

11 POTENTIAL JUROR #50: Possibly.

12 THE COURT: All right. I'm gonna excuse you from
13 her to suppression in this matter. Mr. Funderburk if you
14 would remain with us we may be able to use you in another
15 case. Ma'am, your name please?

16 POTENTIAL JUROR #47: Mary Easterling.

17 THE COURT: All right. Juror number 47.

18 POTENTIAL JUROR #47: By marriage I'm related to
19 Marilyn Winburn.

20 THE COURT: All right. Ma'am, and the fact that
21 you are related to Ms. Winburn, with that in any way affect
22 your ability to give both the state and the defense a fair
23 trial?

24 POTENTIAL JUROR #47: I don't.

25 THE COURT: Sir, your name please?

1 POTENTIAL JUROR #91: William Jordan.

2 THE COURT: All right. Mr. Jordan ---

3 POTENTIAL JUROR #91: Adam Howell. He's my second
4 cousin.

5 THE COURT: All right. And if Mr. Howell were to
6 appear and testify in this case, with that in any way
7 affect your ability to give the state and the defense a
8 fair trial?

9 POTENTIAL JUROR #91: No, it would not.

10 THE COURT: Thank you very much, sir. You may have
11 a seat. That was Mr. Jordan number 91. Ladies and
12 gentlemen, is there any member of the jury panel or a
13 member of your immediate family who has ever been a victim
14 of a criminal offense, if so please stand?

15 (Whereupon, no one is standing)

16 THE COURT: Thank you. There are none.

17 (Whereupon, a juror stands)

18 THE COURT: Oh, I apologize. Your name please?

19 POTENTIAL JUROR #24: Donna Burch, juror 24.

20 THE COURT: All right, Ms. Burch?

21 POTENTIAL JUROR #24: We had robberies of our
22 garage.

23 THE COURT: All right. Ma'am, the fact that you've
24 had that experience with that in any way affect your
25 ability to give both ---

1 POTENTIAL JUROR #24: No, sir.

2 THE COURT: --- the state and the defense a fair
3 trial?

4 POTENTIAL JUROR #24: No, sir.

5 THE COURT: Thank you, ma'am. You may have a seat.
6 Is there a member of the jury panel or member of your
7 clothes immediate family who has ever been employed by any
8 type of law enforcement agency whether it be the police
9 department, Sheriff's Department, sled, FBI, any type of
10 law enforcement agency, if so please stand?
11 (Whereupon, several jurors stand)

12 THE COURT: All right. Sir, your name please?

13 POTENTIAL JUROR #167: Charles Streett.

14 THE COURT: All right. This is juror 167. Mr.
15 Streett, what relation do you have ---

16 POTENTIAL JUROR #167: My father he worked for
17 Darlington County.

18 THE COURT: Okay. The fact that you've had that
19 relationship with your family, with that in any way affect
20 your ability to give both the state and the defense a fair
21 trial?

22 POTENTIAL JUROR #167: No, sir.

23 THE COURT: Thank you, Mr. Streett. You may have a
24 seat. Yes, sir, your name please?

25 POTENTIAL JUROR #134: My name is Patrick Pierre.

1

2 THE COURT: All right. This is juror 134. Mr.
3 Pierre, how does that question apply to you, sir?

4 POTENTIAL JUROR #134: My son used to work for the
5 sheriff department.

6 THE COURT: All right. In the fact that you've had
7 that relationship, with that in any way affect your ability
8 to give both the state and the defense a fair and impartial
9 trial?

10 POTENTIAL JUROR #134: No, sir.

11 THE COURT: Thank you very much, sir. You may have
12 a seat. Ma'am, your name please?

13 POTENTIAL JUROR #132: Virginia Perry.

14 THE COURT: All right. Ms. Perry, juror 132. How
15 does that apply, ma'am?

16 POTENTIAL JUROR #132: My husband was a former
17 police officer and now he is first sergeant for the
18 department of natural resources.

19 THE COURT: Okay. The fact that you have that
20 relationship with that anyway affect your ability to give
21 both the state and the defense a fair trial?

22 POTENTIAL JUROR #132: No, sir.

23 THE COURT: Thank you, Ms. Perry. You may have a
24 seat. Yes, ma'am, your name please?

25 POTENTIAL JUROR #29: Nicole Chapman.

1 THE COURT: All right. This is juror 29. Ms.
2 Chapman, how does that apply?

3 POTENTIAL JUROR #29: My brother is the County
4 corner.

5 THE COURT: Okay. The fact that you had that
6 relationship ma'am would that affect your ability in any
7 way to give both the state and the defense a fair trial?

8 POTENTIAL JUROR #29: No.

9 THE COURT: Thank you, ma'am. You may have a seat.
10 Yes, sir?

11 POTENTIAL JUROR #91: A family member that works
12 for the sheriff's department.

13 THE COURT: All right. And for the record your
14 name again?

15 POTENTIAL JUROR #91: William Jordan.

16 THE COURT: Mr. Jordan, the fact that you have that
17 relationship, sir, with that in any way affect your ability
18 to give both the state and the defense a fair trial?

19 POTENTIAL JUROR #91: No, it would not.

20 THE COURT: Thank you, Mr. Jordan. You may have a
21 seat. (Whereupon, a bench conference was held off the
22 record)

23 THE COURT: All right. Ladies and gentlemen, are
24 there any members of the jury panel or a member of your
25 family who is I guess a professional journalist? In other

1 words, someone who makes their living either reporting as a
2 writer for either a newspaper or a television station, news
3 outlet, any type of journalist or reporter, someone who on
4 reporting the news and events in the community, if so
5 please stand?

6 (Whereupon, a juror stands)

7 THE COURT: All right. Sir, your name please?

8 POTENTIAL JUROR #101: Jay Lane, Jerry Lane. I work
9 for I heart media.

10 THE COURT: And, Mr. Lane, your work with the media
11 company, with that in any way affect your ability to give
12 both the state and the defense a fair trial?

13 POTENTIAL JUROR #101: No.

14 THE COURT: Thank you, sir. You may have a seat.
15 Is there any member of the jury panel or a member of your
16 family or close circle of friends who has ever worked for
17 either currently or in the past, either worked for the
18 solicitor's office or for the Attorney General's office, if
19 so please stand?

20 (Whereupon, a juror stands)

21 THE COURT: All right. Sir, your name again?

22 POTENTIAL JUROR #167: Charles Streett.

23 THE COURT: Mr. Streett - this is again juror
24 number 167 - how does that apply, sir?

25 POTENTIAL JUROR #167: My father is currently

1 employed by the Florence County solicitor's office.

2 THE COURT: All right. In the fact that you have
3 that relationship with that in any way affect your ability
4 to give both the state and the defense a fair trial?

5 POTENTIAL JUROR #137: No, sir.

6 THE COURT: Thank you, Mr. Streett. Is there a
7 member of the jury panel or a member of your immediate
8 family or close circle of friends who has ever been
9 represented by a member of the solicitor's office or a
10 member of the Attorney General's office as a victim of a
11 crime, if so please stand?

12 (Whereupon, no one is standing)

13 THE COURT: Thank you. There are none. Is there a
14 member of the jury panel or a member of your close circle
15 of friends or your immediate family who has ever worked on
16 a political campaign either for the solicitor or for the
17 Attorney General, if so please stand?

18 (Whereupon, no one is standing)

19 THE COURT: Thank you. There are none. Is there
20 any member of the jury panel who has either been a member
21 of or donated money either by way of cash donation or by
22 volunteering of your time to any types of organizations
23 that support or defend victims rights such as, MADD,
24 mothers against drunk drivers, SADD, students against drunk
25 drivers, CAV, citizens against violence, or any law

1 enforcement type organizations such as fraternal Order of
2 police, the South Carolina state troopers Association, any
3 of those types of organizations, if you're a contributor to
4 those organizations please stand?

5 (Whereupon, no one is standing)

6 THE COURT: Thank you. There are none. Is there
7 any member of the jury panel who has ever served as a
8 member of a jury panel in a criminal trial prior to this
9 week, if so please stand?

10 (Whereupon, no one is standing)

11 THE COURT: Thank you. There are none.

12 THE CLERK: We have one, judge.

13 THE COURT: Oh, I apologize.

14 (Whereupon, a several jurors stand)

15 THE COURT: Ma'am, your name please?

16 POTENTIAL JUROR #126: I'm juror 126, Vicki Norwood.

17 THE COURT: All right. Ms. Norwood, you served on
18 a criminal jury trial before?

19 POTENTIAL JUROR #126: Yeah.

20 THE COURT: All right.

21 POTENTIAL JUROR #126: I don't know how long it's
22 been but I ---

23 THE COURT: That's okay.

24 POTENTIAL JUROR #126: It's been a while.

25 THE COURT: But the fact that you've had that

1 experience with that in any way affect your ability to give
2 the state and the defense ---

3 POTENTIAL JUROR #126: No.

4 THE COURT: --- a fair trial in this case?

5 POTENTIAL JUROR #126: No, sir.

6 THE COURT: Thank you very much, ma'am. All right.
7 Sir, your name please?

8 POTENTIAL JUROR #114: Alvin McQueen.

9 THE COURT: All right. Let's see.

10 POTENTIAL JUROR #114: It's been some time ago about
11 eight years ago.

12 THE COURT: All right. Mr. McQueen, with that in
13 anyway affect your ability to do that again, give the state
14 and the defense a fair trial?

15 POTENTIAL JUROR #114: No, sir.

16 THE COURT: Thank you, sir. You may have a seat.
17 Sir, your name please?

18 POTENTIAL JUROR #152: Yes, Randall Schoenecker.

19 THE COURT: All right. And this is juror number
20 152. How long ago do you recall?

21 POTENTIAL JUROR #152: I don't know.

22 THE COURT: That's fine.

23 POTENTIAL JUROR #152: Mamny years ago.

24 THE COURT: The fact that you've had that
25 experience would that in any way affect her ability to give

1 both the state and the defense a fair trial in this case?

2 POTENTIAL JUROR #152: No, sir.

3 THE COURT: Thank you very much, sir. You may have
4 a seat.

5 POTENTIAL JUROR #91: William Jordan.

6 THE COURT: Mr. Jordan?

7 POTENTIAL JUROR #91: It's greater than 20 years
8 ago. I don't remember ---

9 THE COURT: Okay. But with that in any way affect
10 your ability to give both sides a fair trial in this case?

11 POTENTIAL JUROR #91: No, it would not.

12 THE COURT: Thank you, sir. Is there any member of
13 the jury panel who is more inclined to believe the
14 testimony of the law enforcement officer over that of a lay
15 witness simply because that person is a law enforcement
16 officer, if so please stand?
17 (Whereupon, a juror stands)

18 THE COURT: Mr. Streett, juror 167. Yes, sir?

19 POTENTIAL JUROR #167: Just with my family history
20 with law enforcement I'm just a little bias.

21 THE COURT: All right. So it might would affect
22 your ability ---

23 POTENTIAL JUROR #167: Yes, sir.

24 THE COURT: --- depending on who's testifying?

25 POTENTIAL JUROR #167: Yes, sir.

1 THE COURT: All right. I'm gonna excuse you from
2 participation in this matter, Mr. Streett. You can have a
3 seat, sir. Ladies and gentlemen, apparently there is a,
4 there is a Facebook group here over in this area called the
5 Darlington County resident's crime information group, is
6 there any member of the jury panel who is a member or a
7 follower or associated with that group, and if so please
8 stand?

9 (Whereupon, several jurors stand)

10 THE COURT: All right. Mr. Brown, I think of
11 excuse you from participation in this case.

12 POTENTIAL JUROR #22: Oh, that's right, I did not.
13 So this is juror number 22, correct? Mr. Brown, are you
14 somehow associated or affiliated with that group?

15 POTENTIAL JUROR #22: Yes, sir.

16 THE COURT: All right. Now, in fact - - are you a
17 member or a follower?

18 POTENTIAL JUROR #22: Follower.

19 THE COURT: Okay. And with that in any way affect
20 your ability to give both the state and the defense a fair
21 and impartial trial?

22 POTENTIAL JUROR #22: No, sir.

23 THE COURT: Thank you very much, sir. And we'll
24 start over here and work our way across. Yes, ma'am?

25 POTENTIAL JUROR #126: Juror 126, Vicki Norwood.

1 THE COURT: Yes, Ms. Norwood, you a member or a
2 follower?

3 POTENTIAL JUROR #126: Follower.

4 THE COURT: All right. In the fact that you are a
5 follower of that website or that group, with that in any
6 way affect your ability to give both the state and the
7 defense a fair trial?

8 POTENTIAL JUROR #126: No, sir.

9 THE COURT: Thank you very much, ma'am.

10 POTENTIAL JUROR #156: Shannon Simmons.

11 THE COURT: All right. Ms. Simmons - and this is
12 juror 156 - Ms. Simmons, are you a member or just a
13 follower?

14 POTENTIAL JUROR #156: Just a follower.

15 THE COURT: And the fact that you have followed
16 that website, with that in any way affect your ability to
17 give both the state and the defense a fair trial?

18 POTENTIAL JUROR #156: No, sir.

19 THE COURT: Thank you, Ms. Simmons, you may have a
20 seat. Yes, ma'am?

21 POTENTIAL JUROR #77: Renee Howle, juror 77.

22 THE COURT: All right. Go ahead, Ms. Howle?

23 POTENTIAL JUROR #77: I'm a follower of the site.

24 THE COURT: Would that affect your ability to give
25 both sides a fair and impartial trial, ma'am?

1 POTENTIAL JUROR #77: Not at all. No, sir.

2 THE COURT: Thank you very much. You may have a
3 seat. Yes, ma'am?

4 POTENTIAL JUROR #182: Tiffany Wallace, and I'm a
5 follower.

6 THE COURT: All right, juror 182. Ms. Wallace,
7 would that affect your ability to give both sides a fair
8 and impartial trial, ma'am?

9 POTENTIAL JUROR #182: No, sir.

10 THE COURT: Thank you, Ms. Wallace. You may have a
11 seat. Is there any member of the jury panel who considers
12 themselves a member of the sovereign citizens group and
13 therefore considers yourself not subject to the laws of the
14 state or nation, if so please stand?

15 (Whereupon, no one is standing)

16 THE COURT: Thank you. There are none. Ladies and
17 gentlemen, you know I've gone through a lot of questions
18 with you here and those of you have responded to those
19 questions if you noticed every time my follow-up question
20 is always with that in any way affect your ability to give
21 both the state and the defense a fair and impartial trial?
22 The reason, I hope, is clear. That's our goal. Anytime we
23 select the jury in this courtroom is to impanel a group of
24 folks who can set aside whatever has occurred outside of
25 these doors and to decide this case based solely upon the

1 evidence that's presented during this court hearing. And
2 confine your consideration solely to that evidence in
3 arriving at your decision. And to be able to do so in a
4 way that gives both the state and the defense a fair and
5 impartial hearing. That's our goal anytime we pull a jury
6 in this case are, excuse me, in this courtroom whether it's
7 a criminal trial or a civil trial that's what we're
8 attempting to do. And so maybe the easiest way to figure
9 that out is to simply ask the question this way, is there
10 any member of the jury panel who knows of any reason why
11 you would not be able to give the state and the defense a
12 fair and impartial hearing, if so please stand?

13 (Whereupon, no one is standing)

14 THE COURT: Thank you. There are none. Are there
15 any additional questions of voir dire from the state?

16 MS. COOKE: No, Your Honor.

17 THE COURT: Anything additional from the defense?

18 MS. GAINNEY: No, sir, Your Honor.

19 **Jury Selection:**

20 THE COURT: All right. Ladies and gentlemen, let
21 me tell you how we go about drawing juries here in general
22 sessions court and will get on that as soon as possible.
23 The way we do that folks is your name all appear on this
24 roster and they typically it is alphabetical order. Mr.
25 Suggs has a computer program in his office that will take

1 this list and it will completely randomly reorder the list.
2 It just - - it's almost like putting all the names in a hat
3 and pulling them out one at a time and making a new list.
4 It may be for example if I was Tommy Russo number 134 on
5 this list I may pull up and show as Tommy Russo number 14
6 on this new list. It's completely random. But in any case,
7 they're producing that list. In just a moment Mr. Suggs
8 will start at the top of that list and he'll call the first
9 name. If your name is called I would ask if you would to
10 just stand, just in where you are. Mr. Suggs will then
11 look to first to the state and will ask a question to this
12 effect or words to this effect, "what say you for the
13 state?". The state has two options. They can excuse you
14 and if they excuse you you just have a seat or they can
15 present you. If they present you just remain standing.
16 He'll then look to the defense and asked the same question
17 of the defense. The defense has two options. They can
18 either excuse you and if they do you have a seat. Or they
19 can seat you. And if they seat you then you'll come around
20 and have a seat in the jury box. And will go through that
21 process until we've selected our jury. Now, if your name
22 is selected to come around and have a seat in the jury box
23 just please bring with you any belongings that you brought
24 the court with you because you won't be returning to your
25 seat out there, okay. So is the State ready to proceed to

1 jury selection?

2 MS. COOKE: Yes, Your Honor.

3 THE COURT: The defense ready?

4 MS. GAINNEY: Yes, sir, Your Honor.

5 THE COURT: All right. We're five and ten, right.

6 All right.

7 THE CLERK: Thank you, Your Honor. Juror number
8 106, Mary Smith, if you'd stand please?

9 (Whereupon, a black female stands)

10 THE CLERK: What saith the State?

11 MS. COOKE: Please present the juror.

12 THE CLERK: What saith the Defense?

13 MS. GAINNEY: Please seat this juror.

14 THE CLERK: Ms. Smith, if you'll come forward and
15 have a seat in this jury box for me please ma'am.

16 THE CLERK: Juror number 101, Jerry Lane.

17 (Whereupon, a white male stands)

18 THE CLERK: What saith the State?

19 MS. COOKE: Please present the juror.

20 THE CLERK: What saith the Defense?

21 MS. GAINNEY: Please seat this juror.

22 THE CLERK: Please come forward and have a seat in
23 the jury box for me, Mr. Lane. Juror number 132, Virginia
24 Perry.

25 (Whereupon, a white female stands)

1 THE CLERK: What saith the State?

2 MS. COOKE: Please present the juror.

3 THE CLERK: What saith the Defense?

4 MS. GAINNEY: Please excuse this juror.

5 THE CLERK: You've been excuse this particular
6 case, Ms. Perry. You can have seat right back out in the
7 audience for me please. Juror number 155, Melissa Shumate.
8 (Whereupon, a white female stands)

9 THE CLERK: What saith the State?

10 MS. COOKE: Please present the juror.

11 THE CLERK: What saith the Defense?

12 MS. GAINNEY: Please seat this juror.

13 THE CLERK: Please come forward and have a seat in
14 the jury box for me, Ms. Shumate. Juror number 134,
15 Patrick Pierre.

16 (Whereupon, a black male stands)

17 THE CLERK: What saith the State?

18 MS. COOKE: Please present the juror.

19 THE CLERK: What saith the Defense?

20 MS. GAINNEY: Please excuse this juror.

21 THE CLERK: You've been excused in this particular
22 case Mr. Pierre. Thank you. Juror number 24, Donna Burch.
23 (Whereupon, a white female stands)

24 THE CLERK: What saith the State?

25 MS. COOKE: Please present the juror.

1 THE CLERK: What saith the Defense?

2 MS. GAINNEY: Please excuse this juror.

3 THE CLERK: You've been excused in this particular
4 case, Ms. Burch. Thank you. Juror number 157, Christopher
5 Smith.

6 (Whereupon, a white male stands)

7 THE CLERK: What saith the State?

8 MS. COOKE: Please present the juror.

9 THE CLERK: What saith the Defense?

10 MS. GAINNEY: Please present this juror.

11 THE CLERK: Please come forward and have a seat in
12 the jury box for me, Mr. Smith. Juror number 126, Vicki
13 Norwood.

14 (Whereupon, a white female stands)

15 THE CLERK: What saith the State?

16 MS. COOKE: Please present the juror.

17 THE CLERK: What saith the Defense?

18 MS. GAINNEY: Please excuse this juror.

19 THE CLERK: You've been excused in this particular
20 case, Ms. Norwood. Thank you. Juror number 65,
21 Stephanie Grant.

22 (Whereupon, a white female stands)

23 THE CLERK: What saith the State?

24 MS. COOKE: Please present this juror.

25 THE CLERK: What saith the Defense?

1 MS. GAINNEY: Please seat this juror.

2 THE CLERK: Please come forward and have a seat in
3 the jury box for me, Ms. Grant. Juror number 27, Brandy
4 Cane.

5 (Whereupon, a black female stands)

6 THE CLERK: What saith the State?

7 MS. COOKE: Please present the juror.

8 THE CLERK: What saith the Defense?

9 MS. GAINNEY: Please present this juror.

10 THE CLERK: Please come forward and have a seat in
11 the jury box for me, Ms. Cain. Juror number 61, Steven
12 Goodson.

13 (Whereupon, a black male stands)

14 THE CLERK: What saith the State?

15 MS. COOKE: Please present the juror.

16 THE CLERK: What saith the Defense?

17 MS. GAINNEY: Please present this juror.

18 THE CLERK: Please come forward and have a seat in
19 the jury box for me, Mr. Goodson. Juror number 70, Harrell
20 James.

21 (Whereupon, a white male stands)

22 THE CLERK: What saith the State?

23 MS. COOKE: Please present the juror.

24 THE CLERK: What saith the Defense?

25 MS. GAINNEY: Please present this juror.

1 THE CLERK: Please come forward and have a seat in
2 the jury box, Mr. Harrell. Juror number 96, Lottie King.

3 (Whereupon, a black female stands)

4 THE CLERK: What saith the State?

5 MS. COOKE: Please present the juror.

6 THE CLERK: What saith the Defense?

7 MS. GAINNEY: Please present this juror.

8 THE CLERK: Please come forward and have a seat in
9 the jury box for me, Ms. King. Juror number 159, Martin
10 Smith.

11 (Whereupon, a black male stands)

12 THE CLERK: What saith the State?

13 MS. COOKE: Please present the juror.

14 THE CLERK: What saith the Defense?

15 MS. GAINNEY: Please present this juror

16 THE CLERK: Please come forward and have a seat in
17 the jury box for me, Mr. Smith. Juror number 114, Alvin
18 McQueen.

19 (Whereupon, a black male stands)

20 THE CLERK: What saith the State?

21 MS. COOKE: Please present the juror.

22 THE CLERK: What saith the Defense?

23 MS. GAINNEY: Please present this juror.

24 THE CLERK: Please come forward and have a seat in
25 the jury box for me, Mr. McQueen. Juror number 115. Seven

1 Messick.

2 (Whereupon, a white male stands)

3 THE CLERK: What saith the State?

4 MS. COOKE: Present the juror.

5 THE CLERK: What saith the Defense?

6

7 MS. GAINY: Please excuse this juror.

8 THE CLERK: You've been excuse from this particular
9 case. Juror number 144, Anthony Roderick.

10 (Whereupon, a black male stands)

11 THE CLERK: What saith the State?

12 MS. COOKE: Judge, will excuse this juror from the
13 trial.

14 THE CLERK: You've been excused in this particular
15 case, Mr. Roderick. Just have a seat for me. Juror number
16 5, Milton Anderson.

17 (Whereupon, a white male stands)

18 THE CLERK: What saith the State?

19 MS. COOKE: Please present the juror.

20 THE CLERK: What saith the Defense?

21 MS. GAINY: Please present this juror.

22 THE CLERK: Come forward and have a seat in the
23 jury box for me, Mr. Anderson. Juror number 73, Beverly
24 Herring.

25 (Whereupon, a white female stands)

1 THE CLERK: What saith the State?

2 MS. COOKE: Please present the juror.

3 THE CLERK: What saith the Defense?

4 MS. GAINNEY: Please strike the juror.

5 THE CLERK: You've been excused in this particular
6 case, Ms. Herring. If you'll just have a seat for me
7 please, ma'am. Juror number 162, Robert Soforic.

8 (Whereupon, a white male stands)

9 THE CLERK: What saith the State?

10 MS. COOKE: Please present the juror.

11 THE CLERK: What saith the Defense?

12 MS. GAINNEY: Please sit this juror.

13 THE CLERK: Please come forward and have a seat in
14 the first chair outside the jury box for me, Mr. Soforic.
15 Juror number 77, Renee Howle.

16 (Whereupon, a white female stands)

17 THE CLERK: What saith the State?

18 MS. COOKE: Please present the juror.

19 THE CLERK: What saith the Defense?

20 MS. GAINNEY: Please sit this juror.

21 THE CLERK: Please come forward and have a seat in
22 the second chair outside of the jury box for me, Ms. Howle.

23

24 THE COURT: All right. Are there any motions
25 regarding jury selection from the state?

1 MS. COOKE: None from the State, Your Honor.

2 THE COURT: Anything from the defense?

3 MS. GAINNEY: No, sir, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, those
5 of you who remain in the pool I am going to excuse you from
6 the balance of the day with this instruction. You've gotten
7 that slip of paper that the bailiffs gave you that's got to
8 phone numbers on there, it doesn't matter which one. You
9 can call either one. But I'm asking that you call that
10 number after 6 o'clock this evening and just follow
11 whatever the instructions are. More likely it will be
12 probably instructions to call back at another time. But
13 just whatever the instructions are follow those
14 instructions, okay.

15 Now, I need you to do me a favor - let me say one more
16 thing to back it up - I need you to do yourself a favor put
17 that number where you can find it and it will remind you to
18 call it after 6 o'clock because lately, and not here in
19 Darlington, but I hold court all over South Carolina and
20 lately we've had a rash of jurors that aren't coming back
21 after we tell them to call in and they would leave a
22 message that we need him the next day and some of them
23 aren't coming back. I don't know if they're playing the
24 odds that, you know, we won't miss some or whatever but
25 here's what ends up happening, for example, if the message

1 and it says we need you back in the morning, if you come
2 back in the morning those of you who are to come back if
3 some of you don't come back we will know who doesn't come
4 back because we know, we have your names we know who shows
5 up and here's what's gonna happen I've done it all over the
6 state in various counties, were going to send the sheriff's
7 deputy out to find you. And more than likely you're either
8 going to be at home or you're going to be at your place of
9 business and they're going to come pick you up. And fury
10 neither one of those places they're not going to stop
11 looking to they do find you. So - - and it could be
12 embarrassing or it could be just judge I forgot, I'm sorry,
13 I forgot to call. Don't put yourself in that position. Just
14 call the number after 6 o'clock and follow whatever the
15 instructions are, okay. So I'm going to ask that everyone
16 else remain seated, ladies and gentlemen, you're excused
17 for the balance of the day.

18 (Whereupon, the jury pool was excused at 12:11 a.m.)

19 THE COURT: Ladies and gentlemen, while they're
20 filing out let me, I want to address y'all. We're actually
21 going to start this case first in the morning. I need to
22 send you with some additional instructions first. You are
23 the folks that are going to hear this matter and what's
24 very important is between now and tomorrow that you do
25 everything within your power to protect your ability to

1 remain fair and impartial. So what does that mean? Please
2 do not talk with anyone about this case. Don't allow
3 anyone to talk with you about it. It's very important that
4 when you return tomorrow that you don't know one thing
5 about this case more than you know right now, okay. You're
6 going to take an oath to try this case and base your
7 decision upon the evidence that's presented here in court.
8 So it's very important that you don't try to do any
9 independent investigation on your own. It's very important
10 to the State and Mr. Brunson that when you come back
11 tomorrow that you base your judgment of this case upon the
12 testimony and evidence that's presented here in court.

13 Now, your family, friends, or your loved ones will
14 probably be curious as to whether or not you were selected
15 to be on a case. And you can tell them that you were
16 selected and that you have to be back tomorrow. But that's
17 really where it needs to end. Saying something as innocent
18 or harmless as, well, it's the case that involves the guy
19 who was charged with a burglary in the first-degree or it's
20 a case of guy named Brunson who is charged with burglary.
21 Something as innocent as that could possibly elicit a
22 response that might compromise your ability to be fair and
23 impartial. So what I tell juries is to tell your family,
24 friends, and loved ones is this, I can't talk about the
25 case. I can't tell you what it's about. I can't tell who

1 it's about. Just be patient because when the case is over
2 then I can tell you everything you ever wanted to know
3 probably more than you want to know. But until that time
4 you're not allowed to have any conversation. So if you'll
5 do that I'd greatly appreciate that, folks. Please take
6 your role in this matter very serious and do everything
7 within your power to protect that ability to remain fair
8 and impartial.

9 Now, what I'm gonna do I'm gonna ask you if you would
10 to follow the bailiff's. They're gonna show you where your
11 jury room is and then when you come back tomorrow you'll
12 report here and then they'll be someone who will direct you
13 into the jury room.

14 Now, when you reconvene tomorrow please, again, this
15 instruction about having no conversation about the case
16 that means amongst yourselves as well. Have no
17 conversation, okay. There will come a time when you will
18 but we're not there so please continue to respect that.
19 I'm going to ask you if you would be back in the jury room
20 tomorrow at 9:30, okay. Once all of you are convened at
21 9:30 then we'll bring you out and we'll get started. So
22 everyone please remain seated while members of the jury go
23 out.

24 (Whereupon, the jury exits the courtroom at 12:15 p.m.)

25 (Whereupon the court goes back on record at 1:00 p.m.)

1 THE COURT: All right.

2 MS. COOKE: Judge, I'm sorry. Can I just ask for a
3 bench warrant for Mr. William Brunson since he didn't show
4 up for his trial this morning.

5 THE COURT: Yeah, let me tell you -- let's do this,
6 first of all I'm going to grant that motion because he's
7 not here and I'll grant the motion. I also want to put on
8 the record regarding his notice to be here. His notice
9 that the case would proceed in his absence and his failure
10 to appear on that so I'm gonna go ahead and hear from you
11 regarding that.

12 MS. COOKE: Yes, sir. The week of August 5th we
13 had a status conference and he had a plea offer of ten
14 years, burglary second non-violent, he rejected that plea
15 offer and so we did a status conference and both myself and
16 Judge Burch noticed him for trial the week of the 19th. He
17 was healed last Monday and was told to come back today
18 because Mr. Redmond went forward with this trial. He also
19 he had rejected the offer last Monday. Both Judge Burch
20 and myself advised him that he would be tried on the
21 burglary first and that was being indicted this past week
22 if he were to go to trial and it was true billed by the
23 grand jury. And he also -- Your Honor, also have signed
24 TIA slip by him, it's from a while back. This was December
25 15, 2018, he send a notice of the TIA.

1 THE COURT: All right. And this is a notice,
2 basically, letting him know that should he fail to maintain
3 contact with his attorney or his bondsman and if they are
4 unable to get him to appear in court that a trial would
5 proceed in his absence and a bench warrant will be issued
6 for his arrest for his failure to appear. Ms. Gainey,
7 anything you want to put on the record regarding that?

8 MS. GAINNEY: Yes, sir, Your Honor, we would just
9 object from the defense's standpoint. I haven't made any
10 contact with my client this morning but it's come to our
11 offices' attention that he may have had to seek medical
12 assistance this morning in an emergency room. I have been
13 unable to independently verify that but I do just want to
14 put the objection on the record to the trial in absence.

15 THE COURT: Okay. Well, I'll note your objection.
16 I overrule it. He's been noticed both by Ms. Cooke and by
17 Judge Burch that his case would proceed as a burglary first
18 and that if he were not show up the case would proceed in
19 his absence. You did mention earlier today that, I
20 believe, the codefendant who just pled a little while ago
21 indicated that he might have a medical issue but no one has
22 been able to give you any information regarding that, is
23 that correct?

24 MS. GAINNEY: No, I haven't been able to
25 independently verify that.

1 THE COURT: All right.

2 MS. COOKE: And we have not received any sort of
3 medical excuse and it's my understanding that we don't even
4 have the name of the hospital he's allegedly in.

5 THE COURT: Okay. All right. We will proceed to
6 trial and I'll issue the bench warrant for failure to
7 appear.

8 MS. COOKE: Thank you, Your Honor.

9 MS. GAINNEY: Thank you, judge.

10 THE COURT: All right. So we're gonna start back
11 at 2 o'clock. All right. Now, at 2 o'clock we'll take up,
12 Elaine and Rachel, at 2 o'clock we'll start with this
13 matter, take up anything we need to take up and whatever
14 else you've got, all right.

15 (Whereupon, the court takes a lunch at 1:05 p.m.)

16 (Whereupon, the court goes back on the record at 2:33 p.m.)

17 THE COURT: All right. I'm gonna be back on the
18 record here with State versus William Brunson. We pulled
19 the jury this morning and with the intentions of not
20 beginning the actual trial until tomorrow but we're gonna
21 take up some pretrial matters so either Ms. Cooke or Ms.
22 Gainney whichever one wants to go.

23 MS. GAINNEY: Judge, I just have a couple of pretrial
24 motions.

25 THE COURT: All right.

1 MS. GAINNEY: First, I'd like to move and ask to
2 sequester the witnesses under Rule 615 of the South
3 Carolina Criminal Rules of Procedures.

4 THE COURT: All right. Ms. Cooke, obviously, you
5 can have your lead investigator with you throughout but is
6 everyone else in a position to be sequestered?

7 MS. COOKE: Well, Your Honor, it's my understanding
8 that by statute the victims can't be sequestered and I
9 would ask that. I think my victim is going to be my first
10 witness anyway.

11 THE COURT: That's not a problem. Okay.

12 MS. COOKE: And I don't have any objection to any
13 of the other witnesses being sequestered.

14 THE COURT: All right. Well, and again, obviously,
15 as far as hearing these matters this afternoon we don't
16 have any of those folks here this afternoon, do we?

17 MS. COOKE: Well, the only one we have here is Mr.
18 Neal Cusack who I'm fixing to make a motion with regarding
19 the identification.

20 THE COURT: Right.

21 MS. COOKE: And I'm gonna call -- now, Ms. Nicole
22 Freeman, with the clerk's office, is going to be the second
23 witness to enter the priors.

24 THE COURT: Oh, sure, and that's not a problem.
25 Ms. Gainney, you don't have a problem with this Freeman, I

1 mean, ---

2 MS. GAINNEY: No, sir.

3 THE COURT: Her only role in this case is to
4 identify the records so she's not a fact witness as far as,
5 you wouldn't have any problem with her ---

6 MS. GAINNEY: We don't have any.

7 THE COURT: --- doing her job, would you?

8 MS. GAINNEY: No, not at all.

9 THE COURT: Well, I know that Mr. Suggs would
10 appreciate her doing her job. All right. So we will do
11 that, we will sequester all the other fact witnesses.

12 MS. COOKE: And just for the record and for
13 everybody's knowledge, Your Honor, I'm striking Michelle
14 Norton. She was only on there just in case Ms. Freeman got
15 sick and couldn't be here for some reason from the clerk
16 report's office. And Crystal Johnson and Marilyn Winburn
17 will not have to testify since Ms. Haynes pled guilty this
18 morning.

19 THE COURT: Okay. Well, let me find my list and
20 let's talk about who's left. We've got Mr. and Mrs.
21 Little. We've got Mueller.

22 MS. COOKE: Matthew Mueller is the responding
23 officer.

24 THE COURT: And investigator Cusack, who you've
25 already discussed and so then, of course, Nicole's here.

1 So Michelle and Crystal Johnson and Winburn those three are
2 off?

3 MS. COOKE: Yes, sir.

4 THE COURT: Okay. All right. What else, Ms.
5 Gainey ---

6 MS. COOKE: Unless, Ms. Freeman develops a virus
7 overnight then Ms. Norton has to fill in.

8 THE COURT: Ms. Freeman is not going to miss her
9 opportunity ---

10 MS. NORTON: No, I've already warn her she better be
11 here.

12 THE COURT: --- to be the star in this case, I'm
13 sure.

14 MS. GAINNEY: Judge, the next, I would just like to
15 discuss the prior burglary charges that the State intends
16 on putting in.

17 THE COURT: All right. Ms. Cooke?

18 MS. COOKE: Your Honor, I only plan to put in two.
19 It's my understanding under the case law I'm limited to two
20 and I was just gonna have Ms. Freeman talk about these two,
21 a burglary second on September 3, '09 and a burglary third
22 on August 22, 2016. So I won't try to put in any of the
23 other ones.

24 THE COURT: Are there other ones?

25 MS. COOKE: Yes, sir. He pled to several more on

1 August 22nd, I believe, one of the same dates. He pled to
2 indictment 0750 which was also burglary second-degree. On
3 February 6, 2013 he pled in Dillon. He pled to a burglary
4 second, indictment 0201. That one, 0201, on the same
5 8/22/16, the same date as one of the burglaries I'm putting
6 in and pled to burglary third also on 8/22/2016, indictment
7 ending 2016-0198 and I'm not trying to enter those ---

8 THE COURT: Okay.

9 MS. COOKE: --- under the case law.

10 THE COURT: Um, 2016-719 and 2009-1165, those are
11 the two you're going to go with?

12 MS. COOKE: Yes, sir.

13 THE COURT: Okay.

14 MS. GAINNEY: And, judge, I don't have no other
15 questions at this time.

16 THE COURT: All right. Anything further, Ms.
17 Cooke, from the State?

18 MS. COOKE: The only other matter I had, Your
19 Honor, and I didn't know if you want to deal with this
20 pretrial or if you wanted to wait until trial is,
21 investigator Neal Cusack watched the video, recognized the
22 gentleman, couldn't remember his name, ask around and
23 received the name and started looking up booking photos and
24 matched this photo to -- it sparked his memory, number one,
25 of the name and; also, number two, to confirm his memory

1 and the name that he received he matched this booking photo
2 to the video which has identify marks on his neck. And,
3 Your Honor, I would like to enter this photo. I have --
4 investigator Cusack has cropped it so that it doesn't show
5 anything having to do with prior record and I feel that the
6 State has a demonstrative need because that's how he
7 confirmed the ID and it has identify marks on it which he
8 has identifying marks on his neck in the video. I don't
9 believe this video itself, as it's cropped, implies a
10 criminal record and as long as we just say that we obtained
11 a picture and didn't obtain a mug shot I would move that it
12 be admissible to identify the defendant.

13 THE COURT: Well, you may have to proffer that and
14 then Ms. Gainey you can cross-examine and we can see where
15 we go on that.

16 MS. COOKE: Okay.

17 THE COURT: So let's go ahead and do that.

18 MS. COOKE: Oh, you want to do that now? I'd ---

19 THE COURT: He's here ---

20 MS. COOKE: Okay. And I'd call investigator Cusack
21 to the stand.

22 THE COURT: All right.

23 THE CLERK: Place your left on the Bible and raise
24 your right hand. Do you swear the testimony you give this
25 court be the truth, the whole truth, and nothing but the

N. Cusack- Direct Examination by Ms. Cooke

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1 truth so help you God?

2 MR. CUSACK: I do.

3 NEAL CUSACK, first being
4 duly sworn, testified as follows:

5 Direct Examination by Ms. Cooke:

6 Q. Investigative Cusack, did you work on this case
7 involving Mr. William Brunson?

8 A. I did.

9 Q. And how did you get involved in this case?

10 A. The report came in that morning, the next morning
11 after the incident occurred and there was a video involved
12 in it. It being in the Hartsville area, I started looking
13 at it because I worked many years in the Hartsville area.
14 Looked at the video, recognized him, I just couldn't call
15 his name.

16 Q. And what did you do to try to find out his name?

17 A. I called around to some of my people and everything,
18 some associates knew and everything in the area. I taught
19 with them and got a name, got a last name in the beginning.
20 And from there I checked our files and see if anything
21 would match up.

22 Q. Can you identify State's Exhibit 1?

23 A. This would a mug shot of Mr. Jonathan Brunson.

24 Q. Okay. Is that a picture of Mr. William Brunson that
25 you - that you - that you pulled?

1 A. Yes, it is.

2 Q. And what did you do with that -- did you recognize him
3 when you saw that picture?

4 A. After I saw the picture and everything and looking at
5 the video, yeah, you can hold it up beside the video and it
6 was like, yeah. Um, in the video he also had tattoos on
7 his arms. Looking further in our pictures we had through
8 the jail system they do take pictures of any tattoos if
9 anybody ever comes into the jail.

10 Q. Are there any identify marks in that photo that you
11 could identify on the video as well?

12 A. There is on the -- he's got a red mark on his neck.

13 Q. Is that in both the picture and the video?

14 A. Yes.

15 Q. And who did you identify him to be?

16 A. That's William Jonathan Brunson.

17 Q. And is that the defendant who was arrested for this
18 crime ---

19 A. Yes, it is.

20 Q. Okay.

21 THE COURT: Ms. Gainey?

22 MS. GAINNEY: Thank you.

23 **Cross-Examination by Ms. Gainey:**

24 Q. Officer Cusack, you said that you called around to ask
25 people if they knew who Mr. Brunson was?

1 A. Yes, ma'am.

2 Q. But you didn't know what his name was?

3 A. No, I didn't.

4 Q. So how would you get that information via the phone?

5 A. I just ask white male, mark on his neck, tattoos on
6 his arm, who would that be? Who do you think that might
7 be?

8 Q. And from there Mr. Brunson's name came up?

9 A. I got a last name of Brunson.

10 Q. Okay.

11 A. It might be a Brunson.

12 Q. But you didn't actually show the video to another
13 officer?

14 A. No. No.

15 Q. Okay. This is just simply based on a phone call you
16 describing the defendant?

17 A. Yes, ma'am.

18 Q. Okay.

19 THE COURT: Anything further?

20 MS. COOKE: Nothing further, Your Honor.

21 THE COURT: Ms. Cooke, so you're wanting to move
22 picture number one into evidence, is that correct?

23 MS. COOKE: Yes, Your Honor.

24 THE COURT: All right. Ms. Gainey?

25 MS. GAINNEY: Judge, I would object. I think that

1 the picture is pretty prejudicial. I think it's kind of
2 obvious that it's a mug shot. It's obviously from a
3 different conviction. I just think it would be very
4 prejudicial to enter that into evidence.

5 THE COURT: And, Your Honor, as I stated before
6 under State v. Denson, mug shots can be moved into evidence
7 if the State has a demonstrative need. I think here in
8 confirming the identity and especially with the matching
9 red spots on the neck and face. I don't think that picture
10 itself implies a criminal record. It could be a DMV photo
11 or a passport photo and I would -- I can speak with
12 investigator Cusack not as long as we don't like mention
13 mug shot or booking photos or talk about jail records
14 during the trial, I would ask that it be moved into
15 evidence under State v. Denson, Your Honor.

16 THE COURT: Okay.

17 MS. GAINNEY: Judge, I would just argue that, you
18 know, his testimony today here was that he called around
19 and was able to pull it up in his system so, you know, the
20 fact that it could be a passport or a DMV picture, you
21 know, it's obviously a mug shot because he testified that,
22 that's how he found it, is he pulled it up through his
23 system so

24 THE COURT: Well, here's the thing, it's gonna
25 depend on the testimony that goes before the fact finder

1 tomorrow, the jury. Obviously, there can't be any mention
2 of, I mean, obviously, investigator Cusack is a police
3 officer or a sheriff's investigator, you know, we went
4 through photos in our file would not be appropriate. It's
5 gonna have to be generic. It's just gonna have to be, you
6 know, look through some photographs, looking to see, you
7 know, if I could identify, put a name with a face and came
8 up with this, saw this photograph and it matched.

9 MS. COOKE: Thank you, Your Honor. We'll ---

10 THE COURT: Assuming that testimony meets the
11 criteria but we'll just have to wait and see at the time,
12 all right.

13 MS. COOKE: Thank you, Your Honor.

14 MS. GAINNEY: Thank you, judge.

15 THE COURT: Now, I'm gonna return this to you
16 because at this point this has been marked as State's
17 Exhibit for Identification Purposes.

18 MS. COOKE: Yes.

19 (Whereupon, the Photo has been marked and entered into
20 evidence as State's Exhibit No. 1 for Identification
21 Purposes Only)

22 MS. COOKE: Thank you, Your Honor.

23 THE COURT: All right. Anything further?

24 MS. COOKE: Nothing further, Your Honor.

25 MS. GAINNEY: Nothing further.

1 THE COURT: Thank you, investigator. You may step
2 down. Okay. Ms. Gainey, I guess, if you would keep us
3 informed as far as whether or not Mr. Brunson decides to
4 bless us with his presence or if he has some valid reason
5 why he wasn't here by some doctors or something. But if he
6 doesn't appear and we go forward tomorrow, I think maybe
7 during my preliminary remarks it might be appropriate to at
8 least informed the jury that a person charged with criminal
9 offense is presumed innocent and that their appearance or
10 not appearance, I mean, that there is no requirement that
11 they appear for trial and that has no effect on their
12 presumption of innocence. I think I should probably
13 address that in my preliminary remarks with the jury, do
14 you agree?

15 MS. GAINNEY: Yes, sir, Your Honor, I agree.

16 THE COURT: And so I will do that. Hopefully,
17 he'll be here and hopefully you'll hear from him today and
18 he'll be here. But if not, we'll certainly talk about that
19 tomorrow.

20 MS. GAINNEY: Okay.

21 THE COURT: Anything else that we can do today
22 that, then?

23 MS. GAINNEY: No, sir.

24 THE COURT: All right. Okay. We'll be at ease
25 regarding this case.

1 (Whereupon, the court adjourned in this case at 2:51 p.m.)

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1 Tuesday, August 27, 2019

2 (WHEREAS, this matter was scheduled for a trial, all
3 parties appeared along with their counsels of record,
4 however, Mr. Brunson, defendant did not appear. The
5 proceedings began at 10:15 a.m)

6 THE COURT: Rachel, you haven't heard from your
7 client?

8 MS. GAINNEY: No, sir.

9 THE COURT: Any other headway about his medical
10 condition as to whether he even has one or not?

11 MS. GAINNEY: He did call yesterday and said that he
12 had been in the hospital but

13 THE COURT: He called you yesterday?

14 MS. GAINNEY: I haven't heard from him.

15 THE COURT: Well, when he called, did they tell him
16 you better be in court they're trying your case?

17 MS. GAINNEY: Yeah.

18 THE COURT: What did he say?

19 MS. GAINNEY: I'm not sure I didn't speak with him.

20 (Whereupon, someone from the public defender's office spoke
21 out)

22 MS. GAINNEY: He's on the way.

23 THE COURT: He's on the way?

24 MS. GAINNEY: He's on the way.

25 THE COURT: Does he know where the courthouse is?

1 (Whereupon, there is laughter in the courthouse)

2 THE COURT: All right. Are we ready to proceed?

3 Is the State ready to proceed?

4 MS. COOKE: Yes, Your Honor.

5 THE COURT: Is the defense ready?

6 MS. GAINNEY: Judge, I would just like to renew my
7 motion to continue from yesterday based on the fact that my
8 client is not here.

9 THE COURT: Well, tell me about your efforts to
10 finding him and what you've heard?

11 MS. GAINNEY: Okay. So we had our office to reach
12 out to him several times. He did call yesterday. I did
13 not speak with him directly. He did say that he had been
14 in the emergency room had medical, had to seek medical
15 attention. I'm not sure the specifics of that medical
16 attention and that he would try to be on his way up here.

17 THE COURT: However, your office checked with the
18 local hospitals and he wasn't, he wasn't shown to be at any
19 of those?

20 MS. GAINNEY: No, sir, Your Honor, not as of
21 yesterday morning. We called yesterday morning ---

22 THE COURT: Right.

23 MS. GAINNEY: around ---

24 THE COURT: And he told ---

25 MS. GAINNEY: --- 9:30, judge.

1 THE COURT: And then he told your office, I mean,
2 your office told him that his trial was going forward he
3 needed to be here?

4 MS. GAINNEY: Yes, sir, we did.

5 THE COURT: And all he said was, "I'm on the way"?

6 MS. GAINNEY: Yes, sir, Your Honor.

7 THE COURT: And he's not here?

8 MS. GAINNEY: That's correct.

9 THE COURT: I'm gonna respectfully deny the motion,
10 Ms. Gainney. And it may be at some point he shows up and
11 has all kind of medical support for his position, but right
12 now all Mr. Brunson has done is not communicated with you
13 or your office or this court and we've heard rumors that
14 he's had medical problems, but the little bit of
15 investigation into that issue by your office did not turn
16 up any proof of that so we're gonna proceed in his absence.
17 I think he's been notified and properly noticed so

18 THE COURT: All right. Anything further?

19 MS. GAINNEY: No, Your Honor.

20 THE COURT: All right. I guess we'll bring the
21 jury out.

22 THE CLERK: Do you want to withdraw ---

23 THE COURT: Oh, thank you. One of our jurors ---

24 THE CLERK: Alvin McQueen.

25 THE COURT: --- Mr. McQueen, juror number 114,

1 unfortunately, it appears that his father passed away last
2 night. So he is, obviously, not present and so Mr. Suggs
3 is gonna put the two alternates in the bind and draw one
4 out and we'll substitute an alternate.

5 MS. COOKE: Okay.

6 MS. GAINNEY: Okay.

7 THE CLERK: Juror number 162, Robert Soforic is
8 number 20 on the strike sheet and Renee Howle, juror 77, is
9 number 21 on the strike sheet.

10 THE COURT: All right.

11 THE CLERK: It's juror number 162, Robert Soforic.

12 THE COURT: All right. So Mr. Soforic will be
13 moved to the main panel. Ms. Howle will continue to serve
14 as an alternate. All right. We ready to bring the jury
15 now?

16 MS. COOKE: Yes, Your Honor.

17 THE COURT: Everybody?

18 (Whereupon, everyone all agrees)

19 THE COURT: Okay.

20 THE CLERK: You can bring them.

21 (Whereupon, the jury enters the courtroom at 10:20 a.m.)

22 THE CLERK: If I can get you to raise your right
23 hand for me. You shall well and truly try true
24 deliverance, make between the State of South Carolina and
25 the defendant whom you shall have in charge, and a true

1 verdict render according to the law and the evidence so
2 help you God, if you accept the oath please indicate by
3 saying, I will?

4 (Whereupon, all jurors agree to the oath)

5 THE CLERK: Everyone who took the oath may have a
6 seat.

7 (Whereupon, all jurors takes a seat)

8 THE COURT: Ladies and gentlemen, welcome back. We
9 are about ready to proceed with the case of the State of
10 South Carolina versus William Brunson. Let me first
11 address, ladies and gentlemen, you've probably noticed that
12 Ms. Gainey is present and that Mr. Brunson is not here.
13 What I want to share with you is this, a person who is
14 charged with a criminal offense is not required, there's no
15 requirement under the law that person attend any proceeding
16 or trial and their case. They have the right to do that.
17 But they have the right also to remain silent and to not
18 participate. At some point, I will share with you when I
19 give you the charge on the law, I will discuss with you the
20 law as it regards to a defendant choosing to remain silent.
21 And what I will tell you is this, the fact that Mr. Brunson
22 is not present, is not to be considered by you at all in
23 your deliberations or your examination of the evidence in
24 this case. It cannot be considered by you as any evidence
25 of guilt or innocence. His trial is scheduled and, he has,

1 at this point chosen not to appear but that is to not be
2 held for or against him. It's not to be considered by you
3 in any fashion. Under your oath you're going to listen to
4 the evidence that is presented during the course of this
5 trial. And under your oath you are to view that evidence,
6 weigh that evidence and decide what the facts are on the
7 case based on the evidence that's presented. So you're to
8 give no consideration whatsoever to the fact that Mr.
9 Brunson has appeared or has not appeared, okay.

10 **Judge's Instructions:**

11 THE COURT: Now, what I want to share with you is
12 just a few opening remarks. I don't know if any of you
13 have ever served on an actual jury trial, most people do
14 not have that opportunity. In all candor, most people's
15 experience with regards to jury trials is what they've seen
16 on television or what they've read in books or they've seen
17 at the movies. We know how all those trials go it's always
18 full of high drama and intense action, I guess, Hollywood's
19 efforts in trying to entertain you.

20 Now, during the course of this trial while any number
21 of those things could occur the important thing to always
22 keep in mind is this, this trial is not for your
23 entertainment. This trial is a fundamental part of our
24 democracy and unlike movies, books, and TV, this trial may
25 be, it may be slow or it may be fast. It may be

1 deliberate. It may be repetitive. There's no way of
2 determining how a case is going to flow, it just flows. And
3 so it's very different from what you've seen on television
4 or in movies or what you've read in books. This courtroom
5 is a place of honor that is dedicated to the protection and
6 to the preservation of citizens rights through of what many
7 have called the greatest justice system ever created. The
8 attorneys that have appeared before you are advocates for
9 the parties that they represent. But the first and
10 foremost their officers of the court sworn to uphold the
11 integrity even the fairness of our judicial system. You
12 should expect them to be professional, reasonable, and
13 ethical in the performance and the representation of their
14 clients interest. Now, you have just taken an oath to try
15 this case and to reach a fair and just verdict. And so you
16 are also expected to be reasonable, professional, and
17 ethical in the performance of your duties. I have
18 absolutely no doubt that you will do just that. And,
19 again, I want to thank you for your service to Darlington
20 community here this week. I'm going to share a few things
21 with you about the trial and how it's going to flow to give
22 you maybe a little bit better idea or a better
23 understanding what to expect as we go forward. This is not
24 a charge on the law but I will charge you on the law before
25 you retire to deliberate this case. In this matter Mr.

1 Brunson is charged with the offense of burglary in the
2 first-degree. The elements of that charge I will explain
3 to you later when I charge you on the law. But as I told
4 you yesterday when we drew this jury the indictment that
5 brought the charge into this courtroom is merely that. It
6 is a charging document. It is not in any sense evidence of
7 any of the allegations that it contains. To that
8 indictment or to that charge Mr. Brunson has pled not
9 guilty and that plea of not guilty places upon the State
10 the burden of proving each and every element of the crime
11 beyond a reasonable doubt. It will be your duty, ladies
12 and gentlemen, to decide whether or not the State has met
13 that burden. Your purpose as jurors is to find and to
14 determine the facts of this case. As I told you yesterday
15 you are the sole judges of the facts in this case. If at
16 any time I make any comment about the evidence or any fact
17 presented, you must disregard my comments because only you
18 the jury are allowed to make that determination. It is
19 especially important that you determine the facts
20 diligently and conscientiously because ordinarily there's
21 no way for the court to correct an erroneous determination
22 of facts by jury. You determine the facts from the
23 testimony that you hear and any evidence that is presented.
24 It would be up to you to determine what inferences that you
25 feel should be properly drawn from that evidence.

1 Now, with equal emphasis the same law that makes you
2 the judges of the facts, makes me the judge of the law.
3 The law as I give it to you at the close of the case is the
4 only law that you may consider. You must accept it and
5 apply it whether or not you agree with that. I'm not
6 allowed to tell you or intimate to you what I think about
7 the facts of the case and you're not allowed to disagree
8 with me about what the law is or what you think the law
9 should be. Your duty is to take the law as I give it to
10 you and apply it to the facts as you find from the evidence
11 that's presented.

12 Now, as I told you yesterday and until I tell you to
13 begin your deliberations it's very important that you have
14 no conversation with anyone about this case and that
15 includes amongst yourselves. During the course of the
16 trial we'll take breaks and you'll step back into the jury
17 room and anytime you do that it's important that you do not
18 discuss the case. Often times I'll tell juries going
19 through a jury trial and listening to the evidence often
20 times it's like baking a cake, those of you who bake you
21 understand that if you are gonna bake a cake you don't
22 start to bake the cake until all of the ingredients are in.
23 If you don't have all the ingredients in the cake is not
24 gonna turn out. It's the same way with this case, this
25 trial. You need to wait before you start to "bake". In

1 other words, before you begin to deliberate this case you
2 need to have all of the evidence. Once you have all of the
3 evidence then you can proceed to your deliberations and
4 properly deliberate case. So throughout the trial I will
5 continually ask you as you leave the courtroom to have no
6 conversation about the case with anybody.

7 It is important that from this moment throughout this
8 trial that you keep an open mind and that you do not decide
9 any issue in this case until all of the evidence has been
10 presented, the attorneys have addressed you with their
11 closing arguments, and I've given you the charge on the
12 law. It would be your sole and your solemn responsibility
13 to determine the guilt or innocence of Mr. Brunson and your
14 verdict must be based solely upon the evidence that is
15 presented during the course of this trial.

16 Now, in just a moment I'm going to recognize Ms. Cooke
17 on behalf of the State for her opening remarks or her
18 opening statement. I don't really know what she's going to
19 share with you but, typically, what you're hear in opening
20 statements is basically what she believes the evidence in
21 this case will show. Once she has concluded her opening
22 remarks I'll then recognize Ms. Gainey on behalf of the
23 defense. Ms. Gainey may make an opening statement as well,
24 although, she's not required to. But the important thing
25 to understand is this, what the lawyers is going to share

1 with you in their opening remarks that is not evidence in
2 this case. They're not under oath. They're not
3 testifying. What they're going to share with you is merely
4 their contention as to what they think the evidence in this
5 case will show. The evidence will be presented to you
6 through witnesses who are placed under oath and take the
7 witness stand and then any other exhibits that may come in
8 during the course of the trial. It is important that you
9 pay close attention to all of the evidence.

10 Now, from time to time you may hear one of the
11 attorney say something along this line, "Judge, we have a
12 matter of law we need to take up with the court," or, Your
13 Honor, may we approach the bench?" If I can resolve the
14 matter up here at the bench I'll do that. But I may need
15 to ask you to step back into the jury room while I deal
16 with a matter of law. If I do that the only reason I would
17 send you back into the jury room is this, sometimes when
18 I'm dealing with an issue of law it requires me, in
19 connection with my ruling, to make some comment about the
20 facts or the evidence that was presented - folks, we're
21 having some type of electrical thing going on so these are
22 on now, heck, they make all cut off, I don't know. But
23 we're just gonna ride through it, okay - But sometimes when
24 I'm dealing with an issue of law it requires me to make a
25 comment about the evidence that was just presented. And as

1 I said earlier, I'm not to have any influence over you
2 about the facts. So to protect you from those comments I
3 may have you stepped back into the jury room, let me
4 resolve an issue of law, and then I'll bring you back out
5 and we'll pick up where we left off, okay.

6 It is going to be your decision to decide what the
7 true facts are in this case. And then determining what
8 those facts are you're going to have to decide of whether
9 or not the testimony of a witness is believable. It gonna
10 be my job to rule as a matter of law whether certain
11 testimony is allowed into this record. But once testimony
12 is allowed into this record whether or not you believe it,
13 it's solely up to you to decide. And in deciding whether
14 to believe a witness you have the right to consider the
15 interest of the witness, the bias of any witness, the
16 opportunity for the witness to have seen the matters and
17 the things about which they testify, the way the witness
18 acts on a witness stand. You have the right, ladies and
19 gentlemen, to consider anything in this record that would
20 help you to evaluate the credibility and the believability
21 of the witnesses. So that means it is your duty to pay
22 close attention to the witnesses, listen carefully to their
23 responses. Pay close attention to the attorneys and to the
24 court. Try not to let your thoughts wander. Pay strict
25 attention to all the evidence so that once all of the

1 evidence is presented and the lawyers have addressed you
2 with the closing remarks and I've given you the charge on
3 the law, you would then be in a position to go back into
4 the jury room and to begin your deliberations in deciding
5 this case.

6 Now, before I turn it over to the attorneys let me
7 first acquire from the State, are there any objections or
8 exceptions to the court's opening remarks?

9 MS. COOKE: None from the State, Your Honor.

10 THE COURT: Are there any from the defense?

11 MS. GAINNEY: No, sir, Your Honor.

12 THE COURT: All right. Now, ladies and gentlemen,
13 one more thing, before I turned it over to the attorneys
14 let me tell you this, throughout this case it's very
15 important that you're comfortable and that you can hear
16 everything that goes on. If at any time you can't hear a
17 witness or you didn't hear their comment or their response
18 or if you can't hear one of the lawyers or me please get
19 our attention and let us know. We'll have that person
20 repeat their response and we'll have them all speak up and
21 make sure that you can hear everything. Also, if at any
22 time anyone of you need a break please do not hesitate to
23 get my attention and let me know that you need a break.
24 There's probably no delicate way to put this so I'm just
25 gonna say it we're all adults here, sometimes mother nature

1 calls and you've gotta answer the call. Well, don't sit
2 there and think, ah, you know what, I'll wait until this
3 witness gets done and then I let the judge know. Because
4 the witness may end up being a little lengthy and I'd
5 rather you go ahead, it doesn't matter if it's right in the
6 middle of a witness' response, get my attention. We can
7 always stop and pick up where we left off. But I would
8 rather we go ahead and take a break if you need to, rather
9 than have you sitting there and instead of listening and
10 paying attention to the witness in your mind you're
11 thinking, how much longer is this person gonna go, I need
12 to go? So rather than do that just let me know if you need
13 a break. We can take as many breaks as you need. But it's
14 important that you're comfortable and so please don't
15 hesitate to get either the bailiffs attention or mine and
16 we'll take a break if you need a break, okay. Having said
17 that, Mr. Cooke, I recognize you on behalf of the State.

18 MS. COOKE: Thank you, Your Honor. May it please,
19 the court, ---

20 THE COURT: Yes, ma'am.

21 MS. COOKE: --- Ms. Gainey?

22 **Opening Statement - Ms. Cooke:**

23 MS. COOKE: Ladies and gentlemen, approximately two
24 minutes after Ashley Little left her home and backed out of
25 her driveway to make a fifteen minute run to Walmart the

1 defendant approach her home in broad daylight. He tried to
2 get in her front door. And when that didn't work he
3 entered her garage. Her garage was opened but enclosed and
4 attached to the house. And a few seconds later he runs out
5 of the garage with the generator, one of those big
6 generators that you buy for hurricane when hurricane is
7 coming. He puts the generator in the trunk of a car that
8 drove him to Ms. Little's home, gets in the passenger seat
9 and is driven away from the scene. And all this happened
10 in the few minutes that she was gone to Walmart and a few
11 minutes before she comes home.

12 Burglary in the first-degree is against the law in
13 South Carolina. And the elements of burglary in the first-
14 degree are that the defendant enter a dwelling or a place
15 where someone regularly sleeps including an enclosed garage
16 without consent and with the intent to commit a crime
17 therein or in this case stealing a generator. Also an
18 element of burglary in the first-degree is that the
19 defendant had two prior burglaries on his record when he
20 committed this offense and the State intends to prove each
21 of those elements here at trial today.

22 We intend to prove those elements partly because this
23 crime was caught on Ashley Little's home security video
24 footage and we will watch that video today together during
25 the trial. Deputy, former deputy Matthew Mueller responded

1 to Ashley's call for help and came to her home and took the
2 report and watched the video. Ms. Little transferred the
3 video to law enforcement and it ended up in the hands of
4 investigator Neal Cusack who will testify today that he
5 identified the defendant using the video. Investigator
6 Cusack saw the defendant on video and used that video
7 footage to identify the defendant as the one committing
8 this crime and who is on trial today. As I stated, we will
9 watch that video here today. Two minutes after Ashley
10 Little left her home to make a fifteen minute run to
11 Walmart in broad daylight the defendant approached her home
12 and tried to enter it. He then entered her open but
13 enclosed and attached garage and stole a generator, put in
14 the trunk of a car, and was driven away from the scene.
15 Ashley Little saw those events unfold on her home security
16 did footage. We will watch them here today in court
17 together. She watched them at home alone with her three-
18 month-old child before she called law enforcement. So I
19 will come back before you at the close of the case and ask
20 you to return a verdict of guilty for burglary in the
21 first-degree against the defendant on trial today. Thank
22 you.

23 THE COURT: Thank you, Ms. Cooke. Ms. Gainey?

24 MS. GAINNEY: May it please, Judge?

25 Opening Statement - Ms. Gainey:

1 MS. GAINNEY: Good morning, ladies and gentlemen. My
2 name is Rachel Gainey and I have the pleasure of
3 representing Mr. William Brunson today.

4 Looks can be deceiving. Especially from a strange
5 angle or a video or a picture that doesn't show the entire
6 view. And in today's world anything can be captured by
7 camera. That's why it's important that when we view videos
8 or pictures we scrutinize them because once again they can
9 be deceiving. We've all heard the saying that the camera
10 can add ten pounds.

11 Well, ladies and gentlemen, what we have here today is
12 a case based on evidence that I submit to you is deceiving.
13 The
14 State of South Carolina wants you to convict my client, Mr.
15 Brunson, for burglary in the first-degree based on a video
16 that does not show the entire picture. A video that is
17 deceiving. The issue today is whether or not a burglary
18 was committed. The State will show you a video today but
19 the State will not tell you about this video as that it's
20 only from one angle. The video does not show everything.
21 The video is deceiving. From the angle of the video you
22 cannot see the garage door. You cannot see whether or not
23 there was an actual entrance into that garage. This is a
24 crucial fact in today's case, ladies and gentlemen, because
25 it is the difference between a larceny and a burglary. The

1 State will not be able to prove to you beyond a reasonable
2 doubt that Mr. Brunson entered into that building or,
3 excuse me, the garage in order to take that generator. I
4 want you to pay close attention to the video when the State
5 plays it. You will notice you cannot see the garage door.
6 You will notice that the video, from the video it's from
7 the angle of the front door which is not the angle of the
8 garage door. You will notice that there is a taking of a
9 generator. But what you will not be able to notice from
10 this video is whether or not that generator was inside that
11 garage.

12 The State proving that the generator was taken does
13 not prove burglary, ladies and gentlemen. The State has to
14 prove that Mr. Brunson entered into that garage to take the
15 generator. This is a crucial element among others and I
16 submit to you that they're not going to be able to prove
17 that there was an entrance inside of this garage. During
18 today's trial the State of South Carolina has the burden of
19 proof. That proof is beyond a reasonable doubt. It's a
20 very extremely high burden. It's the highest burden of
21 proof in any courtroom in the United States of American.
22 The reason why that burden is so high is because we're
23 asking you to sit in judgment of your fellow peer, Mr.
24 Brunson, while his liberty or freedom is at stake. Mr.
25 Brunson is not required to prove to you that he's innocent.

1 MS. COOKE: Objection, Your Honor.

2 THE COURT: What's the basis of your objection?

3 MS. COOKE: That his liberty or freedom was at
4 stake.

5 THE COURT: That's overruled.

6 MS. GAINNEY: Thank you, judge. Mr. Brunson is not
7 required to prove his innocence, ladies and gentlemen, he's
8 presumed innocent throughout the entire trial. In fact,
9 Judge Russo even told you that this morning and he'll
10 instruct you about that at the end of today's trial. After
11 hearing and seeing all of the evidence presented by the
12 State today, I submit to you that the State will not be
13 able to meet their burden, they will not be able to prove
14 burglary beyond a reasonable doubt and I will ask you to
15 find my client not guilty. Thank you.

16 THE COURT: Thank you, Ms. Gainney. Ms. Cooke, you
17 may call your first witness.

18 MS. COOKE: I would like to call Ashley Little.

19 THE COURT: Ms. Little, if you'll please come
20 around and be sworn, ma'am.

21 THE CLERK: Place your left on the Bible and raise
22 your right hand. Do you swear the testimony you give this
23 court be the truth, the whole truth, and nothing but the
24 truth so help you God?

25 MS. LITTLE: I do.

A. Little- Direct Examination by Ms. Cooke

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1 ASHLEY LITTLE, first being
2 duly sworn, testified as follows:

3 Direct Examination by Ms. Cooke:

4 Q. Can you state your name for the record?

5 A. Ashley Little.

6 Q. And where do you live?

7 A. 1010 Ousleydale Road.

8 Q. Is that where you lived on October 10, 2018?

9 A. Yes.

10 Q. And in what County is that residence in?

11 A. Darlington County.

12 Q. Is that somewhere where you sleep on a regular basis?

13 A. Yes, ma'am.

14 Q. And who do you live there with?

15 A. My kids and husband.

16 Q. I'm gonna show you what's been marked as State's
17 Exhibit 3, can you identify what that is?

18 A. That's my home.

19 Q. Is that a fair and accurate representation of what
20 your home looks like?

21 A. Yes, ma'am.

22 Q. Is that a fair and accurate representation of what
23 your home look like on 10/10/2018?

24 A. Yes, ma'am.

25 MS. COOKE: Your Honor, I would ask that State's

A. Little- Direct Examination by Ms. Cooke

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1 Exhibit 3 be entered into evidence.

2 THE COURT: Any objection.

3 MS. GAINNEY: No objection, Your Honor.

4 THE COURT: Without objection. That's 3 b, is that
5 what you said?

6 MS. COOKE: It's State's Exhibit 3.

7 THE COURT: Three, I'm sorry. All right. That's
8 in evidence.

9 MS. COOKE: And I'd ask that it be published to the
10 jury, Your Honor.

11 THE COURT: Yes, ma'am.

12 (Whereupon, the Photo has been marked and entered into
13 evidence as State's Exhibit No. 3)

14 Q. I'm gonna let you hold this so you can hold it up if
15 you need to.

16 A. Okay.

17 Q. Ms. Little, did you leave home for any, for anything
18 reason that day?

19 A. I went to Walmart.

20 Q. Do you remember about what time you went to Walmart?

21 A. It was at 1:15.

22 Q. And can you tell us which, how you left the home,
23 which door you left out of?

24 A. I walked out of the garage to my vehicle.

25 Q. Okay. Where was your vehicle, was it in front ---

A. Little- Direct Examination by Ms. Cooke

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1 A. In front of the garage.

2 Q. Okay. And were your doors locked?

3 A. Yes, ma'am.

4 Q. And tell us how many doors you have leading into your
5 home?

6 A. There's two on the front and one in the back and one
7 in the garage.

8 Q. And -- all right, so you left and where did you go?

9 A. I went to Walmart.

10 Q. And how long were you there?

11 A. Fifteen minutes. I just had to go get formula for my
12 daughter.

13 Q. Okay. So when you left was the garage door open or
14 closed?

15 A. It was supposed to be closed.

16 Q. Okay. Tell us about that?

17 A. There is a -- I have a button in my car to close it
18 and the weather stripping on the bottom of the garage door
19 had broke off and it didn't let it close so it opened it
20 back up.

21 Q. Did you realize that when you left home?

22 A. No, ma'am.

23 Q. And when you came back home did you notice anything
24 unusual?

25 A. The garage door being opened.

1 Q. And where -- what did you as a result of that?

2 A. I went to walk in the house and I notice that the
3 stroller that was in front of the generator was gone and
4 then ---

5 Q. Where was the stroller and the generator?

6 A. In the garage, as soon as you walk in, on the right-
7 hand side.

8 Q. And is your garage enclosed?

9 A. Yes, ma'am.

10 Q. Is it attached to your house?

11 A. Yes, ma'am.

12 Q. And the stroller and the generator were inside the
13 garage?

14 A. Yes, ma'am.

15 Q. And go ahead and tell us about where they were?

16 A. When you walked in they were on the right-hand side.

17 Q. And what did you notice about them?

18 A. That the stroller had been pushed forward and the
19 generator was gone.

20 Q. And do you know what kind of generator this was?

21 A. I don't know the brand of it.

22 Q. But what was it used for?

23 A. It was in case of hurricanes and power outages for our
24 family.

25 Q. Was the generator there when you left?

A. Little- Direct Examination by Ms. Cooke

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1 A. Yes, ma'am. There was two of them.

2 Q. And how many were there when you came home?

3 A. One.

4 Q. So one was still there?

5 A. Yes, ma'am.

6 Q. And what did you do as a result of that?

7 A. I called 911 and checked my cameras.

8 Q. And what did you see on the cameras?

9 A. The -- Mr. Brunson pulling in trying to get in the
10 side door and then entering the garage and taking the
11 generator.

12 Q. Did you see him actually entered the garage ---

13 A. Yes, ma'am.

14 Q. --- on camera? Would he have had to enter the garage
15 to get to the generator?

16 A. Yes, ma'am.

17 MS. GAINY: Objection, Your Honor. I'd say
18 speculation.

19 THE COURT: Overruled. It's a factual issue. She
20 can testify.

21 Q. And what did you do after you watched that video?

22 A. I gave the video to the responding officer.

23 Q. How did you get the officer there?

24 A. I called 911.

25 Q. And do you know about how long it took them to get

1 there to your house?

2 A. Twenty minutes.

3 Q. And then did the responding officer watch the video?

4 A. Yes, ma'am.

5 Q. Did you turn that video over to law enforcement?

6 A. Yes, ma'am.

7 Q. Do you remember how you turned it over to law
8 enforcement?

9 A. I sent it to the responding officers, um, it was
10 either his phone or email.

11 Q. Okay. And have you -- so you've seen the video
12 footage?

13 A. Yes, ma'am.

14 Q. You've seen the video on State's Exhibit Number 2?

15 A. Yes, ma'am.

16 Q. It is a fair and accurate representation of the video
17 footage that you watched that day?

18 A. Yes, ma'am.

19 Q. And of the video footage that you turn over to law
20 enforcement?

21 A. Yes, ma'am.

22 Q. And is this video surveillance footage from your home
23 security system?

24 A. Yes, ma'am.

25 Q. And can you tell us the, the snippet of video that's

A. Little- Direct Examination by Ms. Cooke

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1 shown here, when did it occur?

2 A. The day that my generator was taken right after I left
3 home.

4 Q. And can you tell us a little bit about -- is there a
5 timestamp on your video?

6 A. Yes, ma'am.

7 Q. And did you make note of how long you had been gone
8 when the defendant approached her home?

9 A. Yes, ma'am. I'd been gone exactly two minutes before.

10 Q. And did you see him in your rearview mirror or
11 anything approach your home?

12 A. No, ma'am.

13 Q. And tell us just a little bit about your home security
14 system, how many cameras do you have?

15 A. There's four.

16 Q. How many outside?

17 A. Three.

18 Q. How many caught this event on video?

19 A. One.

20 Q. Is this the only one that caught the event on video?

21 A. Yes, ma'am.

22 Q. And does it record on motion or all the time?

23 A. It's all the time recording.

24 Q. Did you get any kind of alert on your phone ---

25 A. No, ma'am.

A. Little- Direct Examination by Ms. Cooke

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1 Q. --- that something was going on at your house?

2 A. No, ma'am.

3 MS. COOKE: Your Honor, I would asked to enter the
4 video, State's Exhibit 2, into evidence and publish it to
5 the jury.

6 MS. GAINNEY: Judge, I would object to that. That's
7 just the CD-ROM, you know, the video hasn't been played for
8 her to actually state that's the video it's just ---

9 MS. COOKE: Well, that would be the publishing,
10 Your Honor.

11 MS. GAINNEY: She's asking ---

12 THE COURT: The CD that Ms. Cooke is showing you,
13 is that the CD you viewed the video on?

14 A. Yes, sir.

15 THE COURT: I'm gonna allow it.

16 (Whereupon, the Video has been marked and entered into
17 evidence as State's Exhibit No. 2)

18 (Whereupon, the solicitor takes a moment to set up video)

19 MR. BELL: Can everybody see the screen?

20 (Whereupon, the jurors indicated they can)

21 MS. COOKE: Why don't you come down ---

22 THE COURT: Be careful. None of you stand in front
23 of any of the jurors. If you need to back that up, you can
24 back it up.

25 Q. Ms. Little, will you show us on the picture there --

A. Little- Direct Examination by Ms. Cooke

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1 can you orient us and show us what's showing right here on
2 the video?

3 A. This is the area ---

4 COURT REPORTER: She's gonna have to speak up.

5 THE COURT: You're gonna have to speak up.

6 Q. Hold it up here so everyone can see. Can you speak up
7 just a little bit for the court reporter?

8 A. That's this area right here.

9 Q. What's he holding in his hands there?

10 A. The generator.

11 Q. And was it sitting outside in the driveway?

12 A. No.

13 Q. Where was it?

14 A. It was inside the garage.

15 MS. COOKE: Okay. You can have a seat back in the
16 witness chair.

17 Q. Did you give the defendant permission to enter your
18 home?

19 A. No, ma'am.

20 Q. Did you give him permission to enter your garage?

21 A. No, ma'am.

22 Q. Did you give him permission to take the generator?

23 A. No, ma'am.

24 Q. Was the generator yours?

25 A. No, ma'am.

1 Q. Whose was it?

2 A. My father's.

3 Q. Whose possession was it in?

4 A. Mine.

5 Q. And whose garage was it in?

6 A. Mine.

7 MS. COOKE: I begged the court's indulgence for
8 just one moment. Your Honor, that's all the questions I
9 have this witness.

10 THE COURT: All right. Cross-examination?
11 (Whereupon, the solicitor takes a moment to move t.v. from
12 in front of jury)

13 THE COURT: All right. Ms. Gainey?

14 **Cross-Examination by Ms. Gainey:**

15 Q. Hello, Ms. Little, have a couple questions for you.
16 You just previously testified that your garage door was
17 cracked and you notice that when you return home?

18 A. Yes, ma'am.

19 Q. Okay. And it had been like that previously?

20 A. That's the first time that it had ever done that.

21 Q. But you noticed that it was just a small crack?

22 A. No, it was opened.

23 Q. Okay. But earlier you testified that it was cracked,
24 correct?

25 A. No. I said the weather stripping at the bottom of it

A. Little- Cross-Examination by Ms. Gainey

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1 broke and it hit the sensor and pushed it back opened.

2 Q. Okay. And then also would you agree with me that the
3 camera from your surveillance videos that we just watched
4 is from the angle of your front door?

5 A. It's from the side door.

6 Q. But it's -- you can only see the front door, correct?

7 A. You can see in front of the garage and the door.

8 Q. Your testimony is that you can see in front of the
9 garage door from that surveillance video?

10 A. Yes, ma'am.

11 Q. You can see the front garage door ---

12 A. You can see in front of it.

13 Q. Okay. What garage door was that?

14 A. The one on the side of my house.

15 Q. What type of garage door is that?

16 A. It's a, where one of those garage doors that's got an
17 automatic open and close.

18 Q. So it's your testimony here today that from that video
19 you can see from the front of the garage door, is that
20 correct?

21 A. You can't see the door itself but you can see in front
22 of it.

23 Q. Okay. You can see it from a side angle?

24 A. Yes, ma'am.

25 Q. Okay.

A. Little- Cross-Examination by Ms. Gainey

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1 MS. GAINNEY: Thank you all.

2 MS. COOKE: No redirect, Your Honor.

3 THE COURT: Thank you very much, ma'am. You may
4 step down. You may call your next witness.

5 MS. COOKE: Your Honor, I would call former Deputy
6 Matthew Mueller from the back.

7 THE COURT: All right.

8 MS. COOKE: I just wanted to verify, this was
9 entered into evidence, Your Honor.

10 THE COURT: I'm sorry.

11 MS. COOKE: Did this -- this was approved to be
12 entered into.

13 THE COURT: Did you move that into evidence?

14 COURT REPORTER: No.

15 THE COURT: It hasn't been moved in.

16 MS. COOKE: Okay. I ask for it to be moved in and
17 published, published to the jury.

18 THE COURT: Okay. Do you ---

19 MS. GAINNEY: No objection.

20 THE COURT: No objection and that's State's what?

21 MS. COOKE: State's Exhibit, it's on the disc.

22 COURT REPORTER: Two.

23 THE COURT: State's 2.

24 MS. COOKE: State's 2, thank you.

25 (Whereupon, the Video has been marked and entered into

M. Mueller- Direct Examination by Ms. Cooke

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1 evidence as State's Exhibit No. 2)

2 THE CLERK: Place your left on the Bible and raise
3 your right hand. Do you swear the testimony you give this
4 court be the truth, the whole truth, and nothing but the
5 truth so help you God?

6 MR. MUELLER: I do.

7 MATTHEW MUELLER, first being
8 duly testified as follows: y sworn,

9 **Direct Examination by Ms. Cooke:**

10 Q. Can you state your name for the court?

11 A. My name is Matthew Mueller.

12 Q. And what was your occupation on October 10, 2018?

13 A. I was a sheriff's deputy on patrol.

14 Q. And what were your duties there?

15 A. Responding to calls. Service calls. Answering the
16 needs of the public.

17 Q. And did you have an occasion to come to 1010
18 Ousleydale Road that day?

19 A. I did.

20 Q. What county was that residence in?

21 A. Darlington.

22 Q. And how did you come there?

23 A. I was dispatched over the radio and I responded as
24 quickly as I could.

25 Q. And when you got there what did you encounter?

1 A. I was met by Ashley Little who stated that when she
2 had left to go to Walmart, when she returned she noticed
3 that her garage was in a disarray and that she noticed one
4 of her generators was missing and then she showed me a
5 video of such. From there I got a copy of that video and
6 submitted into evidence.

7 Q. Okay. And did she point out to you where the
8 generator was?

9 A. She did.

10 Q. And where was that?

11 A. It was in the garage towards the front.

12 Q. Were you able, yourself, to identify the defendant on
13 the video?

14 A. I was not.

15 MS. COOKE: No further questions, Your Honor.

16 THE COURT: Cross?

17 **Cross-Examination by Ms. Gainey:**

18 Q. Good morning.

19 A. Good morning.

20 Q. How long have you been in law enforcement?

21 A. I was in law enforcement for a year and a half.

22 Q. Okay. And you testified that you were the responding
23 officer to 1010 Ousleydale Road?

24 A. Yes, ma'am.

25 Q. Okay. And would you agree with me that you arrived

1 around 2:06 p.m.?

2 A. Roughly.

3 Q. Okay. Would you agree with me that you left around
4 2:33 p.m.?

5 A. Without seeing the report, roughly, in that time
6 frame, yes.

7 Q. Okay. Would you agree with me that's a total of
8 twenty-seven minutes?

9 A. Yes.

10 Q. Okay. I want to direct your attention -- so it's your
11 job pretty much to gather evidence and to preserve it,
12 correct?

13 A. Correct.

14 Q. Okay. Did you check for any DNA or forensic DNA
15 inside of the garage?

16 A. At that point, I hadn't been trained to do so.

17 Q. Okay. Did you dust for any fingerprints inside the
18 garage?

19 A. No, I did not.

20 Q. Did you dust for any fingerprints on the outside of
21 the garage door?

22 A. No, I did not.

23 Q. Did you check for any footprints inside the garage?

24 A. I did not see any.

25 Q. Okay. Did you check for them?

1 A. I did look around for them ---

2 Q. Okay.

3 A. --- but I did not see them.

4 Q. Did you check to see if there were any scratch marks
5 inside of the garage?

6 A. I didn't see any obvious scratch marks.

7 Q. Okay. Did you take any pictures from inside the
8 garage?

9 A. Not that I remember.

10 Q. Okay. You testified that you went inside the garage
11 and saw where the generator was, what side of the garage
12 was the generator on?

13 A. It was on the right-hand side of the garage door at
14 the front.

15 Q. Okay. Would you agree with me that you didn't put
16 that into your incident report?

17 A. I would.

18 Q. Okay. And you're trained to supplement your incident
19 report, correct?

20 A. Correct.

21 Q. And that's because it's important to preserve evidence
22 since you got so many cases, correct?

23 A. Correct.

24 Q. Okay. So you would agree with me that there's nothing
25 in your incident report that says that you went inside that

M. Mueller- Redirect Examination by Ms. Cooke

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1 garage at all, correct?

2 A. Correct.

3 Q. Okay. Also there were no signs of any forced entry,
4 were there?

5 A. Not that I could see.

6 Q. Okay.

7 MS. GAINNEY: That's all.

8 THE COURT: Redirect?

9 Redirect Examination by Ms. Cooke:

10 Q. Do you -- in your reports when you're taught to write
11 reports, are you taught to write every single little step
12 you take or word you say?

13 A. No.

14 MS. COOKE: No further questions.

15 THE COURT: Any re-cross?

16 MS. GAINNEY: Just briefly.

17 Re-cross Examination by Ms. Gainey:

18 Q. But you would put steps in there that were to be
19 important to gathering evidence, correct?

20 A. Yes.

21 Q. If you were to do the investigation I previously asked
22 you about, check for fingerprints, dust for fingerprints,
23 you would've put that in your report, correct?

24 A. If I were to do those, yes.

25 Q. Okay.

1 MS. GAINNEY: That's all, judge.

2 MS. COOKE: No further questions, Your Honor.

3 THE COURT: Thank you very much, sir. You may step
4 down.

5 MS. COOKE: Your Honor, I'd ask that ---

6 THE COURT: You may call your next witness.

7 MS. COOKE: --- deputy Mueller be excused.

8 THE COURT: Any objection?

9 MS. GAINNEY: No objection, judge.

10 THE COURT: Let Mr. Mueller know that he is
11 excused.

12 MS. COOKE: Your Honor, I would call Ms. Nicole
13 Freeman. And, Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (Whereupon, a bench conference was held off the record)

16 THE CLERK: Place your left on the Bible and raise
17 your right hand. Do you swear the testimony you give this
18 court be the truth, the whole truth, and nothing but the
19 truth so help you God?

20 MS. FREEMAN: I do.

21 NICOLE FREEMAN, first being
22 duly sworn, testified as follows:

23 Direct Examination by Ms. Cooke:

24 Q. Can you state your name for the record?

25 A. Nicole Freeman.

N. Freeman- Direct Examination by Ms. Cooke

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1 Q. And where do you work?

2 A. For the clerk of court's office in Darlington County.

3 Q. How long have you worked there?

4 A. Five years.

5 Q. And is your office keeper of records for general
6 sessions court?

7 A. Yes, ma'am.

8 Q. And are those records kept in an ordinary normal
9 course of business?

10 A. Yes.

11 Q. Do those records include criminal convictions?

12 A. Yes.

13 Q. And when the records are filled out are they filled
14 out at or near the time of a guilty plea or a conviction?

15 A. Yes.

16 Q. And do they accurately reflect the events of the
17 guilty plea or conviction?

18 A. Yes, they do.

19 Q. And did you receive a request from the State in this
20 case to look for records for criminal convictions on a
21 defendant in this matter, William J. Brunson?

22 A. I did.

23 Q. And did you search for those records?

24 A. I did.

25 Q. And I'm going to hand you State's Exhibit 5 and

1 State's Exhibit 6, can you just state what those are?

2 A. These are copies of the records that I was asked to
3 pull, sentencing sheet.

4 Q. And what is the sentencing sheet, um, what does a
5 sentencing sheet record?

6 A. So when somebody either please guilty or has a trial
7 and there found guilty the solicitor's office, the public
8 defender's office, the defense attorney, the judge and us
9 from the clerk's office all fill out a paper that basically
10 says, you know, what the defendant got, the case number,
11 you know, different things like that, court cost, has the
12 judge's signature on it, any conditions that may need to be
13 added to the conviction.

14 Q. How many sentencing sheets do you have there?

15 A. Two.

16 Q. And who are they on?

17 A. William Jonathan Brunson.

18 Q. Can you read the, what he was convicted of, if
19 anything, and the dates he was convicted?

20 A. So the first one is a burglary third and he pled
21 guilty to that on 8/22/16. And the second one is burglary
22 second non-violent. He pled guilty to that on September 3,
23 2009.

24 Q. Okay.

25 MS. COOKE: Thank you. I have no further

1 questions.

2 MS. GAINEY: Judge, I don't have any questions from
3 this witness.

4 THE COURT: All right. Thank you very much.

5 MS. FREEMAN: Thank you.

6 THE COURT: Thank you, ma'am. You can step down.
7 And you are not free to leave.

8 MS. FREEMAN: I can't go?

9 THE COURT: You have to continue working. I got
10 that from your boss.

11 MS. COOKE: Your Honor, I'd call investigator Neal
12 Cusack from the back.

13 THE COURT: All right.

14 THE CLERK: Place your left on the Bible and raise
15 your right hand. Do you swear the testimony you give this
16 court be the truth, the whole truth, and nothing but the
17 truth so help you God?

18 MR. CUSACK: I do.

19 NEAL CUSACK, first being
20 duly sworn, testified as follows:

21 **Direct Examination by Ms. Cooke:**

22 Q. Can you state your name for the record?

23 A. Neal Cusack.

24 Q. And where do you work?

25 A. Darlington County Sheriff's office.

1 Q. What do you do there?

2 A. I am the Commander over Criminal Investigation
3 Division.

4 Q. How long have you been there?

5 A. Been there at the sheriff's office?

6 Q. Yes.

7 A. I came in with the new sheriff about, a little over
8 three years now.

9 Q. How long have you been in law enforcement total?

10 A. Over thirty-three years.

11 Q. Were you working -- did you become involved in this
12 case at all?

13 A. Yes, I did.

14 Q. How did you become involved in this case?

15 A. I viewed the home security video.

16 Q. And when you watched the video, what did you see?

17 A. I saw a gentleman get out of the car, go up to the
18 house. He was familiar, I just couldn't put a name with
19 him. Saw him go through the garage. Came back out with a
20 generator and stuck it in the back of a car, and him and a
21 female left.

22 Q. You state that you were familiar with him but you
23 couldn't place his name, were you able to obtain his name?

24 A. Yes, ma'am, I was.

25 Q. How did you do that?

N. Cusack - Direct Examination by Ms. Cooke

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1 A. After viewing the video, like I said, I recognized him
2 but couldn't call his name. I made several phone calls,
3 got a name ---

4 MS. GAINNEY: Objection, Your Honor. I think we
5 might have a matter of law

6 COURT REPORTER: I can't hear you.

7 MS. GAINNEY: Objection, Your Honor. Under 403 I
8 think this line of question might be prejudicial.

9 THE COURT: Let me get you to come over here.
10 (Whereupon, a bench conference was held off the record)

11 Q. So, um, ---

12 THE COURT: All right. I'm gonna overrule your
13 objection.

14 MS. GAINNEY: Thank you, judge.

15 Q. You made some calls and what happened?

16 A. Yes, ma'am, I obtained a name. After obtaining a name
17 I got a picture and looked at the picture and compared it
18 to the security video and identified the defendant as being
19 the one in question.

20 Q. I'm gonna show you what's been marked as State's
21 Exhibit 1, do you recognize this?

22 A. Yes, ma'am.

23 Q. What, what is that?

24 A. That is a picture of William Jonathan Brunson.

25 Q. Is that the picture you used to match to the video to

1 identify the defendant?

2 A. Yes, ma'am.

3 Q. In that picture does he have any distinguishing marks
4 that you can see?

5 A. He has a red mark on his neck that stood out.

6 Q. And when you watched the video, did you see that same
7 mark on the video?

8 A. Yes, ma'am. Like I said, when I saw the video and
9 after getting the picture and looking at it you could, I
10 could visually say it was him plus the identification red
11 mark on his neck.

12 Q. And did you personally remember who he was at that
13 time?

14 A. After we got a name and looked at it, I was like,
15 yeah, okay.

16 MS. COOKE: Your Honor, If I could get Mr. Davis to
17 help me drag this out for one brief moment and I'd like to
18 stop the video at the point where he identified the
19 defendant.

20 THE COURT: Okay.

21 (Whereupon, the State takes a moment to get set up with
22 video equipment)

23 Q. Can you come down and stop the video where you....

24 (Whereupon, the solicitor is showing video again)

25 Q. Can you explain to the jury this on the television?

1 COURT REPORTER: I'm sorry, I can't hear you
2 Elaine.

3 Q. I said, can he explain to the jury on the television
4 how ---

5 THE COURT: Y'all need to speak very loudly ---

6 Q. --- he identified ---

7 THE COURT: --- because all of y'all are
8 whispering.

9 A. I identified Mr. Brunson by the mark here on his neck.
10 He has a red mark that stands out very distinctful (sic).
11 (Whereupon, they continue to look at video and he's
12 pointing out for the jury)

13 A. Same mark right here.

14 Q. Okay. You can have a seat back....

15 (Whereupon, the witness returns to the witness stand)

16 Q. And I just want to be clear, was the red mark the only
17 way you matched and identified the person in that photo to
18 the person in the video?

19 A. With looking at the face also you can identify him
20 that way also. He had tattoos on his arm also. That's
21 very kind of distinctful (sic).

22 Q. And you were familiar with the defendant?

23 A. Yes.

24 Q. You have personal knowledge of who he is from living
25 in Darlington County?

1 A. I've work for twenty-nine years in Hartsville in the
2 city so, I mean, we have crossed paths.

3 Q. And is William Jonathan Brunson in that photo that you
4 identified as being in the video is that the same William
5 J. Brunson that's on trial today?

6 A. Yes, ma'am.

7 MS. COOKE: Your Honor, I would asked to move that
8 photo into evidence and that it be published to the jury at
9 the appropriate time.

10 MS. GAINNEY: Judge, at this time I would object and
11 take up a matter of law before the court.

12 THE COURT: All right. I'm gonna overrule the
13 objection and we'll put that matter on the record.

14 MS. GAINNEY: Okay. I object under Rule 403.

15 THE COURT: Yes, ma'am, I understand.

16 (Whereupon, the Photo has been marked and entered into
17 evidence as State's Exhibit No. 1)

18 MS. COOKE: I have no further questions.

19 THE COURT: Ms. Gainney?

20 MS. GAINNEY: One moment, judge. I have nothing
21 further for this witness, judge.

22 THE COURT: Okay. You may step down. Your Honor,
23 I would call Robert Little.

24 THE COURT: Mr. Little, please come around and be
25 sworn, sir.

R. Little- Direct Examination by Ms. Cooke

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1 THE CLERK: Place your left on the Bible and raise
2 your right hand. Do you swear the testimony you give this
3 court be the truth, the whole truth, and nothing but the
4 truth so help you God?

5 MR. LITTLE: I do.

6 ROBERT LITTLE, first being
7 duly sworn, testified as follows:

8 Direct Examination by Ms. Cooke:

9 Q. Mr. Little, can you state your name for the record?

10 A. Robert Little.

11 Q. And where do you live?

12 A. 1010 Ousleydale Road.

13 Q. And do you regularly sleep there?

14 A. Yes, ma'am.

15 Q. And the only thing that I want to ask you is, did you
16 give the defendant permission to enter your home or garage?

17 A. No, ma'am.

18 Q. Did you give him permission to take a generator?

19 A. No, ma'am.

20 MS. COOKE: That's all the questions I have.

21 MR. LITTLE: Thank you.

22 THE COURT: Any cross?

23 MS. GAINES: Judge, I have no questions.

24 THE COURT: All right. Thank you very much, sir.

25 You may step down.

1 MS. COOKE: I beg the court's indulgence for one
2 moment, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. COOKE: Your Honor, the State rest.

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to ask if you would to step back into the jury room.
7 At the close of the State's case I have to take up matters
8 of law with the attorneys and so I'm going to do that.
9 Please, if you need anything while your back there let the
10 bailiffs know. Please have no conversation about the case
11 and I'll get you back out shortly, okay.

12 (Whereupon, the jury exits the courtroom at 11:20 a.m.)

13 THE COURT: All right. Before I take up any
14 issues, matters of law at the close of the State's case,
15 Ms. Gainey, I'm gonna give you an opportunity to go on the
16 record with your objection regarding the photograph that
17 Ms. Cooke entered into evidence. Go ahead, ma'am.

18 MS. GAINNEY: Thank you, judge. I would just object.
19 I don't think that it meets the, um, Denson, judge, I think
20 that booking photo was being introduced in a way to draw
21 attention to his origin or implication. I've got case law
22 and I'll provide it to you and to the solicitor, if I may
23 approach?

24 THE COURT: Yes, ma'am. Thank you.

25 MS. GAINNEY: Judge, I think that this case is a

1 little bit different in the State vs. Green case.

2 Yesterday, Lieutenant Cusack testified that he recognized
3 Mr. Brunson from previous dealings and then called other
4 law enforcement officers or called others in order to
5 determine who Mr. Brunson was by giving the description he
6 was a white male with tattoos, I believe, is what he said
7 which would lead any reasonable juror to suggest that he
8 has a prior record. In addition to that I don't think that
9 the State ---

10 THE COURT: Now, hold on. That testimony was not
11 before the jury. That was proffered yesterday. So that
12 wasn't evidence before this jury.

13 MS. GAINNEY: Okay. Well, I've got further points on
14 this case, judge. I don't think that they had a
15 demonstrative need to introduce the booking photo. He
16 testified today, got up there, and said he recognized him
17 from previous dealings and he got up there and identified
18 him on the video. I feel like submitting the photograph on
19 top of that is more prejudicial than probative because
20 it's, it's not only cumulative because he's gotten up there
21 and he's given a identification of the witness, I don't
22 know, or excuse me, of the defendant, I don't know why they
23 would need to see the booking photo in addition to that
24 because he gave an in court identification.

25 THE COURT: Well, first of all, I mean, you know

1 it's a booking photo. We know it's a booking photo. The
2 jury does not. It's been cropped and edited to the point
3 that it's simply a photo so there's no indication from the
4 photograph that it is a booking photo. It was never
5 testified into evidence as a booking photo. So let me
6 address the issue, it's simply a photo. The testimony from
7 the officer was that he recognize the guy from, from the
8 video but couldn't call his name. Had a visual on him but
9 couldn't call a name. So he made some calls or called
10 around and got a name and then got a photo of the person
11 whose name he had and verify that, that was, in fact, the
12 guy that he saw in the video. I think all of that is, I
13 think it's appropriate. I don't think it's volitive of any
14 evidentiary rule. It may be a little cumulative but he --
15 it's just a verification of what he saw on the video. So I
16 don't think it's inadmissible as far as it being, it's
17 probative value outweighing any, it's prejudicial effect
18 outweighing any probative value. It has substantial
19 probative value because the important thing in this case
20 is, who was the guy on the video? Who was -- that's an
21 essential issue in the case. And so it's evidence that
22 goes to support the State's position that it was, in fact,
23 Mr. Brunson. This officer was able to testify to that
24 effect by using the video as well as the photograph. So I
25 think it's probative value outweighed by any prejudice. So

1 that's why I overrule the objection.

2 MS. GAINNEY: Thank you, judge.

3 THE COURT: Now, let me take up any matters at the
4 close of the State's case from the defense.

5 MS. GAINNEY: Judge, at this time we would move for a
6 directed verdict based on the fact that the State hasn't
7 presented enough evidence for this to go forward.

8 THE COURT: Okay. I think I gonna respectfully
9 deny the motion, Ms. Gainney. I think it's a jury issue. I
10 think it's a factual issue depending on how the jury views
11 the evidence as to whether or not -- I think there's
12 evidence in the record depending on how the jury views it
13 so I think it's a jury call.

14 MS. GAINNEY: Thank you, judge.

15 MS. COOKE: Thank you, Your Honor.

16 THE COURT: Anything -- I know that Mr. Brunson is
17 not here but did you have any other witnesses or ---

18 MS. GAINNEY: I don't, judge. I do -- I don't know
19 if I mentioned this when we did the pretrial motion
20 regarding the prior burglary convictions.

21 THE COURT: Yes, ma'am.

22 MS. GAINNEY: I would move for the court to give a
23 limiting instruction about those previous burglary charges
24 that they're not to be taken into consideration for guilt
25 or innocence in this particular ---

1 THE COURT: Okay.

2 MS. GAINNEY: --- case that it's just to show the
3 elements of the crime.

4 THE COURT: The element -- right. Okay. And I'll
5 certainly will do that. But there's no objection to that,
6 Ms. Cooke?

7 MS. COOKE: Oh, no, not at all, Your Honor.

8 THE COURT: Yeah, I think it's absolutely
9 appropriate.

10 MS. GAINNEY: Thank you, judge.

11 THE COURT: And we'll do that. Now, if you have
12 anything, we're going to be at ease for a little bit, if
13 you have any or let me ask y'all this since we have this,
14 this time available, would y'all prefer that I bring the
15 jury back out, tell them that we're going to break for
16 lunch, let them go to lunch and during that lunch break you
17 can look over and see if you have any specific request to
18 charge or whatever, work on your closing and then close
19 after lunch or would you rather I just keep him here and we
20 feed them and we go forward with the closing arguments.

21 MS. COOKE: Your Honor, I don't know how Ms. Gainney
22 feels. I would love to break for lunch and have a few
23 minutes to get my thoughts together and look at the charge
24 and the close ---

25 THE COURT: Well, it would help us -- we've got a

1 rough draft of the charge but we're not done with it and I
2 haven't got any feedback from y'all if y'all have anything
3 in particular you would like for us to charge. So why
4 don't we do that. Why don't I -- and I'll bring them out
5 -- I'm not going address any issue other than that this is
6 a good time to break and then I'll send them out. I'll
7 look and see what I've got, Ms. Gainey. If you've got a
8 instruction that you'd like for me to give, in particular,
9 let me know and we'll look at it. But we'll work on that
10 over this lunch break and give you a copy of the rough
11 draft that we've got to give you an idea of what we have.
12 But if you have anything in particular you want us to
13 charge that's not part of this boiler plate stuff then let
14 me know, okay. Let's go ahead and bring the jury back in
15 and let me tell them that this is a good time for us to
16 break even though it's a little early and I'll bring them
17 back in just a little while. All right. Go ahead and
18 bring the jury back in.

19 (Whereupon, the jury enters the courtroom at 11:30 a.m.)

20 THE COURT: All right. Ladies and gentlemen, if
21 you don't already feel a little bit like a yo-yo you're
22 about to. So I'm about to turn you right around and send
23 you back out but not back to the jury room. I've taken up
24 some of the matters of law that I needed to take up. The
25 other matters that I need to take up before we proceed may

1 take a little bit longer than I anticipated so rather than
2 you just sit back there and by the time you do come back
3 out it's lunchtime, I know it's a little early it's 11:30,
4 but I think what I'm going to do is while I finish up these
5 matters of law I think I'm gonna let y'all go to an early
6 lunch and that way we can finish up the matters of law
7 we've got. When we get back from lunch we can proceed from
8 there. So as I said it's 11:30, I'm gonna ask you if you
9 would please to be back at 1:30. It gives you two hours
10 for lunch. And when you get back at 1:30, when everybody's
11 reconvened, we will start back with the trial at 1:30,
12 okay. So if everyone else will remain where you are and
13 members of the jury I'll see you back here at 1:30.

14 (Whereupon, the jury exits the courtroom at 11:31 a.m.)

15 THE COURT: Ms. Gainey, I think you told me
16 earlier, but you don't have, the defenses isn't putting up
17 anything, is that correct?

18 MS. GAINNEY: No, sir, Your Honor.

19 THE COURT: Okay. Well, what we'll do then is
20 we'll go ahead and we'll be at ease. We're gonna continue
21 working with regards to this charge. So if you have
22 anything specific you want us to consider let us know but
23 we'll go ahead and break at this time and start back at
24 1:30. But start back, I mean, kget back with us earlier if
25 you have something you want us to consider, okay.

1 (Whereupon, the court breaks for lunch at 11:33 a.m.)

2 (Whereupon, court convenes back on the record at 1:49 p.m.)

3 THE COURT: Have y'all had an opportunity to review
4 the proposed charge that, the drafted charge that I did up?

5 MS. COOKE: Yes, Your Honor. The State is fine
6 with the charges.

7 THE COURT: Anything from the defense that we need
8 to look?

9 MS. GAINNEY: No objection from the defense, judge.

10 THE COURT: Okay. Well, let's do this then before
11 we bring the jury out, Ms. Gainney, let me go ahead I'm
12 gonna recognize you for your motions at the close of all
13 the evidence and let you go ahead put that on the record.
14 And then when we bring the jury out we can just go into
15 closing arguments. And, of course, you'll get final
16 arguments so Ms. Cooke you'll lead it off, okay.

17 MS. COOKE: Yes, sir, Your Honor, I just have ---

18 THE COURT: Yeah.

19 MS. COOKE: I would like to play to the jury the
20 video as part of my closing arguments so I would like to
21 turn the TV around.

22 THE COURT: If you want to go ahead and set that up
23 you can do that now.

24 MS. COOKE: Okay.

25 THE COURT: I'm gonna go ahead and hear from Ms.

1 Gainey renewing her motions at the close of the case,
2 evidence.

3 MS. COOKE: Okay.

4 THE COURT: But y'all can go ahead and set that up.
5 Ms. Gainey?

6 MS. GAINNEY: Judge, I would just renew my motion for
7 directed verdict in this case.

8 THE COURT: Okay. I appreciate that. Ma'am, as I
9 said earlier I think it's a jury issue, it's a factual
10 question, and gonna respectfully deny the motion.

11 MS. GAINNEY: And, judge, I don't have any further
12 motions at this time. The defense doesn't have any
13 witnesses or anything.

14 THE COURT: Okay. What I'll do then is -- let's do
15 it -- this is the way I think -- I'll bring the jury out.
16 I'll explain to them that if they recall the State rested
17 and so now I'm gonna recognize the defense. I'll let you
18 then stand up and rest on the record before the jury. And
19 then I'll explain to them what we're doing and we'll move
20 into closing argument.

21 MS. GAINNEY: Okay. Great. Thank you.

22 THE COURT: And will you need that? So whenever
23 Ms. Cooke finishes her argument, guys, if we could then put
24 it to the side and then I'll recognize you.

25 MS. GAINNEY: Okay. Thank you, judge.

1 THE COURT: All right. Okay. Let's bring the jury
2 out.

3 MS. COOKE: Judge, um ---

4 DEPUTY: Hold up! Hold up!

5 (Whereupon, the jurors are asked to remain in the jury
6 room)

7 THE CLERK: Did you want to tell the judge
8 something, Elaine?

9 MS. COOKE: No. Neal was just reminded me that it
10 wasn't gonna play because the disc was up there. So I just
11 popped the disc in.

12 THE COURT: Oh, okay.

13 (Whereupon, the jury enters the courtroom at 1:53 p.m.)

14 THE COURT: Ladies and gentlemen, first thing I
15 want to do is apologize. I had no idea that the elevators
16 weren't working. If I had known that I would have called,
17 we would've called in lunch and we would've brought it to
18 you. I promise you when I let you go at 11:30 I didn't
19 know that was happening. We continue with the matters of
20 law we needed to take up and we did that. And then went
21 back, went back into chambers, well my law clerk and I had
22 some matters to go over so we didn't even think about going
23 to lunch until about quarter til one and we went out and
24 were told the elevators weren't working. He's a strapping
25 young man. I told him you go ahead and go to lunch and he

1 said, judge, you're not going to go? I said, well I could
2 go, I can get downstairs. I don't know if I can get back
3 up.

4 (Whereupon, there is laughter in the courtroom)

5 THE COURT: I've had, I'm over due for a knee
6 replacement. I've had six knee operations and I'm due for
7 an knee replacement that I have to get done. I just wasn't
8 sure that my knees would get me back up here. So I would
9 never have sent you away if I'd known that the elevators
10 weren't working so I apologize. Before we get started
11 back, Mr. Harrell, I'm going to ask you to serve as the
12 foreman of the jury. Ladies and gentlemen, anytime we, we
13 have found over time that when you deal with a group of
14 people it's easier to deal or to relate with one person on
15 behalf of the panel. And so the foreperson's main role is
16 to be the spokesperson for the jury. If any of you have
17 any questions about anything you just let Mr. Harrell know
18 and he'll write the question and pass out to me. Depending
19 on the question, I may just write my response and send it
20 back into you or I may just bring you out as a group and
21 respond to your question. But that's the main role of the
22 foreperson is to be the communicator between the jury panel
23 in the court. When you begin your deliberations as I said
24 if you have any questions they'll be passed out to me. But
25 in this case, as if with every case that's tried in this

1 courtroom, your verdict must be unanimous. You must all
2 agree on the verdict whatever it is. And I tell you that to
3 say this, the foreperson's vote carries no more weight, his
4 opinion carries no more weight, than anyone else. You're
5 all equal members of the jury. I always encourage jurors
6 to listen with an open mind to each other and be willing to
7 reevaluate your position if others feel differently. But I
8 don't ever ask anyone to give up their firmly held
9 convictions. So I'm just saying the part, that's what
10 deliberations are about it's about listening to each other,
11 talking about the evidence, talking about the facts and
12 arriving at a verdict. So you're all equal members of the
13 jury when it comes to that because your decision must be
14 unanimous. So thank you Mr. Harrell for being willing to
15 serve in that capacity. If you recall when we broke for
16 lunch I was taken up matters of law. The State had rested
17 their case and so I had to take matters of law. And so at
18 this time we're ready to start back and I would recognize
19 Ms. Gainey on behalf of the defense.

20 MS. GAINY: Thank you, judge. At this time the
21 defense rest.

22 THE COURT: All right. Thank you, ma'am. Folks,
23 the law requires that I take up matters of law at the close
24 of the State's case and then again at the close of the
25 defense's case. Ms. Gainey was kind enough to inform me

1 during the break that the defense would be closing,
2 resting. And so rather than bring you out, recognize her
3 and have her rest and then send you back out and take up
4 those matters of law, because she let me know that she was
5 going to do that we went ahead and did that. So we've
6 already taken up the matters of law at the close of all the
7 evidence and so there's no need to send you back out and
8 we're just ready now to move into the next stage of the
9 trial and that is closing arguments.

10 Now, if you recall when the attorneys addressed you
11 with their opening statements this morning I told you that
12 what they tell you or what they share with you is not
13 evidence. And I will tell you the exact same thing goes
14 for their closing arguments. They are not witnesses in this
15 case. They are not under oath. They are the attorneys that
16 are representing their client's interest. But it's
17 important that you listen to them because this is their
18 opportunity to argue to you what they believe the evidence
19 in this case has shown. And so this is their opportunity
20 to do that. And it's important that you pay close
21 attention and listen to them as they do that. Now, as in
22 all cases, the burden of proof rest on the State and so,
23 therefore, the State will open with their closing arguments
24 first. So I would recognize Ms. Cooke on behalf of the
25 State.

1 MS. COOKE: Thank you, Your Honor. May it please,
2 the court?

3 THE COURT: Yes, ma'am.

4 MS. COOKE: Ms. Gainey?

5 Closing arguments by Ms. Cooke:

6 THE COURT: Ladies and gentlemen, they say a
7 picture is worth a thousand words. I believe that this
8 picture of the defendant and this video are worth one very
9 powerful word and that is guilty. Two minutes after Ashley
10 Little left her home to go on a fifteen minute run to
11 Walmart in broad daylight the defendant approached her
12 home. He knocked on the door twice and when nobody
13 answered he stepped back from the door and he looked around
14 as if to see if anyone was watching. And then he looked in
15 the garage and he looked around again and he had a
16 conversation with the lady in the car. And he goes in the
17 garage and comes out running with the generator and puts it
18 in the trunk.

19 So let's talk about the elements that the State has to
20 prove. The first element I have to prove is that he
21 entered a dwelling. He entered a dwelling by walking into
22 the garage. The law does not require breaking and
23 entering. It only requires entering without consent. So
24 it does not matter that the garage door was accidentally
25 left open. All he has to do under the law is enter without

1 consent here he does not have to break into the garage or
2 break into the home to enter. How do we know he entered?
3 Well, on the video you can see him turning this corner
4 right here and disappearing. But Ashley Little testified
5 that the only way he could get to the generator was to
6 enter into her garage to pick it up. And then former
7 deputy Matthew Mueller testified, who was sequestered and
8 could not hear her testimony, he confirmed that when he
9 said she showed me the spot where it was and it was inside
10 the garage. She testified that he would've had to enter
11 her garage in order to take that generator and steal it.
12 So the first element "enter" is satisfied.

13 A dwelling, the judge is going to tell you that a
14 dwelling is a building or place where one regularly sleeps,
15 like a home or a house. Both Ashley Little and Robert
16 Little testified that they regularly sleep in their home.
17 That is a dwelling. He's also going to tell you that any
18 part of that dwelling matters. That includes an attached
19 enclosed garage. That garage is part of the dwelling. So
20 he entered a dwelling. He entered it without consent
21 because both homeowners testified that he did not have
22 consent or permission to enter their dwelling nor did he
23 have permission to take that generator. So he entered the
24 dwelling without consent with the intent to commit a crime
25 therein. So did he enter with the intent to commit a crime

1 therein? Well, I'm going to play the video for you in just
2 a minute. I'm gonna let you watch his actions and
3 determine for yourself if he had the intent to commit a
4 crime when he entered that garage. He knocked on the door
5 twice. He waited. He knew nobody was home. Nobody came
6 to the door. He kept looking around to see if anybody was
7 watching him. He went to the garage once and came back
8 out. Looks like he gets to an argument or some sort of
9 conversation with the lady in the car. He goes back in and
10 runs out with the generator. Puts it in the trunk and
11 speeds off. He had the -- he had formed the intent to
12 commit a crime inside the dwelling when he entered that
13 garage. And, of course, he did commit a crime inside. He
14 steals the generator. The generator wasn't his. He went
15 in, picked up, ran out with it and put it in the trunk of
16 the car and took off with it. It took him seconds to grab
17 the generator after he entered it and to run out with it.
18 The law allows you to infer from all circumstances and his
19 behavior and his demeanor whether or not he intended to
20 commit a crime when he entered that garage.

21 Also we put a witness up, Ms. Nicole Freeman from the
22 clerk of court's office, who testified that he has two
23 prior convictions of burglary. A burglary second in
24 September of '09 and a burglary third in August of 2016.
25 This satisfies the last element of burglary in the first-

1 degree. So the State has proven all of the elements.
2 Investigator Neal Cusack identified the defendant. He
3 looked familiar. He saw him on the video. Couldn't place
4 his name. He obtained this picture and he matched the red
5 markings on his neck with the red markings on the neck of
6 the person in the video along with his face to the face of
7 the person on the video. He was identified by law
8 enforcement.

9 Now, we're not on CSI, we're not on Law and Order.
10 When you have a crime committed on video and a law
11 enforcement officer who identifies the suspect who
12 committed the crime, we don't have to have fingerprints or
13 DNA because we're not on a television show. This crime was
14 committed on video and he was identified by a law
15 enforcement officer through this picture and his own
16 familiarity with the suspect.

17 So let's talk about reasonable doubt. Reasonable
18 doubt is just that. It's a reasonable doubt. It is not
19 beyond all doubt. It is not beyond any doubt. It's not
20 beyond a shadow of a doubt. It is beyond a reasonable
21 doubt. The standard is not impossible. It's just high.
22 The judge is going to charge you that at the close of the
23 evidence if you are firmly convinced that the defendant
24 committed the crime of burglary first that you must find
25 him guilty if you are firmly convinced after watching the

1 video, looking at the pictures and hear the testimony. So
2 I'm going to play the video for you now.

3 (Whereupon, the State plays the video for the jury)

4 These events occurred two minutes after Ashley Little
5 left home to make a fifteen minute run to Walmart in broad
6 daylight. We watched these events unfold today on the
7 video in the courtroom. Ms. Little watch those events
8 unfold at her home after she returned home from Walmart
9 along with their three-month-old child. They say that a
10 picture is worth a thousand words, I say these pictures and
11 this video is worth one word, a very powerful one, and
12 that's guilty. And I ask you to return a verdict of guilty
13 against the defendant. Thank you.

14 THE COURT: Thank you, Ms. Cooke. Ms. Gainey?

15 **Closing arguments by Ms. Gainey:**

16 _____MS. GAINNEY: Thank y'all for being here this
17 afternoon. So once again the issue here is whether or not
18 a burglary is actually committed. I submit to you that
19 there's no evidence presented by the state that Mr. Brunson
20 entered into that garage. The state today focused on a
21 video that you just watched. It doesn't actually show Mr.
22 Brunson entering into the garage. Deputy Mueller, the
23 responding officer, testified that there was no signs of
24 forced entry. There were no fingerprints found on the
25 inside of the garage. There were no footprints found on

1 the outside of the garage nor any scratch marks inside of
2 the garage. In fact, there was no physical evidence
3 gathered by law enforcement and presented to you today
4 whatsoever to prove that Mr. Brunson actually went into
5 that garage. In fact, deputy Mueller testified that he
6 didn't even check for these types of evidence.

7 Ladies and gentlemen, there's no evidence in the
8 record that law enforcement even went inside that garage to
9 investigate whether or not someone entered it.

10 What about a photo of the inside of the garage? We
11 didn't see that today, did we? It sure would've been
12 helpful if we would've seen a photograph of the inside of
13 the garage after this incident allegedly took place so we
14 can determine where things were positioned and where
15 everything was at. We didn't see any of that today. In
16 fact, the testimony today shows that law enforcement
17 arrived to Ms. Little's house, watch the video, and left
18 within twenty-seven minutes. The video you saw shows the
19 outside of the garage. You can't even see the front of the
20 garage. You can't even see the garage from the video. You
21 can't even see the door, what type of door that the garage
22 has from the video. The video just simply doesn't show Mr.
23 Brunson entering into it. You can't tell from that video
24 if he went around the garage or in the garage. If that's
25 what they're relying on, you simply can't see it from the

1 angle of this video, ladies and gentlemen. In fact,
2 furthermore, you heard Ms. Little testify that she wasn't
3 even the owner of this generator. She testified that this
4 generator belonged to her father. There was not even
5 testimony today from the owner of this generator that he
6 never gave someone consent to use it. The State showed you
7 a deceiving video from one angle. One in which, once
8 again, does not even show the garage door, ladies and
9 gentlemen, nor the inside of the garage. We don't know
10 what that garage looks like on the inside. And they want
11 you to convict my client of a burglary in the first-degree
12 based on this. The State has failed to prove an essential
13 element for the crimes of burglary in the first-degree.
14 That is the entering element. The State must prove beyond
15 a reasonable doubt that he entered into that garage. I
16 submit to you that they cannot prove this, ladies and
17 gentlemen, based on the evidence today. And if you find
18 that my client did not enter into that garage in order to
19 take that generator you must find him not guilty. Thank
20 you.

21 **Judge's Charge:**

22 THE COURT: Thank you, ma'am. All right. Ladies
23 and gentlemen, when we started this case, I told you that
24 you are the judges of the facts and that I was the judge of
25 the law. So as the facts were being presented to you it was

1 appropriate for me to be up on the bench out of the way and
2 allow that to occur. But we've now reachdc a portion of
3 this trial where you and I enter into this together, you as
4 the judges of the facts and I as the judge of the law. So
5 I think it's appropriate that I come down and be with you
6 as I give you the charge on the law.

7 I'm going to pretty much gonna read this verbatim. I
8 don't want to leave anything out or misquote anything.

9 So, Mr. Foreman and members of the jury, you have
10 heard the evidence and the arguments of both parties. I am
11 now going to tell you the law that applies to this action.
12 The indictment charges the defendant, William J. Brunson
13 with the offense of burglary in the first-degree. I remind
14 you that the fact that the defendant was arrested, charged,
15 and indicted in this case is not evidence in this case nor
16 does it create any presumption or inference of guilt. The
17 indictment is simply the formal written instrument which
18 contains the charge made against the defendant. It is the
19 formal document by which this case is brought into this
20 court. The defendant, to that indictment, has pled not
21 guilty and that plea puts the burden on the State to prove
22 the defendant guilty. A person charged with a criminal
23 offense in South Carolina - excuse me, folks, I don't know
24 this is fairly new to me. I don't know how to work this
25 watch.

1 (Whereupon, the judges's watch goes off in court)

2 A person in South Carolina charged with a criminal
3 offense is never required to prove themselves innocent. It
4 is an important rule of law, ladies and gentlemen, that a
5 defendant in a criminal trial no matter what the
6 seriousness of the charge may be, will always presumed to
7 be innocent of the crime for which the indictment was
8 issued unless guilt has been proven by evidence satisfying
9 you with that guilt beyond a reasonable doubt.

10 This presumption of innocence is not in when you begin
11 your deliberations but it accompanies the defendant
12 throughout the trial until you've reached a verdict of
13 guilt based on evidence satisfying you of that guilt beyond
14 a reasonable doubt. The presumption of innocence is not a
15 mere legal theory. It's not just a legal phrase but it is
16 a substantial right to which every defendant is entitled
17 unless, you the jury, are satisfied from the evidence of
18 the defendant's guilt beyond a reasonable doubt. So what
19 is a reasonable doubt in the law? Some of you may have
20 served as jurors in civil cases where you were told that
21 it's only necessary to prove that a fact is more likely
22 true than not true such as by the greater weight or the
23 preponderance of the evidence. In criminal cases the
24 State's proof must be more powerful than that. It must
25 beyond a readable doubt. Proof beyond a reasonable doubt

1 is proof that leaves you firmly convince of the defendant's
2 guilt.

3 Now, there are very few things in this world that we
4 know with absolute certainty and in criminal cases the law
5 does not require proof that overcomes every possible doubt.
6 If based on your consideration of the evidence you are
7 firmly convinced that the defendant is guilty of the crime
8 charged you must find the defendant guilty. If however you
9 feel that there is a real possibility that the defendant is
10 not guilty then you must give the defendant the benefit of
11 that doubt and find him not guilty. I remind you that
12 during this trial you and I have certain duties to perform.
13 As a trial judge it's my responsibility to preside over the
14 trial of this case and I also have the duty to rule on the
15 admissibility of evidence that's been offered during the
16 course of this trial. I have the additional duty to charge
17 you the law that is applicable to this case. It is your
18 duty as jurors to accept and to apply the law as I now
19 state it to you. If you already have an idea as to what the
20 law is or what the law ought to be and it does not agree
21 with what I now tell you the law is, you must abandon your
22 idea because you are sworn to accept the law and to apply
23 the law exactly as I state it to you. As I told you at
24 the start of this case the jury is the sole and exclusive
25 judge of the facts. The law does not allow me to have an

1 opinion about the facts in this case. This is a matter
2 solely for you, the jury, to determine. As jurors it's
3 your duty to determine the effect, value, weight, and truth
4 of the evidence that was presented during the course of
5 this trial.

6 To determine the facts of this case you're gonna have
7 to evaluate the credibility that is the believability of
8 the witnesses and that's basically what credibility means,
9 it means believability. It becomes your duty as jurors to
10 analyze and evaluate the evidence and to determine which
11 evidence convinces you of its truth. You, the jury, can
12 believe as much or as little of the witnesses testimony as
13 you think is proper. You should assess the credibility of
14 each witness who is testifying. You may consider whether
15 any witness has exhibited to you any interest, bias, or
16 other motive in this case. You may also consider the
17 appearance in the manner of the witness while on the
18 witness stand. You do not, however, determine the truth
19 merely by counting the number of witnesses presented by
20 each side.

21 Now, there are generally two types of evidence that
22 are presented during a trial. There is direct evidence and
23 there's circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 claims to have actual knowledge of the fact such as an

1 eyewitness. Circumstantial evidence is proof of a chain
2 of facts and circumstances which indicate the existence of
3 a fact. Crimes may be proven by circumstantial evidence.
4 The law makes absolutely no distinction between the weight
5 or value to be given to either direct or circumstantial
6 evidence. Nor is there any greater degree of certainty
7 require of circumstantial evidence than of direct evidence.
8 However, to the extent that the State relies on
9 circumstantial evidence, all of the circumstances must be
10 consistent with each other and when taken together point
11 conclusively to the guilt of the accused beyond a
12 reasonable doubt. If the circumstances merely portray the
13 defendant's behavior as suspicious than that proof has
14 failed. You should weigh all of the evidence in this case.
15 The State has the burden of proving the defendant guilty
16 beyond a reasonable doubt and this burden rests with the
17 State regardless of whether it relied on direct evidence,
18 circumstantial evidence or some combination of the two.

19 Now, I instruct you and I emphasize the fact that the
20 defendant, William J. Brunson, did not testify or did not
21 appear during this trial is not a factor to be considered
22 by you in any way in your deliberations as to his guilt or
23 innocence. The guilt or innocence of Mr. Brunson is not to
24 be considered by you in any manner due to the fact that he
25 did not appear nor did he testify. A defendant has a

1 constitutional right to remain silent and the assertion of
2 this right is not be considered by you in your
3 deliberations. I repeat, under your oath, you are to draw
4 no conclusion whatsoever from the fact that Mr. Brunson did
5 not appear or testify in this case. The fact that he did
6 not appear or testify should not even be discussed in the
7 jury room. The burden of proof, as I told you, rest on the
8 State. The defendant is not required to prove his
9 innocence and the burden remains on the State throughout
10 the trial.

11 So necessarily you must determine the credibility of
12 any of the witnesses who have testified in this case, um, -
13 excuse me, I've already been through that.

14 Now, in this trial Mr. Brunson has been charged with
15 burglary in the first-degree. The defendant, as I said,
16 has been charged with that offense. The State must first
17 prove beyond a reasonable doubt that the defendant entered
18 a dwelling without consent.

19 A dwelling is any building or portion of a building in
20 which a person ordinarily sleeps. But if a building is
21 occupied it is a dwelling even if the residents are
22 temporarily absent from that building. In order to prove
23 that the defendant entered the dwelling, the State does not
24 have to show that the defendant's entire body entered the
25 dwelling. The smallest entry is sufficient. It may be any

1 part of the body such as a hand or a foot or even an
2 instrument such as a hook, or some other type of
3 instrument.

4 In addition, the State does not have to prove that
5 force was used to gain entry. If a person enters a
6 building by using deception, artifice, trick or
7 misrepresentation to get consent to enter this is an entry
8 without consent.

9 Next, the State must prove beyond a reasonable doubt
10 that the defendant intended to commit a crime either a
11 felony or a misdemeanor at the time of the entry. The mere
12 entry into a dwelling without consent is not a burglary.
13 There must be an intent to commit a crime therein. Intent
14 may be shown by the acts or the conduct of the defendant
15 and other circumstances from which you may naturally and
16 reasonable infer intent.

17 Finally, the State must prove beyond a reasonable
18 doubt that the defendant has a prior record of two or more
19 convictions for burglary and/or housebreaking. Evidence of
20 prior offenses committed by the defendant is not offered to
21 prove that the defendant has bad character or to prove that
22 the defendant committed the burglary on this occasion. The
23 prior convictions may be considered by you only for the
24 purpose of determining of whether or not it satisfies the
25 element of the offense that makes burglary a first-degree

1 burglary by entering a dwelling without consent to commit a
2 crime and that you have two prior convictions for burglary
3 and/or housebreaking. That is the only purpose that you
4 may consider the prior convictions. Before you can even
5 consider the evidence of the defendant's prior burglaries
6 or housebreaking convictions, you must first find that the
7 State has proved beyond a reasonable doubt that the
8 burglary was committed by the defendant. If you find
9 beyond a reasonable doubt that the burglary was committed
10 then you may consider the circumstances and the evidence of
11 the prior convictions as evidence which would make the
12 burglary first-degree a burglary. If you do not find
13 beyond a reasonable doubt that the defendant committed
14 these alleged prior offenses then you cannot return a
15 verdict of burglary in the first-degree because that is an
16 essential element of that charge.

17 Now, Mr. Foreman, and ladies and gentlemen, of the
18 jury, as you retire to begin your deliberations I want to
19 wish, to express the hope that each of you will reach, will
20 be mindful of the importance of your responsibility to
21 reach the height of understanding your responsibility. As
22 the presiding officer of this court, I am vitally concerned
23 that whatever verdict you find that will be a result of you
24 going into the jury room and confining your considerations
25 and your deliberations to evidence and to the law that you

1 have heard here in this courtroom weighing it fairly and
2 impartially as I have every confidence you will do. Your
3 verdict cannot be based on sympathy, compassion or emotion
4 or some other consideration that's not found in the
5 evidence. Your evidence, excuse me, your verdict in this
6 case, as I told you earlier, must be unanimous. You must
7 all agree on that verdict.

8 Now, I'm gonna ask you in just a moment to step back
9 into your jury room. I'm gonna ask you, though, don't
10 begin the deliberations quite yet. I need to confer with
11 the attorneys to make sure that the charge is complete and
12 that I haven't left anything out or misquoted anything. If
13 there's anything I need to bring you back out and correct,
14 I'll do that. If the charge is find as given, we would
15 then collect the exhibits that were entered into evidence
16 and we'll send those back to you. When you receive, Mr.
17 Harrell, the exhibits that'll be your cue to begin
18 deliberations. If you need to see that video again, the
19 disc will be back there with you, but if you need to see
20 the video again, you just need to let me know and we will
21 show that to you again as many times or as few times as you
22 need to see it, okay. So, if you would, step back into the
23 jury room and await these items before you begin your
24 deliberations.

25 (Whereupon, the jury exits the courtroom at 2:30 p.m.)

1 THE COURT: All right. Are there any objections or
2 exceptions to the charge from the State?

3 MS. COOKE: Judge, I have no objection or
4 exceptions to anything that was said. I do have one
5 request based on an inference that was made during Ms.
6 Gainey's closing argument that it's not the law that you
7 may consider adding a charge that the crime of burglary is
8 against possession and not ownership based on State v.
9 Singley, 392 SC 270.

10 THE COURT: Give that to me again?

11 MS. COOKE: State v. Singley, the ruling in that
12 was that burglary is a crime against possession and not
13 ownership and I would ask that based on the inference that
14 was made to the jury during the closing argument of the
15 defense that because this is not their generator this is
16 not burglary.

17 MS. GAINNEY: Judge, that was not the inference that
18 I was making. She, in her closing statement, brought up
19 the fact that Mr. Brunson took the generator and that was
20 the crime that was intended to be committed therein to
21 satisfy that burglary. I was just simply arguing that
22 there was no testimony provided from the State whatsoever
23 that, that crime was even committed, that the owner wasn't
24 even here to testify.

25 THE COURT: That's -- that's her point, though.

1 MS. GAINNEY: Yeah.

2 THE COURT: Ownership is not an element it's
3 possession. So I think what your argument is just exactly
4 what she's claiming the law says is not necessary. In
5 other words, she doesn't have to show ownership of the
6 item, simply possession of the item.

7 MS. GAINNEY: Okay.

8 THE COURT: So, um, ---

9 MS. GAINNEY: So my -- that's fine.

10 THE COURT: Go ahead.

11 MS. GAINNEY: What I was saying is I don't know if I
12 worded that correctly. It wasn't so much ownership it was
13 the fact that the crime wasn't to go in to steal it - to
14 steal - that the inference was who to say he didn't have
15 consent to have the generator in the first place. I don't
16 know if that's semantics but that's where that was leading
17 not to the ownership of it. If the whole crime, the reason
18 why he broke in, the burglary occurred if the crime to take
19 place therein was the larceny, that's what I was arguing
20 was that there was no evidence presented that Mr. Brunson
21 didn't have consent to have that.

22 THE COURT: So your point is that -- your point was
23 that the owner may have given him consent ---

24 MS. GAINNEY: Exactly.

25 THE COURT: --- unaware that they would've been

1 aware of it.

2 MS. GAINNEY: Exactly.

3 THE COURT: But, Your Honor, that was not what was
4 said and I don't think that's what was inferred. And even
5 if he did - - even if the owner had given him consent to
6 take the generator he didn't have consent to enter, the
7 crimes against possession and habitation, not ownership and
8 I think it was stated the first way.

9 MS. GAINNEY: Just I have written down specifically
10 -- I've read it verbatim from a written sheet of paper
11 so....

12 THE COURT: What did you say?

13 MS. COOKE: "Furthermore, you heard from Ashley
14 little. She testified that she's not even the owner of the
15 generator. She testified the generator belonged to her
16 father. There has been no testimony from the owner of the
17 generator that Mr. Brunson was not permitted to use the
18 generator."

19 THE COURT: Of course, the State's position is that
20 a crime of burglary that occurs that ownership is not the
21 issue, the issue is whether or not the person was in
22 possession and was deprived of the possession.

23 MS. COOKE: Yes, Your Honor, based on State v.
24 Singley.

25 THE COURT: Have you got it, the exact charge or

1 quote that you want the court to charge?

2 MS. COOKE: No. I just wrote down the exact quote
3 from the case. I can write it down.

4 THE COURT: Yeah.

5 MS. GAINNEY: What was that case and cite number?
6 That way I can verify that case and everything like that.
7 You don't have a copy of that do you, Ms. Cooke?

8 MS. COOKE: No. State vs. Singley, 392 S.C. 270.

9 THE COURT: 392 S.C., what?

10 LAW CLERK: 270.

11 MS. COOKE: 270. A 2011 case.

12 (Whereupon, the court takes a moment to look at case)

13 MS. COOKE: Your Honor, I had it on my phone and it
14 just blacked out on me.

15 THE COURT: I've got it right here. I've got the
16 case.

17 MS. COOKE: Your Honor, I've been told that I have
18 one of the worst handwritings in the world but....

19 THE COURT: I don't know that I need your
20 handwriting ---

21 MS. COOKE: Okay.

22 THE COURT: --- but you can pass it up.

23 MS. COOKE: It's, um, burglary is a crime against
24 possession and habitation not ownership ---

25 THE COURT: You've got to understand I read a lot

1 of letters -- you'd make a good inmate.

2 (Whereupon, there is laughter in the courtroom)

3 THE COURT: What I would propose Ms. Gainey is --
4 do you have the case in front of you?

5 MS. GAINNEY: I am and judge, I was just gonna say I
6 don't know that this case is on point. I'm reading it,
7 it's a burglary case, I mean, I haven't had time to sit
8 here and go through ---

9 THE COURT: It's not, I mean, the facts aren't on
10 point as far as with this case but ---

11 MS. GAINNEY: Yeah, it seems like here the case is
12 more so talking about the ownership of the house and that
13 was the element that the court was focusing on here.
14 Whereas, this inference was going towards the actual crime
15 being committed therein ---

16 THE COURT: Right.

17 MS. GAINNEY: --- which would be the taking of the
18 generator. The inference wasn't that ---

19 THE COURT: No, what the court is saying here ---

20 MS. GAINNEY: Yeah.

21 THE COURT: --- and what the law is in this country
22 is, essentially, if J.D. has a generator and he let me
23 borrow it, so now I've got the generator and it's in my
24 home and I've had it for a year. And then you and JD get
25 together and he says, you know, what, Russo has a generator

1 of mine, if you need to borrow it I'm happy, you can use
2 it. You don't have a right to come to my house and break
3 into my house and take that generator. That's what this is
4 saying. The law says that burglary is a crime against
5 possession and habitation and not a crime against
6 ownership. So if I'm in possession of the item you don't
7 have the right to violate the sanctity of my home to take
8 it even if you have permission of the owner. That's what
9 this is saying, I think. And in your closing, both Mr.
10 Elliott and I both, you know, when you made your reference
11 in your closing, we both looked at each other and said
12 ownership is not an issue. So we both had the impression
13 that what you were saying is that because they didn't own
14 the generator it couldn't be a burglary against them. Now,
15 we misconstrued what you meant, but I think based on your
16 argument I think the State is entitled to this charge, if
17 you really want it. Now, not giving it in context with the
18 rest of the charge I don't know if it's just going to be
19 confusing to the jury or wonder why because I'm not gonna
20 go any further and tie it back to Ms. Gainey's closing.

21 MS. COOKE: Right.

22 THE COURT: I'm just gonna basically, I would
23 basically -- if I give this charge it will basically be,
24 "ladies and gentlemen, in addition to what I've already
25 charged you on burglary, I also charge you that in South

1 Carolina burglary is a crime against possession and
2 habitation and not a crimes against ownership," and leave
3 it at that.

4 MS. COOKE: I understand, Your Honor. I would
5 still asked that it be charged to the jury.

6 THE COURT: I'm sorry?

7 MS. COOKE: I understand, Your Honor. I believe I
8 would still like it to be charged to the jury.

9 THE COURT: Okay. I will note your exception to
10 that ruling, Ms. Gainey. I am going to charge it and I'll
11 note your objection and exception to that rule.

12 MS. GAINNEY: Okay. Thank you, judge.

13 THE COURT: All right. Let's bring the jury back
14 out.

15 (Whereupon, the jury enters the courtroom at 2:45 p.m.)

16 THE COURT: Folks, I have an additional charge that
17 I do need to make to you with regards to the offense of
18 burglary. In addition to what I've already charged you
19 about burglary I would also charge you that under South
20 Carolina law burglary is a crime against possession and
21 habitation and is not a crime against ownership, okay. So
22 that completes that charge regarding burglary and so I'll
23 get you to step back into your jury room and await these
24 items and when you get these items that will be your que to
25 begin deliberating.

1 (Whereupon, the jury exits the courtroom at 2:47 p.m.)

2 THE COURT: All right. Now, anything further from
3 the State?

4 MS. COOKE: No, Your Honor.

5 THE COURT: Anything further from the defense?

6 MS. GAINNEY: No, sir, Your Honor.

7 THE COURT: All right, guys, do me a favor and get
8 with Lisa and go over the exhibits to make sure that
9 everything here that needs to be here.

10 (Whereupon, the court address to the alternate)

11 THE COURT: I want to thank you for your service.

12 MS. HOWLE: Yes, sir.

13 THE COURT: I think everybody's healthy and can go
14 through deliberations so that kind of, it's kind of bad for
15 you, you have to sit through all of it and then you don't
16 get to participate.

17 MS. HOWLE: That's okay. I think the experience
18 has been good. I appreciate it.

19 THE COURT: Well, thank you for your service.

20 MS. HOWLE: Thank you.

21 THE COURT: And I think that concludes any juror
22 matters that we have for the week so you don't have to call
23 back in you're free to go.

24 MS. HOWLE: I'm going back to work.

25 THE COURT: Thank you, ma'am. We'll be at ease

1 while the jury is deliberating. If y'all have anything you
2 need for me to deal with I'll be happy to do it. If not
3 we'll just await for the jury's decision.

4 (Whereupon, the court starts their deliberations at 2:56
5 p.m.)

6 THE COURT: Lisa, for the record the jury has sent
7 out this note, it says, "picture of Mr. Brunson - is it
8 correct left to right?" I'm just gonna write on here it's
9 a photograph. It is what it is. How else would I -- what
10 else would I say? Because if I go through all that
11 rigmarole about how a camera switches, stuff like that, now
12 I'm commenting on the evidence, I don't think that's
13 appropriate. I think I just have to say it is a photograph
14 and it is -- I don't even know what to say other than, the
15 picture and the video are items placed into evidence and
16 the court cannot comment on the evidence.

17 (Whereupon, the judge takes a moment to answer the question
18 for the jury)

19 THE COURT: All right. What I've put here is,
20 "the photo and video are items placed into evidence. The
21 court cannot comment on the evidence this is solely for the
22 jury to evaluate."

23 (Whereupon, the Question by the Jury has been marked and
24 entered into evidence as Court's Exhibit No. 1)

25 THE COURT: Folks, it's my understanding that the

1 jury has reached a verdict and all that I ask that it be
2 received in a professional manner. Whether you agree with
3 it or disagree with it I just would appreciate that there
4 be no outburst or show of emotion just understand that it
5 is the jury's verdict. Whether you agree with that or
6 don't agree with it, it's fine but they deserve to have
7 verdict received in a professional manner. Is the State
8 ready to receive the jury verdict?

9 MS. COOKE: Yes, Your Honor.

10 THE COURT: Is the defense ready?

11 MS. GAINES: Yes, sir, Your Honor.

12 THE COURT: All right. Let's bring them out.

13 (Whereupon, the jury enters the courtroom at 3:34 p.m.)

14 THE COURT: All right. Mr. Harrell, has the jury
15 reached a unanimous verdict, sir?

16 MR. HARRELL: We have.

17 THE COURT: If you could -- I have it right here.
18 Thank you. All right. Mr. Suggs, if you would please
19 publish the verdict for the jury.

20 **Verdict:**

21 THE CLERK: Yes, sir, Your Honor. This is the
22 State of South Carolina versus William J. Brunson, the
23 defendant. Indictment number 2019-GS-16-1162, the verdict
24 form, burglary in the first-degree, we the jury find the
25 defendant William J. Brunson, guilty for burglary first-

1 degree, signed the foreperson, James Harrell, dated August
2 27, 2019. If this is your verdict, would you so signify by
3 raising your right hand please.

4 (Whereupon, all the jurors raised their hands)

5 THE COURT: Ladies and gentlemen, I want to thank
6 you very much for your service and just apologize again
7 about the elevator. It's my understanding it's working now
8 so -- personally if I get trapped on an elevator I'll go
9 insane so I'll probably take the steps going down. But
10 it's working fine. I want to thank you again very
11 sincerely for your service.

12 Now, this concludes your service for the week. We do
13 have matters that we're going to continue dealing with. We
14 have guilty pleas and other matters that we're going to be
15 dealing with but we don't have anything where we need a
16 jury so this concludes your service and you have an
17 outstanding clerk of court here in Darlington. In Florence
18 I'd be telling the jury your checks will be in the mail but
19 your checks are right here and you get those as you leave.
20 As I told you on Monday because the state law only requires
21 you to serve on jury duty once every three calendar years
22 you've earned an exemption so that if you get a summons for
23 jury service here in State Circuit Court for the balance of
24 this year all of 2020 and all of 2021 you have that
25 exemption. So if you get another summons and you would

1 like to be excused you could exercise that exemption. It
2 is just an exemption. It doesn't mean you're not qualified
3 to serve and so if you do get another summons and you would
4 like to serve I would encourage you to do that. But I do
5 want to thank you for your service here this week. And
6 that would conclude your work and so I'm gonna ask everyone
7 else to remain seated and as you go out Mr. Suggs will have
8 your checks for you.

9 (Whereupon, the jury exits the courtroom at 3:37 p.m.)

10 THE COURT: All right. Is there anything further?

11 MS. GAINNEY: No, sir, Your Honor.

12 THE COURT: Ms. Gainey, I know you are aware what
13 I'll do is, in just a moment, I'm going to get Ms. Cooke to
14 prepare the sentencing sheet and what I will do is I'll
15 hear from the State and I'll hear from you just as if Mr.
16 Brunson were here, well maybe not because he will not be
17 participating. I'll hear from you with regards to any
18 mitigation or anything else and then I make a decision as
19 to the sentence and I'll fill out the sentencing sheet and
20 we'll seal it. And then -- there is a bench warrant that's
21 been issued so if they pick up Mr. Brunson and bring him
22 into court, if it's while I'm here, we'll unseal it and
23 I'll pronounce the sentence. If it's sometime after I'm
24 gone any sitting judge can do that.

25 (Whereupon, the court is waiting on sentencing sheet from

1 the solicitor)

2 THE COURT: All right. We're back on the record.
3 The jury has found Mr. Brunson guilty of burglary in the
4 first-degree and I'll hear from the State regarding
5 sentencing.

6 MS. COOKE: Your Honor, I put his record into
7 evidence. Shoplifting in 2009, burglary second-degree and
8 petty larceny in 2009, a violation of probation of 2011,
9 burglary second-degree, another violation of probation in
10 2011. He went to SCDC for that one. Five shopliftings in
11 2016. A forgery and a burglary second ---

12 THE COURT: That was 2000, what, '16?

13 MS. COOKE: Sixteen, I believe. In 2016 five
14 shopliftings.

15 THE COURT:

16 MS. COOKE: A forgery and also went to SCDC on a
17 burglary, burglary third-degree in 2016, breaking into
18 autos in 2017, and he went to SCDC for that, Your Honor.
19 And he also has four other pending charges that I didn't
20 think I can prove anything more than receiving stolen good,
21 I even know if they were charged as burglary that I'm gonna
22 be nol prosing since he's been convicted on this one.

23 THE COURT: All right. Thank you, ma'am. Ms.
24 Gainey, I'll be more than happy to hear from you on behalf
25 of Mr. Brunson.

1 MS. GAINNEY: Thank you, judge. May it, please, the
2 court? Mr. Brunson is 36 years old. He was born and
3 raised in Hartsville. He's the father of three kids. To
4 my knowledge I believe he supports those children. He also
5 has told me that he takes care of his elderly mother who's
6 also from the area, judge. I realize that the sanctity of
7 someone's home it's very important and the fear one has
8 once it's been breached, is a lot having that happen to
9 you, but in pointing out mitigation I would like the court
10 to take notice that there was no damage done to this home.
11 Even the item that was stolen was a minimum amount I
12 believe the generator was \$300 or \$400, judge. Also
13 another mitigating factor is I noticed this charge was a
14 burglary first-degree because the garage was attached to
15 the dwelling, but he didn't actually enter into the home
16 where they were sleeping it was a garage, judge. These are
17 just mitigating factors I would like the court to take note
18 of. He spent three days in jail on this charge. Judge, we
19 would ask that he be given credit for that. And that's all
20 I have at this time, judge.

21 THE COURT: All right. Thank you, ma'am. Folks,
22 now it's my understanding that this charge carries ---

23 MS. COOKE: Fifteen to life.

24 THE COURT: Fifteen to life. It is classified as a
25 violent, most serious offense and, obviously, it's an

1 eighty-five percent offense, is that correct?

2 MS. GAINY: Yes, sir, Your Honor.

3 THE COURT: All right. I will consider what y'all
4 have shared with me. We'll impose -- we'll note the
5 sentence on the sentencing sheet and sign that. Ms. Cooke,
6 if you would let law enforcement know that this case is
7 resolved and Mr. Brunson does have a sentence awaiting him
8 at the courthouse, hopefully, rather than allow that to
9 just be a bench warrant that gets put in the system,
10 they'll pick him up if he happens to get stopped, hopefully
11 they'll actually actively seek him and find him.

12 MS. COOKE: I believe they are already on that,
13 Your Honor.

14 THE COURT: All right. Well, I will do that. And
15 I will seal that sentence and then give it to Mr. Suggs and
16 I'm here for the balance of this week as well as next week
17 if they find Mr. Brunson and he's brought in, we will
18 unseal the sentence and impose that. If they don't find
19 him within that time frame any circuit court judge can
20 impose that sentence.

21 THE CLERK: Yes, sir.

22 THE COURT: All right. Okay. Now, we will then
23 be in recess.

24 (Whereupon, the court adjured for the day)

25

1 Wednesday, August 28, 2019

2 (WHEREAS, this matter was scheduled for a trial, all
3 parties appeared along with their counsels of record. The
4 proceedings began at 10:00 a.m)

5 MS. COOKE: Your Honor, this is indictment 2019-GS-
6 1162, State vs. William Brunson, burglary in the first-
7 degree. This is the gentleman that was found guilty in his
8 absence yesterday at trial and he was picked up this
9 morning.

10 THE COURT: All right. Ms. Gainey, obviously, I've
11 heard from you yesterday regarding the sentencing and
12 anything in mitigation or whatever, but at that point,
13 obviously, you didn't have Mr. Brunson available. Is there
14 anything in addition to what you shared yesterday that you
15 want to share today or is there anything that Mr. Brunson
16 would like to share? I'd be happy to hear from anybody. I
17 have imposed the sentence but I'm open to hearing from
18 anyone that wishes to address the court.

19 MS. GAINNEY: Yes, sir, Your Honor, I have spoken
20 with Mr. Brunson this morning. I've updated him on
21 everything that occurred yesterday, what would be happening
22 this morning. As you said I went over some mitigating
23 circumstances yesterday. I did speak with William this
24 morning. He still tells me he was at the hospital, judge,
25 yesterday morning. You know, that would be another

1 mitigating factor. I wasn't able to independently verify
2 that as I told the court that during the trial, judge. We
3 would just, um, I don't have anything else to add unless
4 Mr. Brunson does.

5 THE COURT: Mr. Brunson?

6 MR. BRUNSON: Yes, Your Honor. There's nothing I can
7 say to justify what I've done. I was at the hospital at
8 the ER. There are metal rods in my hips and my knee and I
9 stepped in the hole and I thought I needed - I thought I
10 would get it x-rayed. I tried my best to get up here
11 afterwards. But, Your Honor, like I said there's nothing I
12 can justify what I done. I would like to tell the victims
13 that I'm sorry. I had no intentions of hurting no one.
14 It's the drug -- it's the drug -- it's all drug, Your
15 Honor. But I -- I was scared yesterday, you know, after
16 they told me I was being tried in my absence in a jury
17 trial for first-degree burglary when it really wasn't a
18 burglary, I just entered a garage, Your Honor. So -- but
19 there's nothing I can say to justify it. And I'm very
20 sorry for taking the generator and, um, or entering the
21 victim's property.

22 THE COURT: Mr. Brunson, you know, please
23 understand you or anyone, you're never under any obligation
24 to accept any offers or any deals that the State makes.
25 Everyone has the right to a jury trial and they have the

1 right to exercise those rights.

2 MR. BRUNSON: Well, ---.

3 THE COURT: But they made you a pretty decent offer
4 and, you know, I mean, through what you're telling me now,
5 you knew you took the generator, why didn't you accept the
6 deal?

7 MR. BRUNSON: Well, because -- like I said I didn't
8 speak to her, you know, until that day they offer me the
9 ten years and I said if I didn't burglary -- if I didn't
10 enter a dwelling and I said, why would we go over that and
11 that's ---

12 THE COURT: Well, here's the problem ---

13 MR. BRUNSON: My record too.

14 THE COURT: Well, that's, obviously, a problem.
15 But going into that garage even if the doors open it's a
16 burglary according to the law. You don't have to go inside
17 the house but -- here's the other thing is, I don't know,
18 Ms. Gainey and her office checked with the hospitals and
19 none of them have any record of you being there.

20 MR. BRUNSON: Yes, sir, I was there. You can call
21 there and verify it. On my bracelet it had John Brunson.
22 She said she gave them my social security number and all
23 but I don't understand.

24 THE COURT: I don't either.

25 MR. BRUNSON: I was -- I was -- I was there.

1 THE COURT: You knew that there was a bench warrant
2 out for you. You knew that they were gonna -- why didn't
3 you show up? You don't have to show up for the trial.

4 MR. BRUNSON: I could ---

5 THE COURT: I mean, I think you should but ---

6 MR. BRUNSON: I know ---

7 THE COURT: Why didn't you show up yesterday, not
8 even for your trial, turn yourself in. You knew that there
9 was a warrant out for you?

10 MR. BRUNSON: Yes, sir, I was gonna turn myself in.

11 THE COURT: When?

12 MR. BRUNSON: I was gonna go to my mama's -- see I
13 had nobody to give me a ride and nothing, Your Honor. I
14 caught the same ride every court date but nothing I can say
15 can justify what I've done. I'm sorry, Your Honor.

16 THE COURT: All right.

17 MR. BRUNSON: I'm very sorry.

18 THE COURT: Well, I appreciate your honesty. All
19 right. On indictment 2019-GS-16-1162 the sentence of the
20 court is that you be committed to the State Department of
21 Corrections for the period of twenty-four years. I give
22 you credit for the three days, four days now, that you have
23 served. Good luck to you, sir.

24 MS. GAINEY: Thank you, judge.

25 (Whereupon, court is adjured for this case)

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Dillon County, South Carolina, on the 26th through the 28th day of August, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

February 5, 2020

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

William Johnathan Brunson, Appellant.

Appellate Case No. 2019-001483

Appeal From Darlington County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2022-UP-015
Submitted November 1, 2021 – Filed January 12, 2022

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor William Benjamin Rogers, Jr.,
of Bennettsville, all for Respondent.

PER CURIAM: William Johnathan Brunson appeals his conviction for
first-degree burglary and sentence of twenty-four years' imprisonment. On appeal,

he argues the trial court erred in admitting an edited photograph of a prior mugshot. We affirm pursuant to Rule 220(b), SCACR.

We find the trial court did not err in admitting a photograph of Brunson's prior mugshot. See *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, . . . misleading the jury, . . . or needless presentation of cumulative evidence."). Here, the State had a demonstrable need to introduce the photograph because Brunson was not present for an in-court identification. Further, the photograph did not suggest Brunson had a criminal record because prior to trial, law enforcement edited the photograph to remove the common details of mugshots and provided only a front-facing image of Brunson. Moreover, the photograph was not introduced in such a way as to draw attention to its origin or implication because a witness only vaguely testified as to how he acquired the photograph, and his testimony did not indicate Brunson committed a prior bad act. See *State v. Traylor*, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004) ("The introduction of a 'mug-shot' of a defendant is reversible error unless: (1) the [S]tate has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication."); *State v. Denson*, 269 S.C. 407, 412, 237 S.E.2d 761, 764 (1977) (finding the State had a "demonstrable need" to introduce the photographs because "[i]n the absence of an in-court identification, the[] photographs were an essential element of the State's case"); *id.* (finding the "photographs did not imply that appellant had a prior criminal record" because they "were not the juxtaposed full face and profile photographic display normally associated with 'mug shots'"); *State v. Stephens*, 398 S.C. 314, 322, 728 S.E.2d 68, 72 (Ct. App. 2012) (affirming the trial court's admission of photographs that showed the defendant's "head and neck against a blank background"; contained "no identifying marks as to date, location, agency, or purpose of the photograph"; and showed the defendant "wearing street clothes" because "[t]he photographs . . . could have come from driver's licenses, employee identification badges, or other sources"); *Denson*, 269 S.C. at 413, 237 S.E.2d at 764 (finding "there [was] no intimation in the record that the admission of the photographs in any way focused the jury's attention on the source of the pictures" even when the jury was told "the photographs came from the files of the Richland County Sheriff's Department and the Columbia Police Department").

Accordingly, we find the trial court did not err in admitting the prior mugshot.

AFFIRMED.¹

WILLIAMS, A.C.J., MCDONALD, J., and LOCKEMY, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of DarlingtonWilliam J Brunson 342228

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

22CP160185

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2022 FEB 28 P 12:00
SCOTT B. SUGGS
CLERK OF COURT/R.O.
DARLINGTON COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institute, 4344 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence 4th Circuit Court of Darlington County; Public Square #210, Darlington S.C. 29532
3. Name(s) of co-defendant(s) (if any) JAYNE Marie Haynes
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2019GS1601162; 1st Degree Burglary
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 8-27-2019 24 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals / South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 12, 2022
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion No. 2022-up-015
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denial of 6th amendment right to effective assistance of counsel;
- (b) Denial of 5th amendment right to due process of law
- (c) Denial of 14th amendment right to due process and equal protection of the law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (See attachment) a-h
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Jan 12, 2022
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished opinion No. 2022-DP-015
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) All issues are being presented for the first time.
 (b) This is applicants first opportunity to present all
 (c) issues in accordance with S.C. Rules of Court.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Rachel Gentry; 4th Circuit public defender office, 300
Russell St, Suite 113, Darlington S.C. 29532
 ii. Wanda H. Carter; Division of Appellate Defense,
1330 Lady Street, Suite 401, Columbia, S.C. 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial.
 ii. Direct appeal to the S.C. Court of appeals.
 iii. _____

19. State clearly the relief you seek in filing this application:

Sentence vacated; Conviction Reversed and Remanded
for new trial; or immediate release

20. Are you now under sentence from any other court that you have not challenged?

No

22CP160185

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, William Johnathan Brunson 342228, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

William Brunson

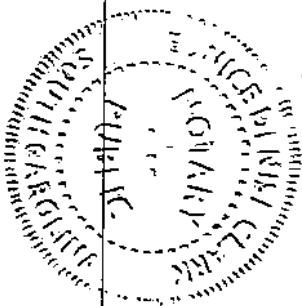
SWORN to and subscribed before me this 22nd
 day of February, 2022

Janice Denise Clark (L.S.)
 Notary Public

My Commission Expires: 2/5/31

2022 FEB 28 P 12:11
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

FILED



22 CP 160185

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, William Johnathan Brunson 342228, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

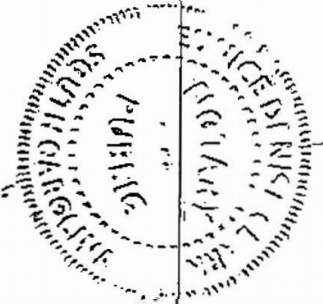
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William J Brunson
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of February, 2022.

Denise Denise Clark
Notary Public

My Commission Expires: 2/5/31



SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2022 FEB 28 P 12:11

FILED

A) Trial Counsel was ineffective for failing to object to the Jury Selection of Renee Howle as alternate during my trial.

B) Appellate Counsel was ineffective for failing to raise issue preserved for direct appeal, that applicant was denied his right to be present during trial.

C) Trial Counsel was ineffective for failing to investigate and prepare a defense for trial.

D) Trial Counsel was ineffective for failing to effectively defend applicants right to be present during trial. Applicant's right was not void; where as, he was hospitalized and should have received an extension because his presence was vital to his defense.

E) Trial Counsel was ineffective for failing to present evidence.

F) Trial Counsel was ineffective for failing to object to potential Jurors comments that "defendant, had robbed them", and then allow them to remain seated with other potential Jurors.

G) Trial Counsel was ineffective for failing to object to the Court's Jury Charge, which instructed them to determine the truth based on the evidence that was presented before them; whereas, the only evidence presented before them was from the State.

H) Trial Counsel was ineffective for failing to effectively represent applicant in his plea arrangement.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

William Brunson, #342228,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2022-CP-16-0185

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on February 28, 2022, by William Brunson (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. During its August 2019 term, the Darlington County Grand Jury indicted Applicant for first degree burglary (2019-GS-16-1162). Applicant was represented by Rachel Gainey Harte, Esquire. Elaine Cooke and Monty Bell, Esquires, of the Fourth Circuit Solicitor's Office prosecuted the case. On August 26-28, 2019, Applicant proceeded to trial before the Honorable Thomas Russo, circuit court judge, and a jury. Judge Russo sentenced Applicant to twenty-four years' imprisonment.

Applicant filed a timely notice of appeal on September 4, 2019, that was perfected by Wanda H. Carter, Esquire, through filing a brief raising the following issue:

The trial judge erred in allowing into evidence a police department booking mug shot of appellant in support of the arresting officer's identification verification of appellant as the perpetrator as shown in the residence garage from the home surveillance videotape because this was inadmissible prejudicial prior crime

evidence that outweighed any probative value, particularly in light of the fact that the jury asked a curious question about the photograph at trial.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. *State v. Brunson*, 2022-UP-015 (S.C. Ct. App. filed Jan. 12, 2022). The remittitur was issued on January 28, 2022.

II. Statement of Facts

On October 10, 2018, Ashley Little left her residence in Darlington to purchase formula for her daughter. (Tr. 73-75). As Little departed, she attempted to close her garage door using the remote button in her car. (Tr. 75). However, because the weather stripping on the bottom of her garage door was dislodged, the door did not close. (Tr. 75). When Little returned, she noticed her garage door was open and a generator was missing from the garage. (Tr. 76). Little checked her security camera footage and witnessed an unknown white male taking a generator from her garage and loading it into his car. (Tr. 77). Little called law enforcement and turned over the video to the responding officer. (Tr. 77). After reviewing the security footage, Commander Neal Cusack of the Darlington County Sheriff's Office determined he recognized the person in the footage, but he did not know his name. (Tr. 47, 94). After speaking with fellow law enforcement officers, Applicant's name was developed as a possible suspect. (Tr. 47, 95). Cusack viewed a mug shot of Applicant and recognized him from the security footage based on a red mark on his neck. (Tr. 48, 95-96).

Applicant was subsequently arrested and indicted for burglary first degree based on two prior burglary convictions. Applicant pled guilty to burglary third degree in 2016 and burglary second degree non-violent in 2009. (Tr. 92). Applicant did not appear for trial and was tried in his absence. (Tr. 39-41). At trial, Cusack identified Applicant using the security footage and the photo of Applicant. (Tr. 96-98). Cusack testified he recognized Applicant from the red mark on

Applicant's neck in both the photo and the security footage. (Tr. 96-97). Additionally, Cusack testified he further recognized Applicant from seeing him around the town of Hartsville during his twenty-years of working in the city. (Tr. 97-98). Ashley Little and her husband, Robert Little, testified they never gave Applicant permission to enter their home or take their generator. (Tr. 81, 99).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Trial Counsel
 - a. For failing to object to the jury selection of Renee Howle as alternate during my trial.
 - b. For failing to investigate and prepare a defense for trial.
 - c. For failing to effectively defend applicant's right to be present during trial. Applicant's right was not void; where as, he was hospitalized and should have received an extension because his presence was vital to his defense.
 - d. For failing to present evidence.
 - e. For failing to object to potential juror's comments that defendant had robbed them, and then allow them to remain seated with other potential jurors.
 - f. For failing to object to the Court's jury charge, which instructed them to determine the truth based on the evidence that was presented before them; whereas, the only evidence presented before them was from the State.
 - g. For failing to effectively represent applicant in his plea arrangement.
2. Ineffective Assistance of Appellate Counsel
 - a. For failing to raise issue preserved for direct appeal, that applicant was denied his right to be present during trial.

Attached to and incorporated herein are Applicant's Darlington County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Trial Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. See *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC (“The applicant

has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); see *Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (2011).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object to Alternate Juror

Applicant claims that Counsel was ineffective for failing to object to an alternate juror. Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

Respondent has failed to show why an objection should have been made, how Counsel was deficient for failing to object, or how he is prejudiced. Thus, Respondent contends Applicant has likely not met his burden of proof on this claim, but requests an evidentiary hearing be held to fully resolve the matter.

Failure to Investigate

Applicant alleges ineffective assistance of counsel for "failure to investigate." *Strickland* makes clear that Defense counsel "has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the

circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.* That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Here, Applicant shows no facts indicating that any failure to investigate on the part of Counsel occurred, let alone was unreasonable. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. The Applicant has made no showing that Counsel’s inaction regarding investigations fell outside the zone of reasonableness, nor has Applicant specifically stated what exactly Counsel failed to investigate. Thus, Respondent requests a more specific statement regarding this claim to ascertain the merit, or lack thereof, of the allegation.

Failure to Prepare a Defense

Applicant claims Counsel was ineffective for failing to prepare a defense. Whether

failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a “reasonably substantial investigation” into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). However, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.*

“[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial.” *Id.* at 681 *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, Counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that Counsel was not ineffective when failing to state a defense that was not recognized by the Court until six years later and was just recently acknowledged by the scientific community).

Applicant has failed to show what defense should have been asserted, why Counsel was

deficient for failing to assert it, or how he was prejudiced as a result. Though Respondent contends that Applicant's allegation likely lacks merit, Respondent requests a more definite statement and an evidentiary hearing to fully resolve the matter.

Failure to Defend Applicant's Right to be Present During Trial

Applicant claims Counsel was ineffective for failing to defend Applicant's right to be present at trial. Applicant has failed to show that Counsel did not attempt to get Applicant to the courthouse or continue the proceedings because of his absence, that Counsel was deficient for failing to defend his right to be present, or how that would have impacted the trial proceedings. Accordingly, Respondent contends that this allegation likely lacks merit but requests an evidentiary hearing be held to fully resolve the matter.

Failure to Present Evidence

Applicant claims Counsel was ineffective for failing to present evidence at trial. He failed to state what evidence should have been presented, how Counsel was deficient for failing to present this evidence, or how it prejudiced the proceedings. Respondent contends the allegation likely lacks merit but requests a more definite statement and that an evidentiary hearing be held to fully resolve the matter.

Failure to Object to Potential Juror's Comments

Applicant claims that Counsel was ineffective for permitting a potential juror who was robbed a seat among the other jurors. Applicant claims that this potential juror claimed that Applicant robbed her, but this is not supported by the record. (Tr. 14-15). Instead, she stated she had dealt with robberies before, but that that experience would not impact her ability to allow both the State and the defense to have a fair trial. (Tr. 14-15). Applicant has failed to show what objection would have been made, why it would have been appropriate, how Counsel was

deficient for failing to object, or how Applicant was prejudiced as a result. Respondent contends the allegation likely lacks merit but requests a more definite statement and that an evidentiary hearing be held to fully resolve the matter.

Failure to Object to Court's Jury Charge

Applicant's allegation that Counsel was ineffective for failure to request a voluntary manslaughter instruction is without merit. Concerning deficiency, Counsel must articulate a valid reason for employing a certain strategy, which is measured under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). Counsel is not ineffective for failing to request a lesser included offense jury instruction when there is no evidence that the defendant committed the lesser, as opposed to the greater offense. *Bozeman v. State*, 307 S.C. 172, 176, 414 S.E.2d 144, 146 (1992).

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

Applicant fails to show what objection should have been made, why Counsel was deficient for failing to object, or how Applicant was prejudiced as a result. Respondent contends the allegation likely lacks merit but requests a more definite statement and that an evidentiary hearing be held to fully resolve the matter.

Failure to Secure Plea Deal

Applicant's allegation that Counsel was ineffective for failure to obtain a plea deal is

without merit. “[A] defendant has no constitutional right to plea bargain.” *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easler*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff’d as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)).

“Prosecutors have broad powers in the plea bargain process[.]” *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. “The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.* Accordingly, Respondent contends this allegation lacks merit and requests the Court deny relief on this ground.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). “Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Applicant must show appellate counsel’s performance was deficient, and he was prejudiced by the deficiency. *Gilchrist v. State*, 364 S.C. 173, 612 S.E.2d 702 (2005); *Anderson v. State*, 354 S.C. 431, 581 S.E.2d 834 (2003); *Thrift v. State*, 302 S.C. 535, 537, 397 S.E.2d 523, 525 (1990).

Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Tisdale v. State*, 357 S.C. 474, 476. 594 S.E.2d

166, 167 (2004) (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983) (“For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . . .”)).

When a claim of ineffective assistance of counsel is based upon neglecting to file a merits-based brief, Applicant must show that appellate counsel unreasonably failed to discover non-frivolous issues and file a merits brief raising them, and a reasonable probability that, but for his counsel’s unreasonable failure to file a merits brief, he or she would have prevailed on his appeal. *Smith v. Robbins*, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one non-frivolous issue warranting a merits brief, and that the issue identified would have won on appeal. *Id.* at 288.

Applicant has failed to show how Counsel was deficient on this ground or how this was a winnable issue on appeal. Thus, Respondent contends this allegation likely lacks merit.

Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations. Applicant alleges that trial and appellate counsels counsel were constitutionally ineffective.

However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain

discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

May 31, 2022.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

William J. Brunson, #342228

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

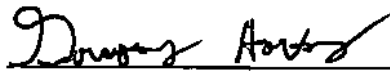
Case No.: 2022-CP-16-0185

Certificate of Service by Mail

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven W. Fowler, Esquire
730 Main Street Unit # 237
North Myrtle Beach, SC 29582

DATED this 31st day of May 2022.



Grayson Horton, Legal Assistant
For Respondent

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2022 JUN -1 A 9:44

FILED

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) 2022-CP-16-00185
)
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)
William J. Brunson) TRANSCRIPT OF RECORD
vs.)
State of South Carolina)
) Darlington, South Carolina
DEFENDANT) December 10, 2024

B E F O R E:

THE HONORABLE GEORGE M. MCFADDIN, JR.

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

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for the Applicant

D. RUSSELL BARLOW, II, SENIOR ASSISTANT DEPUTY AG
Attorney for the Respondent

KESHIA REED
Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	William Brunson				
4	Ms. McMahan	7		40	
5	Mr. Barlow		23		
6					
7	Rachel Harte				
8	Mr. Barlow	43			
9	Ms. McMahan		52		
10					
11	Certificate of Reporter	65			
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1 THE COURT: Yes, sir.

2 MR. BARLOW: Your Honor, may it please the
3 Court. Russ Barlow on behalf of the State of South
4 Carolina. This is the post-conviction relief matter of
5 William J. Brunson vs. the State, case number
6 2022-CP-16-00185 out of Darlington County. During it's
7 August 2019 term, the Darlington County grand jury
8 indicted applicant for first degree burglary
9 2019-GS-16-1162. And applicant was represented by Rachel
10 Gainey Harte, Esquire, and Elaine Cooke and Monty Bell,
11 Esquire of the Fourth Circuit Solicitor's office
12 prosecuted the case.

13 On August 26th through the 28th 2019, applicant
14 proceeded to trial before the Honorable Thomas Russo,
15 Circuit Court Judge and a jury. Applicant was convicted
16 as charged and Judge Russo sentence applicant to 24 years
17 imprisonment. On September 4th 2019, applicant filed a
18 timely notice of appeal and that appeal was perfected by
19 appellant defender Wanda H. Carter and she briefed one
20 issue on that. And the South Carolina Court of Appeals
21 dismissed the appeal by unpublished opinion and affirmed
22 his convictions and sentence and that was by the State vs.
23 Brunson 2022-UP-015, that's Court of Appeals filed
24 January 12th 2022 with the remittitur returned on January
25 28th 2022.

1 Applicant filed this will PCR action on
2 February 28th of 2022. And within that your Honor, he is
3 alleging ineffective assistance of trial counsel to
4 include seven separate allegations of ineffective
5 assistance of trial counsel. And your Honor he does have
6 one ineffective assistance of appellate counsel claim.
7 And just for the record your Honor, I have Ms. Carter --
8 she can appear virtually if we need to take her testimony,
9 but she is not present in the courtroom at this time. And
10 before this court are the Darlington County clerk of court
11 records. Applicant's records from the South Carolina
12 department of corrections, applicant's complete trial
13 record, applicant's complete appellant records, and the
14 records of his PCR action. And at this time we would just
15 ask for PCR counsel to let us know what allegations they
16 intend to move forward on.

17 THE COURT: Ms. McMahan.

18 MS. MCMAHAN: Yes, your Honor, we're intending
19 to move forward on A through H on all the issues listed in
20 the application.

21 THE COURT: Now, Ms. McMahan -- Mr. Barlow,
22 yesterday there was a mention made of the fact that my
23 dealings with Ms. Harte in the past. Do we need to talk
24 about that today?

25 MS. MCMAHAN: Mr. Barlow -- sorry I was about to

1 call him by his first name and I already discuss that. I
2 did have a conversation with Mr. Brunson about it as well.
3 I did not think it was going to be an issue. My last
4 conversation with Mr. Brunson he did not think it was
5 going to be an issue, but if you want to question him
6 about it, please do so.

7 THE COURT: Just to be certain, Mr. Brunson, if
8 you'll stand up for me please, sir.

9 MR. BRUNSON: Yes, sir.

10 THE COURT: How you today?

11 MR. BRUNSON: Fine.

12 THE COURT: All right. Mr. Brunson, Rachel
13 Harte she was your lawyer? One of them?

14 MR. BRUNSON: Yes, sir.

15 THE COURT: All right. The last time I saw
16 Rachel Harte was in Georgetown when she was with her
17 husband and their child, that would have been in the fall
18 of 2022 by pure happenstance we saw each other at Big
19 Tuna restaurant before it closed. Before that, I saw
20 Rachel Harte in April of 2021 when they ask me to
21 officiate at their wedding at Pawleys Island, that's when
22 I saw her that time. When I use to come -- well, when I
23 came to Darlington County in the past, I don't ever recall
24 having, but maybe one guilty plea with her. I haven't
25 seen her since then. I haven't seen Mr. Harte since back

1 in 2022. And he -- Mr. Harte, her husband, was a law
2 clerk with me in 2017 and 2018, but those are the only
3 times I have seen him since then. We're not social
4 friends. I don't do anything with them. They're just
5 part of my past so to speak. I have neither one of them
6 to reward with anything or punish with anything, and I
7 just want you to know that. However, if you feel
8 uncomfortable about me hearing your case, I want you to
9 tell me now. If you don't want me to, I won't be angry,
10 but I don't want you to seek buyers remorse either.

11 MR. BRUNSON: No, sir, I don't have a problem.

12 THE COURT: You sure?

13 MR. BRUNSON: Yes, sir.

14 THE COURT: You want me to go forward?

15 MR. BRUNSON: Yes, sir.

16 THE COURT: All right. I am ready.

17 MS. MCMAHAN: Your Honor, at this time we call
18 Mr. Brunson.

19 THE CLERK: Mr. Brunson, if you'll come forward
20 and take the oath as a witness please, raise your right
21 hand and place your left hand on the Bible. Do you swear
22 or affirm the testimony you give this court will be the
23 truth and nothing but the truth so help you God?

24 MR. BRUNSON: Yes, ma'am, I do.

25 THE CLERK: You have a seat and state your name

1 for the record please.

2 MR. BRUNSON: My name is William Brunson.

3 WHEREUPON,

4 William Brunson,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MCMAHAN:

8 Q Mr. Brunson, did you file this PCR application?

9 A Yes, ma'am, I did.

10 Q And we've had discussions about if successful what
11 your remedy would be if you win a PCR knowing that you do
12 still want to go forward?

13 A Yes, ma'am, I do.

14 Q Okay. And in your PCR application, you raise issues

15 A through H, is that correct?

16 A Yes, ma'am.

17 Q All right. And you brought some notes with you so
18 that you can refresh your recollection of what you like to
19 talk about?

20 A Yes, ma'am.

21 Q Let's just start with issue A about the jury
22 selection involving Renee Howel. What did you want the
23 Court to know today about that?

24 A Well, Renee Howel was selected a juror in my trial.
25 She was a member of a Facebook page called the Darlington

1 County Residence Crime Information Group. And on this
2 page, she -- they was -- that was the -- the website that
3 the State's witness Ashley Little posted the video of me
4 taking the generator on that page. And within an hour,
5 there was 1000 viewers and comments within the hour. And
6 before I got arrested, it was well -- the number I don't
7 even remember, but a lot. And so I was asking -- when I
8 got out on bond, I got shot and I was out on attorney -- I
9 mean, I was out on -- I was on the call list didn't have
10 to go on roll call due to my injuries, but when I got
11 Mr. Harte or Ms. Gainey call me out of the blue on
12 August -- I think it was the 5th week of August and told
13 me to come up there that they had a deal for me. And when
14 I went up there, she told me the plea deal. I didn't want
15 to accept it because I didn't enter the garage and -- but
16 I did -- she said you say gone take a trial and I said,
17 well, if I was, I wouldn't want to do it in Darlington
18 County because -- and I told her about the page. And she
19 said she would speak to the judge, but we didn't speak no
20 more after that.

21 Q Okay. Well, let's just go back a little bit.

22 A But that's the page.

23 Q Yeah, so Ms. Howel how did you know that she was
24 apart of that page?

25 A Well, on jury selection in my transcript, she jury 77

1 and the State said Ms. Gainey did too and she ended up
2 being the alternate in the final section.

3 Q Okay. And it was because they were questioning the
4 jurors on the record about the Facebook page?

5 A Yeah, the judge finally asked was there anyone in
6 there that was a member or follower of the page and
7 several of them stood up.

8 Q Okay. And then ---

9 A And Renee Howel was the one.

10 Q And part of that also goes to that you had talk to
11 Ms. Gainey apparently about wanting to possibly to try to
12 change venue because of the Facebook page?

13 A Yes, ma'am.

14 Q Okay. And then -- so anything else about the issue
15 with Renee Howel that you want the Court to know today?

16 A I feel like she came in with a preconceived mind of
17 ---

18 Q And when you say she who do you mean?

19 A Renee Howel. And had a sway with the other juries
20 because she was allowed to voice her opinion, you know, so
21 I feel like the outcome would have been different if it
22 wasn't for her.

23 Q Now, she was the alternate, correct?

24 A Yes, ma'am.

25 Q Okay. So let's move on to B. What do you feel

1 Ms. Carter should have argued on appeal, that she didn't
2 argue on appeal?

3 A Well, at trial Ms. Harte she did that to the trial
4 started in my absence. Even though she didn't fully
5 represent me through the trial, she did later on she did
6 preserve the issue for me not being present for a direct
7 appeal. So when I got Ms. Wanda Carter, she told me I got
8 my final -- my brief that she put. I said, well, I want
9 you to get the medical records, so when I was at the ER
10 and argue my trial in absence and she wasn't -- well, no,
11 I raised this issue and so she did. And I feel like that
12 issue would have been stronger because my presence ---

13 Q Well, how did you communicate with Ms. Carter during
14 ---

15 A By phone and letters.

16 Q Okay. Did she have a conversation with you how she
17 couldn't add anything to the appeal, that the records she
18 could only use what was already entered?

19 A She said that she feels like the issue she raised was
20 the strongest issue.

21 Q Okay. So she told you -- your recollection of your
22 conversation with her was that the issue that she raised
23 was she felt the strongest?

24 A Yes, ma'am. Yes, ma'am.

25 Q Okay. But she did not raise the issue of you not

1 being there?

2 A No, ma'am.

3 Q Okay. Did she ever tell you she could raise more
4 than one issue?

5 A Well, I didn't really -- I just wanted her to
6 raise -- that was my main issue. I was stressing not
7 being present, you know. It wasn't volunteer that I
8 wasn't, you know. I ain't never run from a court date. I
9 would never run.

10 Q Well, let's talk about that issue since it's sort of
11 a sub issue? So you said you weren't there -- you weren't
12 at trial, but it wasn't on purpose?

13 A No, it wasn't.

14 Q And you talk to Ms. Gainey about that?

15 A Yes, ma'am.

16 Q Okay. And that was -- you alluded to some hospital
17 records and that was because of that. You were in the
18 hospital when the trial started?

19 A I was at the ER when they put a bench warrant on me
20 and pick the jury and all. I got a call -- the nurse come
21 got me. I been triage back there waiting to see the
22 doctor and I got records in there too as well. And she
23 come got me out there said I had an emergency call and it
24 was my co-defendant was at the courthouse and she pled.
25 She pled there said that she pled that day. And she call

1 me and said they putting a bench warrant on you picking a
2 jury you need to get up here. So I call Ms. Galloway and
3 them, the bondsman, and Donovan Young, which is the
4 contractor that was on my bond, but they was both out of
5 town. And so the preacher -- he said he couldn't get me a
6 ride there, so I went on home with pain in my back and
7 laid there. They come right after the trial and got me.
8 I was right there in the bed when they come got me.

9 Q Do you remember telling the Court that you had been
10 in the ER?

11 A Yes, ma'am.

12 Q Do you remember telling the judge that?

13 A Yes, ma'am.

14 Q Okay. All right. So let's go to -- anything else
15 about the appeal or anything you want the Court to know?

16 A No, ma'am.

17 Q Okay. So let's go to C fail to investigate and
18 prepare a defense?

19 A Yes, ma'am.

20 Q What would you like Judge McFaddin to know about
21 that?

22 A If trial counsel if she would have even investigated
23 the case, she would have gathered evidence to present
24 throughout -- the during the trial from the generator
25 wasn't inside the garage. The dad -- I live five minutes

1 down the road from the victims. The dad had just brought
2 the generator over there, crank it. It run, so he put it
3 on the inside. The one that needed gas. He left it
4 sitting right out in front of the garage to go five
5 minutes down the road to get gas, which right there by my
6 house. I rode by and seen the generator. We turn around.
7 I rung the doorbell.

8 Q Okay. I'm going to stop you there because I don't
9 want you to admit to anything on the record.

10 A I didn't enter the garage though, that's why I didn't
11 want to take the plea -- I was hesitating taking the plea.

12 Q The ten years?

13 A Yes, ma'am.

14 Q Did you have any other discussions with her about,
15 you know, whether or not the Solicitor was going to offer
16 anything else or anything like that?

17 A No, not until the 23rd, I think, like the 23rd the
18 Friday. My co-defendant's lawyer Jamie Scruggs and Ms.
19 Gainey came to -- we was the last two in the courtroom
20 that day and she came and said -- and then Jamie said can
21 we speak. Mr. Scruggs said can we speak to y'all
22 together. I said yes. We agreed and he ask me what was
23 the numbers in my head what would I take. I say I'll take
24 five years right then. They said come back Monday the
25 judge is gone and Monday's when I had the accident. And

1 so I was going to plead that Monday. I was just trying to
2 get a better deal than ten. I wasn't even going to trial,
3 that's why we never discussed anything about no trial
4 never.

5 Q You wanted something better than ten?

6 A Yes, ma'am.

7 Q Did Ms. Gainey ever indicate to you that the
8 Solicitor was willing to offer you something better than
9 the ten?

10 A No.

11 Q And if the Solicitor wasn't going to come off the ten
12 years what would you have done?

13 A And then I asked Ms. Gainey that day that if I took
14 the ten could she give me enough time to make things right
15 with my kids and my mother because I was on drugs then
16 worst then I ever been and she said, no, they wouldn't do
17 it. That's the last words we spoke.

18 Q And if the Solicitor hadn't come down off ten, if Ms.
19 Gainey had come back and said, hey, they're not coming
20 down on the ten would you have gone to trial?

21 A No.

22 Q What would you have done?

23 A No, I would have pled that Monday. Yes, ma'am. Yes,
24 ma'am.

25 Q Okay. So we're talking about plea offers again, but

1 you were saying that she didn't do any investigation in
2 part C. Was there -- in that just related to the fact
3 that the generator was outside and not inside?

4 A Well, yes, ma'am, if I was planning on going to
5 trial, we would have got the footage right before I pulled
6 up and right afterwards and the surveillance from the
7 store right down the road the dad came up to me when we
8 was at Dollar Store. It would have made more sense of why
9 putting up a defense for a trial of making why the
10 generator would be outside the garage instead of the jury
11 not putting up any defense and the jury just two prior
12 records and mug shot all that. They want to come up with
13 guilty then, you know. It wasn't ---

14 Q So when you read your transcript, did you see where
15 the State entered that video from Ms. Little?

16 A Yeah, in the transcript, yes, ma'am.

17 Q Yeah. Did you ever watch that video with Ms. Gainey?

18 A Yes, ma'am. Yes, ma'am.

19 Q Okay. And in that video does it show that you did
20 not enter the garage?

21 A Yes, ma'am, it doesn't because I never entered.

22 Q Okay. So let's move on to part D now. Ineffective
23 for failing to effectively defend you during the trial was
24 this sort of all related to that because you were
25 hospitalized. You didn't get an extension with the

1 continuances is that all related?

2 A Yes, ma'am, the judge gave her an opportunity on the
3 record to tell him about my medical conditions and her
4 finding me. And so she says that it's come to our
5 attention where he had actually had to seek medical
6 attention, but I hadn't been able to verify that. And so
7 if she would have explain more of my medical condition to
8 him. And you see I got the records right there where I
9 was at the ER. The investigators were called to my
10 properly. The continuance would have gotten granted and
11 that could have been my presence ---

12 Q Well, I don't think it's in dispute that you were in
13 the ER at some point during this trial. I guess, are you
14 trying to say that Ms. Gainey didn't present enough
15 evidence regarding your medical situation at the time in
16 order get a continuance?

17 A Yes, ma'am.

18 Q That was part D?

19 A Yes, ma'am. When I got to SCDC, I had to get the rod
20 removed from that, but I left the ER trying to get to
21 Court. And then the medical -- I went to the house and
22 was there in the bedroom when they come got me. When I
23 got to SCDC, I had to get the rods removed from my leg.

24 Q So when you said you were in the bed when they came
25 and got you, who was they?

- 1 A The police.
- 2 Q The sheriff?
- 3 A Yes, ma'am.
- 4 Q In which bed was that?
- 5 A At my residence at 604 Spruce Street.
- 6 Q So out of your bed at the residence?
- 7 A Yes, ma'am, right after the trial not days later, not
- 8 weeks.
- 9 Q Just shortly after the verdict came out?
- 10 A Yes, ma'am.
- 11 Q Okay. And then let's move on to E. So you said Ms.
- 12 Gainey didn't present any evidence on your behalf?
- 13 A Yes, ma'am. Like the footage and all I was talking
- 14 about, that would have been very helpful. The testimony
- 15 from my co-defendant which was present right there in her
- 16 presence at the time.
- 17 Q Did your co-defendant had an attorney represent them,
- 18 right?
- 19 A Yes, ma'am, Jamie Scruggs.
- 20 Q And the video was entered as an exhibit?
- 21 A Yes, ma'am.
- 22 Q So does it matter that the State entered the video or
- 23 Ms. Gainey because the video became evidence in your
- 24 trial?
- 25 A Right. I think she objected to the mug shot. She

1 objected to the mug shot.

2 Q Did she not object to the video?

3 A No.

4 Q Okay.

5 A Yes, she did because she said it was a CD rom, that
6 it wasn't an actual video rom. The judge said, well, I'm
7 going to allow it.

8 Q So she was arguing it wasn't the best evidence
9 because it was a copy of the video?

10 A Yes, yes, ma'am, correct. She did.

11 Q Okay. Was there anything else that she should have
12 presented on your behalf besides the co-defendant and the
13 video?

14 A No.

15 Q What was your co-defendant's name again?

16 A Jane Marie Haynes.

17 Q Okay. Anything else you should have done to --
18 anything in your notes you wanted to still address Judge
19 McFaddin on part E?

20 A That was the one we was just on?

21 Q Yeah. Anything else about that?

22 A No.

23 Q Okay. Let's move on to F. Failing to object to the
24 jurors comments that the defendant had robbed them.
25 There's some jurors that stood up during the jury

1 qualification that said you had robbed them?

2 A Yes, ma'am.

3 Q So tell Judge McFaddin about that?

4 A Over in my community was a contractor from in the
5 Darlington County area for 30 plus years and his wife was
6 the attendance lady for Hartsville High since I was a
7 little boy. So they known in the community and he stood
8 up. He stood up and said that he might know me, that
9 three years ago there was a break-in in his residence and
10 feels like that I was the defendant there and that I had
11 rob them. And the judge allowed him to sit with the other
12 jurors.

13 Q With the pool you mean, the big group of them? The
14 big group of jurors?

15 A Yes, and it allowed him to sit.

16 Q So did Ms. Gainey raise any issue at that time about
17 the jury pool maybe being tainted or anything like that?

18 A No, ma'am. No, ma'am.

19 Q Okay. What else about that issue?

20 A I just know he's well known in the community because
21 when -- I remember when I went to court for that I stayed
22 in the county jail for like nine months and my mother
23 was -- I had Jim Cox as a lawyer. And my mother was
24 trying to give him more money for me to get time served.
25 The lawyer said \$50,000 couldn't get him time served.

1 McElveen just stand up in the courtroom and tell them they
2 seen him with his TV in his back pocket and they'll
3 believe him. So I say that to say that the -- he's well
4 known in the community.

5 Q He stood up ---

6 A I'm quite sure.

7 Q And he stood up and said that during the jury
8 qualification selection process?

9 A Yes, ma'am.

10 Q Okay. Let's move on to G now. Something with the
11 Court jury charge?

12 A Yes, ma'am. Yes, ma'am.

13 Q Okay. So what's you're issue with the charge and
14 which charge was it?

15 A Where the judge gave instructions on the jury to
16 determine the case based on the evidence that was
17 presented whereas the only evidence that was presented was
18 from the State because the defense didn't put up anything.

19 Q So did you ever have a conversation with Ms. Gainey
20 that it's the State's burden of proof that they have to
21 present the evidence and try to prove that you were
22 guilty?

23 A Did ---

24 Q Did you have a conversation with Ms. Gainey about
25 that?

1 A No, ma'am, I hardly had a conversation with
2 Ms. Gainey at all.

3 Q Okay. And so your -- and don't let me put words in
4 your mouth. But your issue is that because the judge told
5 the jurors to base the case solely on the evidence
6 presented not anything else outside the courtroom and that
7 only the State presented the evidence therefore the -- and
8 because Ms. Gainey didn't present any evidence on your
9 behalf that the jurors were then obviously, I guess,
10 pressured for a lack of a better term?

11 A Yes, ma'am. The judge should instruct the jury that
12 they should determine the case based on whether or not the
13 State prove beyond a reasonable doubt each of the elements
14 of the crime.

15 Q Well, did the judge give a jury instruction on what
16 reasonable doubt meant? Do you recall that?

17 A No, ma'am, I don't recall that.

18 Q Okay.

19 A He was just expressing the point about the evidence.

20 Q Okay. And so I think your last issue is H failing to
21 effectively represent you during a plea negotiation. What
22 did you want to say about that?

23 A Well, the only day that the trial started, the only
24 time I seen her is when she called me for the plea
25 agreement is the only time I had talk to her or first time

1 I ever laid eyes on her was then.

2 Q You mean -- so the day of your trial was on a Monday,
3 right?

4 A From December the 15th all the way to January, I
5 mean, August two weeks before the trial, three weeks
6 before the trial is the only time I seen Ms. Gainey.

7 Q So the only time you saw her in person was two weeks
8 before your trial started?

9 A The week of the fifth.

10 Q Okay.

11 A The week of the fifth I would say. The first time I
12 ever seen her.

13 Q So the week of August 5th?

14 A We watched a video together and negotiated a plea. I
15 didn't accept it that day. She said come to roll call
16 every day pretty much. And then Rayford's trial come.
17 And then I come and see her back -- the last Friday I was
18 in the courtroom the 23rd is -- they ask me what was the
19 numbers in my head what would I take. I told Mr. Scruggs
20 and her that I take five years. Well, I suppose to come
21 back Monday.

22 Q And that's when you were in the ER?

23 A Yes, ma'am.

24 Q So did you have the conversation with Ms. Gainey
25 about your record and how that might affect the

1 solicitor's plea offers to you?

2 A No, ma'am, she was -- I think she was a little upset
3 because I didn't take the ten.

4 Q Is there anything else you want Judge McFaddin to
5 know about your case today?

6 A No, ma'am.

7 MS. MCMAHAN: Answer any questions Mr. Barlow
8 may have for you, okay.

9 THE COURT: Mr. Barlow.

10 MR. BARLOW: Thank you, your Honor. May it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MR. BARLOW:

14 Q It's still in the morning. So good morning, sir?
15 How are you?

16 A Good morning, sir. How are you?

17 Q I'm well. All right. I know your attorney has
18 already discussed this with you, but I always like to go
19 through this just to make sure that you understand what
20 you're facing. We don't -- this is not a situation where
21 the Court can grant you a resentencing. They can't grant
22 you less time. They can't grant you a lesser charge. The
23 only thing this court can offer you is a new trial. You
24 go back to square one. You're indictment comes back on,
25 okay?

1 A Yes, sir.

2 Q And you were convicted of first degree burglary,
3 correct?

4 A Yes, sir.

5 Q And do you understand what the maximum potential
6 sentence is for first degree burglary?

7 A Yes, sir.

8 Q Okay. And what is that?

9 A Life.

10 Q Okay. And what did you get?

11 A Twenty-four years.

12 Q Okay. What's the minimum of first degree burglary?

13 A Fifteen.

14 Q Okay. So you didn't quite get the minimum, but you
15 didn't get the maximum?

16 A Correct.

17 Q But on remand do you understand that you potentially
18 face the maximum of life?

19 A Yes, sir, I do.

20 Q Okay. All right. You're still willing to proceed
21 forward?

22 A Yes, sir, I do.

23 Q Perfect. So we'll jump right in. The failure to
24 object to the juror Renee Howel. Tell me what objections
25 she should have made to that?

1 A From her being seated -- instead of sitting her. She
2 any attorney would have knew based on the knowledge that
3 she already knew about the Facebook group. She shouldn't
4 have been seated. She shouldn't have seated her.

5 Q All right. Well, let me ask you this. Do you
6 recall -- well, you weren't there.

7 A Yes, sir.

8 Q You've read the record though, correct?

9 A Yes, sir.

10 Q Okay. So do you recall the Court asking her that if
11 it would have affect her ability to be fair and impartial
12 in your trial? She answered?

13 A No, it would not. Yes, sir.

14 Q So she said that didn't affect her ability to be a
15 juror, correct?

16 A That's correct.

17 Q Okay. And she was the alternate, correct?

18 A Yes, sir.

19 Q Okay. And the video that she watched on the Facebook
20 page, that was also entered at trial, correct?

21 A Yes, sir.

22 Q Okay. So all the jurors got to see the same video
23 Ms. Howel saw, correct?

24 A Yes, sir.

25 Q Okay.

1 A Ms. Howel done seen it before.

2 Q Okay. But all jurors got to see it too at that time?

3 A Yeah.

4 Q Okay. We'll move on to the next one failure to
5 investigate. What investigation -- I know that you said
6 that she should have investigated the garage, correct?
7 You've read the record. Do you not recall that in all of
8 that she argued repeatedly that it showed you did not
9 enter the garage?

10 A Yes, yes, sir.

11 Q Okay. So what else she could have investigated?

12 A That the footage before and after would have showed a
13 reason -- what jury wouldn't have convicted just for her
14 saying he didn't enter the garage. If they didn't know
15 the full story of up to that moment, of course, they was
16 going to come with a guilty verdict. I mean, we say, hey,
17 it wasn't in the garage. They didn't hear the whole story
18 of why it wasn't in the garage.

19 Q Who would have ---

20 A And the footage would have showed that before and
21 after. It would have showed it.

22 Q Do you have that footage here today?

23 A No, sir, I do not. I wish I did because if I had
24 good representation, I would have it here.

25 Q So what you're talking about today is that there's

1 footage out there that allegedly shows the before and
2 after that was not played?

3 A Yes, sir.

4 Q Okay. But that's not here today?

5 A No, sir, it's not.

6 Q Okay. So all we have is your word to go on?

7 A Yes, sir.

8 Q Okay. Moving on. Let's get into the failure to
9 defend your right to be present for trial. Do you not
10 recall from the record that you've read that she requested
11 continuance multiple times on that basis?

12 A Yes, sir.

13 Q Okay. Let me ask this, you were you on bond at this
14 time?

15 A Yes, sir.

16 Q Okay. Whose responsibility is it to contact their
17 attorney?

18 A Me.

19 Q And did you contact her?

20 A Yes, I tried.

21 Q And when did you do that?

22 A Check the record. Didn't it say that he's called our
23 office. You didn't read that. So I tried to call the
24 bondsman, her and all because I wasn't planning on
25 running. It wasn't nothing like running.

1 Q My recollection of the record is that you called
2 after trial started?

3 A From the ER, standing in the ER parking lot from
4 someone else's phone begging for rides, yes, sir, I did.

5 Q Okay. How did you get to the ER?

6 A The co-defendant the ride that come to get us dropped
7 us off.

8 Q I thought the co-defendant on your direct testimony
9 you said the co-defendant was at your trial. She was
10 right there with her. She had already pled. She could
11 have testified for you, but she took you to ---

12 A She drop me off and she went on to court. Ms. Gainey
13 know. She told Ms. Gainey and the judge. It's in the
14 transcript, the judge said so. It's in the transcript.

15 Q Excuse me she said what?

16 A She told the judge what happened with the accident to
17 Ms. Gainey in front of the judge. The judge said it in
18 the transcript right here.

19 Q My question was how did you get to the ER. You
20 replied your co-defendant ---

21 A My co-defendant dropped me off before because that's
22 when the accident happened walking out the door.

23 Q Did your co-defendant go to the courthouse and then
24 tell everybody that you were in the ER?

25 A Yes, sir.

1 Q Okay. When did she do that?

2 A The same day when -- before they put a bench warrant
3 on me the 26th.

4 Q So your testimony here today is that your
5 co-defendant went on the 26th and informed the Court that
6 you were in the ER?

7 A Yes, ma'am -- yes, sir, I mean, it's right here in
8 the transcript.

9 Q Can you point me to that?

10 A Yes, sir. I believe the co-defendant who just pled a
11 little while ago indicated that he might have a medical
12 issue, but no one has been able to give you any
13 information regarding that, is that correct? Ms. Gainey
14 said, no, I have not been able to definitely verify that.

15 Q Okay. So what your testimony was is that your
16 co-defendant went to the courthouse and informed everyone
17 that you were in the ER because she dropped you off,
18 that's not the testimony that was given though. It was
19 that you may have had a medical event?

20 A I'm sorry I ain't really understand the way you
21 putting it, but they was aware where I was at.

22 Q Would you agree with me or would you agree with me
23 that if there was a difference between knowing what you
24 have done and not maybe knowing what you done?

25 A Yes, sir.

1 Q Okay. And how did you get home from the ER?

2 A Pritchard Small Engine Repair Mr. Billy come gave me
3 a ride.

4 Q Did you request Mr. Billy to take you to court?

5 A Of course, yes, sir.

6 Q And Mr. Billy said no?

7 A He couldn't. He had a meeting to attend.

8 Q How far ---

9 A But he took me home.

10 Q How far is your house from the ER?

11 A I would say approximately ten miles I would say.

12 Q How far is the courthouse?

13 A All the way in Darlington County, it's Hartsville.

14 So Hartsville and this is Darlington, so -- what 30 miles
15 I would say. I guess.

16 Q Okay.

17 A I'm not sure.

18 Q Okay. Well, we can move on. Let's move on to
19 failure to present evidence. And, again, there was some
20 testimony on direct that a lot of your complaint is that
21 you were not in the garage with -- the generator was not
22 in the garage, that has been a bulk of your testimony here
23 today, correct?

24 A That's correct.

25 Q And that you stand on that?

1 A I do.

2 Q But you've read this record, correct?

3 A Yes, sir.

4 Q Okay. Do you recall what you told the Court?

5 A Yes.

6 Q What did you tell them?

7 A That I didn't enter that garage.

8 Q Okay. So you got the record before you, let me point

9 you to a page real quick?

10 A Yes, sir, the sentencing.

11 Q Go to page 145.

12 A Yes, sir.

13 Q Okay. It is going to be line 18, and it's just after

14 the word burglary. What did you say to the Court?

15 A Line 18. You say verse 20 to line 20?

16 Q Eighteen.

17 A I see what you saying. When I go on or enter the

18 victim's property, you said what I said on that. It

19 wasn't -- I didn't enter that garage. I didn't enter the

20 garage.

21 Q I hear you, sir, but it was your own testimony at

22 your trial where you said -- and it's line 18 on page 145.

23 I just entered a garage your Honor.

24 A But the lines up under that tell the truth or the

25 victim's property. I was switching -- I was telling them

1 that I ain't enter a garage. It was just a piece property
2 is what it meant to say on there. You can tell that, but
3 I understand how you ---

4 Q Well, we'll take it for what the record said. You
5 admitted to entering the garage?

6 A Yes, sir, you right.

7 Q Okay. And there was some testimony about your
8 co-defendant could have testified for you?

9 A Yes, sir.

10 Q Your attorney asked you was she represented by
11 counsel and she was, correct?

12 A Yeah.

13 Q So how would she testify for you when she had just
14 pled for a crime that she was a co-defendant in with you?

15 A Because she knows I never left her sight the whole
16 time.

17 Q But she's not here today, is she?

18 A No, I didn't have time to get her a subpoena. My
19 lawyer -- my PCR lawyer now was great. If I had her the
20 whole time, I'd had everything I needed, but she's -- but
21 that's not on her. She's actually great.

22 Q Well, let's move on to your next allegation potential
23 jurors comments that would have been Mr. Ervin McElveen.
24 You weren't present for this, correct?

25 A No, sir, I wasn't.

1 Q So how do you know that this was said within the jury
2 pool?

3 A I don't know if it was said in the jury pool, but he
4 went back to sit in the jury pool. And it's very easily
5 for discussions to be a month or so.

6 Q But you're speculating. You're speculating. Let me
7 ask you on page 11 of the transcript if you want to turn
8 to it.

9 A Page 11?

10 Q Yeah.

11 A Yes, sir.

12 Q It's going to be line eight.

13 A Yeah, I got it highlighted.

14 Q Line eight on page 11 and the juror stands and asks
15 could I approach?

16 A He said, yeah, sure.

17 Q So you don't know if it was said to the jury pool or
18 if it was said at the bench because he requested to
19 approach the judge and discuss something?

20 A True.

21 Q Okay. We'll move on to failure ---

22 A He did say it would affect his ability to be fair.

23 Q Correct.

24 A Pretty bias.

25 Q But he wasn't seated.

1 A But he sent back to the ---

2 Q He was not seated as a juror for your jury, was he?

3 A But he was seated back with the jury pool.

4 Q That's how that works.

5 A All right, yes, sir. Yes, sir.

6 Q Okay. Failure object to the Court's jury charge
7 instructing them on to determine the truth based off the
8 evidence. And your attorney she presented to you that
9 you're innocent until proven guilty?

10 A Correct.

11 Q Do you have to present a defense?

12 A Well, if you don't know nothing, you're not -- but if
13 you was aware of the evidence, you would have put up a
14 defense yeah. If not then, the guilts gone be on me.

15 Q Well, let me ask you this, you've mentioned that you
16 didn't -- you barely talked to Ms. Harte, but, again, you
17 were on bond. Whose responsibility was it to contact
18 Ms. Harte? It's your life on the line not Ms. Harte's.
19 So whose responsibility, was it?

20 A Mine.

21 Q Okay. You're the one that has to do time for this,
22 correct?

23 A Yes, sir.

24 Q Okay. So did you make meetings with Ms. Harte that
25 you fail to appear for?

1 A No, sir, I couldn't get a ride to the doctor
2 appointment more less meetings.

3 Q Well, on direct you testified that you did go to the
4 doctors' appointments?

5 A That's what I'm saying. I catch a ride. I catch
6 from the preacher to do that, you know what I mean and my
7 brother.

8 Q You couldn't just pick up the phone?

9 A Yes, sir.

10 Q Did you call Ms. Harte?

11 A I didn't even know who she was. I didn't know she
12 was my lawyer or nothing.

13 Q So then how did she get you to come in and do plea
14 negotiations?

15 A Because she called me out the blue one day and said
16 you need to get up here there's a plea deal for you.

17 Q So that was August third on your direct testimony.
18 You said that was August 3rd?

19 A No, that was the week of the fifth.

20 Q Okay. So August 3rd, August 5th somewhere ---

21 A Somewhere round in there. I don't know exactly what
22 date. Probably the only plea negotiation, you know what I
23 mean, so whatever date that was.

24 Q Who represented you on your bond?

25 A Who got me out on bond?

1 Q Uh-huh.

2 A Callaway.

3 Q Which attorney represented you?

4 A What attorney represent me? She was the one
5 appointed to me.

6 Q Ms. Harte?

7 A Yeah.

8 Q So Ms. Harte was there for your bond?

9 A I don't know what you're saying.

10 Q Was Ms. Harte present for your bond hearing?

11 A No, you don't have to have a lawyer present for
12 bond.

13 Q That's your testimony -- your testimony was she was
14 not present for that?

15 A I don't get what you saying.

16 Q For your bond hearing, sir, was Ms. Harte present?

17 A Bond, no. When I got out on bond and posted bond?

18 Q Okay. When did you get notice that she was your
19 attorney?

20 A I got out on bond. They appointed me an attorney,
21 and I never knew it was her or who my attorney was because
22 that was on December the 15th when I got out on bond. I
23 got shot on January the 8th. So a few weeks after I got
24 shot -- I mean, a few weeks after I got out on bond, I got
25 shot before my first initial appearance. So I never knew

1 who was my attorney or who she was.

2 Q So you're facing a first degree burglary charge
3 life -- potential life sentence ---

4 A It was second degree nonviolent.

5 THE COURT: Wait, wait, wait.

6 MR. BRUNSON: Oh, I'm sorry.

7 THE COURT: Mr. Brunson, slow down a little bit.

8 Let him finish the question.

9 MR. BRUNSON: Okay. I'm sorry, sir.

10 THE COURT: It's okay, but just slow down a
11 little bit. Proceed, sir.

12 BY MR. BARLOW:

13 Q First degree burglary a potential life sentence and
14 you didn't think it was prudent for you to contact your
15 attorney?

16 A Well, it was second degree nonviolent at the time,
17 but still, no, sir, I didn't. I didn't even know who she
18 was to contact to be honest. I didn't know who was over
19 my case, who was representing me. My injuries were
20 severe. My whole femur bone shattered, so it was.

21 Q Beg the Court's indulgence. Move on I think two more
22 here. Your failure to represent him during your plea
23 negotiations. She didn't negotiate for you, correct?

24 A I don't know about that. No, it's not correct.

25 Q Well, how did you know about the ten years?

1 A That's the only plea she came with, that ain't
2 negotiating. Negotiating when you come -- try to get a
3 better plea.

4 Q Do understand that the Solicitor's office doesn't
5 have to offer you anything?

6 A Oh, yes, sir. Yes, sir. So the first one is
7 negotiating then. I'm sorry.

8 Q From what you're potentially facing to a ten year, I
9 would say that's a negotiation, is that not?

10 A If you put it like that, sir. I thought negotiating
11 was you come with the first plea and go negotiate for
12 another. I thought that's what you meant by negotiating.

13 Q You could do that, but the Solicitor does not have to
14 do that. Do you understand that?

15 A Yes, sir.

16 Q Your lawyer can take whatever she wants. The
17 Solicitor doesn't have to offer anything?

18 A Well, then I was thinking they was negotiating
19 because the last day in the courtroom which was the 23rd,
20 they was asking me what was the number in my head, so I'm
21 thinking they was negotiating. I didn't think it was gone
22 be no trial that Monday, that's for sure.

23 Q So there was a negotiation?

24 A It don't look like it. It look like it went straight
25 to trial, that's what I'm trying to figure out. I was

1 thinking I was to take a plea.

2 Q Mr. Brunson, last question here I think is. Explain
3 to me what your appellate counsel did that was
4 ineffective?

5 A She didn't raise the issue that was clearly stronger
6 than the issue she raised. My presence would have been
7 violated at trial because the jury would have learned it
8 what really took place. You know, not just nothing,
9 nothing from defense, the jury. My trial in absence would
10 have been stronger than the issues she raised.

11 Q Mr. Brunson, are you an attorney?

12 A No, sir.

13 Q Do you have any legal training?

14 A No, sir, just a little bit I read on my case trying
15 to figure out how this happen to me.

16 Q Do you have any appellate training?

17 A No, sir, I do not just from what I study on my own in
18 four years trying to figure out how this happen to me.

19 Q So it's your lay opinion even though Ms. Carter told
20 you she raised the strongest issue that she found, it's
21 your lay opinion that her -- she should have raised an
22 issue that you feel was stronger?

23 A Yes, sir.

24 MR. BARLOW: Thank you, nothing further, your
25 Honor.

1 THE COURT: Ma'am.

2 MS. MCMAHAN: Just briefly.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q I'm just going to go back on Ms. Howel briefly. Did
6 you recall if your attorney or anything ask for a strike
7 for cause for Ms. Howel, so she wouldn't be an alternate?

8 A No. No, ma'am, not at all.

9 Q And so your earlier testimony was that you had
10 attempted to call her office and the bondsman multiple
11 times. So in your opinion did someone in the public
12 defender's office know where you were?

13 A Yes, ma'am. Her name was Barbie. Matter of fact,
14 her name was Barbie that I spoke with.

15 Q Like the doll?

16 A Yes, ma'am.

17 Q And would Mr. Barlow reference page ---

18 A Because on there it says he's on the way. He's on
19 the way and the judge said do he know where the courtroom
20 is. And they was laughing in the courtroom. I know the
21 transcript pretty well.

22 Q And so when Mr. Barlow referenced page 145 line 18
23 where you said I just entered the garage. On the three
24 lines before that, so it's in your opinion, you know, a
25 few lines before that on lines to -- line 21 all that

1 needs to be taken together in reference to what you were
2 saying about the garage where you said I was being tried
3 in my absence and a jury trial for first degree burglary
4 when it really wasn't burglary?

5 A That's exactly right. And I promise that's the God
6 honest truth. I wouldn't go forward with this PCR if it
7 wasn't the truth and nothing but the truth I promise you.

8 Q And did you have a discussion with Ms. Harte about
9 how this current burglary the one that you were charged
10 with -- obviously, I had a discussion with you about how
11 this was a direct presentment remember that? You were
12 arrested on burglary first, right?

13 A Yes, yeah.

14 Q But you were arrested on a different burglary,
15 burglary second?

16 A Second nonviolent.

17 Q Did you have a discussion with Ms. Harte about how
18 that burglary second could be enhanced to a burglary first
19 degree based on your record?

20 A No, I think she was just angry because I didn't take
21 the ten. We watched a two minute video together. And I
22 was telling her -- I asked her if I would take the ten
23 could I make things right. She said no. I said, well, if
24 I was to go to trial, I wouldn't want to do it in
25 Darlington County because of the Facebook page, that's it.

1 That's all the conversation we had. We never went over
2 trial or anything.

3 MS. MCMAHAN: And your Honor I just wanted to
4 put on the record when we're referencing Ms. Gainey and
5 Ms. Harte those are two interchangeable people.

6 A But I feel like if she would have knew the actual
7 case, it would have been different.

8 Q So you believe the outcome of your trial would have
9 been different?

10 A Yes, she would have knew everything. You can tell --
11 I can just tell by the way she -- if you look at the
12 responding Officer Matthew Millier on there, just in what
13 she do by the police report. There was nothing about it
14 inside of a garage nothing indicating it was on the inside
15 of the garage because it wasn't. It wasn't until three
16 days later when the Investigator Adamhiem (sic) was
17 involved when the story changed.

18 Q And the garage was actually attached to the house,
19 right?

20 A Yes.

21 MS. MCMAHAN: Okay. I have no further
22 questions.

23 THE COURT: Mr. Barlow.

24 MR. BARLOW: Nothing from the State, your Honor.

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

1 (WHEREUPON, the witness leaves the witness
2 stand.)

3 MS. MCMAHAN: At this time the applicant rest?

4 THE COURT: Mr. Barlow.

5 MR. BARLOW: Thank you, your Honor. We would
6 call Ms. Rachel Harte, for the record Rachel Gainey Harte.

7 THE CLERK: Place your left hand on the Bible
8 and raise your right. Do you swear or affirm the
9 testimony you give this court to be the truth, the whole
10 truth, and nothing but the truth so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Please be seated and
13 state your name for the record.

14 THE WITNESS: Rachel Gainey Harte H-A-R-T-E.

15 THE COURT: Proceed, sir.

16 MR. BARLOW: Thank you, your Honor. May it
17 please the Court.

18 WHEREUPON,

19 Rachel G. Harte,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BARLOW:

23 Q Ms. Harte, good morning. How are you?

24 A Good. I hope you are.

25 Q How long have you been practicing law?

1 A Almost ten years.

2 Q And how much of that has been in criminal law?

3 A The entire time.

4 Q And were you appointed or retained in this case?

5 A Appointed.

6 Q And do you recall roughly how long before the trial
7 you were appointed?

8 A Yes, according to my notes, I was assign this case in
9 March of 2019.

10 Q Okay. So that was -- a trial was August of 2019?

11 A That's correct.

12 Q You were appointed in March?

13 A That's correct.

14 Q Okay. And during that time did you receive the Rule
15 5 and discovery in this case?

16 A Yes.

17 Q And just a simple question and we'll get more into
18 it. Did you review the discovery with Mr. Brunson?

19 A I did.

20 Q Okay. And can you give us a brief overview of your
21 understanding of what the State's evidence was in this
22 case?

23 A Yeah, so he was originally charged with burglary
24 second nonviolent. There was a video of Mr. Brunson and
25 his co-defendant pulling up into the complainant or

1 victim's yard. It showed -- I don't remember if it was
2 Mr. Brunson or his co-defendant going to the door,
3 knocking on the door seeing if someone was home. Then it
4 shows Mr. Brunson walking back up the driveway to his
5 vehicle carrying a generator and putting the generator
6 inside of his vehicle that he drove up in. And then him
7 and his co-defendant drive off. They had that -- when I
8 say they, the State had that evidence on a ring doorbell
9 or something sort of doorbell provided from the victim.
10 It didn't have all different types of angles, so you
11 couldn't see the garage door and that was my argument at
12 trial, but however you did see Mr. Brunson carrying the
13 generator. So in my discussions with Mr. Brunson, you
14 know, we talked about the fact you could see him carrying
15 the generator, so we did discuss that. And also in
16 speaking with the prosecutor when she did make the plea
17 offer, she made it very clear that this case could be
18 directly indicted for burglary first degree because of
19 Mr. Brunson's previous record. And I could get into that
20 at the appropriate time, but I did discuss that with Mr.
21 Brunson several times once in person and over the phone a
22 couple of times. It was very hard to meet with
23 Mr. Brunson in person. He had several court dates
24 whether that be an initial appearance, the second
25 appearance. Then he was roll called in quite often. I've

1 got notes where I attempted to call him to schedule
2 appointments, no shows. I could never get him on the
3 phone. I would luck up and get his mother on the phone or
4 his co-defendant would call the office quite often and
5 Mr. Brunson would be with his co-defendant, so I could
6 speak to him in that regard. But to get back to your
7 question, that was the main evidence was the video and the
8 fact that you could see him on video.

9 Q Was your client notice for trial?

10 A He was. So several times we had a status conference
11 on -- let me see August the 8th. Actually, he was suppose
12 to be in court on August the 7th. He did not show up for
13 court. I tried to call him ahead of time to schedule an
14 appointment for that. He showed up to court the next day
15 on August the 8th where he had a status conference where
16 the Solicitor put on the record what the plea offer was,
17 when it was expiring and when she intended to try the
18 case. The offer expired the next day. However, over the
19 next couple of weeks when the client -- when Mr. Brunson
20 kept coming back to court, the Solicitor would say the
21 offer is still open, so he was very aware of the court
22 dates. He was given his trial in absence notice and was
23 told on August the 8th that he would have a trial on
24 August the 19th or the week of August the 26th.

25 Q Okay. And let's jump right in -- the first thing I

1 want to ask you Mr. Brunson testified multiple times that
2 you were just angry at him because he did not accept the
3 ten-year plea deal. Is that -- would you characterize
4 that as how you felt?

5 A Not at all. I wasn't angry at Mr. Brunson. I
6 thought that the plea offer was reasonable given the
7 evidence that the State had and his prior record. I
8 discussed that with him. Mr. Brunson was upset about the
9 plea offer. It seemed in our conversations going back
10 with him through our notes, he couldn't wrap his mind
11 around the amount of time the plea offer of ten years
12 being associated with a \$300 generator. He kept saying it
13 was just a \$300 generator. I wasn't upset with him about
14 wanting to go to trial, that's what I do for a living, so
15 I don't mind trials. I just wanted him to know what the
16 plea offer was and that once it expired that the State did
17 intend to take him to trial.

18 Q During the jury selection, do you recall Renee Howel?

19 A I do. And I just want to go back. So Darlington
20 County Crime Stoppers page was not anything that
21 Mr. Brunson mentioned to me. That is actually a question
22 that I prepose in all my voir dire when I practiced in
23 Darlington because I was aware of that page, so that was
24 not anything that Mr. Brunson had brought to my attention.
25 I never had that discussion with Mr. Brunson about

1 including that in voir dire because that's, you know, my
2 strategy as a trial attorney. So when the judge asked the
3 jury that question, I don't remember particularly Renee
4 Howel, but that jury pool had so many individuals that
5 were followers of that page. There were a couple of
6 administrators on that page. There were a lot of law
7 enforcement family members in that jury pool, but I don't
8 remember her specifically.

9 Q Okay. In terms of investigation, how did you go
10 about investigating this case?

11 A As far as, you know, reading over the evidence,
12 speaking with Mr. Brunson when I could, watching the
13 video. I believe I drove by the house. I wasn't aware of
14 any other videos. Mr. Brunson never divulged to me in
15 prepping for this trial that he had a previous
16 conversation with Ms. Little's dad. In fact, the video
17 that I recall seeing showed Ms. Little at the house prior,
18 so we did have a little bit of the video prior. She left
19 the home. And then you saw Mr. Brunson and his
20 co-defendant pull up, but at no time prior to trial did
21 Mr. Brunson tell me about any encounter or any
22 surveillance videos at gas a station that I would have
23 known to go and ask for, so I didn't do that as far as
24 following up with that. I didn't know about it.

25 Q How did you go about Mr. Brunson not being present

1 for his hearing?

2 A So according to my notes, Mr. Brunson was in court on
3 August the 19th the week prior because he was also given a
4 trial date for that week. At that time the prosecutor
5 said the same offer was on the table. I discussed that
6 with Mr. Brunson. I think he's talking about -- that's
7 what he was referencing when I asked him what was the
8 lowest or what was his number. I remember trying to
9 negotiate with the prosecutor at that status conference or
10 trial roster meeting. She was not willing to budge on
11 that. So I had in my notes where I relayed that to the
12 client and that he would be going to trial on Monday. And
13 he explain to me that he justed wanted more time with his
14 family. I explain that I couldn't get the trial date
15 pushed off, that Monday was the day of his trial. He
16 assured me that he would be there. Monday morning rolled
17 around. Mr. Brunson -- when I say Monday morning, the
18 26th roll around Mr. Brunson was not there. Our office
19 tried to call every number that we had on file for him.
20 We weren't able to get in touch with him. I do see where
21 our administrative assistant, Ms. Barbie Lyles, who he's
22 referring to, was able to speak to him at 9:30. She said
23 she was hung up on. He said he was at the hospital and
24 was calling from a pay phone across the street at Carolina
25 Pines. Our office called Carolina Pines Medical Center,

1 McLeod and MUSC all the hospitals in the area to try to
2 get documentation of him actually being in the hospital
3 and I was able unable to get that. So the only thing I
4 knew to do was explain to the Court that I had gotten
5 information that he was in the hospital, but I didn't have
6 any actual documentation. I didn't even know what
7 Mr. Brunson was in the hospital for. He didn't even call
8 the office to tell us that.

9 Q Okay. I believe on direct that Mr. Brunson testified
10 that you were aware of his medical conditions. Was that
11 true?

12 A Not the day off. I know that he told me that he had
13 been shot in the past, but as far as what he was in the
14 hospital for that Monday morning, I had no clue. I also
15 have where on the 27th where I put in notes because I was
16 in the middle of a trial where I had tried to call and was
17 able to get in touch with his mother. His mother said law
18 enforcement was looking for him. She didn't know where he
19 was. Also, a contact person for him was his
20 co-defendant's daughter Skylar. She was the only one who
21 my office was able to really get in contact with that had
22 a phone number that we could call. She said that the
23 client or Mr. Brunson knew that the trial was going on and
24 she didn't know where he was. So I didn't know
25 specifically what to tell the Court what he was in the

1 hospital for because I didn't know and couldn't get that
2 information.

3 Q Do you happen to recall the issue with I believe it
4 was Mr. Ervin McElveen? It was a potential juror.

5 A I don't specifically, but I think I do remember in
6 the transcript, but it's not -- it's not ringing a bell.

7 Q Can you tell me a little bit about the -- you went
8 through it already, but one more time about the plea
9 negotiations real quick?

10 A Yes, so just going back from my notes, I received a
11 plea offer from the State. Let's see looks like at the
12 beginning of July of 2019. I have a message where I ask
13 my office to call the client to come in for a meeting and
14 gave several days for him to come because I wanted to
15 discuss that in person because it was a, you know,
16 significant amount of time. I don't like to do that in
17 court. We attempted to contact him several times was
18 unsuccessful in that. And we even reached out to the
19 bail bondsman Stephanie Galloway. She was unable to
20 contact him. This is going on to the 24th. Then on 7-25
21 Mr. Brunson I have a message he finally called and asked
22 when he had court. And we told him it was on August the
23 7th and that would have been a roll call on that date. He
24 did not show up to court. We were suppose to have a
25 meeting that day. So it was just very hard to get in

1 contact with Mr. Brunson. So every time I actually had
2 him face to face, I would take the time to have a
3 conversation with him about the plea offer, about the
4 evidence and about his constitutional rights. I know that
5 he testified I didn't put in any evidence. I had a
6 conversation with him about his right to testify. At that
7 time he didn't want to testify because of the implications
8 of his record. So it was just very hard to get in contact
9 with him.

10 Q My last question. Do you stand by your
11 representation?

12 A I do.

13 MR. BARLOW: Nothing further. Please answer any
14 questions Ms. McMahan has.

15 THE COURT: Ma'am.

16 CROSS-EXAMINATION

17 BY MS. MCMAHAN:

18 Q Would you have recommended that Mr. Brunson testify?

19 A I always leave that up to the client because it's
20 their right whether or not they want to testify. I mean,
21 I laid it out for them, you know, and present the
22 implications of what testifying, you know, would trigger
23 him being cross-examined, his record being put in, and how
24 it would my closing, but ultimately that's his decision
25 and I let him know that.

1 Q And did you hear him talk about how only the State
2 presented evidence on his behalf?

3 A Yes.

4 Q Was there anything that you could have presented on
5 his behalf that would have been helpful for that trial?

6 A Not that I'm aware of.

7 Q And could you have presented his co-defendant as a
8 possible witness?

9 A No.

10 Q And why is that?

11 A Well, because she had you know ---

12 Q She was represented?

13 A Yeah, she was represented.

14 Q Do you think her attorney would have advised her not
15 to testify?

16 A Exactly, yeah, that could have not been in her best
17 interest because she was charged with the exact same
18 crime.

19 Q So we're talking about possibly like pleading the
20 fifth situation?

21 A That's correct.

22 Q Did he have other charges pending while this was
23 going on?

24 A He did.

25 Q Do you recall what those were?

1 A One was with his stepson. It might have been a
2 larceny or a burglary. I don't remember off the top of my
3 head, but he did have another pending case I believe.

4 Q So when I contacted the public defender's office,
5 they told me that he had some charges pending 2016, 2017
6 and 2018 all kind of at the same time?

7 A Okay.

8 Q Do you recall that at all?

9 A I don't.

10 Q Do you recall the Solicitor dismissing charges?

11 A She must have. This case was the one that she was
12 focused on.

13 Q Okay. And if he had shown up on Monday would that
14 ten-year offer still would have been on the table?

15 A No, that ten-year offer -- it was my understanding
16 that that ten-year offer expired on the 19th excuse me --
17 no, the 23rd. He was there the Monday of the 19th.

18 Q So that Friday the 23rd?

19 A No, excuse me. No, excuse me he was in court on 8-19
20 that Friday. That would have been that that trial roster
21 meeting since he was notice for trial on the week of the
22 19th and the week of the 26th. On the 19th, technically
23 the offer had already expired that was on the record for
24 the status conference. The Solicitor had indicated to me
25 that morning, hey, if he still doesn't want to go to trial

1 next week or if he doesn't want to go to trial next week,
2 I would still offer this ten year burg second. I haven't
3 served him with a the direct indictment.

4 Q And the 19th -- and he would have had to take it on
5 the 19th?

6 A Yes, but it was not the first time that it was
7 proposed to him.

8 Q Yes, I'm just trying to clarify the timeline a little
9 bit.

10 A Yeah.

11 Q And he was indicted actually that Thursday the 22nd
12 for burglary first?

13 A I don't remember the specific date, but she served
14 him with a direct indictment in court I believe.

15 Q I mean, I can't believe you don't flip through all
16 the direct indictments to memorize these dates. Okay.
17 And so then -- so when he showed up on the 23rd, that was
18 the trial. You were like we're going to trial?

19 A Well, no, he didn't show up on the 23rd. I'm sorry I
20 put in the note on Friday he showed up on the 19th
21 rejected the plea offer again said that he wanted to go to
22 trial because he wanted more time.

23 Q Was that when the five years came into play when he
24 said I'll take five?

25 A I believe so. That wasn't an option. The State was

1 not willing to come down on their plea offer. I explain
2 that that meant Monday was going to be a trial. He said
3 he would be here Monday morning at nine am ready to select
4 a jury.

5 Q And then did you have any discussion with him from
6 let's say the 20th until that following Monday about
7 talking about trial strategy or anything like that?

8 A No, because we had done that before on the 13th. He
9 had called, he could not get a ride to his appointment at
10 10:30 on the 13. And his co-defendant actually called on
11 his behalf and I ask to speak with him on the phone. I
12 have notes where I made sure that he was aware of his
13 potential trial dates. We discussed his right to testify
14 and the implications. Client seen -- I'm not going to go
15 into that. I already discussed -- what he was -- we
16 discuss the fact he was very upset that it was a \$300
17 generator. He was very stuck on it wasn't burglary. It
18 was a larceny, so we had discussed that being a trial
19 strategy.

20 Q Okay.

21 A He also had discussed wanting to hire a private
22 attorney during that same time we had talked about what
23 size he would need for his trial date if he needed any
24 clothes and stuff like that. So we had an entire phone
25 call because he couldn't come in.

1 Q At any point so when Mr. Brunson -- at any point
2 during the trial, did Mr. Brunson besides calling and
3 talking to Barbie was there any communications with him
4 that you recall regarding about his location?

5 A No, none whatsoever.

6 Q Was he ever able to provide you a documentation after
7 the fact that he was in the hospital?

8 A No. And I just want to say when we called the
9 hospitals around we gave them every indicator we could. I
10 think now if he called after the fact or told me after the
11 fact that he was under a different name. We gave his date
12 of birth, his social security number. We gave every
13 identifying information we could to see if I could get
14 documentation for the Court to show that he was there and
15 I was just not able to.

16 Q I'm not super familiar with this area, but you said I
17 guess three hospitals?

18 A We even called the ones in Florence. So there's not
19 even -- I don't even think there is a McLeod in ---

20 Q Darlington?

21 A Yeah. So called -- when Barbie spoke with him, he
22 told us he was at Carolina Pines, that's where we called.
23 We also called McLeod and MUSC. They might have small
24 offices, but the larger ones are in -- emergency rooms are
25 in Florence.

1 Q So when you were saying you were unable to
2 independently verify what the information you had just
3 come from secondary sources not from you talking to him
4 directly?

5 A Exactly. And even when he called, he said he was on
6 a pay phone across the street.

7 Q Would you have encouraged him to take that ten-year
8 offer?

9 A I would have encouraged him to come to trial at that
10 point.

11 Q And just backing up a little bit to the jury
12 selection. So Ms. Howel it look like you had already
13 struck an alternate at that point, so you were out of
14 strikes presumably?

15 A That's correct. And I don't remember her
16 specifically, but I do remember about that jury pool
17 because I do have a little bit of notes. There was a lot
18 of people that were involved or followers of that page.
19 And like I said, that's something that I ask about that
20 page every time I had a trial, so the strikes seem to go
21 kind of fast.

22 Q So would you think if you had asked for a strike for
23 cause on her, you would have been successful?

24 A No, I don't.

25 Q Is that because she indicated that she could be fair

1 and impartial?

2 A That's correct.

3 Q You indicated that you had no idea about any possible
4 videos at a gas station or anything like that?

5 A No.

6 Q And do you recall how many times you may have spoken
7 to him either in person or on the phone?

8 A So I just know looking back from my notes and
9 speaking with him he was upset that I only met with him
10 five times. I need to go back and see if it was five
11 times. Now, I think it would be more than that in person.
12 And then I know we had several phone conferences where I
13 could get him on the phone. So it might have been five
14 times in person. I can't remember specifically.

15 Q So in theory if you're directly indicted, you have an
16 arraignment, right, where you're basically arrested in
17 court, so that never happened?

18 A He was arraigned in court, but I want to think we
19 consented to like a PR bond or something like that which
20 you can do because typically they will take the person
21 into custody, take them to the jail, book them, rearrest
22 them, which is crappy because the person already paid to
23 bond out. So I believe we consented to a bond, but I
24 don't remember specifically.

25 MS. MCMAHAN: Court beg the Court's indulgence,

1 your Honor.

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, a pause in the proceedings.)

4 MS. MCMAHAN: I have no further questions, your
5 Honor.

6 THE COURT: The State.

7 MR. BARLOW: Your Honor, nothing from the State
8 and no further witnesses either.

9 THE COURT: You may step down, ma'am.

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 THE COURT: You said no more witnesses.

13 MR. BARLOW: No more witnesses, your Honor.

14 THE COURT: May we take about a 15, 20 minute
15 break please and let me look over my notes. I will be
16 back.

17 (WHEREUPON, a break was taken.)

18 THE COURT: All right. We have regathered here
19 and I wish to offer the Court's ruling on the Brunson
20 matter. I took copious notes and like good lawyers here
21 today while I'm taking notes, I'm also thinking and
22 analyzing and forming rulings when I can. I would command
23 and demand for putting forth all of the desires and wants
24 and requests of Mr. Brunson. Likewise, the State has
25 responded well and with great preparation. At a PCR, Mr.

1 Brunson, I sit as the fact finder not the jury or not a
2 jury, but I sit as a jury because I have the discretion
3 today to assign something called credibility or
4 believability. Mr. Brunson, I can't -- I cannot and never
5 have been able to and never will be able to know it
6 precisely when the truth is being said. So we have to
7 fall back as human beings and rely on the believability,
8 which is about as close as you can get to pure truth as
9 possible.

10 Without greater due, Mr. Brunson, I'm going to
11 disappoint you today and not grant you the new trial that
12 you seek and I say that for these reasons. First of all,
13 I listen carefully to your allegations. I read the
14 filings. And I listen to the answers to the lawyers
15 involved. I don't find any ineffective assistance of
16 counsel and concomitantly find prejudice to you in this
17 case. To get -- what I did was as you testified, I went
18 down your checklist that you had offered and I made notes
19 in one of these books here. Bear with me, a lot of pages
20 here, here we are. Your handwriting. At trial, trial
21 counsel was ineffective for failing to object to the jury
22 selection of Renee Howel as an alternate jury. The key
23 there is that she was alternate. Alternates do not
24 participate in the deliberation during jury trials.

25 Further, if she was and I'm sure she probably

1 was questioned about that Facebook notation or membership,
2 the question the Court always follows with is in light of
3 that information can you be a fair and impartial juror.
4 Number three, which obviously said she could. Number
5 three according to Ms. Gainey's testimony, the pool was
6 rife with members of people who were following that
7 Facebook page or that organization and that she had
8 literally ran out of strikes, which is possible. The
9 question arises, well, why couldn't she just be dismissed
10 for cause. According to her, there were so many that
11 probably would have wiped out the entire -- not all of the
12 jury panel causing them to get a continuance. I see no
13 wrong there.

14 As to the allegation about the appellate
15 counsel, I find that to be simply a general complaint with
16 no proof of any prejudice or what she should have done.
17 She being the appellate attorney. Mere conclusory
18 allegations don't help you, Mr. Brunson.

19 Failing to investigate, Ms. Harte discussed the
20 fact -- Ms. Gainey discussed the fact that she saw the
21 video and that the video was actually shown to the Court
22 or the jury. According to her, she strongly objected or
23 according to testimony of her that strongly objected to
24 going forward with a trial because you were not there.
25 She did what appear to me to be the best she could to hold

1 that trial off, but you were not there.

2 Chief trial counsel Ms. Harte was ineffective
3 for failing to present evidence as Ms. McMahan ask you or
4 perhaps remind you through her questioning there's no
5 burden on you to present any evidence, Mr. Brunson, none.
6 I'm sure the judge -- Judge Burch told the jury that
7 there's no burden whatsoever on you at a trial. The
8 comment about the gentlemen that may have said something
9 that you have stolen from him or somebody in the past.
10 First of all, he was not on your jury. He was placed back
11 in the jury panel. And there's no evidence of anything
12 here that he tainted that jury pool in any way with
13 discussions of other jurors. Remember, we're in a
14 courtroom not all in one room where they placed.

15 The objection about the jury charge that the
16 judge told the jury based on the evidence that was
17 presented to them. Again, there's no duty on you to
18 present any evidence at all. So, Mr. Brunson, I don't
19 find fault with you at all for filing a PCR. I would do
20 the same, that's how our system works. And I'm sorry to
21 disappoint you, sir, but I don't find where you -- that
22 you met your burden of proof. And it's your burden today
23 not the State to show that you're entitled to a new trial,
24 but I wish you the best, sir. I hope things work out for
25 you.

1 MR. BARLOW: And, your Honor, the State will
2 prepare the order for that and just to place it on the
3 record your Honor as a matter practice now I order all
4 transcripts of my PCR hearings to avoid any Fishburne
5 issues.

6 THE COURT: Yes, sir.

7 MR. BARLOW: So I will notify chambers once I
8 have the transcripts, so I can begin working on that
9 order.

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

11 MR. BARLOW: Thank you, Your Honor.

12 THE COURT: Good luck, Mr. Brunson. Ms.
13 McMahon, good luck, ma'am.

14 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 65, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Darlington County, South Carolina, on the 10th day of December, 2024.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 21st day of April 2025.

Keshia Reed

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

William J. Brunson, #342228,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE No. 2022-CP-16-00185

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. George M. McFaddin, Jr.
Ashley A. McMahan, Esq.
D. Russell Barlow, II, Esq.
Rachel G. Harte, Esq.
December 10, 2024
Keshia Reed

FILED
2026 FEB 23 A 9:23
CLERK OF COURT
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of William J. Brunson's (Applicant) application for post-conviction relief (PCR) filed on February 28, 2022. Respondent, the State of South Carolina, submitted its Return and Motion for a More Definite Statement on June 1, 2022, requesting an evidentiary hearing to resolve the claims outlined in the application.

On December 10, 2024, an evidentiary hearing was held at the Darlington County Courthouse before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Ashley A. McMahan, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original application. In support of these claims, Applicant testified on his behalf, and Respondent presented testimony from Rachel G. Harte, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish

any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During its August 2019 term, the Darlington County Grand Jury indicted Applicant for first-degree burglary (2019-GS-16-1162). Applicant was represented by Trial Counsel. Elaine Cooke and Monty Bell, Esquires, of the Fourth Circuit Solicitor's Office, prosecuted the case. On August 26-28, 2019, Applicant proceeded to trial before the Honorable Thomas Russo, circuit court judge, and a jury. Applicant was found guilty as indicted. Judge Russo sentenced Applicant to twenty-four (24) years' imprisonment.

Applicant filed a timely notice of appeal on September 4, 2019, that was perfected by Wanda H. Carter, Esquire (Appellate Counsel), through filing a brief raising the following issue:

The trial judge erred in allowing into evidence a police department booking mug shot of appellant in support of the arresting officer's identification verification of appellant as the perpetrator as shown in the residence garage from the home surveillance videotape because this was inadmissible prejudicial prior crime evidence that outweighed any probative value, particularly in light of the fact that the jury asked a curious question about the photograph at trial.

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Brunson, 2022-UP-015 (S.C. Ct. App. filed Jan. 12, 2022). The Remittitur was returned on January 28, 2022.

FACTS ADDUCED AT TRIAL

On October 10, 2018, Ashley Little (Little) left her residence in Darlington to purchase formula for her daughter. (R. pp. 73-75). As Little left, she tried to close her garage door using the remote in her car. (R. p. 75). However, because the weather stripping on the bottom of her

garage door was dislodged, the door did not close. (R. p. 75). When Little returned, she noticed her garage door was open, and a generator was missing from the garage. (R. p. 76). Little reviewed her security camera footage and saw an unknown white male take a generator from her garage and load it into his car. (R. p. 77). Little called law enforcement and turned over the video to the responding officer. (R. p. 77). After reviewing the security footage, Commander Neal Cusack (Cusack) of the Darlington County Sheriff's Office determined he recognized the person in the footage, but he did not know his name. (R. pp. 47, 94). After speaking with fellow law enforcement officers, Applicant's name was developed as a possible suspect. (R. pp. 47, 95). Cusack viewed a mug shot of Applicant and recognized him from the security footage based on a red mark on his neck. (R. pp. 48, 95-96).

Additionally, Cusack testified that he recognized Applicant from seeing him around Hartsville during his twenty years of working in the city. (R. pp. 97-98). Little and her husband, Robert Little, testified that they never gave Applicant permission to enter their home or take their generator. (R. pp. 81, 99).

CURRENT ACTION BEFORE THIS COURT

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

- 1) Ineffective Assistance of Trial Counsel
 - a) For failing to object to the jury selection of Renee Howle as an alternate during my trial.
 - b) For failing to investigate and prepare a defense for trial.
 - c) For failing to effectively defend Applicant's right to be present during trial. Applicant's right was not void; whereas he was hospitalized and should have received an extension because his presence was vital to his defense.
 - d) For failing to present evidence.
 - e) For failing to object to a potential juror's comments that the defendant had robbed them, and then allowing them to remain seated with other potential jurors.
 - f) For failing to object to the Court's jury charge, which instructed them to

- determine the truth based on the evidence that was presented before them;
 whereas, the only evidence presented before them was from the State.
- g) For failing to effectively represent Applicant in his plea arrangement.
- 2) Ineffective Assistance of Appellate Counsel
- a) For failing to raise an issue preserved for direct appeal, Applicant was denied his right to be present during trial.

Applicant requests relief as follows:

"vacate conviction"

Before this Court are the Darlington County Clerk of Court records regarding the Applicant's conviction and sentence, Applicant's SCDC records, Applicant's appellate records, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- 1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2) That the court was without jurisdiction to impose sentence;
- 3) That the sentence exceeds the maximum authorized by law;
- 4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- 5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- 6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v.

¹ S.C. Code Ann. §§ 17-27-10 to 160

Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When

analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325

S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different.")! Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S.at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the

record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant she rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590,

596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1a: Failure to object to the jury selection of Renee Howle as an alternate during my trial.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to Renee Howle as the alternate juror in his trial. This Court finds this allegation to be without merit.

While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. State v. Stanko, 376 S.C. 571, 577, 658 S.E.2d 94, 96-97 (2008); see also State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009) (a defendant is not entitled to the jury of his or her choice); Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 765 ("a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury"). The Constitution, after all, "does not dictate a catechism for *voir dire*, but only that the defendant be afforded an impartial jury." Stanko at 97, 658 S.E.2d at 576 (citing Morgan v. Illinois, 504 U.S. 719, 729 (1992)).

The process of jury selection inherently falls within the expertise and experience of trial counsel. Magazine at 617, 606 S.E.2d at 764 (citing Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999)). In a PCR proceeding, an applicant must provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense.

Trial

During the trial, the trial court addressed matters regarding juror #77, Rebecca Howle, as follows:

The Court: Ladies and gentlemen, apparently there is a, there is a Facebook group here over in this area called the Darlington County resident's crime information group, is there any member of the jury panel who is a member or a follower or associated with that group, and if so please stand?

(Whereupon, several jurors stand)

. . . .

Potential Juror #77: Renee Howle, juror 77.

The Court: All right. Go ahead, Ms. Howle?

Potential Juror #77: I'm a follower of the site.

The Court: Would that affect your ability to give both sides a fair and impartial trial, ma'am?

Potential Juror #77: Not at all. No, sir.

The Court: Thank you very much. You may have a seat.

(Trial Tr. pp. 23–25).

The Court: I want to thank you for your service.

Ms. Howle: Yes, sir.

The Court: I think everybody's healthy and can go through deliberations so that kind of, it's kind of bad for you, you have to sit through all of it and then you don't get to participate.

Ms. Howle: That's okay. I think the experience has been good. I appreciate it.

The Court: Well, thank you for your service.

Ms. Howle: Thank you.

The Court: And I think that concludes any juror matters that we have for the week so you don't have to call back in you're free to go.

Ms. Howle: I'm going back to work.

(Trial Tr. p. 136).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all



significant decisions in [his] case." Ard v. Catoe, *supra*. Applicant failed to present any credible evidence that his right to a trial by a competent and impartial jury was violated. Juror #77 told the trial court that she could be fair and impartial. Nevertheless, Juror #77 was released and never deliberated as a juror; instead, she merely sat as a potential alternative. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1b:	Failure to investigate and prepare a defense for trial.
Allegation 1d:	Failure to present evidence.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to properly investigate and prepare a defense for trial. Applicant also contends that Trial Counsel failed to present evidence. This Court finds these allegations to be without merit.

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of

issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. at 690. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's

decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

PCR Evidentiary Hearing

On direct examination, Applicant testified to the following:

- A: If trial counsel if she would have even investigated the case, she would have gathered evidence to present throughout -- the during the trial from the generator wasn't inside the garage. The dad -- I live five minutes down the road from the victims. The dad had just brought the generator over there, crank it. It run, so he put it on the inside. The one that needed gas. He left it sitting right out in front of the garage to go five minutes down the road to get gas, which right there by my house. I rode by and seen the generator. We turn around. I rung the doorbell.
- Q: Okay. I'm going to stop you there because I don't want you to admit to anything on the record.
- A: I didn't enter the garage though, that's why I didn't want to take the plea -- I was hesitating taking the plea.

(PCR Tr. pp. 12–13). Applicant testified that Trial Counsel could have gathered evidence that the generator was not inside the garage. (PCR Tr. p. 12). Applicant testified that the only evidence presented was by the State. (PCR Tr. p. 20).

On cross-examination, Applicant testified that if Trial Counsel had obtained the before-and-after parts of the video, he would not have been found guilty. (PCR Tr. pp. 26–27). Applicant testified that he did not have the before-and-after video to present to the PCR court. (PCR Tr. p. 27). Applicant testified that a video from a gas station would have cleared things up. (PCR Tr. p. 27). Applicant testified that he did tell the trial court that he "just entered a garage." (PCR Tr. p. 31).

On direct examination, Trial Counsel testified that she recalled reviewing the video evidence, discussing it with Applicant, and riding by the house. (PCR Tr. p. 48). Trial Counsel testified that they had some of the video before her client pulled into the driveway. (PCR Tr. p. 48). Trial Counsel testified that Applicant never told her about any other videos that she would

have needed to investigate. (PCR Tr. p. 48). Trial Counsel testified that she discussed Applicant's right to testify at trial, and he did not want to because of his record. (PCR Tr. p. 52).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds Trial Counsel's testimony credible that Applicant never informed her of any other surveillance video that she should have investigated, and that the only evidence they could have entered would have been Applicant's testimony; however, Applicant did not want to testify because of his record. This Court is not persuaded by Applicant's testimony on these matters. Furthermore, Applicant has presented no competent evidence to support either allegation. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding respondent failed to show how his counsel's lack of preparation prejudiced him given respondent did not "present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial"); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (holding record did not support PCR judge's conclusion that counsel's deficient performance was prejudicial to respondent given respondent did not show how additional preparation would have resulted in a different outcome); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render



reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1c: Failure to effectively defend applicant's right to be present during trial. Applicant's right was not void; whereas he was hospitalized and should have received an extension because his presence was vital to his defense.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing ensure that he was present for trial. Specifically, Applicant contends Trial Counsel should have requested a continuance because he was hospitalized and his presence at trial was essential to his defense. This Court finds these allegations to be without merit.

It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007). In order to claim the protection afforded by the rule of law, a criminal defendant may be tried in his absence only upon a trial court's finding (1) the defendant has received notice of his right to be present, and (2) he was advised the trial would proceed in his absence if he failed to attend. State v. Williams, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987). Notice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at his trial. Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976); Fairey, 374 S.C. at 99, 646 S.E.2d at 448. Further, a bond form that provides

notice that a defendant may be tried in absentia may serve as the requisite warning that he may be tried in his absence if he fails to appear. Fairey, 374 S.C. at 101, 646 S.E.2d at 449.

Trial

At the start of the trial, the following occurred regarding Applicant not being present for the trial:

MS. COOKE: Judge, I'm sorry. Can I just ask for a bench warrant for Mr. William Brunson since he didn't show up for his trial this morning.

THE COURT: Yeah, let me tell you let's do this, first of all I'm going to grant that motion because he's not here and I'll grant the motion. I also want to put on the record regarding his notice to be here. His notice that the case would proceed in his absence and his failure to appear on that so I'm gonna go ahead and hear from you regarding that.

MS. COOKE: Yes, sir. The week of August 5th we had a status conference and he had a plea offer of ten years, burglary second non-violent, he rejected that plea offer and so we did a status conference and both myself and Judge Burch noticed him for trial the week of the 19th. He was healed last Monday and was told to come back today because Mr. Redmond went forward with this trial. He also he had rejected the offer last Monday. Both Judge Burch and myself advised him that he would be tried on the burglary first and that was being indicted this past week if he were to go to trial and it was true billed by the grand jury. And he also Your Honor, also have signed TIA slip by him, it's from a while back. This was December 15, 2018, he send a notice of the TIA.

THE COURT: All right. And this is a notice, basically, letting him know that should he fail to maintain contact with his attorney or his bondsman and if they are unable to get him to appear in court that a trial would proceed in his absence and a bench warrant will be issued for his arrest for his failure to appear. Ms . Gainey, anything you want to put on the record regarding that?

MS. GAINNEY: Yes, sir, Your Honor, we would just object from the defense's standpoint. I haven't made any contact with my client this morning but it's come to our offices' attention that he may have had to seek medical assistance this morning in an emergency room. I have been unable to independently verify that but I do just want to put the objection on the record to the trial in absence.



THE COURT: Okay. Well, I'll note your objection. I overrule it . He's been noticed both by Ms. Cooke and by Judge Burch that his case would proceed as a burglary first and that if he were not show up the case would proceed in his absence. You did mention earlier today that, I believe, the codefendant who just pled a little while ago indicated that he might have a medical issue but no one has been able to give you any information regarding that, is that correct?

MS. GAINY: No, I haven't been able to independently verify that.

THE COURT: All right.

MS. COOKE: And we have not received any sort of medical excuse and it's my understanding that we don't even have the name of the hospital he's allegedly in.

THE COURT: Okay. All right. We will proceed to trial and I'll issue the bench warrant for failure to appear .

(Trial Tr. pp. 39–41).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court finds that Trial Counsel did object to the trial proceeding without Applicant present, and that her objection was overruled. The trial court found that Applicant was properly noticed and that no evidence had been presented that he was, in fact, in the hospital. Notably, Applicant presented nothing to this Court to show that he was, in fact, in the hospital during his trial. Also, this Court finds Applicant's testimony incredible and unpersuasive.

What was presented to this Court was the credible testimony of Trial Counsel, who provided that her office was contacted by Applicant at 9:30 on the morning of his trial, and Applicant told them he was calling from a pay phone and was in the hospital at Carolina Pines. Trial Counsel further testified that they were hung up on, so they called Carolina Pines and all the surrounding hospitals in the area, and Applicant was not an admitted patient at any of them. Trial

Counsel testified that Applicant's mother indicated that she did not know where he was and that he knew his trial was starting. (PCR Tr. pp. 49–50). Accordingly, this Court cannot find Trial Counsel's representation ineffective where Trial Counsel did exactly what she could, and Applicant was the architect of his own circumstance, as there is nothing before this Court to prove otherwise.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1e: Failure to object to a potential juror's comments that the defendant had robbed them, and then allowing them to remain seated with other potential jurors.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to a potential juror's comments that the defendant had robbed them, and then allowing them to remain seated with other potential jurors. This Court finds this allegation to be without merit.

The Sixth Amendment guarantees a criminal defendant the right to a public trial with a jury. U.S. Const. amend. VI. The procedure for jury qualification is codified in the South Carolina Code as follows:



The presiding judge shall at each term of court ascertain the qualifications of the jurors.

The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law. The clerk of court shall maintain a list of all jurors excused or disqualified and the reasons provided thereof by the presiding judge [...]

S.C. Code Ann. § 14-7-1010 (Supp. 2020). South Carolina has several statutory automatic disqualifiers for jury service. *Id.* §§ 14-7-810 to -830. Statutory disqualifiers include reasons such as criminal convictions; illiteracy; mental or physical infirmities that would render jury service inefficient; less than a sixth (6th) grade education; or any reason a person has good reason to suspect that he is disqualified. *Id.* § 14-7-810. A trial judge may, within its discretion, excuse a potential juror upon a finding of good and sufficient cause. *Id.* § 14-7-860; *State v. Rogers*, 263 S.C. 373, 210 S.E.2d 604 (1974).

Trial

During juror qualifications, potential juror #112 (McElveen) stood up to indicate that he may know Applicant. (Trial Tr. pp. 10–11). McElveen asked the judge if he could approach and indicated that Applicant may have been the person who robbed his house three years prior. (Trial Tr. p. 11). McElveen indicated that this would affect his ability to be impartial. (Trial Tr. p. 11). The trial judge did not qualify him for Applicant's case, but asked him to remain because they could possibly use him in another case. (Trial Tr. p. 11).

Findings

As an initial matter, the issue raised by Applicant concerns jury qualification, which is distinct from the jury selection process itself. Moreover, the record clearly indicates that the discussion occurred at the bench with the trial judge, and there is no evidence that it was overheard by other potential jurors. Notably, the trial judge did not designate McElveen to serve on Applicant's trial; instead, he requested McElveen's presence to address other matters on the docket

for which his assistance might be required. Thus, there is no objection that Trial Counsel could have made. Assuming *arguendo*, Trial Counsel could have objected; Applicant failed to present any competent evidence that this action infected his jury such that the result of his trial would have been different.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1f: Failure to object to the Court's jury charge, which instructed them to determine the truth based on the evidence that was presented before them; whereas, the only evidence presented before them was from the State.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the Court's jury charge, which instructed them to determine the truth based on the evidence that was presented before them; whereas, the only evidence presented before them was from the State. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable'



action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in order to succeed on a claim of ineffective assistance, defendant must demonstrate both deficient performance and cognizable prejudice)); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3rd Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d

203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from the trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

Trial

The trial court charged the following to the jury during the jury charge on witness credibility:

As jurors it's your duty to determine the effect, value, weight, and truth of the evidence that was presented during the course of this trial.

....

It becomes your duty as jurors to analyze and evaluate the evidence and to determine which evidence convinces you of its truth.

....

You do not, however, determine the truth merely by counting the number of witnesses presented by each side.

(Trial Tr. p. 123).

Findings

This Court finds the foregoing did not unconstitutionally shift the burden of proof, and it is not reasonably likely the outcome would have been different without the foregoing "truth"

language. Furthermore, the "truth" language in the charge on witness credibility did not, under our appellate jurisprudence, unconstitutionally shift the burden of proof or constitute reversible error. See State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (finding no reversible error in court's preliminary comments because "they were a mere statement to the jury and not a charge on the law," and they "were not linked to either the reasonable doubt or the circumstantial evidence charges").

This Court further finds Applicant has failed to prove any prejudice from the use of "truth" in the witness credibility charge to the jury where the jury was (1) prefaced by a full and proper instruction on reasonable doubt, (2) it was not given in either the reasonable doubt or circumstantial evidence charges, and (3) was given in the context of the jury's role as fact finder and determiner of witness credibility. Viewed as a whole and in context, this Court finds the trial court's use of "truth" in the witness credibility charge did not shift the burden of proof or otherwise prejudice Applicant. See State v. Aleksey, 343 S.C. 20, 27 S.E.2d 248, 251 (2000) ("[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error."); id. ("The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution.").

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1g: Failure to effectively represent Applicant in his plea arrangement.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to properly represent him in his plea arrangement. This Court finds this allegation to be without merit.

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). “The United States Supreme Court has held that ‘defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.’” Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169-70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145. To show prejudice, an applicant for post-conviction relief “must demonstrate a reasonable probability that: (1) he [or she] ‘would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;’ (2) ‘the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;’ and (3) ‘the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.’” Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler v. Cooper, 566 U.S. 156, 164 (2012)). An applicant must show actual prejudice, but depending on the facts of the case, an applicant’s self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. The record before this Court shows that Applicant was offered a negotiated ten (10) year plea to the lesser-included offense of Burglary—2nd Degree (non-violent), which he rejected at a hearing before the Honorable Paul Burch. It is clear to this Court that Applicant believed plea negotiations were where the Solicitor made an offer, and then Applicant could counter that offer. This Court further finds Trial Counsel's testimony on this issue credible that she communicated the offer, presented that it was a good deal, but it was ultimately Applicant's decision to accept it or reject it. Trial Counsel credibly testified that the State was not willing to budge and reduce the ten (10) year offer.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Ineffective Assistance of Appellate Counsel

Allegation 2a: Ineffective Assistance of Appellate Counsel for failing to raise the issue that Applicant was denied his right to be present during trial.

Applicant alleged Appellate Counsel's representation was constitutionally ineffective for failing to raise the issue that Applicant was denied his right to be present during trial. This Court finds this allegation to be without merit.

If an applicant can establish both a deficiency, according to professional norms, and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 826; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error). Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." State v. Robbins, 528 U.S. 259, 288 (2000).

While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy ..." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only

when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Findings

As an initial matter, the burden of proof lies with the Applicant. See Butler, *supra*. Ultimately, this Court must decide whether, had the issue been raised, the Applicant would have succeeded on appeal. See State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate."). This Court has reviewed the record and finds that, had Appellate Counsel raised the issue that Applicant was denied his right to be present at trial, the appeal would not have been successful. As found *supra*, Applicant was properly notified of the trial and advised that he would be tried *in absentia* if he did not appear. Just as the appellate court would have had on direct appeal, this Court has nothing to substantiate Applicant's claim that he was a hospital patient during his trial.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Appellate Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.



[CONCLUSION PAGE FOLLOWS]

CONCLUSION

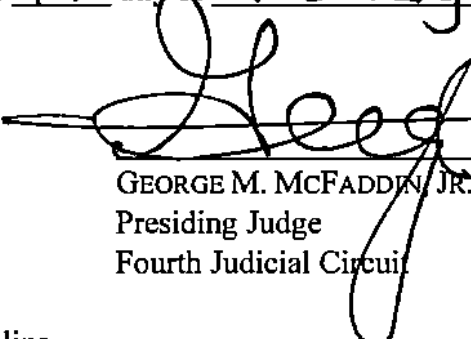
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking a review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 43 for the appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17th day of February, 2026.



GEORGE M. MCFADDEN, JR.
Presiding Judge
Fourth Judicial Circuit

Sumter, South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Mar 05 2026

S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge

Case No. 2022-CP-16-00185

William J. Brunson, #342228, Petitioner,

v.

State of South Carolina, Respondent.

NOTICE OF APPEAL

Applicant, William J. Brunson, appeals the order of the Honorable George M. McFaddin, Jr., filed on or about February 23, 2026, and received by the undersigned on February 24, 2026.

March 5, 2026



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN LAW, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahanlawsc.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

Opposing Counsel:

D. Russell Barlowe, II, Senior Assistant Deputy Attorney General

S.C. Attorney General's Office

PO Box 11549

Columbia, SC 29211-1549

WITNESSES

Adam D Howell

Darlington County Sheriff

Law Enforcement Case #: 201810-0184
440

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR1080

ARRESTED ON: 0000-00-00

ACTION OF GRAND JURY

TRUE BILL


Grand Jury Foreperson

Date

AUG 22 2019

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2019-GS-16-1162**The State of South Carolina**

County of Darlington

COURT OF GENERAL SESSIONS

Term:
August 2019**THE STATE**

vs.

William Johnathan Brunson

INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) -
First degree

§16-11-0311

CDR Code: 0079

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF DARLINGTON

Burglary / Burglary (After June 20, 1985) - First
degree

§16-11-0311

At a Court of General Sessions, convened on August 22, 2019, the Grand Jurors of Darlington County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That William Johnathan Brunson did in Darlington County on or about October 10, 2018, along with a co-defendant, enter without consent and with the intent to commit a crime therein, the garage attached to the dwelling of Ashley Little, located at 1010 Ousleydale Road, Hartsville, SC, while having a prior record of at least two (2) prior convictions for burglary or housebreaking or a combination of both, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

Nov 24 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM JOHNATHAN BRUNSON,

APPELLANT

APPELLATE CASE NO 2019-001483

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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 The trial judge erred in allowing into evidence a police department
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 in the residence garage from the home surveillance videotape
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in allowing into evidence a police department booking mug shot of appellant in support of the arresting officer's identification verification of appellant as the perpetrator as shown in the residence garage from the home surveillance videotape because this was inadmissible prejudicial prior crime evidence that outweighed any probative value, particularly in light of the fact that the jury asked a curious question about the photograph at trial.

STATEMENT OF THE CASE

Appellant William J. Brunson was convicted per jury trial of first degree burglary during the August 2019 term of the Darlington County General Sessions Court before Judge Thomas Russo, who sentenced him to imprisonment for a period of twenty four years. Appellant was represented by Rachel Gainey at trial, and Assistant Solicitors Elaine Cooke and Monty Bell appeared on behalf of the state.

Appellant appealed his conviction and sentence. This brief follows.

STANDARD OF REVIEW

The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion. State v. Dickinson, 395 S.C. 101, 716 S.E.2d 895 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012) see also State v. Dial, 405 S.C. 247, 746 S.E.2d 495 (Ct. App. 2013) (A trial judge's decision regarding the comparative probational value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstance.)"

ARGUMENT

The trial judge erred in allowing into evidence a police department booking mug shot of appellant in support of the arresting officer's identification verification of appellant as the perpetrator as shown in the residence garage from the home surveillance videotape because this was inadmissible prejudicial prior crime evidence that outweighed any probative value, particularly in light of the fact that the jury asked a curious question about the photograph at trial.

At trial, state's witness Ashley Little testified that she left her home on the afternoon of October 10, 2018, and returned to find her garage door up and a generator missing from inside the garage. Little viewed the home surveillance video camera tape that captured the perpetrator at the garage door. R. 39, 1.3-p. 48, l. 6. Little stated that when she reviewed the tape, she saw "[appellant] pulling in trying to get in the side door and then entering the garage and taking the generator." R. 43 lines 9-11.

Police Officer Neal Cusack testified that he viewed the home surveillance video camera tape and believed he recognized the perpetrator. Officer Cusack testified that he made some calls and uncovered some names, and ultimately received a picture of appellant, which he compared to the perpetrator on the tape, and was then able to make a match identifying the perpetrator as appellant. R. 59, 1.19-p. 64, l.6.

Prior to trial, defense counsel objected to the admission of the booking photograph of appellant marked as state's exhibit #1 because it was a mug shot, which was prejudicial in that the mug shot was obviously generated from police department files and would signal to the jury that appellant had a prior criminal record. R. 15, 1.25-p.17, 1.25.

At trial, when state's exhibit #1 (appellant's mug shot) was offered into evidence, defense counsel objected again and was overruled by the trial judge. R. 64, 1.7-17. Also, defense counsel

renewed the same objection at the close of the state's case on the ground that the photo suggested that appellant had a prior criminal record. The court overruled the objection. R. 66, 1.18-p.69, 1.1.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury... or the needless presentation of cumulative evidence. Rule 403, SCORE. The introduction of a mug shot of a defendant is reversible error unless:

- 1.) The state has a demonstrable need to introduce the photograph,
- 2.) The photograph shown to the jury does not suggest the defendant has a criminal record,
- 3.) The photograph is not introduced in such a way as to draw attention to its origin

See State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004); State v. Denson, 269 S.C. 407, 237 S.E.2d 761 (1977); State v. Green, 412 S.C.65, 770 S.E.2d 424 (2015).

In State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986), the Court reversed where the state introduced a photographic line-up that included a mug shot of the defendant that had an identifier indicating that it was a county sheriff department photograph. In State v. Lawson, 424 S.C. 51, 817 S.E.2d 509, the Court reversed where the state elicited testimony showing the defendant's print card originated from Kirkland Correctional Institution because it showed that he had a prior record and it was unnecessary to authenticate his fingerprints. In Traylor, *supra*, the Court held that there was no demonstrable need to introduce the photographic line up mug shot into evidence because the victims testified and described the assailants and because one codefendant identified appellant as an accomplice. The Traylor Court strongly admonished the state against the utilization of [mug shots] except in the rarest of cases." In Green, the booking photograph did not suggest a criminal record because the photo was taken as a result of his arrest in the case, and did not draw attention to its "origin or implication" and was cut off to avoid that problem.

In the instant case, Little stated that she saw that “he” was holding the generator in his hands and that she had not given appellant permission to be in the garage. R. 47, 1.1-25. Police Officer Cusack stated that he thought the perpetrator was appellant and confirmed it after making some calls and conducting his investigation and ultimately verified that the perpetrator on the tape was appellant after viewing a photograph that was found. R. 60, 1.15 – p. 61, 1.19. Hence, there was testimony by two state’s witnesses identifying appellant as the perpetrator, so the mug shot introduced as evidence was cumulative. Clearly, the jury could infer logically that the police officer’s finding of a photograph came undoubtedly from police files, and that the genesis of said photograph proved appellant had a prior record. Therefore, the mug shot evidence was unnecessary, cumulative, and more prejudicial than probative. The entrance of the mug shot as evidence violated appellant’s right to a fair trial under the Fourteenth Amendment.

Furthermore, there was proof that the jury members were aware of the possibility that the photograph of appellant was a prior booking mug shot because they sent in a question to the trial judge about the photograph that stated: “picture of [appellant] is it correct left to right.” R. 103, 1.6-8. The trial judge responded to counsels regarding the jury mug shot question as follows:

The Court: I’m just gonna write on here it’s a photograph. It is what it is. How else would I...say? R. 103, 1.8-10.

Then, the trial judge addressed the jury mug shot question to the jury as follows:

The Court: Alright...what I’ve put here is “the photo and video are items placed into evidence...the Court cannot comment on the evidence that is solely for the jury to evaluate. R. 103, 1.19-22.

Last but not least, note that the state presented evidence of two prior burglaries committed by appellant as part of its case-in-chief element to establish first degree burglary. This matters because appellant had already been portrayed as a serial burglar, and the photograph,

which was clearly a mug shot, indicated that there might have been other priors on appellant's criminal record.

All things considered, the prejudicial photograph mug shot admitted into evidence violated the prior crime prohibition provision and was inadmissible evidence, and the same violated appellant's due process right to a fair trial guaranteed under the Fourteenth Amendment.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that this Court reverse appellant's burglary conviction and sentence, and remand the case for a new trial.

s/Wanda H. Carter

Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of November, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

November 24, 2020

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Darlington County
The Honorable Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2019-001483

THE STATE,

Respondent,

v.

WILLIAM JOHNATHAN BRUNSON,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

1 Public Square,
Room 410
Darlington, SC 29532
(843)-398-4300

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in admitting a mug shot of Appellant where the State had a demonstrable need for the photograph, and the photograph did not indicate Appellant had a criminal record or otherwise draw attention to its origin?

STATEMENT OF THE CASE

In August 2019, a Darlington County Grand Jury indicted Appellant for one count of burglary first degree. On August 26-27, 2019, a jury trial was held in the Darlington County Court of General Sessions with the Honorable Thomas A. Russo, presiding. The State was represented by Assistant Solicitor Elaine Cooke of the Fourth Circuit Solicitor's Office. Appellant did not appear for trial and a trial was held in his absence. Rachel Gainey, Esq. represented Appellant. At the conclusion of trial, the jury convicted Appellant of burglary first degree. The trial judge issued a bench warrant for Appellant and sealed his sentence. Appellant was arrested and brought to court on August 28, 2019. Judge Russo unsealed the conviction and sentenced Appellant to twenty-four years' imprisonment.

STATEMENT OF FACTS

On October 10, 2018, Ashley Little left her residence in Darlington to purchase formula for her infant daughter. (R. 39-41). As Little departed, she attempted to close her garage door using the remote button in her car. (R. 41). However, because the weather stripping on the bottom of her garage door was dislodged, the door did not close. (R. 41). When Little returned, she noticed her garage door was open and a generator was missing from the garage. (R. 42). Little checked her security camera footage and witnessed an unknown white male taking a generator from her garage and loading it into his car. (R. 43, State's Exhibit #2). Little called law enforcement and turned over the video to the responding officer. (R. 43). Commander Neal Cusack of the Darlington County Sheriff's Office reviewed the security footage provided by Little. (R. 60). Cusack recognized the person in the footage but he did not know his name. (R. 13, 60). Cusack spoke with fellow law enforcement officers and obtained Appellant's name as a possible suspect. (R. 13, 61). Cusack viewed a mug shot of Appellant and recognized him from the security footage based on a red mark on his neck. (R. 14, 61-62, State's Exhibit #1).

Appellant was subsequently arrested and indicted for burglary first degree based on two prior burglary convictions. Appellant plead guilty to burglary third degree in 2016 and burglary second degree non-violent in 2009. (R. 58). Appellant did not appear for trial and was tried in his absence (R. 5-7). At trial, Cusack identified Appellant using the security footage and the photo of Appellant. (R. 62-64, State's Exhibit #1, State's Exhibit #2). Cusack testified he recognized Appellant from the red mark on Appellant's neck in both the photo and the security footage. (R. 62-63). Additionally, Cusack testified he further recognized Appellant from seeing him around the town of Hartsville during his twenty-years of working in the city. (R. 63-64). The photo used by the State was cropped to avoid appearing like a mug shot. (R. 12, State's Exhibit #1). Ashley

Little and her husband, Robert Little, testified they never gave Appellant permission to enter their home or take their generator. (R. 47, 65). Appellant was convicted at the conclusion of trial.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). “A trial [court]’s decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in ‘exceptional circumstances.’” State v. Green, 412 S.C. 65, 79, 770 S.E.2d 424, 432 (Ct. App. 2015) (quoting State v. Lyles, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008)). “If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” Id.

ARGUMENT

The trial judge did not abuse his discretion in admitting a mug shot of Appellant when the State had a demonstrable need for the photograph, and the photograph did not indicate Appellant had a criminal record or otherwise draw attention to its origin.

Appellant argues the trial judge erred by admitting a mug shot of Appellant because it was unfairly prejudicial to Appellant. Additionally, Appellant argues the photo was unnecessary for the State to prove its case and it was cumulative to other evidence presented. On the contrary, the State had a demonstrable need to introduce the photograph because Appellant was not present at trial. Furthermore, the photograph did not suggest Appellant had a criminal record nor was it introduced in such a way to draw attention to its origin. Accordingly, the trial judge did not abuse his discretion in admitting the photograph of Appellant.

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...” Rule 403 SCRE. “The introduction of a ‘mug-shot’ of a defendant is reversible error unless: (1) the [S]tate has a demonstrable need to introduce the photograph, (2) the photograph shown to the jury does not suggest the defendant has a criminal record, and (3) the photograph is not introduced in such a way as to draw attention to its origin or implication.” State v. Traylor, 360 S.C. 74, 84, 600 S.E.2d 523, 528 (2004).

Here, all prerequisites prescribed by the South Carolina Supreme Court for the admission of a mug shot in State v. Traylor have been met. First and foremost, there was a demonstrable need for Appellant’s photograph to be admitted into evidence. Appellant was not present for trial. (R. 5-7). Therefore, no witness could make an in-court identification of Appellant and the jury had no way to determine if Appellant was the man in the security footage unless they had a photograph to compare the footage with. In State v. Denson, our Supreme Court previously held

the State had a demonstrable need to introduce a photograph of a defendant where there was no in-court identification of the defendant. The Court found “in the absence of an in-court identification, these photographs were an essential element of the State’s case.” State v. Denson, 269 S.C. 407, 412, 237 S.E.2d 761, 764 (1977). In Denson the defendant was present for trial and could be viewed by the jury; although no in-court identification took place. Denson, 269 S.C. at 410, 237 S.E.2d at 762. Here, Appellant was not present, thus enhancing the State’s need to enter a photograph of Appellant.

In State v. Green, this Court found the State had a demonstrable need to introduce booking photos even though the defendant was present at trial because the photos could be compared by the jury to the photos of the armed robbery for which Green was on trial. Green, 412 S.C. at 82, 770 S.E.2d at 433. Furthermore, this Court noted the photos were highly probative evidence because they gave a clear view of Green’s distinctive nose which law enforcement used to identify him. Id. Here, Cusack used the photo in question to identify Appellant based on a distinctive red mark on his neck. Like in Green and Denson, the State had a demonstrable need to enter the photo and the trial judge did not abuse his discretion in admitting the photo.

Secondly, the photograph shown to the jury did not suggest Appellant had a criminal record. The photo is a straightforward view of Appellant’s face and neck. (State’s Exhibit #1). It does not have any indications that it is a booking photo such as a placard around Appellant’s neck or Appellant clearly dressed in a prison uniform. The solicitor stated the photo was cropped specifically to avoid any appearance of it being a mug shot. (R. 12). In State v. Ford, this Court held that a series of similar mug shots were proper where “Only the heads and necks of the individuals in the lineup photographs were visible in the photo lineup. The remainder of each

photograph was cut away. No identifying clothing or placards were visible in the lineup.” State v. Ford, 334 S.C. 444, 450 n. 3, 513 S.E.2d 385, 388 n. 3 (Ct. App. 1999). Furthermore, the photo shown of Appellant did not have the “side-view profile...which is a feature commonly associated with police mug shots” that was ruled by this Court to be proper in Green. Green, 412 S.C. at 82-83, 770 S.E.2d at 434. Therefore, the trial judge properly admitted the photograph because it did not indicate Appellant had a prior criminal record¹.

Finally, the photograph was not introduced in such a way to draw attention to its origin or implication. When the State introduced the photo of Appellant, Cusack described how he began to obtain the photo by saying “I made several phone calls, got a name--.” (R. 61, lines 2-3). Appellant objected before Cusack could finish his answer, but after Appellant’s objection was overruled, Cusack elaborated further: “After obtaining a name I got a picture and looked at the picture and compared it to the security video and identified [Appellant] as being the one in question.” (R. 61, lines 16-19). Cusack never mentioned anything about looking for Appellant in police files or looking through mug shots. In fact, Cusack was exceedingly vague about who he called to get Appellant’s name or how he obtained a photograph. There was nothing about Cusack’s answer or the State’s questions to suggest the photo was a mug shot. Appellant’s conviction and sentence should be affirmed.

¹ Even if the photograph suggested Appellant had a criminal record, Appellant could hardly have suffered any prejudice from such an association because the jury already knew Appellant had a criminal record from when his prior burglary convictions were entered into evidence. (R. 58).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

1 Public Square,
Room 410
Darlington, SC 29532
(843)-398-4300

BY: s/ Scott Matthews
SCOTT MATTHEWS
Bar # 101464

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 9, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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The Honorable Thomas A. Russo, Circuit Court Judge

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WILLIAM JOHNATHAN BRUNSON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, Fourth Judicial Circuit

1 Public Square,
Room 410
Darlington, SC 29532
(843)-398-4300

BY: s/ Scott Matthews
Scott Matthews
Bar # 101464

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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