

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

JUL 30 2014

S.C. Supreme Court

JEROME W. RAINEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000641

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 WILLIAM JEROME RAINEY,) 2011-GS-11-00493
7 DEFENDANT.) DECEMBER 5, 2011
) GAFFNEY, SOUTH CAROLINA

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10 B E F O R E:

11 THE HONORABLE J. DERHAM COLE, JUDGE.
12

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

15 MATTHEW KENDALL, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE

17 DEFENDANT ACTING PRO-SE.
18

19 MICHAEL R. WATTS
20 CIRCUIT COURT REPORTER
21
22
23
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1 (PROCEEDINGS, DECEMBER 5, 2011)

2 MR. KENDALL: Your Honor, before the court is Mr.
3 William Rainey on Indictment 2011-493.

4 Mr. Rainey has indicated to us on multiple
5 occasions that he wishes to proceed in this matter pro-se.
6 It's a charge for Peeping Tom. We told him he certainly had
7 the right to do that, but that was something that we
8 typically brought him before a court to explain to him of
9 the dangers and risks associated with self-representation,
10 Your Honor.

11 THE COURT: Okay. Have you got a copy of the
12 indictment?

13 MR. KENDALL: Yes, sir.

14 THE COURT: All right, you are William Jerome
15 Rainey?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And Mr. Rainey, you understand what
18 you are charged with?

19 THE DEFENDANT: Yes, sir, Your Honor, I understand
20 that I'm charged with --

21 COURT REPORTER: Stand in front of the microphone,
22 please.

23 THE COURT: Do you understand what you are charged
24 with?

25 THE DEFENDANT: Yes, sir, I understand I'm being

1 charged with Peeping Tom.

2 THE COURT: Okay. And you are entering a plea of
3 not guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you want to go to trial before a
6 jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand when you are charged
9 with a crime, you have a right to have a lawyer assist you
10 in the case? And even if you can't afford to hire a lawyer,
11 if you cannot, then one can be appointed to represent you.
12 It won't cost you anything.

13 THE DEFENDANT: Yes, sir, I understand that.

14 THE COURT: Do you understand that you have a
15 right to have a lawyer?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you made a conscious decision
18 that you want to have a lawyer, or you do not want to have a
19 lawyer?

20 THE DEFENDANT: I do not want to have a lawyer.

21 THE COURT: You want to represent yourself?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you ever handled a criminal
24 matter for yourself before?

25 THE DEFENDANT: Yes, sir. I -- I filed a --

1 THE COURT: When did you do that?

2 THE DEFENDANT: I filed a tort claim, a state tort
3 claim, on a couple of correctional officers in the
4 Department of Corrections.

5 THE COURT: Well, that's a civil case.

6 THE DEFENDANT: But, I mean, I'm saying I didn't
7 get to make it to the pretrial because I got out of prison
8 and I didn't have the money to go to Charleston at the time
9 for the trial, but I had filed a gross negligence on them.

10 THE COURT: Okay. Well, my question is not that.
11 My question is have you ever handled or represented yourself
12 in a criminal case before?

13 THE DEFENDANT: No, no court as far as filing a
14 state tort claim.

15 THE COURT: Well, a state tort claim has got
16 nothing to do. You see, that's the problem. That's got
17 nothing to with a criminal case. That's a civil matter.

18 My question is about the criminal case. You are
19 charged with a crime. Now, this is not a civil matter.

20 THE DEFENDANT: Yes, sir, I understand.

21 THE COURT: Okay. Have you ever represented
22 yourself in court on a criminal matter?

23 THE DEFENDANT: No, sir.

24 THE COURT: Never have?

25 Are you familiar with the rules of court, the

1 rules of criminal proceedings?

2 THE DEFENDANT: Yes, sir, the bar code you go
3 through and you send me a bar code or something, I can
4 respond back to Your Honor, or --

5 THE COURT: Sir?

6 THE DEFENDANT: It's some code that I can go
7 through, as far as responding back on it, but as far as the
8 case, I mean, I got the evidence as far as the Peeping Tom.
9 I wasn't even on the people's yard, as far as being charged
10 with Peeping Tom, and --

11 THE COURT: Let me ask you this. How old are you?

12 THE DEFENDANT: I'm 47.

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: I finished the 9th and went to
15 10th for a year and a half. I failed to claim two classes
16 so I just dropped out.

17 THE COURT: You went to the 10th grade?

18 THE DEFENDANT: For a year and a half.

19 THE COURT: All right. And did you ever get your
20 GED?

21 THE DEFENDANT: No, sir, I ain't.

22 THE COURT: Never did?

23 THE DEFENDANT: No, sir.

24 THE COURT: Ever been married?

25 THE DEFENDANT: No, sir.

1 THE COURT: Ever worked?

2 THE DEFENDANT: Yes, sir, I worked.

3 THE COURT: Where?

4 THE DEFENDANT: I have worked at my church. I'm a
5 custodian.

6 THE COURT: You're a custodian?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. If you were to represent
9 yourself in this court, would you be familiar with the Rules
10 of Criminal Procedure?

11 THE DEFENDANT: I think I would, Your Honor. I'm
12 not -- I ain't no lawyer, being pro-se, but, I mean, I'm
13 going to have to try to do something. As far as trying to
14 get a lawyer, I think I can represent this case on my own.

15 THE COURT: Yeah.

16 Are you familiar, as I have already asked, with
17 the Rules of Criminal Procedure?

18 THE DEFENDANT: Well, it would be like asking the
19 plaintiff for -- would it be like asking the plaintiff what
20 their side of the story and I just got to explain my side of
21 the story as a lawyer and a defendant.

22 THE COURT: No, it wouldn't have anything to do
23 with being the plaintiff.

24 You don't -- you are not familiar with the Rules
25 of Criminal Procedure?

1 THE DEFENDANT: Well, once the court starts, I
2 guess I'll just have to -- I'm going --

3 THE COURT: My question is a yes or no.

4 THE DEFENDANT: No, sir.

5 THE COURT: You are not. Okay.

6 Are you familiar with the Rules of Evidence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You are?

9 THE DEFENDANT: If they got evidence and against
10 me.

11 THE COURT: Are you familiar with the Rules of
12 Evidence, what's allowed to be admitted and what's not
13 allowed to be admitted into court?

14 THE DEFENDANT: Well, you know, it depends upon
15 what the case would be.

16 THE COURT: Are you familiar with the Rules of
17 Evidence is my question?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You are?

20 THE DEFENDANT: Yes.

21 THE COURT: And how did you become familiar with
22 those rules?

23 THE DEFENDANT: Like I say, I ain't no lawyer,
24 Your Honor, but --

25 THE COURT: Well, how did you become familiar with

1 the rules? What does Rule 609 say?

2 THE DEFENDANT: I couldn't tell you that.

3 THE COURT: Well, I thought you said that you --

4 THE DEFENDANT: I would have to look in the law
5 books.

6 THE COURT: You would have to look? Do you have a
7 copy?

8 THE DEFENDANT: No, sir. I have to go to the
9 law -- to the public library.

10 THE COURT: You would have to go to the library?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand you won't have an
13 opportunity to go to the library when you are in court and
14 having your case tried? You don't get to go to the library
15 every time a question comes up.

16 THE DEFENDANT: No, sir, but I'm going to come in
17 and try to have it dismissed anyway, because the people
18 called my job, threatening -- threatened -- the people's
19 mom -- the plaintiff's mom called my job.

20 THE COURT: There is no -- there is no plaintiff
21 in this case.

22 THE DEFENDANT: I'm saying the people that is
23 charged -- having me charged with a Peeping Tom called my
24 job telling my boss man that the woman's daughter -- well,
25 the daughter's momma called my job and tell my boss man that

1 her daughter had called her brother up in Charlotte, North
2 Carolina about them taking the matters into their own hands.

3 THE COURT: Well, I'm not trying the case right
4 now. I'm trying to determine if you understand the pitfalls
5 in an attempt to represent yourself, and I can see that
6 there may be multiple pitfalls, but what I'm gathering is
7 that you don't understand that they exists.

8 THE DEFENDANT: I might not know the Rules of
9 Evidence and all that against a person, Your Honor, but I
10 can still pro-se myself.

11 THE COURT: Okay. Do you understand what
12 appropriate motions might be made in your case?

13 THE DEFENDANT: As far as the evidence? I
14 don't --

15 THE COURT: As far as anything.

16 THE DEFENDANT: I'm not familiar with all them.

17 THE COURT: Do you understand those are kind of
18 things that a lawyer would help you with?

19 A lawyer would be able to help you know, be
20 familiar with the rules, and the lawyer would be familiar
21 with the rules. He would know how to conduct the trial. He
22 would know how to present the evidence. He would know what
23 things probably ought to be presented and what things likely
24 should not be presented. He would know how to examine
25 witnesses properly and appropriately. He would know what

1 motions to make on your behalf that might be beneficial to
2 you.

3 THE DEFENDANT: Well, I have pictures of the
4 house --

5 THE COURT: I'm not asking you -- I'm not asking
6 you about that.

7 THE DEFENDANT: Well, I mean, if I'm standing
8 where I took those pictures, I couldn't have been peeping in
9 this house.

10 THE COURT: I'm not asking you about that.

11 THE DEFENDANT: And also charged me with the
12 charge saying I was standing on the property.

13 THE COURT: Okay. Do you understand that when you
14 attempt to represent yourself in a criminal matter that can
15 result in serious consequences, it's not advisable to do
16 that, unless you have the proper education and/or training
17 and/or experience in being able to handle that task?

18 THE DEFENDANT: I understand, Your Honor.

19 THE COURT: When you have a medical issue, do you
20 treat yourself, or do you go see a doctor?

21 THE DEFENDANT: I treat myself.

22 THE COURT: You do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What's the last time illness that you
25 treated yourself for?

1 THE DEFENDANT: Well, I wasn't able to get rid
2 of -- I had a stomach virus that I didn't know was a stomach
3 virus and I was just taking antacid pills and Tylenol and it
4 just wasn't going away, so I didn't no choice but to go to
5 the doctor.

6 THE COURT: Well, why did you go to the doctor?

7 THE DEFENDANT: Because it wouldn't heal. I
8 wouldn't never want to heal. I mean, it's been a month or a
9 month and a half before I could see --

10 THE COURT: You don't know how to treat yourself,
11 did you?

12 THE DEFENDANT: No, sir. I mean -- I mean, if I
13 had some antibiotics. Like when I went to the hospital, I
14 told them -- they tell me that I needed antibiotics. I said
15 I thought I needed antibiotics, but I don't have antibiotics
16 and I don't know nobody that do have antibiotics.

17 THE COURT: You can't write a prescription.

18 THE DEFENDANT: I can't write no prescription.

19 THE COURT: Well, this is sort of like treating
20 yourself in the medical field, except you are in the legal
21 field. You don't have any -- apparently you don't have any
22 education, training, or experience in this field either.

23 THE DEFENDANT: Yes, sir, I know, Your Honor.

24 THE COURT: But you are assuming the task of
25 representing yourself in this case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that if you -- if
3 you fail to properly represent yourself, it can result in
4 dire consequences to you?

5 THE DEFENDANT: Yes, sir, I understand, Your
6 Honor. It carries up to a year, the charge?

7 THE COURT: I'm not here to answer questions. Do
8 you know?

9 THE DEFENDANT: No, sir, but I'm thinking it -- I
10 think it carries up to a year.

11 THE COURT: You are thinking it does?

12 Have you ever been treated for any type of mental
13 illness or emotional disturbance?

14 THE DEFENDANT: No, sir, but I have been sent by
15 Mr. Don Thompson when I was in the Spartanburg County back
16 in '98, '99, which they turned me back around the same day
17 and said there ain't nothing wrong -- there wasn't nothing
18 wrong with me.

19 THE COURT: Okay. And so you feel that you are
20 capable of representing yourself?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: But you understand that when you
23 assume that representation, that you are also assuming the
24 risks of deficient representation?

25 THE DEFENDANT: Yes, sir, I understand. I'm not

1 no lawyer.

2 THE COURT: And you want to assume that risk?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Even if it results in a bad result for
5 you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Well, it's your choice, you
8 know, but --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But I just need to be sure that you
11 understand what you are doing and that you are making that
12 decision knowingly. I can't necessarily say intelligently,
13 because I don't think you have the requisite education or
14 training to accomplish that, but it's still your choice.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you have made a decision to
17 represent yourself?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you do not wish to have retained
20 counsel or appointed counsel?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Does the court have your
23 current contact information?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Because -- what contact information

1 have you provided the court?

2 THE DEFENDANT: I gave them my living address and
3 my phone number.

4 THE COURT: Okay. Well, when your case is called
5 for trial, then you will be notified at that contact
6 information. If you fail to appear, there will be a bench
7 warrant issued for your arrest.

8 THE DEFENDANT: Yes, sir, I understand, Your
9 Honor.

10 THE COURT: Okay. All right. Thank you.

11 MR. KENDALL: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 5TH day of DECEMBER, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

FEBRUARY 10, 2013

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
 3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
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24 SC Attorney General
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1 (PROCEEDINGS, MARCH 14, 2012)

2 THE COURT: William Rainey?

3 THE DEFENDANT: I wasn't pleading guilty today.

4 THE COURT: I know.

5 All right. You are William Jerome Rainey?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Rainey, you are charged in
8 Indictment 2011-493 with the crime of eavesdropping or
9 Peeping Tom.

10 The State alleges that on or about May the 5th of
11 2011, you did willfully and unlawfully go about or upon the
12 premises of another for the purpose of spying on and into
13 the person's home by peeping through the person's window and
14 invading the victim's privacy, in violation of Section
15 16-17-470 of the Code of Laws of South Carolina.

16 Do you understand what the charge is that the
17 State has brought against you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you have indicated that you wish
20 to represent yourself in the trial of this case. Is that
21 true?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that even though
24 you indicated that you wish to represent yourself, that you
25 do have the right to have a lawyer if you would prefer?

1 THE DEFENDANT: Yes, sir, I understand.

2 THE COURT: And you have been informed of that
3 previously?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you made a conscious decision
6 not to have a lawyer and to represent yourself?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And have you ever been charged with a
9 crime before this?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you ever been to court before on
12 those charges?

13 THE DEFENDANT: Never been charged with a charge
14 like this before.

15 THE COURT: Well, have you ever been charged with
16 anything where you had to come to court?

17 THE DEFENDANT: Yeah, I have been charged. I have
18 been charged with a lot of stuff, Your Honor. I have got a
19 rap sheet. I got a long rap sheet.

20 THE COURT: Okay. And you have been to court
21 before and had a trial or a guilty plea?

22 THE DEFENDANT: No, sir, I never had a trial.

23 THE COURT: You pled guilty?

24 THE DEFENDANT: I always pled guilty, yes, sir.

25 THE COURT: And at those times did you have a

1 lawyers to assist you?

2 THE DEFENDANT: In a way, yes, sir.

3 THE COURT: Well, did you have a lawyer represent
4 you?

5 THE DEFENDANT: Yes, sir, I had a lawyer represent
6 me.

7 THE COURT: All right. So you understand what
8 lawyers do to assist clients when they are charged with a
9 crime?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. And you have made the
12 decision to represent yourself?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And how old are you?

15 THE DEFENDANT: 48.

16 THE COURT: And how far did you go in school?

17 THE DEFENDANT: I went to the 11th.

18 THE COURT: And what kind of work have you done?

19 THE DEFENDANT: I'm a custodian for my church.

20 THE COURT: And do you understand that if you are
21 going to represent yourself in the trial of case --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- that you have to comply with all of
24 the rules that are applicable to the trial of the case in
25 criminal court? You have to know the rules of court. You

1 have to know the Rules of Evidence. You have to know how to
2 present evidence. You have to know how to examine the
3 witnesses. You have to know how to make motions. Do you
4 understand all that?

5 THE DEFENDANT: Yes, sir, I know a little bit
6 about -- I ain't -- I don't know a whole lot about the law.
7 I got a limited knowledge about the law, but I think I know
8 how to go about that, Your Honor.

9 THE COURT: I understand, but you understand even
10 though you don't have a legal education, and even though you
11 don't have any training --

12 THE DEFENDANT: No.

13 THE COURT: Don't interrupt me.

14 THE DEFENDANT: All right.

15 THE COURT: Even though you don't have a legal
16 education, and even though you don't have any training in
17 the law, you understand that you still are required to
18 comply with the rules of court, just like lawyers will have
19 to be required to comply with the rules when they are
20 operating in this courtroom?

21 THE DEFENDANT: Yes, sir, I understand.

22 THE COURT: And are you prepared to try your case
23 tomorrow?

24 THE DEFENDANT: Yes, sir, I -- I will be prepared.

25 THE COURT: You will be prepared?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. You understand if you
3 choose to represent yourself, that you are going to have to
4 assume the risks of deficient representation?

5 THE DEFENDANT: Correct, sir.

6 THE COURT: And you are prepared to do that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. You need to be here in the
9 morning at 9:30. 9:30 in the morning.

10 THE DEFENDANT: All right.

11 THE COURT: Okay?

12 THE DEFENDANT: All right. Thank you, Your Honor.

13 THE COURT: Okay.

14 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 14th day of MARCH, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

FEBRUARY 11, 2013



Michael R. Watts
Circuit Court Reporter

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2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

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7 DEFENDANT.) MARCH 15, 2012
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16 ATTORNEY FOR THE STATE

17 DEFENDANT APPEARING PRO SE
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19 MICHAEL R. WATTS
20 CIRCUIT COURT REPORTER
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23 SC Attorney General
24 **RECEIVED**

25 MAR 04 2013

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1 (PROCEEDINGS, MARCH 15, 2012)

2 (Photograph marked as State's Exhibit No. 1 for
3 identification)

4 (Photograph marked as State's Exhibit No. 2 for
5 identification)

6 (Photograph marked as Defendant's Exhibit No. 1
7 for identification)

8 (Photograph marked as Defendant's Exhibit No. 2
9 for identification)

10 (Photograph marked as Defendant's Exhibit No. 3
11 for identification)

12 (Photograph marked as Defendant's Exhibit No. 4
13 for identification)

14 (Medical Report marked as Defendant's Exhibit No.
15 5 for identification)

16 THE COURT: Good morning, ladies and gentlemen of
17 the jury panel. We are ready to begin with the jury
18 selection in the first case that's going to require some of
19 your participation. The title of that case is the State
20 versus William Jerome Rainey.

21 Mr. Rainey has been accused by the State, through
22 the prosecutor's office, of having committed the crime of
23 eavesdropping or Peeping Tom, in violation of a particular
24 Code Section.

25 When a person is charged with a crime where the

1 jurisdiction is in this court, they are brought here by way
2 of a document called an indictment, and the indictment sets
3 forth the charge against the defendant.

4 This particular indictment alleges that William
5 Jerome Rainey did, here in Cherokee County, on or about May
6 the 5th of 2011, willfully and unlawfully go about or upon
7 the premises of Kimberly M. Wilkins for the purpose of
8 spying on and into the victim's home by peeping through the
9 victim's window and invading the victim's privacy, in
10 violation of Section 16-17-470 of the Code of Laws of South
11 Carolina.

12 Now, as to those allegations and as to that charge
13 the defendant, Mr. Rainey, has entered a plea of not guilty.
14 And a plea of not guilty places upon the State the burden of
15 proving the allegations that they have set forth in the
16 indictment, the burden of proving each of the essential
17 elements of the crime that's alleged against the defendant.
18 And, therefore, the burden is upon the State to establish
19 the defendant's guilt to the satisfaction of twelve jurors
20 beyond a reasonable doubt before any verdict of guilty could
21 be returned. So we are going to be selecting thirteen of
22 you. There will be twelve primary jurors and then one
23 additional juror to serve as an alternate juror.

24 And the jury's purpose is to consider all of the
25 evidence introduced during the trial of the case. And at

1 the end of the trial, after I instruct the jury on the law
2 that's applicable, the jury will go back and deliberate and
3 the jury will consider all of that evidence. And from that
4 evidence the jury will determine what the facts are. In
5 other words, the jury will decide what, if anything, they
6 believe occurred on May the 5th of 2011, as it relates to
7 the allegations and the charge brought against the
8 defendant. And then once the jury determines those facts,
9 you will apply the law that I will have provided you and you
10 will determine whether or not the evidence in the case
11 proves the defendant to be guilty beyond a reasonable doubt.
12 If it does, then the verdict would be guilty. If it does
13 not, then the verdict would be not guilty.

14 Now, before we begin with jury selection in this
15 case I have got some questions that I'm going to be asking
16 you. And the purpose of the questions is to determine
17 whether or not there is some reason why any one of you
18 jurors should not be selected to serve as a juror in this
19 particular case. And so as these questions are asked of
20 you, should you need to respond to them, I will ask that you
21 simply please stand and I'll address those matters with you
22 individually, in the event that should become necessary.

23 Before I ask those questions I'm going to be
24 introducing some people to you, because you need to know who
25 the participants are and who the potential witnesses are.

1 And the reason I'm introducing those people to you is
2 because I need to know if you have any connection with any
3 person that's involved in this case or that might be called
4 to testify as a witness in this particular case. So as
5 these persons are identified for your benefit, if you know
6 one of them, I would ask that you please stand so that we
7 can determine what that connection is and whether or not it
8 would affect your judgment in the case.

9 Now, in this case, as I have told you, the
10 defendant is William Jerome Rainey.

11 Now, more often than not in the trial of a case
12 lawyers are representing parties in the trial. That's more
13 often than not the case, but sometimes that's not the case,
14 because any person who is involved in a lawsuit or involved
15 as a defendant in a criminal trial may choose to represent
16 himself or herself.

17 Any person who is charged with a crime is always
18 entitled to representation by a lawyer. And if that person
19 cannot afford to hire a lawyer, then the court will appoint
20 a lawyer to represent that person. However, a person still
21 has the option to represent themselves, if they wish to do
22 so. That's simply a choice that any person has who is
23 charged with a crime. You can elect to have a lawyer,
24 either retained or appointed, or you can make the decision
25 to represent yourself in a case, if you prefer to do that.

1 So in this particular case Mr. Rainey has chosen
2 to represent himself, so he will be representing himself and
3 no lawyer will be appearing on his behalf.

4 Presenting the case on behalf of the State is Matt
5 Kendall, who is an assistant circuit solicitor for the
6 Seventh Judicial Circuit and he will be presenting the case
7 on behalf of the State.

8 Mr. Rainey, as I told you, is the defendant. He's
9 the person charged with a crime. So Mr. Rainey, I'll ask
10 you, if you will please stand and face the jury panel so
11 that they may see who you are.

12 Okay. Thank you. Be seated.

13 The person who by way of this indictment is
14 alleged to be the victim of this event is Kimberly M.
15 Wilkins.

16 Ms. Wilkins, I would ask if you would please stand
17 and face the jury panel so that they may see who you are.

18 Thank you. You may be seated.

19 I don't have any witness list. Solicitor, do you
20 have any witnesses?

21 Mr. Rainey, do you have a witness list?

22 MR. RAINEY: No, sir.

23 THE COURT: You do not?

24 MR. RAINEY: No. Just --

25 THE COURT: No, I'm just asking you right now do

1 you have any witnesses?

2 MR. RAINEY: No, sir.

3 THE COURT: You don't have any witnesses, other
4 than perhaps yourself?

5 MR. RAINEY: No, sir.

6 THE COURT: Or some -- do you have a list of the
7 witnesses the State intends to call?

8 MR. RAINEY: Yes, sir.

9 THE COURT: And you don't have anybody else --

10 MR. RAINEY: No, I don't have nobody.

11 THE COURT: -- that doesn't appear on this list?

12 MR. RAINEY: No, sir.

13 THE COURT: Okay.

14 All right. Potential witnesses to be called in
15 the trial of the case include, in addition to Kimberly
16 Wilkins, and perhaps Mr. Rainey, James Bolton.

17 Jeff Sizemore.

18 Sybil Wilkins.

19 Any other potential witnesses on behalf of the
20 State?

21 MR. KENDALL: None on behalf of the State, Your
22 Honor.

23 THE COURT: On behalf of the defendant, Mr.
24 Rainey?

25 MR. RAINEY: Sir?

1 THE COURT: Do you have any other witnesses, other
2 than those I have just named?

3 MR. RAINEY: No, sir.

4 THE COURT: All right. Is any member of the jury
5 panel related by blood, connected by marriage --

6 MR. RAINEY: Your Honor, sir, may I address the
7 court?

8 THE COURT: Not right now. I'm in the middle of a
9 question.

10 MR. RAINEY: I was talking about the witnesses.

11 THE COURT: Sir?

12 MR. RAINEY: I was going to ask you about the
13 witnesses.

14 THE COURT: You have a potential witness?

15 MR. RAINEY: No, sir, I was wondering what they
16 are expecting to say they were saying they was there at the
17 scene when it happened?

18 THE COURT: Mr. Rainey, I'm addressing the jury
19 right now about their connection with the witnesses.

20 MR. RAINEY: Excuse me, Your Honor.

21 THE COURT: We have already addressed whether or
22 not you wish to have representation and you said no. Okay?

23 MR. RAINEY: Thank you, Your Honor.

24 THE COURT: Is anyone related by blood or
25 connected by marriage to any person who has been identified

1 for your benefit up to this point?

2 And also do you have any connection --

3 You can stand.

4 Also do you have any connection with any person
5 who has been identified as participating in the case or
6 potentially to be called as a witness in the case, or do you
7 go to work with them? Do you socialize with them? Do you
8 go to church with them? Do you have any connection
9 whatsoever with any person that I have introduced to you
10 this morning, or even if you just met them somewhere in some
11 fashion?

12 All right. Now, I have got five jurors standing
13 in responding to that question. I'm going to start on the
14 front row and I'll work my way back and I'll ask you if you
15 will please give me your name and your juror number and then
16 tell me how that question relates to you.

17 I'll start with you, ma'am.

18 JUROR NUMBER 34: My name is Connie Garrett. I'm
19 juror number 34.

20 THE COURT: Juror 34?

21 JUROR NUMBER 34: Yes, sir.

22 THE COURT: All right.

23 JUROR NUMBER 34: Ms. Wilkins daddy and my daddy
24 are brothers.

25 And Mr. Rainey, I go to church with him.

1 THE COURT: Okay. And would the fact that you
2 have that connection with those people have any impact
3 whatsoever upon your decision in this case?

4 JUROR NUMBER 34: No, it wouldn't, but I
5 just don't feel like --

6 THE COURT: I know. Well, could you put that fact
7 or those facts aside and not allow it to influence your
8 judgment in this case?

9 JUROR NUMBER 34: Yes, sir.

10 THE COURT: Okay. Thank you, ma'am. You may be
11 seated.

12 That's juror 34, Ms. Garrett.

13 All right. You, sir?

14 JUROR NUMBER 76: I'm juror number 76, Napoleon
15 Norris. I have known the defendant ever since he was a
16 child.

17 THE COURT: Okay. And would the fact that you
18 know Mr. Rainey in any way interfere with your ability to be
19 fair and impartial in this case if you were selected?

20 JUROR NUMBER 76: No.

21 THE COURT: All right. Thank you. You may be
22 seated.

23 That's juror 76.

24 Yes, sir.

25 JUROR NUMBER 51: Juror number 51. My name is

1 William Jenkins, Jr., and I know the Wilkins family. I have
2 been knowing them all my life. We go to church together.

3 THE COURT: And is there anything about that
4 connection that would have any bearing upon your decision in
5 the case?

6 JUROR NUMBER 51: No, sir.

7 THE COURT: You could put that fact aside and not
8 allow it to influence your judgment?

9 JUROR NUMBER 51: Yes, sir.

10 THE COURT: All right. Thank you. You may be
11 seated.

12 Yes, ma'am.

13 JUROR NUMBER 45: My name is Stacy Hill and I'm
14 juror number 45. I know Jeff Sizemore. Our children go to
15 school together.

16 THE COURT: And would that have any bearing upon
17 your decision in the case?

18 JUROR NUMBER 45: No, sir.

19 THE COURT: Would it impair your ability to be
20 fair and impartial?

21 JUROR NUMBER 45: No, sir.

22 THE COURT: Thank you. You may be seated.

23 Yes, sir.

24 JUROR NUMBER 9: Juror number 9, Jeremy Bedford.

25 THE COURT: Did you say 9?

1 JUROR NUMBER 9: 9.

2 THE COURT: Okay.

3 JUROR NUMBER 9: I work with Kim.

4 THE COURT: Ms. Wilkins?

5 JUROR NUMBER 9: Yes, sir.

6 THE COURT: And where is that?

7 JUROR NUMBER 9: At Timken.

8 THE COURT: Would that have any bearing upon your
9 decision in this case?

10 JUROR NUMBER 9: No, sir.

11 THE COURT: Would it in any way influence your
12 judgment?

13 JUROR NUMBER 9: No, sir.

14 THE COURT: Okay. Thank you. You may be seated.

15 All right. Those jurors responding were 34, 76,
16 51, 45, and number 9.

17 This is an event which the State alleges occurred
18 back on May the 5th of 2011. They allege that it occurred
19 at the --

20 Was this the residence of Ms. Wilkins?

21 MR. KENDALL: Yes, sir, Your Honor.

22 THE COURT: And where is that residence located?

23 MR. KENDALL: [REDACTED], Your
24 Honor.

25 THE COURT: [REDACTED] --

1 MR. KENDALL: [REDACTED]. I'm sorry, [REDACTED].

2 MS. WILKINS: [REDACTED].

3 MR. KENDALL: [REDACTED], I'm sorry.

4 THE COURT: [REDACTED]?

5 MR. KENDALL: Yes, sir.

6 THE COURT: [REDACTED]?

7 MR. KENDALL: Yes, sir.

8 THE COURT: All right. And, as I say, the State
9 alleges it occurred back on May the 5th of 2011.

10 Does any juror think you might have heard, seen,
11 or read something that relates to this case? In other
12 words, have you been exposed to any type of information that
13 relates to this case from any person or any other source?
14 If so, please stand?

15 (No response).

16 THE COURT: Is there anything about the nature of
17 the charge; that is, what the allegations are, what the
18 State claims the defendant did. Is there anything about the
19 nature of the charge that would prevent any juror from being
20 able to be fair and impartial if you were called upon to
21 serve as a juror in the case? If so, please stand.

22 (No response)

23 THE COURT: Well, is -- well, does any member of
24 the panel know of any reason whatsoever why you think you
25 could not be fair and impartial as a juror in the case if

1 you were called upon to serve?

2 (No response).

3 THE COURT: Has any member of the jury panel or
4 any members of your immediate family ever experienced any
5 similar type of an event as is alleged in this indictment?
6 If so, please stand.

7 All right, tell me your name and number, please,
8 ma'am.

9 JUROR NUMBER 30: Amy Dover, number 30.

10 THE COURT: Number 30.

11 And was it you or a family member who has had such
12 an experience?

13 JUROR NUMBER 30: It was a family member.

14 THE COURT: And would that fact have any bearing
15 upon your decision in this case?

16 JUROR NUMBER 30: No, sir.

17 THE COURT: You could put that aside and not allow
18 it to influence your judgment?

19 JUROR NUMBER 30: Yes, sir.

20 THE COURT: All right. Thank you.

21 That's juror number 30, Ms. Dover.

22 Anyone else?

23 (No response).

24 THE COURT: Has any member of the jury panel
25 already made up your mind or formed an opinion as to what

1 you think the ultimate decision ought to be, based upon what
2 you have heard up to this point, or based upon any other
3 consideration? If so, please stand.

4 (No response)

5 THE COURT: All right. Any other questions
6 requested by the State?

7 MR. KENDALL: Nothing further, Your Honor.

8 THE COURT: Any other questions requested by the
9 defendant?

10 MR. RAINEY: No, Your Honor.

11 THE COURT: All right. We are going to select a
12 jury.

13 Your names will be selected randomly by a
14 computer, but you will be called individually to come
15 forward. You see where Ms. McBee, the clerk, is sitting?
16 If you will just come through that middle gate there and
17 stand right in front of her. Turn and face your fellow
18 jurors, and each side is going to have an opportunity to
19 have you seated for service in the case, or to have you
20 excused from service in the case.

21 If either side asks that you be excused from
22 serving as a juror, you can simply go back and have a seat
23 where you are now.

24 If both agree to have you seated for service in
25 the case, then you will be having a seat in the jury box to

1 your right and to my left.

2 So please just come forward as your name is called
3 and you will be instructed if you are to be seated for
4 service or excused from service in the case.

5 THE CLERK: Juror 91, Pam Smith.

6 What says the State?

7 MR. KENDALL: Please excuse the juror.

8 THE CLERK: I'm sorry?

9 MR. KENDALL: Please excuse the juror.

10 THE CLERK: You have been excused.

11 Juror 49, Jackie Hopper.

12 What says the State?

13 MR. KENDALL: Please seat the juror.

14 THE CLERK: What says defense?

15 Sir?

16 THE COURT: Just a minute.

17 Mr. Rainey, would you like to seat the juror or
18 have him excused?

19 MR. RAINEY: Seat him.

20 THE COURT: Okay.

21 THE CLERK: Mr. Hopper, take a seat over there.

22 Juror 40, Danny Ham.

23 What says the State?

24 MR. KENDALL: Please seat the juror.

25 THE CLERK: What says the defense?

1 MR. RAINEY: No.

2 THE CLERK: If you will say seated or excused.

3 MR. RAINEY: Excused.

4 THE CLERK: Okay. You may take your seat.

5 Juror 46, Ashley Hink.

6 What says the State?

7 MR. KENDALL: Please seat the juror.

8 THE CLERK: What says the defense?

9 MR. RAINEY: Seat the juror.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 101, Pamela Wade.

12 What says the State?

13 MR. KENDALL: Please seat the juror.

14 THE CLERK: What says the defense?

15 MR. RAINEY: Excuse the juror.

16 THE CLERK: Please take a seat. You have been

17 excused.

18 Juror 37, Barry Greene.

19 What says the State?

20 MR. KENDALL: Please seat the juror.

21 THE CLERK: What says the defense?

22 MR. RAINEY: Seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror 45, Stacy Hill.

25 What says the State?

1 MR. KENDALL: Please seat the juror.

2 THE CLERK: What says the defense?

3 MR. RAINEY: Excuse the juror.

4 THE CLERK: You have been excused.

5 Juror 30, Amy Dover.

6 What says the State?

7 MR. KENDALL: Please seat the juror.

8 THE CLERK: What says the defendant?

9 MR. RAINEY: Sit in the jury box.

10 THE CLERK: Take a seat in the jury box.

11 Juror 63, Jeanette Li.

12 What says the State?

13 MR. KENDALL: Please seat the juror.

14 THE CLERK: What says the defense?

15 MR. RAINEY: Seat the juror.

16 THE CLERK: Please take a seat in the jury box.

17 Juror 96, Julie Steadman.

18 What says the State?

19 MR. KENDALL: Please seat the juror.

20 THE CLERK: What says the defense?

21 MR. RAINEY: Seat the juror.

22 THE CLERK: Please take a seat in the jury box.

23 Juror 22, Melanie Childers.

24 What says the State?

25 MR. KENDALL: Please seat the juror.

1 THE CLERK: What says the defense?
2 MR. RAINEY: Seat the juror.
3 THE CLERK: Please take a seat in the jury box.
4 Juror 66, Brittany Martin.
5 What says the State?
6 MR. KENDALL: Please seat the juror.
7 THE CLERK: What says the defense?
8 MR. RAINEY: Excused.
9 THE CLERK: Excused?
10 You have been excused.
11 Juror 9, Jeremy Bedford.
12 What says the State?
13 MR. KENDALL: Please seat the juror.
14 THE CLERK: What says the defense?
15 MR. RAINEY: Excused.
16 THE CLERK: Excused?
17 MR. RAINEY: Yes.
18 THE COURT: Mr. Rainey, you have exhausted your
19 strikes, so you are not permitted to excuse any further
20 jurors.
21 MR. RAINEY: All right. Thank you, Your Honor.
22 THE CLERK: Juror 51, William Jenkins.
23 What says the State?
24 MR. KENDALL: Please seat the juror.
25 THE CLERK: What says the defense?

1 MR. RAINEY: Seat the juror.
2 THE CLERK: Please take a seat in the jury box.
3 Juror 19, Laura Burns.
4 What says the State?
5 MR. KENDALL: Please seat the juror.
6 THE CLERK: What says the defense?
7 MR. RAINEY: Seat the juror.
8 THE CLERK: Please take a seat in the jury box.
9 Juror 7, Wanda Barkley.
10 What says the State?
11 MR. KENDALL: Please seat the juror.
12 THE CLERK: What says the defense?
13 MR. RAINEY: Seat the juror.
14 THE CLERK: Juror 20, Gerald Camp.
15 What says the State?
16 MR. KENDALL: Please excuse the juror.
17 THE CLERK: You have been excused.
18 Juror 87, Barry Sanders.
19 What says the State?
20 MR. KENDALL: Please seat the juror.
21 THE CLERK: What says the defense?
22 MR. RAINEY: Seated.
23 THE CLERK: Juror 29, Donna Diaz.
24 What says the State?
25 MR. KENDALL: Please seat the juror.

1 THE CLERK: What says the defense?

2 MR. RAINEY: Seat the juror.

3 THE COURT: All right, we are going to select an
4 alternate juror.

5 Now, Mr. Rainey, with regard to the alternate, you
6 have two strikes that you can exercise, if I wish to. Okay?

7 MR. RAINEY: Thank you, Your Honor.

8 THE CLERK: Juror 28, Kimberly Davidson.

9 What says the State?

10 MR. KENDALL: Please seat the juror.

11 THE CLERK: What says the defense?

12 MR. RAINEY: Seat the juror.

13 THE CLERK: Please take a seat in the jury box.

14 THE COURT: All right, those jurors who have been
15 selected, I'll ask you to please go with the bailiff to a
16 jury room and I'll bring you back in just a few minutes to
17 begin with the trial of the case..

18 (The following takes place outside the presence of
19 the jury panel)

20 THE COURT: Are there any matters that we need to
21 address regarding jury selection, by the State?

22 MR. KENDALL: None from the State, Your Honor.

23 THE COURT: Mr. Rainey, do you have any matters
24 that you would like to address regarding jury selection?

25 MR. RAINEY: Yes, sir, Your Honor. I would -- I

1 want to file --

2 THE COURT: Just a minute.

3 MR. RAINEY: Yes, sir, Your Honor.

4 THE COURT: Let me ask y'all to step around here
5 just a minute.

6 (Whereupon, Mr. Kendall and Mr. Rainey approached
7 the bench for an off-the-record discussion).

8 THE COURT: All right, Mr. Rainey, is there any
9 objection to the jury that's been selected?

10 MR. RAINEY: No, sir, Your Honor.

11 THE COURT: All right. Those jurors who were not
12 selected, you are excused for the balance of the morning. I
13 need for you to call back between 12:30 and 1:30 in order to
14 receive further reporting information. Be sure that you
15 call by 1:30, because it might be that you will need to come
16 back this afternoon, but if you will call between 12:30 and
17 1:30, we will have that information for you, okay?

18 Thank you for your participation. Have a good
19 morning.

20 (Whereupon, the jury venire panel left the
21 courtroom)

22 THE COURT: All right. Now, Mr. Rainey, you don't
23 have a microphone at that desk and the court reporter is
24 seated over here. He's got to hear everything that you say.
25 And, of course, the jury has to hear it, too, when they are

1 in the courtroom. They are not here right now, so you are
2 going to have to speak up loud, okay --

3 MR. RAINEY: All right.

4 THE COURT: -- so I can hear you and the court
5 reporter can hear you and the jury can hear you.

6 MR. RAINEY: Yes, Your Honor.

7 THE COURT: All right. Now, what matters do you
8 wish to address before the jury is brought in and sworn?

9 MR. RAINEY: Your Honor, I would like to try to
10 get --

11 THE COURT: You have to stand up when you address
12 the court.

13 MR. RAINEY: I would like to -- I am pro-se Jerome
14 William Rainey. I would like to try to have a motion of a
15 dismissal on this case.

16 THE COURT: All right. Let me ask you to do this,
17 Mr. Rainey. How about coming up here in front of the clerk
18 and use that microphone so we can hear you.

19 MR. RAINEY: I am pro-se Jerome William Rainey and
20 I'm trying to try to -- I'm going to try to see if I can
21 have the court to try to see if I can get a motion of a
22 dismissal on this case.

23 Your Honor, I'm not a lawyer, or I'm not a -- I
24 don't know the knowledge of a lawyer, Your Honor. I have
25 limited knowledge of the law, Your Honor.

1 I am pro-se Jerome William Rainey, a citizen.
2 Your Honor, like a citizen, I pay taxes and work hard every
3 day, Your Honor. I'm not trying to waste the court's time
4 or money, Your Honor, but I ask the court for a motion of
5 dismissal where they said the plaintiff called the police
6 saying the second time that I had did this supposedly --
7 supposedly -- supposing I'm like I'm supposed to have been
8 doing -- been there, like I was masturbating, Your Honor.
9 This is why a dismissal is asked for.

10 The plaintiff called my job instead of letting the
11 courts handle the matter, threatening this matter --
12 threatening -- threatening me, as far as her mother saying
13 this as far as calling my job telling me her daughter had
14 called her brother in Charlotte saying they was still
15 thinking about taking the matters into their own hands and
16 stuff, you know what I'm saying, Your Honor? And this is my
17 boss man. He was telling me he was fearing for my life,
18 which I work. He have a day-care there too and he was
19 trying to protect that too, Your Honor. But --

20 And the mother knows, as far as my 6th grade year
21 back in '76, she had me suspended from school, as far as
22 going back into school to use the bathroom. Had me get
23 three licks and suspended for three days. So she -- it
24 ain't like they don't know me. And I --

25 I mean, I -- it's a field. As far as the church

1 property, I was cutting -- I be cutting the grass there,
2 Your Honor. And that -- and I normally just go ahead and
3 cut their grass too, but where they were saying that I was
4 supposed to have been there, as far as supposed to be doing
5 what I was doing, Your Honor, it wasn't what they thought I
6 was doing, Your Honor.

7 But I'm saying, Your Honor, the people done called
8 my job threatening me, threatening about taking matters into
9 their own hands, and I would just ask to try to see if I
10 could -- if the court would issue a motion of dismissal.

11 THE COURT: All right. You can have a seat.

12 MR. RAINEY: Can I -- excuse me, Your Honor, one
13 more thing, Your Honor.

14 And also Officer Hartman (sic), he -- he -- he
15 seen me up to this Wallgreen back when this incident
16 happened that morning putting in a prescription. So I put
17 the prescription in. He was about three or four people
18 behind me. So I went on outside and sat on my moped out
19 there. I had bought ice cream in the store. I had this
20 stomach virus. I never had that before in my life, and I
21 was seriously hurting, you know what I'm saying, in my
22 stomach. So I'm sitting out there on my moped and he came
23 back out and I'm wondering why somebody -- he was just
24 steady looking at me coming out the door. So he goes to his
25 car, just still steady looking at me and I'm wondering why

1 the man is looking at me, you know what I'm saying? I ain't
2 know where you he been, you know, but I have been in
3 plainclothes. So instead of him getting in his car and
4 going out of the parking lot on this end of the Wallgreen,
5 he is going to come -- he's still looking at me in the car.
6 He's down there looking at the car bringing it up just
7 steadily looking at me, you know what I'm saying? So he
8 gets in his car and comes back me behind me and go out of
9 the parking lot, on the other end of the parking lot, still
10 looking at me. So I had throwed up my hands at him like
11 what's up, you know what I'm saying? And so he pulled on
12 out of the parking lot and went to the red light and then he
13 just throwed up his hands. So I just turned back around and
14 throwed -- gave him my finger. It wasn't nothing
15 disrespectful, you know what I'm -- I'm just saying I was
16 just wondering why the man kept watching me, as I'm sick as
17 I was. And --

18 THE COURT: Who is this officer that you are
19 talking about?

20 MR. RAINEY: Officer Bolton or Holton.

21 THE COURT: Bolton?

22 MR. RAINEY: Yes, sir.

23 So I'm saying, this man, he was challenging, as
24 far as that incident, Your Honor, because on out of there I
25 went on to work as far as with the stomach virus trying

1 to -- you know, I -- I needed to work, Your Honor. I'm a
2 hard worker and I work every day, Your Honor.

3 THE COURT: Okay. Take your seat.

4 MR. RAINEY: Thank you, Your Honor.

5 THE COURT: I'm going to hear from Mr. Kendall.

6 MR. KENDALL: Your Honor, as far as the State
7 knows, Your Honor, we haven't received any reports or
8 anything like that of threats against Mr. Rainey from the
9 sheriff's office or the city police department, that I'm
10 aware of. Nobody is attempting to take matters into their
11 own hands. That's why we are here today to conduct the
12 trial on this matter. However, with respect to Officer
13 Bolton, I'm not familiar with this incident, or whether it
14 would even be classified as an incident. It appears he just
15 saw him, keep an eye on him. I think there actually
16 probably a very good reason to keep an eye on Mr. Rainey.

17 Even after this took place he went back to the
18 victim's house and snapped a bunch of pictures of the
19 bathroom window. It's something that might be very
20 appropriate for trial. Obviously it's something that's very
21 upsetting to them. I suspect that's probably why they are
22 keeping an eye on him in the case, Your Honor.

23 I don't believe he's been prejudiced in any way.
24 There hasn't been any threats in any way. He hasn't been
25 coerced by anybody to do anything. I think this case is

1 appropriate for trial, Your Honor.

2 THE COURT: All right. The motion to dismiss is
3 denied.

4 Anything else you have to address with the court,
5 Mr. Rainey?

6 MR. RAINEY: No, sir, Your Honor.

7 THE COURT: All right. I'm going to bring the
8 jury in and they are going to be placed under oath and
9 sworn. We will begin with opening statements.

10 Would you like to make an opening statement?

11 MR. RAINEY: Your Honor, give me one second.

12 (Off the record)

13 (Back on the record)

14 MR. RAINEY: No, sir, Your Honor.

15 THE COURT: Now, do you understand an opening
16 statement is not providing evidence?

17 You can make an opening statement or not, but even
18 in an opening statement you can't introduce evidence. You
19 can't provide something that you testify to or introduce.
20 You do that during the trial of the case.

21 MR. RAINEY: All right, Your Honor.

22 THE COURT: All right. The State will make an
23 opening statement.

24 Are you saying you do not wish to make an opening
25 statement?

1 MR. RAINEY: Your Honor, I would ask -- like I
2 said, I would ask the court for a dismissal of the trial,
3 because --

4 THE COURT: I have already addressed that. I have
5 denied that request at this point.

6 MR. RAINEY: Yes, sir.

7 Your Honor, I would like to know if I would be
8 able to cross-examine the witnesses?

9 THE COURT: You will.

10 MR. RAINEY: All right, Your Honor. Thank you,
11 Your Honor.

12 THE COURT: But my question is do you want to make
13 an opening statement to the jury?

14 MR. RAINEY: No, sir, Your Honor.

15 THE COURT: Okay. So after the State makes their
16 opening statement, they will begin calling witnesses.

17 MR. RAINEY: Right, Your Honor.

18 THE COURT: And they will examine the witnesses.
19 Then you get to cross-examine the witnesses.

20 MR. RAINEY: Right, Your Honor.

21 THE COURT: All right. Bring the jury in and ask
22 Ms. Steadman to take the foreperson's seat.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right, ladies and gentlemen, we

1 are ready to begin with the trial of the case for which each
2 of you have been selected.

3 Ms. Steadman, I'm going to ask you to serve as the
4 foreperson of the jury.

5 As the foreperson you will have three duties that
6 none of the other jurors will have.

7 Number one, you will be asked for serve as the
8 spokesperson for the jury. And that just means if
9 something -- during the course of this trial if something
10 arises that need to be brought to my attention, that is, you
11 or a fellow juror has some difficulty or a problem or a
12 question, it will be you who will let me know of that fact
13 and I'll address it.

14 Secondly, you are going to be called upon to
15 preside over jury deliberations when that time comes. That
16 won't be until the end of the trial after the evidence has
17 been received and I have instructed you on the law. But
18 when the time does come for jury deliberations, you will
19 preside over that process in the jury room simply to ensure
20 that those deliberations are carried out in some orderly
21 fashion.

22 And, thirdly, you will be asked to actually write
23 the decision of the jury, whatever that decision may be, and
24 you will do that on a verdict form that I will provide you
25 at the trial's conclusion on which you will indicate the

1 jury's unanimous decision.

2 Now, the foreperson has those duties that I have
3 just indicated, but that doesn't mean that she's any more
4 important than any of you other jurors, and that's because
5 the decision of a jury is the unanimous consensus opinion of
6 all twelve jurors. And so each of you will have an equal
7 say and an equal vote in what the ultimate decision will be.
8 Someone simply has to be delegated those responsibilities
9 that I have just indicated and I have delegated those to Ms.
10 Steadman in appointing her as the foreperson, but all of you
11 jurors are equally important, so far as the ultimate
12 decision in the case is concerned, because, as I have
13 stated, the verdict has to be unanimous. All of you must be
14 in agreement.

15 Now, Ms. Davidson, you have been selected as an
16 alternate juror. And the function of an alternate juror is
17 to take the place of one of the original twelve if during
18 the trial one of these twelve cannot continue to serve for
19 some reason. So if one is called away or unable to
20 continue, then you take that person's place. In that event
21 you would become the twelfth juror. And if that occurs,
22 then you participate in the jury deliberations at the
23 trial's conclusion.

24 However, when the time comes for deliberations, if
25 the original twelve are able to participate, your service

1 ends and you don't participate any further. And that's
2 because the decision of a jury is that of twelve, and no
3 more than twelve can participate in that deliberation
4 process, but it is important that you pay just as careful
5 attention, as we ask of all of the jurors in the case,
6 because it does occur from time to time for one reason or
7 another one of these twelve may be unable to continue. In
8 that event, you become the twelfth. So we do appreciate
9 your participation as an alternate juror, just as we
10 appreciate the participation of each of you jurors who have
11 been selected for the purpose of deciding the verdict in
12 this particular case.

13 You may swear the panel.

14 THE CLERK: Madam Forelady, ladies and gentlemen,
15 please stand and raise your right hand.

16 Do you solemnly swear that you will truly the
17 issues joined in this case and a true verdict render it,
18 according to the law and evidence, so help you God?

19 JURY PANEL: (Collectively said I do).

20 THE CLERK: You may be seated.

21 THE COURT: Ladies and gentlemen, as you know,
22 this is a criminal case. The defendant is brought here by
23 way of this document that I referred to prior to your
24 selection. The indictment is the means by which any person
25 accused of a crime is brought into this court to stand trial

1 on that charge.

2 The indictment sets forth the allegations that are
3 brought against the defendant. And in this case, as I have
4 told you, the defendant is accused by the prosecutor of
5 having committed the crime of eavesdropping or Peeping Tom.

6 They allege on May 5 of 2011, he did willfully and
7 unlawfully go about or on the premises of Kimberly Wilkins
8 for the purpose of spying on and into her home by peeping
9 through her window and invading her privacy.

10 As I have also told you, as to that indictment and
11 as to those allegations Mr. Rainey has entered a plea of not
12 guilty. And a plea of not guilty places upon the State,
13 because they brought the charge, the burden of proving all
14 of the allegations that are set forth in the indictment, the
15 burden of proving each of the essential elements of the
16 crime alleged. And, therefore, the burden is upon the State
17 to establish the defendant's guilt to the satisfaction of
18 you twelve jurors beyond a reasonable doubt before any
19 verdict of guilty could be returned.

20 Every person accused of a crime is always presumed
21 to be innocent of the charge. And that presumption of
22 innocence remains with any defendant, as it does with this
23 defendant, from the time that he is placed under arrest, and
24 even throughout the course of a trial in the case. That
25 presumption of innocence will be with Mr. Rainey even as you

1 go back into your jury room to begin your deliberations at
2 this trial's conclusion. That presumption of innocence will
3 be with him in that jury room, and it will be with him
4 forever, unless you twelve jurors determine that he's no
5 longer entitled to the presumption of innocence.

6 In other words, after you have carefully
7 considered all of the testimony and other evidence received
8 during the trial and after you have carefully considered
9 that evidence and after you have decided the facts, based
10 upon the evidence presented, and after you apply the law
11 that I have provided you, if you twelve jurors unanimously
12 determine that his guilt has been proven beyond a reasonable
13 doubt, then he would no longer be entitled to the
14 presumption of innocence. But it's only if, unless, and
15 until you are satisfied of his guilt beyond a reasonable
16 doubt that the presumption of innocence would no longer be
17 applicable.

18 . Now, the way the trial will proceed is that in a
19 moment the prosecutor will make an opening statement. He
20 will be simply telling you basically as to why this case has
21 been brought against the defendant.

22 After he's concluded, a defendant by himself, or
23 through counsel, also has an opportunity to make an opening
24 statement. In this particular case Mr. Rainey has waived
25 his right to do that. He's told me that he does not wish to

1 make that opening statement, so he will not be making one.

2 After those statements are concluded, or after the
3 solicitor's statements are concluded, the State will begin
4 with their presentation of evidence, and that's because they
5 brought the charge. They have the burden of proof. They
6 have to establish the defendant's guilt beyond a reasonable
7 doubt, and so they will go forward first in their
8 presentation of evidence.

9 And in a criminal trial a defendant has the same
10 opportunity to testify and present evidence, if he or she
11 wishes to do so, but a defendant in a criminal trial is
12 never under any obligation to take the witness stand and
13 testify. A defendant does not have to call any witnesses or
14 produce any evidence. And that's because the burden is not
15 upon a defendant to prove that he or she is not guilty or to
16 prove that he or she is innocent, because in some cases that
17 might not be even be possible, but a defendant is afforded
18 an opportunity to testify or call other witnesses, if the
19 defendant wishes to do so.

20 After all of the evidence has been received, you
21 will again hear final summations given by each side.

22 And once they have concluded, I will then instruct
23 you on the law as it relates to the criminal law, generally,
24 and as it relates to this particular crime, specifically.

25 After that you will go back and begin your

1 deliberations. And through that process you are going to be
2 called on through the exercise of good judgment and common
3 sense, conscientiously applied to the testimony and evidence,
4 in the case, to decide what you believe to be the true facts,
5 as they relate to these allegations. Once you decide the
6 facts, you will apply the law that I will have provided you
7 and you will determine whether or not the defendant has been
8 proven guilty beyond a reasonable doubt. If he has, then
9 your verdict would be guilty. If he has not, then your
10 verdict would be not guilty.

11 So all that we are going to ask you to do is to
12 pay careful attention throughout the course of the trial.
13 Give every witness the same degree of attention, because
14 there may be a conflict in testimony from the witnesses in
15 the case. And where there is a conflict, you have got to
16 resolve the conflict in order to arrive at your decision.
17 And you do that, as I have stated, simply through the
18 exercise of good judgment and common sense, conscientiously
19 applied to the evidence received.

20 So I do want to thank you in advance for your
21 participation, as well as your careful attention. I would
22 ask that you please give the prosecutor your attention now
23 as he gives you his opening statement.

24 Mr. Kendall.

25 MR. KENDALL: May it please the court?

1 THE COURT: Yes, sir.

2 MR. KENDALL: Mr. Rainey.

3 Ladies and gentlemen of the jury, my name is Matt
4 Kendall. I represent the State of South Carolina.

5 Ladies and gentlemen, we are all here today
6 because on May 5th, 2011, the defendant, Mr. Rainey, was
7 caught peeping on the victim, Ms. Kimberly Wilkins, while
8 she was taking a shower, getting ready for work.

9 This happened at approximately 1:00, 1:30 in the
10 afternoon here in Cherokee County, over in the area off
11 [REDACTED]. Ms. Wilkins was getting ready to go
12 into work. She had just gotten out of the shower. Now, she
13 peered out the window and she saw Mr. Rainey standing there
14 with his penis exposed playing with himself.

15 She had seen Mr. Rainey before. In fact, she had
16 certain problems with him. He had left notes on her car.
17 He had tried to get in contact with her before. Obviously
18 this is not something that she was interested in.

19 She called her mother into the room. Her mother
20 came and peered around and also saw the defendant standing
21 there with his penis in his hand. And from there they
22 called the police.

23 A few minutes later officers arrived on the scene
24 and they arrested the defendant, finding him with his pants
25 unzipped still.

1 MR. RAINEY: Objection. Your Honor --

2 THE COURT: Sir?

3 MR. RAINEY: I object to that. I object to that I
4 was leaving notes on this lady's car.

5 THE COURT: All right. I overrule your objection.
6 You will have an opportunity to examine the witnesses and
7 present evidence, if you wish to.

8 You may continue.

9 MR. KENDALL: Officers arrived on the scene and
10 they found Mr. Rainey standing in that same spot, in the
11 victim's yard, right outside her bathroom window with his
12 pants unzipped.

13 MR. RAINEY: Objection.

14 THE COURT: Overruled, Mr. Rainey.

15 MR. KENDALL: Ladies and gentlemen, over the
16 course of this trial you are going to hear from multiple
17 witnesses. You are going to hear from law enforcement, you
18 are going to hear from the victim, and you are going to hear
19 from her mother. And at the end of this trial I'm going to
20 ask you to return a verdict of guilty, but for right now I
21 only ask of you three things.

22 First, and most importantly, you listen to the
23 instructions the judge gives you. What's fair to us or
24 what's most important to us, the State, to ensure we have a
25 fair trial, and if I'm under the rules the judge sets forth,

1 and the law he explains to you will help ensure that
2 happens.

3 Secondly, you listen to the evidence presented
4 today of all of the witnesses.

5 And, finally, in this case you just use a little
6 bit of common sense, and I think in this one will lead you
7 in the right direction.

8 Thank you, ladies and gentlemen.

9 THE COURT: All right, Mr. Kendall, you may call
10 your first witness.

11 MR. KENDALL: The State would call Ms. Kimberly
12 Wilkins.

13 KIMBERLY WILKINS, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. KENDALL:

16 Q. Good morning, Ms. Wilkins.

17 Would you please mind stating your name for the record,
18 please?

19 A. Kimberly M. Wilkins.

20 Q. And where are you from, Ms. Wilkins?

21 A. Gaffney, South Carolina.

22 Q. And on May 5th, 2011, where were you living?

23 A. [REDACTED].

24 Q. Okay. Ms. Wilkins, one of the things that's happening
25 today in the courtroom is we are making a recording of

1 everything that has to happen, as far as how our system
2 works. And the gentleman sitting in front of you, Mr.
3 Watts, is making a -- like a -- basically he's writing it
4 all down. So if you could, please talk loudly and clearly
5 so he could be able to do that, okay?

6 A. Okay.

7 Q. Thank you very much.

8 On May 5th, 2011, where were you living at that time?

9 A. [REDACTED].

10 Q. And what city, county, and state is that located in?

11 A. Cherokee County; Gaffney, South Carolina.

12 Q. Okay. And could you please just generally describe the
13 house to us?

14 A. The house sits like up on -- up on the boulevard, like
15 up on the end, up on the hill. It sits right --

16 Q. Just hold on for one second. Let's see if we can't
17 resolve some --

18 (Off the record)

19 (Back on the record)

20 BY MR. KENDALL:

21 Q. We are going back just a second. You were describing
22 the house. I'm sorry, if you could just kind of begin at
23 the beginning of that description, if you don't mind?

24 A. The sit -- I'm sorry, the house sits right on [REDACTED]
25 [REDACTED] Boulevard. It sits right up on a hill. It's a green

1 house with red trim.

2 Q. Okay. If I were standing on [REDACTED]
3 looking at the house, where is the bathroom and the shower
4 at?

5 A. It's on the left side of the house.

6 Q. Okay. Could you please describe the yard to us?

7 A. The yard, it's -- it's a small yard in the front, but
8 it sits like right up on the hill.

9 Q. Okay. And in the backyard, are there lots of bushes,
10 or scrubs, or anything along that fence?

11 A. It is.

12 Q. I'm going to show you what is marked State's Exhibit 2.

13 MR. KENDALL: Mr. Rainey, this is the --

14 BY MR. KENDALL:

15 Q. I'm going to show you what is marked State's Exhibit 2.

16 Do you recognize this?

17 A. Yes.

18 Q. And how are you able to recognize this?

19 A. It's what I just stated.

20 Q. Okay. Could you please describe to the jury what this
21 is a picture of?

22 A. My house that I used to stay at.

23 Q. And is that a fair and accurate representation of the
24 house that you used to stay at?

25 A. Yes.

1 Q. Okay.

2 MR. KENDALL: We would offer State's Exhibit 2
3 into evidence and request permission to publish to the jury.

4 THE COURT: Mr. Rainey, you have seen that
5 photograph?

6 MR. RAINEY: Yes, sir, Your Honor.

7 THE COURT: Do you have any objection to it being
8 introduced?

9 MR. RAINEY: Yes, sir, Your Honor.

10 I have photographs of the house, Your Honor,
11 where --

12 THE COURT: I understand. Well, you are not
13 presenting evidence right now.

14 Do you object to that photograph?

15 MR. RAINEY: I don't object, Your Honor.

16 THE COURT: Okay. It's admitted.

17 MR. KENDALL: Request permission to publish to the
18 jury, Your Honor.

19 THE COURT: You may.

20 BY MR. KENDALL:

21 Q. Now, Ms. Wilkins, with the court's indulgence, would
22 you mind stepping down for a moment just so you can show us
23 some things?

24 THE COURT: Okay.

25 (Witness off the witness stand)

1 BY MR. KENDALL:

2 Q. Now, Ms. Wilkins, I wouldn't imagine that any of the
3 jury has been to your home before, so I would like to kind
4 of get -- just kind of show them the lay of the land.

5 Using this pointer, would you mind just showing the
6 jury where the front of the house would be located?

7 A. Right here.

8 Q. Okay.

9 THE COURT: I would ask you, ma'am -- we are not
10 going to be able to hear it. Let me ask, Ms. Wilkins, if
11 you will use that microphone at the end of that thing?
12 Please use that microphone.

13 BY MR. KENDALL:

14 Q. Can you show us where the front of the house is?

15 A. It's located here.

16 Q. And where would [REDACTED] be with respect
17 to this?

18 A. It would be kind of sitting over there.

19 Q. All right. And where is the bathroom window in this
20 case?

21 A. It sits right here.

22 Q. Okay. And so I guess, obviously, could you show us the
23 back of the house as well?

24 A. Here.

25 Q. And what is back in there? This is a little blurry on

1 that. What else is back in there?

2 A. There is bushes and trees and stuff.

3 Q. Okay. You can go and have a seat.

4 (Witness back on the witness stand)

5 BY MR. KENDALL:

6 Q. I'm going to show you -- I'm going to show you what is
7 marked as State's Exhibit 1. Do you recognize what is in
8 this picture?

9 A. Yes.

10 Q. And what is that?

11 A. It's the bushes and trees and stuff.

12 Q. Okay. And is that a fair and accurate representation
13 of what your backyard looks like?

14 A. Yes.

15 Q. And is that a fair -- more specifically, is that a fair
16 and accurate representation of what your backyard looks like
17 this time of the year, approximately?

18 A. Yes.

19 MR. KENDALL: We would offer State's Exhibit 1
20 into evidence, Your Honor.

21 MR. RAINEY: Yes, sir. Yes, sir.

22 Yes, sir, Your Honor.

23 THE COURT: No objection?

24 MR. RAINEY: No objection.

25 THE COURT: Okay.

1 MR. KENDALL: And request permission to publish,
2 Your Honor?

3 THE COURT: You may.

4 BY MR. KENDALL:

5 Q. Now, in relation to other landmarks around the
6 community, where is this in relation to the church?

7 There is a large church down there. Where is it in
8 relation to that?

9 A. The church sits like behind the bushes across the
10 street.

11 Q. Okay. Is there anything in between the bushes and the
12 church? Is there a field, or a road, or anything like that?

13 A. It is. It's a field and it's like a house that sits
14 right on the right-hand side, and in front of the house is
15 the road.

16 Q. Okay.

17 A. The church is kind of up on the left.

18 Q. And on May 5th of 2011, did you hear any lawnmowers
19 going that day, or anything like that?

20 A. No.

21 Q. Did you see any lawnmowers going that day?

22 A. No, sir.

23 Q. Okay. Could you please describe to the jury what you
24 were doing?

25 A. Around that time?

1 Q. Around approximately one o'clock.

2 A. Around that time I had got up, getting ready for work,
3 got in the shower.

4 When I got in the shower I seen Mr. Rainey coming
5 across the field. And after seeing Mr. Rainey coming across
6 the field, he had to have seen me in that window to come
7 across the bushes over into my yard.

8 So as Mr. Rainey came into my yard, I seen him standing
9 down there looking up at my window.

10 MR. RAINEY: Objection, Your Honor. I wasn't on
11 her property.

12 THE COURT: Overruled.

13 A. After he got there, he proceeded to pull out his penis
14 and started ejaculating. That's when I called my mother
15 into the bathroom to bring my phone and to come and look.

16 So after she done that, she stepped in the tub where I
17 was at and kind of looked out the window and seen Mr. Rainey
18 standing there with his penis out.

19 BY MR. KENDALL:

20 Q. Okay.

21 MR. RAINEY: Nothing happening to that, Your
22 Honor.

23 BY MR. KENDALL:

24 Q. Now, going back to State's Exhibit 2, would you mind
25 just stepping down briefly and showing and explaining --

1 just show the jury, pointing out where Mr. Rainey --

2 (Witness off the witness stand)

3 MR. RAINEY: Your Honor?

4 THE COURT: Sir?

5 MR. RAINEY: May I ask if she -- she said she had
6 her phone. Did she have any kind of pictures?

7 THE COURT: Just a minute. Let me ask the jury to
8 please go to your jury room. I have got one matter I need
9 to address.

10 Don't talk about the case. You can never talk
11 about the case until you are involved in jury deliberations.
12 So when we take a break don't talk about the case.

13 I'll bring you back in just a few minutes.

14 (Witness back on the witness stand)

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: All right, Mr. Rainey, what's your
18 objection?

19 MR. RAINEY: Your Honor, this is hearsay. They
20 are contradicting themselves, Your Honor. She's making this
21 stuff up as they go along.

22 THE COURT: Okay. Well, Mr. Rainey, let me
23 explain something to you. You don't get to object to a
24 witness' testimony just because you don't agree with it.

25 In any trial, in any case, there is always a

1 conflict in the testimony. People testify to different
2 things all the time. That's why we have a jury. If y'all
3 agree on the facts, we wouldn't need this jury to decide
4 what the facts are.

5 This is Ms. Wilkins testimony. If you don't agree
6 with it, you will be able to testify or call some witness to
7 testify to controvert or to contradict what her testimony
8 is. If you don't agree on what she says the facts are, you
9 can provide testimony, just as the State is providing
10 testimony, to contradict that testimony, but you can't
11 object to a witness' testimony just because you don't agree
12 with it. Do you understand?

13 MR. RAINEY: Thank you, Your Honor.

14 THE COURT: In other words, if you want to
15 contradict it, you will have to take the witness stand or
16 call some witness to contradict it. You can't just object
17 to it and make statements about it not being true and you
18 state something differently. You can only contradict the
19 testimony when you take the witness stand under oath and
20 testify to it. Okay?

21 MR. RAINEY: Thank you, Your Honor.

22 THE COURT: All right, bring the jury back.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right, Mr. Kendall.

1 MR. KENDALL: I would ask the witness to please
2 step down, please, ma'am.

3 (Witness off the witness stand)

4 BY MR. KENDALL:

5 Q. Now, Ms. Wilkins, a moment ago you had testified as to
6 what had happened. I would like, if you could, to show us,
7 using this laser pointer right here and on this thing, both
8 where the bathroom window was and about where the defendant
9 was standing.

10 A. The bathroom window is here, and Mr. Rainey was
11 standing here.

12 Q. Was he standing behind any bushes, trees, or anything
13 along those lines?

14 A. No, sir.

15 Q. And which direction was he facing? Was he facing
16 towards the woods, or was he facing towards the house, or
17 towards [REDACTED]?

18 A. He was facing the boulevard.

19 Q. Okay. And what was he doing?

20 A. He had his penis out and he was ejaculating.

21 Q. Okay. Have you ever seen this gentleman before?

22 A. Yes, I have.

23 Q. You can go ahead and take your seat, please.

24 (Witness back on the witness stand)

25 BY MR. KENDALL:

1 Q. One question before we get into that. On whose
2 property was he standing? On whose premises was he standing
3 when he was looking up to you with his penis exposed?

4 A. He was standing on our property.

5 Q. Okay. Do you see the gentleman who was standing there
6 with his penis exposed in the courtroom today?

7 A. Yes, I do.

8 Q. Could you please point him out to the jury?

9 A. He's there.

10 MR. KENDALL: Could we let the record reflect that
11 she's pointing at the defendant, Your Honor?

12 THE COURT: It shall.

13 BY MR. KENDALL:

14 Q. And how had you seen this individual before, or what
15 contact did you have with this individual before?

16 A. He -- he normally cuts grass that -- in the field that
17 sits right beside the house, and he normally cut grass maybe
18 about every two to three weeks.

19 Q. On this particular day did you hear any lawnmowers or
20 see any lawnmowers?

21 A. No.

22 Q. Okay. Had he ever attempted to contact you before,
23 either just talking to him or leaving notes, or letters, or
24 anything like that?

25 A. He has. He has left notes and numbers on my car.

1 Q. Okay. And how did you respond to this? What was the
2 nature of these notes?

3 A. For me to call him, and he wanted to take me out,
4 and --

5 Q. Okay. And how did you respond to these? These all
6 happened -- or when did these happen? Did these happen
7 before or after he had --

8 A. It was before.

9 Q. And how did you respond to these?

10 A. I -- I wouldn't look at them. I would take the numbers
11 and throw them away.

12 Q. Okay. All right.

13 So you have had some interaction with him before?

14 A. I have.

15 Q. Okay. And on this day about how long, from beginning
16 to end, was he standing -- since from the time you saw him
17 until he was ultimately removed, about how long was he
18 standing in back of your house?

19 A. About five or ten minutes.

20 Q. About five or ten minutes?

21 A. Uh-huh.

22 Q. And during that time, again, just to relay to the jury,
23 about how far away from the house was he?

24 A. About fifteen feet.

25 Q. Okay. And he was below your bathroom window, is that

1 correct?

2 A. He was.

3 Q. At any time did you ever see him appear to be
4 urinating?

5 A. No, sir.

6 Q. And on this day did you, to your knowledge, anybody,
7 give him permission to be on your property?

8 A. No, sir.

9 Q. Okay.

10 MR. KENDALL: The State has no further questions.

11 BY MR. KENDALL:

12 A. Please answer any questions that Mr. Rainey might have
13 for you then, okay?

14 MR. RAINEY: Thank you, Your Honor.

15 CROSS EXAMINATION BY MR. RAINEY:

16 Q. Before I --

17 THE COURT: Mr. Rainey -- Mr. Rainey, let me ask
18 you to do this. Do you see where the court reporter is
19 seated, right there on that rail? You can move down just a
20 little bit.

21 BY MR. RAINEY:

22 Q. How good are your eyes, Ms. Kimberly?

23 A. 20/20.

24 Q. Did you -- did you not -- did you not ask me about
25 cutting your grass that day that this incident supposed to

1 have happened?

2 A. I had.

3 Q. And I used to cut y'all's grass for a whole year last
4 year?

5 A. You did.

6 Q. I mean, I'm saying you are saying like -- I mean, I
7 have been on your property, as far as coming onto your
8 property and leaving notes, like I was stalking you or
9 something, but -- Kimberly.

10 You told my first cousin -- you told one of my
11 cousins -- you told my cousin that me and you couldn't go
12 together? By meaning I have been talking, it ain't like we
13 don't know each other. Like we done talked, ain't we? We
14 have been talking to each other before, haven't we?

15 A. No, I haven't.

16 Q. You haven't -- you haven't never asked me to
17 cut your -- how much I charge you to cut your grass?

18 A. That's it.

19 Q. And that's where I had left that note on your car.

20 Did you call my job?

21 A. No, I didn't.

22 Q. I mean, didn't you -- no, I -- don't worry about that.

23 If I was facing -- if I was facing the boulevard,
24 wouldn't every car at that road come up through there would
25 have seen me out there standing out there in that field?

1 A. Yes.

2 Q. If I wasn't standing in the bushes?

3 A. No.

4 Q. Why would y'all be the only one who called the police
5 and saying that I was standing out there, because I know a
6 whole line of cars would be coming up that street.

7 A. You were standing in my yard.

8 MR. RAINEY: Your Honor, I got pictures, as far as
9 her yard, Your Honor. These are marked pictures. I have
10 been having these pictures because the property that I have
11 been on have been on my job property where I work at, Your
12 Honor.

13 THE COURT: Well, you can -- did you show those
14 pictures to Mr. Kendall?

15 MR. RAINEY: Yes, sir.

16 MR. KENDALL: I have seen those. I'm going to
17 need to get some foundation for that. I don't believe that
18 this would be the appropriate time to introduce those.

19 MR. RAINEY: I would like -- I was wanting to try
20 to let the jurors see what her pictures compared to --

21 THE COURT: Well, you can --

22 MR. RAINEY: I can compare if off those pictures
23 with my pictures.

24 THE COURT: Well, just a minute. You can ask this
25 witness if she recognizes those photographs. And if she

1 does, then she can answer your questions about those
2 pictures. If she doesn't recognize the photographs, you
3 will have to have some other witness to do it.

4 MR. RAINEY: Could you hand them to her?

5 THE COURT: Sure.

6 BY MR. RAINEY:

7 Q. Do you recognize these?

8 A. Yes, it's the bushes that sits right behind my house.

9 Q. But the bush she was pulling out on your pictures is a
10 ways from that picture. It's way out there in the field.

11 MR. RAINEY: It's way out there in the field, Your
12 Honor, where they are pointing at on their --

13 MR. KENDALL: I'm going to object, Your Honor.

14 MR. RAINEY: She's pointing way out here.

15 THE COURT: Mr. Rainey.

16 MR. RAINEY: I'm standing about right here.

17 THE COURT: Listen to me. You can't comment on
18 the evidence. You can ask her questions about those
19 photographs, if you would like to.

20 MR. RAINEY: All right, sir, Your Honor. Thank
21 you, Your Honor.

22 A. This is my house.

23 THE COURT: Wait. Excuse me, Ms. -- let me ask
24 you, Ms. Wilkins. When you refer to something and say this
25 something, you refer to that exhibit number, please, so the

1 record knows what it is.

2 THE WITNESS: Okay, I'm sorry.

3 A. No. 4. Exhibit No. 4 is my house.

4 BY MR. RAINEY:

5 Q. And if I was standing out there, right there at that
6 picture right there, wouldn't I be kind of out there and
7 every car --

8 MR. RAINEY: I mean, I'm saying, Your Honor, every
9 car could see down off in there. You see, I don't care
10 which way you are going.

11 THE COURT: Mr. Rainey, you are not testifying
12 right now.

13 MR. RAINEY: All right, sir.

14 THE COURT: You are asking her questions.

15 MR. RAINEY: All right.

16 THE COURT: Do you have any other questions that
17 you want to ask her?

18 MR. RAINEY: No, sir.

19 THE COURT: Okay.

20 MR. RAINEY: Thank you, Ms. Wilkins.

21 THE COURT: Okay. Anything further?

22 MR. KENDALL: Very, very briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. KENDALL:

24 Q. If you wouldn't mind stepping down just for one quick
25 second again.

1 (Witness off the witness stand)

2 BY MR. KENDALL:

3 Q. Your testimony earlier with the [REDACTED]
4 is up here, right, at the top of the hill?

5 A. Yes.

6 Q. And that he was down here at the bottom of the hill,
7 right?

8 A. Yes.

9 Q. So there is an actual hill separating you from people
10 being able to see, correct, from the road?

11 A. Correct.

12 Q. Okay. Please take a seat back up there real fast. I
13 just have a couple real quick things that I'm curious about.

14 (Witness back on the witness stand)

15 BY MR. KENDALL:

16 Q. Those pictures, did you ever give Mr. Rainey permission
17 to take pictures of your bathroom window?

18 A. I did not.

19 Q. As far you know, did anybody?

20 A. No, sir.

21 Q. Has he ever been in your house before, that you know
22 of?

23 MR. RAINEY: Your Honor?

24 A. He has not.

25 MR. RAINEY: Your Honor?

1 BY MR. KENDALL:

2 Q. So how would he know?

3 THE COURT: Just a minute?

4 Sir?

5 MR. RAINEY: Just to address the court, Your

6 Honor? I took them off the job.

7 THE COURT: You can't testify until you take the
8 witness stand.

9 MR. RAINEY: All right, Your Honor. Thank you,
10 Your Honor.

11 BY MR. KENDALL:

12 Q. So I guess what I'm wondering is would he have any way
13 of knowing which one is your bathroom window, unless he was
14 looking in it?

15 A. He would not.

16 Q. Okay.

17 MR. KENDALL: I have got nothing further, Your
18 Honor.

19 THE COURT: Okay. You may step down.

20 MR. KENDALL: The State would call Ms. Sybil
21 Wilkins.

22 SYBIL WILKINS, having been first duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION BY MR. KENDALL:

25 Q. How are you this morning, ma'am?

1 Would you mind stating your full name for the record,
2 please?

3 A. Sybil A. Wilkins.

4 Q. And Ms. Wilkins, where are you from?

5 A. Gaffney, South Carolina.

6 Q. And where do you currently reside?

7 A. I live at [REDACTED].

8 Q. And how long have you lived there, ma'am?

9 A. Five -- going on five years.

10 Q. And were you living there on May 5th, 2011?

11 A. Yes.

12 Q. And what county, city, and state is that located in?

13 A. Cherokee County, South Carolina.

14 Q. Okay. And were you at your home around 1:00, 1:30 on
15 May 5th, 2011?

16 A. Yes.

17 Q. And what were you doing at approximately 1:00 to 1:30
18 during that time?

19 A. I was in my room sitting on my bed and my daughter
20 called me and told me to come here and bring her camera, the
21 phone.

22 Q. Okay.

23 A. So I got up and she said that Jerome was outside with
24 his penis out masturbating.

25 Q. Okay.

1 A. So I went -- I looked -- so I got her phone and went
2 into the room, looked over the tub and he was standing
3 there. So I got out of the tub and went to my living room,
4 locked my door and went to my back porch and he was standing
5 there fondling himself --

6 Q. Okay.

7 A. -- looking up at my bathroom window.

8 Q. And approximately how far from the house was he, ma'am?

9 A. Could I show you like this way?

10 Q. Yes, ma'am.

11 A. It was about as far as from where I'm sitting to the
12 end of that.

13 MR. KENDALL: Can we let the record reflect, Your
14 Honor, that the witness has --

15 A. It's close.

16 MR. KENDALL: -- pointed to the edge of the
17 witness box to the front end of the jury box, Your Honor?

18 BY MR. KENDALL:

19 Q. Okay. And at that time whose property was he standing
20 on? Whose premises was he standing on?

21 A. It's our property.

22 Q. Okay. And at that time was he standing behind any
23 trees or anything like that?

24 A. No. No, no.

25 Q. And to be clear, what was he -- what was he doing?

1 What was he doing standing there?

2 A. He -- he was standing there with his penis out. He was
3 masturbating.

4 Q. Okay. Did you at any time see him urinating or
5 anything like that?

6 A. No. No, no, no.

7 Q. Okay. Did you hear at any time any lawnmowers going on
8 anywhere around the premises?

9 A. No.

10 Q. And, in fact, that day had you seen any lawnmowers
11 going on?

12 A. No, not that day. No.

13 Q. And do you see that gentleman in the courtroom today?

14 A. Yes.

15 Q. Could you mind pointing him out to the jury, please,
16 ma'am?

17 A. Mr. Rainey.

18 MR. KENDALL: Okay. If you could let the record
19 reflect, Your Honor, that she's, in fact, pointed to Mr.
20 Rainey?

21 THE COURT: It shall.

22 BY MR. KENDALL:

23 Q. And how did you respond to this, ma'am?

24 A. I was kind of in shock when I saw him. And I just
25 stayed there, because it's -- it's just -- it was just

1 ladies living at the house at the time, so I was kind of in
2 shock. But after I locked the door, I felt better about it.
3 I didn't -- I wasn't too --

4 Q. Well, what did you and your daughter do with the phone?

5 A. She called the police.

6 Q. Okay. And when did this situation resolve itself?
7 When did he get off your property?

8 A. When the police came.

9 Q. Okay. And about how long from the beginning, when you
10 first realized that he was out there, until the end, about
11 how long was that?

12 A. It was five minutes, or more. Maybe ten minutes.

13 Q. Okay. Okay.

14 And at any point in time have you ever allowed him
15 inside your house? Did he have any way of knowing which
16 window was the bathroom window?

17 A. No.

18 Q. At any time did you ever -- did you give him on this
19 day permission to come onto your property at all, to stand
20 there, or anything like that?

21 A. No.

22 Q. Okay.

23 MR. KENDALL: I have got no further questions.

24 BY MR. KENDALL:

25 Q. Please answer any questions that Mr. Rainey might have

1 for you, okay?

2 CROSS EXAMINATION BY MR. RAINEY:

3 Q. Good morning, Ms. Wilkins.

4 A. Hi.

5 Q. Do you wear glasses?

6 A. No.

7 Q. You don't wear glasses.

8 You got perfect eye vision? You got 20/20?

9 A. No, I don't have 20/20, but I don't wear glasses
10 either.

11 Q. Didn't you state -- didn't you state that I had been
12 standing on that property about fifteen minutes?

13 A. You were standing on the property for maybe five
14 minutes, or more. Maybe five to ten minutes.

15 You were standing there with your pants unzipped, with
16 your penis in your hand. I'm on the back porch. On my back
17 porch --

18 Q. Wouldn't you might have been mistaken that I was --

19 THE COURT: Just a minute. She's -- you have got
20 let her finish her answer.

21 A. On the back porch there is windows.

22 BY MR. RAINEY:

23 Q. Might you have been mistaken that I might have been
24 shaking myself?

25 A. You could have been shaking yourself, but it didn't

1 look like shaking yourself. Like you was this. You wasn't
2 doing this.

3 Q. You are saying I was standing about fifteen minutes.
4 Your daughter said I was standing there ten minutes.

5 A. You wasn't doing -- Jerome, you wasn't doing this. You
6 were doing this. I'm standing back on that porch looking at
7 you.

8 Q. Couldn't you have been mistaken I might have been
9 shaking myself, instead of you thinking I might have been --

10 A. You are not --

11 Q. -- ejaculating?

12 A. No, I'm not mistaken about that, and I'm not mistaken
13 to how you were turned.

14 Q. Do you recognize these pictures here, as far as --

15 Would I have been standing somewhere up around probably
16 around in here?

17 A. Okay, I -- I'm looking at the pictures now.

18 Q. All right. I want to ask you something else about this
19 picture here. This picture here, is this picture way out
20 that -- way out in the yard, or is it close to your house?

21 A. This picture is right at -- is right at the house.

22 Q. Okay.

23 A. As a matter of fact, I can't show you there, but it's
24 not too far from that house.

25 Q. Okay. Now --

1 A. It's not like out where the building is.

2 Q. All right. Thank you.

3 A. But you were standing -- you see? You see that bush?

4 You were right down here.

5 Q. You see --

6 A. That bush is like maybe seven feet from --

7 Q. If you step out of your house and took that picture,
8 would it be going that way, or would it be coming back
9 behind your house?

10 A. If I come out -- if I come out the front of my house --
11 excuse me, if I come out the front of my house and standing
12 in the front of my house and take the picture, I'm looking
13 in my backyard, because [REDACTED] is here.

14 The house -- the house --

15 MR. RAINEY: Can I -- can I point on this?

16 THE COURT: Yes, sir.

17 MR. KENDALL: I'm sorry, here.

18 THE COURT: Well, can't he just use that projector
19 over there?

20 MR. RAINEY: Your Honor --

21 BY MR. RAINEY:

22 Q. Would I have been standing somewhere about right here?

23 THE WITNESS: May I step down and show him where
24 he was standing?

25 THE COURT: Yes, ma'am.

1 (Witness off the witness stand)

2 BY MR. RAINEY:

3 Q. If a bush -- that bush is -- that bush is here, would I
4 be standing right there, or --

5 A. Jerome, the bush -- the bush that you are talking about
6 here is on over this --

7 THE COURT: Ms. Wilkins, be careful with that
8 light now. You can put somebody's eye out with that. Make
9 sure that you point it at the screen.

10 THE WITNESS: I'm sorry, Your Honor.

11 A. The bush -- this bush is right maybe five feet from --

12 BY MR. RAINEY:

13 Q. I'm saying -- I'm saying you see the picture? You see
14 how you'll took this --

15 A. This is the bush. This was just --

16 Q. Let's that bush right there I --

17 A. You --

18 Q. That bush right there --

19 THE COURT: Excuse me. Whoa. Whoa. Stop.

20 BY MR. RAINEY:

21 Q. But --

22 THE COURT: Mr. Rainey?

23 BY MR. RAINEY:

24 Q. But --

25 THE COURT: Mr. Rainey. Stop -- when I say

1 stop --

2 MR. RAINEY: Yes, sir, Your Honor.

3 THE COURT: -- stop.

4 MR. RAINEY: Thank you, Your Honor.

5 THE COURT: The court reporter has to take down
6 everything y'all say, and it's hard enough when one person
7 is talking. When two are talking it's impossible.

8 So, Mr. Rainey, you ask the question. You let Ms.
9 Wilkins answer it. Don't interrupt her until she's
10 finished. And then when she's finished, you can ask your
11 next question.

12 MR. RAINEY: All right, Your Honor.

13 Your Honor, could I -- can I put a couple of --
14 put this on screen over there?

15 THE COURT: Okay. Show -- just a minute. Show
16 that photograph to --

17 MR. RAINEY: Yeah, I want to put your picture on
18 here, but I'm going to put my picture on there too, as far
19 as --

20 THE COURT: That's fine.

21 MR. KENDALL: The colored one, Mr. Rainey, is
22 sitting right next to the --

23 MR. RAINEY: Well, I mean as far as the picture of
24 the trees and stuff, I want that picture.

25 The picture here -- this picture here, Your

1 Honor --

2 THE COURT: Which picture is that?

3 MR. RAINEY: This is a picture --

4 THE WITNESS: This is Exhibit No. 1.

5 THE COURT: No, Ms. Wilkins, don't answer
6 questions, unless he's asking you something.

7 MR. RAINEY: Exhibit No. 1, Your Honor.

8 THE COURT: No. 1. Thank you.

9 MR. RAINEY: Your Honor, this picture here is
10 like, you know what I'm saying, as far as the way it's
11 pointed, where it's at, I'm saying this is on the side of
12 this bush here.

13 THE COURT: Mr. Rainey, I need use to that
14 microphone.

15 MR. RAINEY: That bush right here I am talking
16 about.

17 Now, is she talking about -- now, my picture is
18 right here, as far as her house, you come out of her house,
19 you see -- you don't see that bush. You see her house.

20 MR. KENDALL: Is there --

21 MR. RAINEY: If I -- excuse me. If I couldn't
22 have been standing right here --

23 MR. KENDALL: Objection, Your Honor. We request a
24 question.

25 THE COURT: Mr. Rainey, remember what I told you.

1 You can't testify. You are asking Ms. Wilkins questions,
2 theoretically, but you don't get to testify yet.

3 MR. RAINEY: All right, sir. All right, Your
4 Honor.

5 BY MR. RAINEY:

6 Q. If you came out of your house, you wouldn't see that
7 bush. You would be looking down towards the woods right
8 there, right?

9 A. If you come out of the house, yes, but when you come
10 out --

11 Q. I'm saying --

12 A. -- of my house --

13 THE COURT: Excuse me. Mr. Rainey, let her answer
14 the question that you have asked.

15 MR. RAINEY: All right, Your Honor.

16 A. When you come out of my house, this is the little --
17 this is --

18 BY MR. RAINEY:

19 Q. That's the bush right there.

20 You took the picture on this side of the tree. You
21 didn't take it on that side of the tree.

22 A. It doesn't matter. This is five feet away, either way
23 you go. If -- I don't want that.

24 That's the car. That's -- that car -- from that bush
25 to the car is in my house. That's five feet.

1 Q. Okay.

2 A. Maybe five feet.

3 Q. How far down -- how far down by them bushes is your
4 property?

5 A. All the way down to here.

6 Q. Over that way is just back behind your house is your
7 property?

8 A. I'm showing you the darkest part, the darkest part.

9 Q. That's the back part of your house?

10 A. That's the back part of the house.

11 Q. So that's as far as your property goes? It doesn't go
12 up on the side?

13 A. It don't go no further than right there.

14 Q. So I wasn't even on your property then?

15 A. Yes, you were here, Mr. Rainey.

16 MR. RAINEY: On this picture here, Your Honor, if
17 the back side of the house is right here and I would have
18 been standing right here, you could see -- you can see only
19 just one of my pictures I'm on the side of the house, not
20 the back side of the house, Your Honor.

21 THE COURT: Mr. Rainey --

22 MR. RAINEY: I'm on the side.

23 THE COURT: Mr. Rainey --

24 MR. RAINEY: Your Honor. Yes, sir, Your Honor.

25 THE COURT: You keep addressing comments to me.

1 As I have told you, it's not your turn to testify. You need
2 to ask Ms. Wilkins questions, if you have any. If you don't
3 have any, just stop.

4 MR. RAINEY: Thank you, Your Honor.

5 (Witness back on the witness stand)

6 THE COURT: You don't have any other questions,
7 Mr. Rainey?

8 MR. RAINEY: No, sir. Thank you.

9 THE COURT: Okay. Mr. Kendall?

10 MR. KENDALL: Your Honor, I do have an issue I
11 think I need to take up outside of the presence of the jury.

12 THE COURT: All right, let me ask the jury to
13 please step out.

14 Don't talk about the case. I'll bring you right
15 back out.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: All right, Mr. Kendall?

19 MR. KENDALL: Your Honor, Mr. Rainey brought up an
20 issue that we had discussed previously with the witnesses
21 not to discuss an incident that happened about three days
22 earlier, on May 3rd, 2011, where they had caught him
23 basically standing out there again. This was an earlier
24 incident where they had been instructed they were not to
25 discuss this, as he was not on trial for this. She did give

1 a statement indicating that he was out there for fifteen
2 minutes on that May 3rd date. Mr. Rainey brought that up.

3 The reason I would like to proffer testimony
4 before the court is is I think I need to resolve this
5 confusion that she didn't give a statement saying on May
6 5th, the day that he was arrested, he was standing out there
7 for fifteen minutes. So that's never been in any of her
8 statements. It was on May 3rd he was out there for fifteen
9 minutes. So I would like to proffer testimony before the
10 court to ensure this is not something which will lead to an
11 inappropriate exposure to the jury to something for which
12 he's not currently being charged.

13 THE COURT: Okay. You may.

14 Mr. Rainey, did you need to be heard on Mr.
15 Kendall's request?

16 MR. RAINEY: No, sir.

17 THE COURT: Okay.

18 Is that it?

19 MR. KENDALL: Yes, sir.

20 THE COURT: Bring the jury back.

21 Before you do that, I'm sorry.

22 Mr. Rainey, let me caution you one more time. I'm
23 giving you a lot of leeway because you are not a lawyer, but
24 at the same time, as I told you yesterday, if you want to
25 represent yourself, you have got to comply with the same

1 rules and obligations that a lawyer would.

2 Right now he's calling -- Mr. Kendall is calling
3 witnesses to the stand to provide testimony. You can
4 examine them by asking them questions. You do not get to
5 make statements of your own.

6 MR. RAINEY: All right, sir.

7 THE COURT: You don't get to contradict them by
8 your statements.

9 You can ask them questions --

10 MR. RAINEY: All right, Your Honor.

11 THE COURT: -- but you don't get to testify until
12 you take the witness stand and be placed under oath. Do you
13 understand?

14 MR. RAINEY: Yes, sir, Your Honor.

15 THE COURT: So don't do that any more.

16 All right, bring them back.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: All right, Mr. Kendall.

20 MR. KENDALL: Thank you, Your Honor.

21 REDIRECT EXAMINATION BY MR. KENDALL:

22 Q. Ms. Wilkins, I would just like to clarify something
23 very, very quickly with you.

24 A few moment ago during his cross-examination Mr.
25 Rainey asked you about how long he was standing out there,

1 is that correct?

2 A. Uh-huh.

3 Q. He had said that previously --

4 THE COURT: Use the microphone, please.

5 THE WITNESS: Okay.

6 THE COURT: You can move it, if you need to.

7 THE WITNESS: Okay.

8 BY MR. KENDALL:

9 Q. And he had said that you had originally said he was out
10 there for fifteen minutes, is that correct?

11 A. Yes.

12 Q. Now, that fifteen minutes he was standing there, was
13 that in regards to this incident, or is that in regards to
14 one that occurred on May 3rd, 2011?

15 A. That was the May 3rd.

16 Q. Okay. I'm going to show you --

17 MR. KENDALL: If we can mark this as Exhibit 3.

18 I apologize, Your Honor, this should have done
19 during break.

20 (Written Statement marked as State's Exhibit No. 3,
21 for identification)

22 BY MR. KENDALL:

23 Q. I'm going to show you what is marked State's Exhibit 3.

24 MR. KENDALL: Mr. Rainey.

25 THE COURT: Are you just providing that to the

1 witness for the purpose of refreshing her recollection?

2 MR. KENDALL: I was going -- I was just going to
3 have her read the statement in its entirety, Your Honor.

4 THE COURT: Well, she's on the witness stand. She
5 can testify. She doesn't need -- is that a statement she's
6 supposedly given?

7 MR. KENDALL: Yes, sir.

8 THE COURT: No, sir, she doesn't need to read her
9 statement. She can testify to what you want to ask her.

10 MR. KENDALL: Okay. Yes, sir.

11 BY MR. KENDALL:

12 Q. Ms. Wilkins, could you just describe very briefly to
13 the court what happened on May 3rd, the previous -- the
14 previous incident?

15 A. May 3rd he -- this was the first time that he came to
16 that bedroom window. He was -- he had his penis out. He
17 was masturbating.

18 We kind of overlooked it, because we do -- I do know
19 Mr. Rainey, but we kind of overlooked -- I don't know him
20 like on a friendly basis, but we -- but he cuts the grass
21 next door, and so we just kind of --

22 But then he came back May 5th, which scared us, because
23 we just -- like I said before, it's just ladies that live
24 there in the house. That scared us when he came back.
25 That's when my daughter called me to tell me come and look,

1 when we called the police.

2 Q. And to be clear, on that occasion, about -- on that
3 first time, about how long was he standing there?

4 A. About fifteen minutes.

5 Q. And on the second time, the one where the police came?

6 A. About five to ten.

7 Q. Okay. I just wanted to clear that up.

8 MR. KENDALL: I have got no further questions.

9 MR. RAINEY: Your Honor, may I ask her one more?

10 THE WITNESS: Yes, sir.

11 RECROSS EXAMINATION BY MR. RAINEY:

12 Q. Didn't I -- I used to cut y'all's grass. When I was
13 going and cutting y'all's grass and --

14 A. Yes, sir. Yes, sir, Mr. Rainey you would cut our
15 grass. You certainly would.

16 Q. It wasn't like I was snooping around your house or
17 stalking y'all's house like I might have been doing
18 something like y'all assuming I might have been doing.

19 A. Not while you were cutting grass, but on May the 5th
20 you were standing there with your pants unzipped with your
21 penis out.

22 Q. Like I said, maybe you might have assumed that I was
23 probably masturbating. I might have been shaking myself.

24 A. Well, Mr. Rainey, I stood and watched you. I didn't
25 see you urinating or anything. I saw you masturbating.

1 MR. RAINEY: Thank you, Your Honor.

2 MR. KENDALL: The State has no further questions.

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

4 MR. KENDALL: The State calls Detective Bolton to
5 the stand.

6 DETECTIVE JAMES BOLTON, having been first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. KENDALL:

9 Q. Detective Bolton, could you please state your name and
10 rank for the record, please?

11 A. My name is James Bolton. I'm a police detective for
12 the City of Gaffney Police Department.

13 Q. And how long have you worked there, sir?

14 A. As of March 2nd was four years.

15 Q. Four years.

16 And how long have you been in law enforcement?

17 A. A total of seven.

18 Q. Okay. And were you employed with the city on May 5th,
19 2011?

20 A. I was, sir.

21 Q. And could you please describe what happened on that
22 day?

23 A. In relation to this incident, we got -- officers -- it
24 came out as a general broadcast for officers as a suspicious
25 subject or a prowler in the area of [REDACTED]

1 Boulevard, which is in the City of Gaffney.

2 Myself and some other officers were pulling out of the
3 station here in town. I had the green light, so I was the
4 closest officer there. I believe my response time was
5 within one minute.

6 While I was going there, dispatch came across the radio
7 again stating that the caller states that the subject is
8 still on the scene, but they have locked the door.

9 When I pulled on the scene at the address, initially
10 pulling up to the road I did not see the defendant, but they
11 had given an accurate description, based on what we know now
12 as Ms. Wilkins' call to 9-1-1.

13 I stepped out of my patrol unit and was going to make
14 an approach to the door. I seen the defendant down in the
15 area as has been described in the testimony, matching the
16 description. Therefore, I -- I had no knowledge of who his
17 identity was at that time, just by the description they had
18 given. I asked that he come to the top of the hill. And
19 about the time I'm getting him to the top of the hill the
20 door unlocks, Ms. Sybil said "that's him." So at that time
21 I advised the defendant that he was going to be placed into
22 an investigative detention while I try to find out what was
23 the nature of their call, and investigative detention means
24 he's not under arrest, but he's not quite free to leave
25 until we see the source of the use for 9-1-1.

1 Ms. Sybil was very upset and distraught and then
2 started describing to me what he had done while he was
3 coming up to the top of the hill.

4 He kept trying to speak. In fact, he started to use
5 profanity. I advised him "just please, just give me a
6 moment. Let me speak with her."

7 She is beginning to tell me what he was doing and I
8 immediately looked back and noticed at that time that the
9 defendant's pants were, in fact, unzipped.

10 So within that matter of two minutes Officer Sizemore
11 arrived. I advised him and requested that he would please
12 stand by with the defendant while I continue the
13 investigation.

14 I stepped into the house, because Sybil was very upset,
15 and, as you could tell, she was very scared. She was
16 telling me of the incident as it happened, as she's
17 testified to. I asked her where her daughter was located.
18 She said her daughter was putting on clothes. And within a
19 matter of another minute and a half Kimberly stepped into
20 the room and again was describing what had happened.

21 They each had given me verbal statements in separate --
22 while they were separated and they both corroborated each
23 other. And they in turn discussed that he had done this two
24 days prior.

25 Based on that I asked Ms. Sybil if she would feel

1 comfortable to step outside to the porch and point to the
2 exact area of where he was located. She did. And Kimberly,
3 once dressed appropriately from the bath, came and pointed
4 to the exact same area as well. At that time I looked and I
5 noticed that the bathroom window had no curtain on it. I
6 looked for any areas of footprints or anything and I was
7 trying to confirm his exact location.

8 At this time I went back to the defendant and offered
9 him Miranda Rights, advised him that he had the right to
10 remain silent. And when asked did he understand those
11 rights he did, in fact, say yes.

12 I asked him his location. He pointed primarily to the
13 area of which Sybil and Kimberly had stated. I asked him
14 what was he doing there. He first said nothing. He was
15 continuing to use profanity. I kept asking him, I said
16 "sir, why is your pants unzipped," because I had never
17 alerted him to that I saw that. It was up until that point.
18 I says "they are trying to say that were standing out there
19 exposing yourself. Is that true?" Immediately he started
20 avoiding eye contact, showing frustration, which from an
21 investigative standpoint you start noticing areas which
22 would commonly point to deception.

23 Then he indicated that he was -- that he had urinated
24 down there and that he had been out cutting grass. He was
25 mildly perspiring. There was no lawnmower in the immediate

1 proximity. In fact, I seen none in the area that we were at
2 between the two roadways, [REDACTED] and West Dr.
3 Ellen Rosemond, whatsoever. There was no lawnmower there.

4 I then went back to the vicinity and pretty much did a
5 perimeter sweep of where he said he was at with relation of
6 where both the victims had stated he was at looking for
7 areas of moisture. The weather was warm, sunny, dry. Any
8 types of indicators that he may have been out there
9 urinating, I found none.

10 At that point in time, based on probable cause that I
11 established, I asked Officer Sizemore if he would obtain
12 written statements from both victims, and he indicated that
13 he would.

14 At this time I advised Mr. Rainey that he was going to
15 be placed under arrest, and he was transported to the jail
16 and while en route he continued to use profane language
17 and --

18 Q. And so that kind of --

19 A. He did not resist, but he was using profane language.

20 Q. So to summarize a couple of key points, when you
21 arrived, Mr. Rainey was standing in that area which was
22 described by both Ms. Wilkins, is that correct?

23 A. Yes, sir.

24 Q. And at that time you discovered that his pants were
25 unzipped --

1 A. Yes, sir.

2 Q. -- is that correct?

3 A. Yes.

4 Q. And would you -- how would you -- again, if you could
5 describe to the jury what his state was like when he was
6 being -- when you were discussing about this?

7 A. Again, when I alluded to the questions as to the
8 statements that were provided to by the victims in more of a
9 confrontational of testimony or evidence that they were
10 presenting to me, he immediately started avoiding eye
11 contact, using profanity and presenting furtive movements.

12 Q. And based on your investigation and the other law
13 enforcement, no evidence of urination was discovered, is
14 that correct?

15 A. No, sir, there was not.

16 Q. I have got no further questions. Please answer any
17 questions that Mr. Rainey might have.

18 CROSS EXAMINATION BY MR. RAINEY:

19 Q. Officer Hartman (sic) -- Officer Hartman (sic), aren't
20 you required to use -- act in the color of state law within
21 the scope of your official duties as an officer of the City
22 of Gaffney Police Department?

23 A. Yes, sir, I was.

24 Q. Were you the first officer on the scene when they
25 dispatched -- dispatched a call, was you the first or the

1 last officer there?

2 A. I was the first officer to arrive, sir.

3 Q. Officer Hartman (sic), you wasn't there. Officer
4 Hartman (sic)-- it was another officer came.

5 Why was I standing on the bottom of the hill or top of
6 the hill? You said I was standing on the bottom of the
7 hill.

8 MR. KENDALL: I'm going to object.

9 BY MR. RAINEY:

10 Q. I was standing on the top of the hill when you got
11 there. You was the last officer who got there.

12 THE COURT: Mr. Rainey, don't forget what I told
13 you. You can't testify yet. You can ask him questions.

14 MR. RAINEY: All right, Your Honor.

15 BY MR. RAINEY:

16 Q. You say that you were the first officer there on the
17 scene, Officer Hartman (sic)?

18 A. I was, sir, and, the record reflects --

19 Q. The only officer. Ain't the first, but the only
20 officer?

21 A. No, I was not only officer. I was the first officer.

22 MR. RAINEY: Thank you, Your Honor. No more
23 questions, Your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, sir.

1 MR. RAINEY: Your Honor, I have got one more
2 question.

3 THE COURT: Okay. You've got one more?

4 MR. RAINEY: I got a question about the pictures,
5 Your Honor.

6 MR. RAINEY: Could I see the pen?

7 BY MR. RAINEY:

8 Q. On your picture right here --

9 THE COURT: Use the microphone.

10 BY MR. RAINEY:

11 Q. Our your picture right here --

12 THE COURT: Mr. Rainey, use the microphone.

13 BY MR. RAINEY:

14 Q. Our your picture right here, as far as --

15 THE COURT: The microphone.

16 MR. RAINEY: Oh.

17 BY MR. RAINEY:

18 Q. Our your picture right here, as far as you taking a
19 picture, they was saying I was standing right here. You
20 see -- you see what -- you see where the tree at? You can't
21 see nothing back on this side. The problem is you see the
22 house. So I would be probably standing way out here in this
23 field. You are about to see the next road over here.

24 A. No, sir.

25 Q. Now, I got a picture of my own. My picture is taken

1 from where I was standing there at the house.

2 And also on the other -- this is Exhibit 1-A (sic), a
3 picture that was taken.

4 MR. KENDALL: Is there a question here, Your
5 Honor? I'm sorry.

6 THE COURT: He's just telling what exhibit he was
7 referring to, 1-A (sic).

8 BY MR. RAINEY:

9 Q. I'm going to show you Exhibit No. 2, as far as the
10 property line she said was back there, back of the house and
11 I'm standing --

12 THE COURT: Use the microphone, Mr. Rainey.

13 MR. RAINEY: Oh.

14 BY MR. RAINEY:

15 Q. She said approximately the property line I was standing
16 was right here. I was --

17 I'm going to show you a picture of mine. This is
18 exhibit number --

19 A. No, sir, you were not standing in the area that you
20 just indicated upon my arrival.

21 Q. This was Exhibit No. 2 -- this is Exhibit No. 2 where
22 you don't see the tree, as far as where I had been standing
23 at on the other property of the yard.

24 And the property line was here, you know what I'm
25 saying, but they are saying I was --

1 MR. KENDALL: Your Honor, again I'm going to
2 object. We are not getting any questions. He's just
3 showing pictures where --

4 MR. RAINEY: That's all I just wanted to know, as
5 far as -- I'm just wanting to know -- to let him know or
6 understand -- well, he's saying her property line here.

7 BY MR. RAINEY:

8 Q. Y'all are saying I'm in Exhibit No. 1 and 2. Y'all are
9 saying that I would have been standing on Exhibit No. 1 way
10 out here, way up at the house. The house is back way up and
11 you can't even see the tree. You see the tree on No. 2.

12 THE COURT: Let him answer the question, if you
13 are going to ask one.

14 A. Sir?

15 THE COURT: What's your question?

16 BY MR. RAINEY:

17 Q. I'm asking how in the world can they say I had been
18 standing on their property looking through a window, the
19 house way up on the hill and the property line is right
20 here, but I'm standing on my Exhibit 4 -- well, not Exhibit
21 4.

22 If I could find a better picture.

23 Now, this is what I mean. I'm standing there on my
24 picture. It's some woods right here. I ain't even nowhere
25 near this house. You can't even see the house. A big old

1 tree you probably see. It will probably be sitting out
2 three, still out there, but that's probably somewhere on
3 your exhibit, isn't it?

4 A. Sir, I brought no exhibits. If you would allow me to
5 tell you you were not standing at this area that you are
6 pointing out, that you were testifying that you were at.

7 I can take that picture right there, that you have that
8 one right there and take that pointer and --

9 Q. About where?

10 A. -- point exactly to the location where you were.

11 Q. Was I standing back here behind the house?

12 A. I don't want you to do it for me. I'll do it.

13 MR. RAINEY: Your Honor, I have no further
14 questions for Officer Hartman (sic), Your Honor.

15 THE COURT: Okay.

16 MR. RAINEY: Thank you, Your Honor.

17 MR. KENDALL: Just one second, just to clarify.
18 After all, that's kind of confusing.

19 REDIRECT EXAMINATION BY MR. KENDALL:

20 Q. The punch line on this here, he's basically standing at
21 the grassy part at the bottom of the hill or right next to
22 that window?

23 A. Yes, sir, he was.

24 MR. KENDALL: Nothing further, Your Honor.

25 THE COURT: Step down.

1 THE WITNESS: Thank you, sir.

2 MR. RAINEY: Your Honor, may I address the court?

3 THE COURT: Just a minute.

4 MR. KENDALL: I believe the State is going to rest
5 at this time, Your Honor.

6 THE COURT: All right, ladies and gentlemen,
7 that's all of the State's evidence that they are going to
8 present. I have got some matters I'll need to address
9 before we go further, so I'll ask you please to go to your
10 jury room. Do not yet discuss the case. I'll bring you
11 back in a few minutes.

12 (The following takes place outside the presence of
13 the jury panel)

14 THE COURT: All right, Mr. Rainey, what do you
15 want to tell me?

16 MR. RAINEY: Your Honor, these -- these pictures
17 are --

18 COURT REPORTER: I can't hear him.

19 MR. RAINEY: -- (undecipherable). This is wrong.
20 He said he was the first officer on the set. And this is
21 officer was the last officer that came.

22 When the officer came, I done been up -- came up
23 the hill. He patted me down and almost -- when he came up
24 he was like "what's your name" here, and went down and
25 asked -- talked to -- and came back up and asked me did I

1 have an ID. And then that's when -- you know, that's when
2 he went down and came back up and told me I was -- you --
3 "I'm placing you under arrest." He wasn't like the first
4 officer on the scene. I do not know the officer that came,
5 Your Honor, because I had been sick. I'd been having
6 stomach problems since '98 about my stomach, but this
7 officer is lying under oath, Your Honor. This officer is
8 telling a good long lie under oath.

9 THE COURT: Well, you know what --

10 MR. RAINEY: Because he was not the only officer
11 there, Your Honor.

12 THE COURT: Well, I wasn't there. You see, I
13 wasn't there and these jurors weren't there. The people who
14 were there are providing testimony. You can agree or
15 disagree with it, but that's their testimony.

16 You can testify also.

17 MR. RAINEY: He is the only one that's here. I
18 don't see no other officers that had been there. He wasn't
19 there, but he -- he wasn't the first officer on the set --
20 on the scene.

21 THE COURT: They decide what witnesses they are
22 going to call. You decide what witnesses you are going to
23 call.

24 Do you have some witnesses that you want to call?

25 MR. RAINEY: No, sir, Your Honor.

1 THE COURT: Are you going to testify?

2 MR. RAINEY: I'm -- I can't call no witnesses.

3 I'm the only one standing out there.

4 THE COURT: Okay. Are you going to testify?

5 MR. RAINEY: Yes, sir, Your Honor.

6 THE COURT: Do you understand that you have a
7 right to testify, if you want to? Nobody can make you
8 testify. Do you understand that?

9 MR. RAINEY: Yes, sir, Your Honor.

10 THE COURT: But if you take the witness stand and
11 you do testify, you are going to have to answer the
12 solicitor's questions, even if those questions might tend to
13 prove you guilty of some crime they claim that you
14 committed. Do you understand that?

15 MR. RAINEY: Yes, sir, Your Honor.

16 THE COURT: Now, you can provide testimony, but
17 you can't just comment upon what everybody else has
18 testified to. You don't get to call people liars and things
19 like that. Do you understand that?

20 In other words, you get to testify, but the jury
21 will decide which one is telling the truth, you see? In
22 other words, they don't need your opinion or your assessment
23 as to who is telling the truth or not. They are going to
24 decide that based upon them listening to the testimony. So
25 they are going -- they have testified. You can testify, if

1 you want to. The jury will decide which one is truthful.
2 Do you understand?

3 MR. RAINEY: Thank you, Your Honor.

4 THE COURT: Okay. Do you want to testify?

5 MR. RAINEY: Yes, sir, Your Honor.

6 THE COURT: Okay. Does he have any convictions
7 that might be used for purposes of impeachment?

8 MR. KENDALL: Yes, sir, Your Honor. He's got a
9 burglary in the second degree from 2002. I believe that
10 falls within the ten year window, based on my reading of the
11 rap sheet. Also I believe his final termination date would
12 be from when he was released. He was violated in 2003, so I
13 believe that falls within the ten year window.

14 THE COURT: What else does he have?

15 MR. KENDALL: As far as --

16 THE COURT: Is that it?

17 MR. KENDALL: As far as impeachable things, Your
18 Honor, that's correct. He has a criminal history from
19 before 2002.

20 THE COURT: Well, which ones are you going to
21 offer?

22 MR. KENDALL: Just burglary in the second degree.

23 THE COURT: Just that?

24 MR. KENDALL: Yes, sir.

25 THE COURT: And he was convicted when?

1 MR. KENDALL: He was -- the conviction date on
2 that, Your Honor, was 6-4-2003.

3 THE COURT: June 4th, 2003?

4 MR. KENDALL: Yes, sir.

5 THE COURT: All right.

6 Mr. Rainey, the solicitor says if you take the
7 witness stand, he thinks it's appropriate to ask you about
8 you having a prior conviction for the crime of burglary in
9 the second degree. Are you -- do you agree with that or
10 disagree with it?

11 MR. RAINEY: Yes, sir, Your Honor.

12 THE COURT: Do you agree with it?

13 MR. RAINEY: Yes, sir, Your Honor, but it's almost
14 ten years, Your Honor.

15 THE COURT: Okay.

16 MR. RAINEY: Now, I was on probation for three
17 years. I completed it, worked hard and paid my taxes and
18 tried to do -- be constructive and trying to be a good
19 citizen.

20 THE COURT: Okay. I'm just telling you he's
21 intending to ask you about that, if you testify. Do you
22 understand that?

23 MR. RAINEY: (No response).

24 THE COURT: Do you understand that?

25 MR. RAINEY: Your Honor, I didn't hear you, Your

1 Honor..

2 THE COURT: I said he's intending to ask you about
3 that conviction, just the fact that you have been convicted.
4 He's not going into the details of it. He's just going to
5 ask you if you were convicted for the crime of burglary in
6 June of 2003. Do you agree that you were?

7 MR. RAINEY: Yes, sir, Your Honor.

8 THE COURT: Okay. All right, anything else we
9 need to address before the jury is brought back?

10 MR. KENDALL: Nothing from the State, Your Honor.

11 THE COURT: All right. Now, Mr. Rainey, you have
12 got some photographs that you have referred to. Where are
13 those photographs?

14 MR. RAINEY: Right here, Your Honor.

15 THE COURT: What are the numbers?

16 MR. RAINEY: Exhibit 1, 2, 3, 4.

17 THE COURT: Is it marked?

18 MR. RAINEY: Yes, sir, Your Honor.

19 COURT REPORTER: Five exhibits.

20 THE COURT: Mr. Kendall, have you got any
21 objection to those photographs?

22 MR. KENDALL: Not to the photographs, Your Honor.
23 He did hand this up, this eye examination. It's not an
24 actual exam. It's just instructions for what happens if you
25 have a corneal abrasion, like an eye scratch. It happened

1 after this occurred by a couple of days. We don't have a
2 doctor or anything there. He doesn't really appear to have
3 a doctor. I do have kind of a problem with that, if you --

4 THE COURT: I didn't know it was introduced. Has
5 it been introduced.

6 MR. RAINEY: Exhibit 5.

7 This is where I had went to the doctor for a
8 couple of days after I got out of jail on bond.

9 THE COURT: What's the relevance of it?

10 MR. RAINEY: By me probably stepping out of that
11 bush, I was turning around making sure nobody was coming out
12 of their house or coming out to walking down the boulevard.
13 I turned around and something fell off. I fell out of the
14 bushes.

15 It ain't the idea of being disrespectful to no
16 one. I got something in my eye and I just wanted to present
17 this, because I had caught something in my eye, as far as
18 she might have seen me stepping up a little bit probably out
19 of the bushes, you know what I'm saying?

20 THE COURT: Let me see what --

21 MR. RAINEY: I wasn't trying to be disrespectful
22 to her or her mother.

23 And I did not see her in no bathroom window. If
24 anything, she probably see -- she was probably -- everybody
25 on the boulevard was seeing her I was standing out there.

1 requires.

2 BY MR. KENDALL:

3 Q. So let me get this straight. She gets out of the
4 shower. So -- it's your testimony that you are peeing.

5 She gets out of the shower, you are peeing. She calls
6 her mother in the room, you are still peeing. They go and
7 they call the police and you are still peeing. Is that the
8 long and short of it?

9 A. No, it ain't --

10 Q. They called the police and they arrive on the scene and
11 you are still peeing, and they arrest you.

12 A. I'm standing out there looking at what I was still
13 trying to do. I'm out here. Like I said, I was out there
14 trying to cut some bushes down. I'm trying to -- trying to
15 figure out a way I'm going to do this. It ain't like I went
16 over there to pee, or let her -- expose myself to her, or
17 nothing like this. It was out there that by me standing
18 there. I was standing there for a reason. It wasn't for
19 the reason that y'all are assuming that I be standing for.

20 Q. You didn't have any tools with you?

21 A. I was there to do a job.

22 Q. You didn't have any tools with you, that's correct?

23 A. Sir?

24 Q. You didn't have any tools with you, is that correct?

25 A. No, I just -- that's why I -- I had just finished

1 cutting their grass. I think I had just finished cutting
2 their grass.

3 Q. That's funny, because nobody's else heard a lawnmower.

4 A. I had finished cutting their grass. I come back. I
5 see if I could try to cut away the shortness, these -- all
6 these bushes out right where they decided --

7 Q. So you just --

8 A. By me coming over there with the riding lawnmower I
9 could go straight across and cut their grass, so I know they
10 are going to want me to cut it. I mean, I like kind of
11 messed up. I just wanted to cut somebody's grass and ain't
12 nobody cutting the grass, you know what I'm saying, then the
13 grass beside their house is all neat and cut, you know what
14 I'm saying?

15 Q. So you just had cut the grass, is that right?

16 A. Whose grass? Their grass?

17 Q. Yeah.

18 A. I ain't cut -- I cut -- I cut the grass over there
19 regardless.

20 Q. What did you do with the lawnmower?

21 A. I keep it over there at my job, at the church.

22 Q. So why didn't you go to the bathroom at the church?

23 A. Well, we got a little ways -- you see, I got bad
24 kidneys. I got bad kidneys. I had a stomach problem. And
25 by me having to take and try to run to the bathroom, I might

1 have a take a leak right then and there, you know what I'm
2 saying? I ain't -- I ain't shy of trying to take no urine
3 outside. My momma always tells me it was always good to go
4 outside, as far as saving some walk. I don't have none.

5 Q. There is a lot of bushes over there, aren't there?

6 A. It's plenty of bushes over there.

7 Q. A whole -- the whole thing is bushes. That whole lot
8 is all the way up from the beginning up to just about near
9 Brown's, right?

10 A. Yes, sir.

11 Q. Okay. And the bush you picked, urinated on, as you
12 say, just happened to be underneath the window that a woman
13 was taking a shower?

14 A. I was not trying to walk up -- nobody -- I wasn't
15 trying to walk through no one's house yard. I was trying to
16 get where I'm -- where I -- on the property where I got to
17 get -- I wasn't trying to cut the bushes. The back of their
18 house, I was trying to cut the bushes where I was -- where I
19 was standing around -- where I'm standing at right now, I
20 was trying to cut the bushes from right there, back that
21 way.

22 Q. And it's just a coincidence of all time that where you
23 suddenly had to urinate just happened to be right underneath
24 a window of a woman taking a shower?

25 A. And another thing. I was not facing that. If I'm

1 going to be facing the boulevard -- you see where the front
2 of the house is? I would have been having to stand out from
3 under that bush and be standing there. The bushes in that
4 pictures -- the pictures -- the picture where I took and the
5 pictures they had done and took and standing there where I
6 had been standing there, that was not true.

7 I mean, I had been standing right there and I wasn't
8 facing the boulevard. I was facing towards the woods and I
9 was urinating. And then I don't know how somebody could
10 look down, unless she was trying to see something, you know
11 what I'm saying? She said she seen me the first time, so
12 she probably liked what she saw, I don't know.

13 I don't have no disrespect towards her or to her momma,
14 but it just I wasn't out there trying to disrespect no one.
15 I had bad kidneys. I was facing these woods. And I guess
16 she probably did lean over and see me out there. I mean --
17 I mean, I would shake, because I take a -- when I do pee --
18 when I do take a leak, I could pee for the longest and still
19 put myself back up in there and still urinate in my clothes.
20 That's why I normally try to use -- take and use the
21 bathroom outside, so -- I mean, I know I might be shaking it
22 a few times before I put it back up, or I'm going to have a
23 wet spot on my pants, which I wear two pair of briefs. I
24 wear a pair of briefs and boxers.

25 Q. You had to shake it from the amount of time it took for

1 them to send you -- call the police for the police -- call
2 her mother in the room, for the police to respond?

3 A. They seen me standing out there, but they seen -- they
4 didn't see me standing out there with my penis in my hand
5 all this time, no, sir.

6 Q. All right, let me ask you this.

7 What about May 3rd? Were you out there again May 3rd
8 cutting grass?

9 A. That's the day I cut her grass. Probably the day I
10 probably cut that field back over there the first May --
11 what, May the -- the first time I was over there I cut the
12 yard, the church yard.

13 Q. Uh-huh. And you suddenly had to urinate that day too
14 in their backyard?

15 A. You see, because they don't be outside. I mean, I
16 ain't -- I ain't trying -- like I say, I'm not over there
17 trying to disrespect no one.

18 Q. By you just happened to be below her bathroom window?

19 A. And it ain't that I have to use the bathroom. I have
20 bad kidneys when I got to take -- to use the bathroom, I
21 need to try to use the bathroom then, because I can't hold
22 myself.

23 Q. Well, did you ever look for any other places, other
24 than their house, to go? You got the school bus right
25 there?

1 A. It ain't like I picked their house out to go use the
2 bathroom. It's just I have a job over there doing. It
3 ain't like I'm trying to disrespect nobody to take and
4 urinating over there.

5 Q. Okay. You were convicted of burglary in the past,
6 weren't you?

7 A. It's 2000 -- 2001. I completed it and I had three
8 years probation. I completed it and I'm working hard and --
9 I mean, whatever it takes.

10 Q. Okay.

11 MR. KENDALL: No further questions, Your Honor.

12 THE COURT: Okay. You may step down.

13 MR. RAINEY: Thank you, Your Honor.

14 THE COURT: All right, Mr. Rainey, do you have any
15 other witnesses that you would like to call?

16 MR. RAINEY: No, sir, Your Honor.

17 THE COURT: All right. Is there any reply?

18 MR. KENDALL: Sir?

19 THE COURT: Do you have any reply?

20 MR. KENDALL: Oh, witnesses? No, sir.

21 THE COURT: All right, ladies and gentlemen,
22 that's all the testimony. That's all the evidence that's
23 going to be offered in the trial of this case. What remains
24 to be done are the lawyer's final summations and Mr.
25 Rainey's final summation and then my instruction on the law,

1 and then you will begin deliberations. Because of the hour
2 we are going to recess for lunch. We will resume this
3 afternoon at 1:45. At 1:45.

4 So, again, don't discuss the case at all. Please
5 report back to your jury room at 1:45 this afternoon. We
6 will conclude with the summations, my legal instructions and
7 your deliberations.

8 Have a good lunch. We will see you at 1:45.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: All right. Court is in recess until
12 1:45.

13 Mr. Rainey, the trial has begun. Once the trial
14 begins, your bond is up, so you are in custody until the
15 trial is concluded, okay?

16 MR. RAINEY: All right. Thank you, Your Honor.

17 THE COURT: Court is in recess until 1:45.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 MR. RAINEY: Your Honor, may I address the court?

21 THE COURT: Sir?

22 MR. RAINEY: Can I address the court?

23 THE COURT: Can you what?

24 MR. RAINEY: May I address the court?

25 THE COURT: Yes, sir.

1 MR. RAINEY: I have two questions for the
2 plaintiff and Officer Hartman (sic).

3 THE COURT: Oh, no, we are finished with the
4 testimony. All the testimony is in. We are done with that.

5 MR. RAINEY: Oh, all right.

6 THE COURT: You can't reopen.

7 When the jury comes back in, the solicitor and you
8 have an opportunity to make a final statement to the jury,
9 just like you had an opportunity to make an opening
10 statement. Do you want to make a final statement?

11 MR. RAINEY: Yes, sir.

12 THE COURT: Okay. You understand you can only
13 comment upon the evidence, as well as the law, but you don't
14 get to introduce any new evidence. Do you understand that?

15 MR. RAINEY: All right.

16 THE COURT: You will be going first and then the
17 solicitor comes last.

18 MR. RAINEY: All right.

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

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Good afternoon, ladies and gentlemen.

23 As you know, all the evidence has been received.

24 What remains to be done are the final summations

25 accomplished by Mr. Rainey and Mr. Kendall. After that I

1 will provide you the legal instructions and then you can
2 begin deliberations. So please give them your attention now
3 as they give you their final statements.

4 Mr. Rainey.

5 MR. RAINEY: Your Honor, I would like to apologize
6 to the plaintiff, to the parties, to the court, and to all
7 the members of the ladies and gentlemen of the court.

8 You know what I'm saying, I would like to praise
9 the court for giving justice on all the evidence that I
10 presented to the court.

11 As Officer Hartman (sic) was acting under the
12 color of the law and under the color of state law within the
13 scope of his official duties as an officer of the City of
14 Gaffney, South Carolina.

15 I proved the plaintiff for them contradicting
16 their stories for convicting me of the charge that I know I
17 wasn't doing, and I just want to thank the court to be as
18 lenient in justice. Thank you, Your Honor.

19 THE COURT: Okay. Is that all you have?

20 MR. RAINEY: Yes, sir.

21 THE COURT: All right. Thank you.

22 MR. RAINEY: Thank you.

23 THE COURT: Mr. Kendall?

24 MR. KENDALL: Thank you, Your Honor.

25 Ladies and gentlemen of the jury, at the beginning

1 of this trial I asked three things of you: That you obey
2 the instructions of the judge; that you listen to all the
3 evidence; and that you use a little bit of common sense.
4 And right now at this time I would like to talk about all
5 three of those things.

6 The first is to listen to the instructions of the
7 judge.

8 In this case what the defendant is charged with is
9 being a Peeping Tom. I'm going to explain what we have
10 tried to prove to you over the course of this trial.

11 If anything that I say in any way contradicts with
12 what the judge says, listen to the judge. The judge is the
13 one that decides what the law is and what his instructions
14 are and what you listen to, not what I say. If anything I
15 say contradicts that, by all means listen to the judge.

16 What the defendant is charged with is being a
17 Peeping Tom. A Peeping Tom is someone who peeps through
18 windows, doors, or about the premises of another for the
19 purpose of spying or invading the privacy of another. In
20 other words, looking through doors or windows to see what
21 someone else is doing, in violation of their privacy.

22 Under this it's not necessary that we know exactly
23 what it was that he saw, just that he was trying to see,
24 though in case I think we all know pretty much what he was
25 trying to see.

1 Now, ladies and gentlemen, I would like to talk to
2 you for a little bit about what the facts of this case are
3 and as they have been presented to you.

4 This occurred on May 5th, 2011, here on [REDACTED]
5 [REDACTED] in Gaffney. Ms. Kimberly Wilkins was on her
6 way to work. Before work she was getting ready to take a
7 shower and she noticed the defendant outside of her window
8 peering up to look at her, trying to catch a glimpse of her
9 with his penis exposed. She had caught him before exposing
10 himself about the same spot just a few days earlier, again
11 trying to sneak a peek. During this time he had his penis
12 exposed. And as you heard from both Ms. Wilkins and her
13 mother he appeared to be masturbating.

14 You heard how distraught there were about this
15 situation, how they notified the law enforcement after
16 locking their doors.

17 You heard how law enforcement was responding to
18 the scene. Before that you also heard how Ms. Sybil walked
19 outside and from the back deck was also able to look down
20 and see the defendant masturbating.

21 Following the arrival of the police and their
22 arrival on the scene, you heard how the officers went down
23 and found him standing at the bottom of the hill still there
24 with his pants unzipped. You heard how officers interacted
25 with him, how he was trying to be deceptive, how he was

1 swearing.

2 You also heard about the time, ladies and
3 gentlemen. I think this is one of the most important
4 things. This whole thing took between five and ten minutes.

5 Now, over the course of this trial the defendant
6 has tried to offer up a lot of explanations to how he got
7 there and what he was doing there and how he was there. He
8 tried to offer you that he was working, but there were no
9 tools found. He had his pants unzipped. You heard that he
10 was just trying to pee.

11 Ladies and gentlemen, there are plenty bathrooms
12 nearby, plenty of other areas around that whole region to
13 use the restroom that were not right below the window of a
14 woman taking a shower.

15 And he had been there before. This was not the
16 first time he had shown up there. They had seen him just a
17 couple days before doing this same thing, in approximately
18 the same spot.

19 You also heard testimony from both ladies that he
20 was masturbating. What he was doing did not appear to be
21 peeing.

22 And, finally, ladies and gentlemen, there was the
23 time issue. This took between five and ten minutes. That
24 is a very, very, very long time peeing. The officers found
25 no evidence of any urination. They found nothing of that

1 sort, and they found the defendant standing there exposed.

2 And finally, ladies and gentlemen, and most
3 disturbingly, you found when he said on cross-examination
4 "maybe she liked what she saw." We asked him about this on
5 cross-examination. I think that sums up into large part the
6 level of respect or disrespect that the defendant has in
7 this case, for the privacy and dignity of Ms. Wilkins. That
8 is simply an absurd statement. Clearly she did not like
9 what she saw there. She called the police and they found
10 him at the bottom of the hill with his pants unzipped.

11 It also shows he'd been there before. He'd been
12 to that same place. He didn't say she had liked what she
13 saw this time, she must have liked what she saw. It shows
14 that he had exposed his penis to her and that he had done it
15 before.

16 Ladies and gentlemen, I have heard a lot of
17 disrespectful things in this courtroom during my time as a
18 solicitor, but the idea that the Wilkins wanted him to do
19 this, that they wanted him to stand at the bottom of their
20 hill with his penis exposed masturbating while she got out
21 of the shower is simply ridiculous, and that's why, ladies
22 and gentlemen, I would ask you to return a verdict of
23 guilty.

24 (Whereupon, at 2:00 p.m., the Court instructed the
25 jury panel)

1 THE COURT: Ladies and gentlemen, you, of course,
2 have heard and seen all the evidence, as well as the final
3 statements. I'm now going to instruct you on the law. Then
4 you can begin with your deliberations.

5 It is your exclusive duty to determine what the
6 facts are. You do that through your own examination of all
7 of the testimony and evidence received during the trial of
8 the case. And you jurors alone will decide what weight,
9 value and effect to give any particular witness' testimony
10 or other evidence in the case.

11 Your sole objective is to simply reach the truth
12 in the matter. And by doing that you will have fulfilled
13 your obligations as jurors, and that is to simply give both
14 the State and the defendant a fair and impartial trial.

15 Now, as you know, in this case the defendant has
16 been accused by the prosecutor with a violation of Section
17 16-17-470, which is referenced as eavesdropping and Peeping
18 Tom.

19 The State alleges that on or about May the 5th of
20 2011, the defendant did willfully go about or upon the
21 premises of Kimberly Wilkins for the purpose of spying on
22 and into her home by peeping through her window and invading
23 her privacy.

24 Also, as you know, the defendant has entered a
25 plea of not guilty. And the plea of not guilty has placed

1 upon the State the burden of proving the allegations that
2 are set forth in that indictment; the burden of proving each
3 of the essential elements that constitutes the crime that
4 they claim he has committed. And, therefore, the burden is
5 upon the State to establish his guilt to the satisfaction of
6 you twelve jurors beyond a reasonable doubt before any
7 verdict of guilty could be returned.

8 It is a vital, important and cardinal rule of law
9 that every defendant in a criminal trial -- and it doesn't
10 matter how serious the offense might be for which that
11 person stands charged. Every person accused of a crime is
12 presumed to be innocent of that charge. And as I told you,
13 that presumption of innocence will be with any defendant, as
14 it will be with Mr. Rainey, even as you go back to begin
15 with your deliberations in this case. And that presumption
16 of innocence will be with him in that jury room, and it will
17 be with him forever, unless you twelve jurors determine that
18 he's no longer entitled to that presumption of innocence.
19 In other words, after you have considered all the evidence
20 in the case and from that evidence you have decided the
21 facts, and upon deciding those facts you apply the law that
22 I will have provided you, that you twelve jurors unanimously
23 determine that his guilt has been proven beyond a reasonable
24 doubt, then he would no longer be entitled to that
25 presumption of innocence. But it's only if, unless, and

1 until you are satisfied of his guilt beyond a reasonable
2 doubt that that presumption of innocence would no longer be
3 applicable.

4 Now, while the State does have the burden of
5 proving the defendant's guilt beyond a reasonable doubt,
6 that doesn't mean that they have to prove his guilt beyond
7 all doubt or beyond any possible doubt, but it does require
8 the State to prove his guilt to your satisfaction beyond a
9 reasonable doubt.

10 And the term reasonable doubt should be given its
11 plain and ordinary meaning. A reasonable doubt is the kind
12 of doubt that would cause a reasonable person to hesitate to
13 act upon the information provided.

14 And a defendant in a criminal trial is entitled to
15 any reasonable doubt that arises from the evidence or lack
16 of evidence in a case. And if upon any factual issue
17 essential to a finding of a verdict of guilty you have some
18 reasonable doubt as to how that issue should be resolved, it
19 would be your duty to resolve that reasonable doubt in favor
20 of the defendant. And, therefore, if upon your
21 consideration of the whole case you have a reasonable doubt
22 as to his guilt, you must resolve that doubt in his favor
23 and return a verdict of not guilty.

24 And at the same time, after you have considered
25 all the evidence in the case and decided the facts and

1 applied the law, if you have no reasonable doubt as to his
2 guilt, it would be your corresponding duty to find him
3 guilty, where that guilt has been proven beyond a reasonable
4 doubt.

5 Now, the same law that provides that you are the
6 judges of the facts also provides that I am the judge of the
7 law. And that simply means nobody is going to tell you how
8 to arrive at your determination of fact in this case. You
9 do that, as I have already stated, through the exercise of
10 good judgment and common sense, conscientiously applied to
11 the testimony or the evidence in the case. You must,
12 however, under your oath as a juror accept the law as I
13 provide it to you as being the law that you are to apply in
14 the case. In other words, you are never to concern yourself
15 with what you thought the law was before you came to serve
16 as a juror this week, or what you think the law ought to be.
17 Under your oath you must accept the law as I provide it to
18 you as being the law that you are to apply in the case. And
19 then you simply take that law and you apply it to the facts
20 as you twelve jurors determine those facts to be, based upon
21 your common sense examination of the evidence received
22 during the trial.

23 Now, because you are the judges of the facts, you
24 are, therefore, necessarily the sole judges of the
25 credibility of each witness that has testified during the

1 trial. And you twelve jurors alone will decide what weight,
2 value, and effect to give to any particular witness'
3 testimony or other evidence in the case. But as you
4 determine and assess the credibility of witness' testimony,
5 there are several factors which you should consider in
6 arriving at your assessment as to that witness' credibility.
7 Those factors include what was the demeanor of the witness
8 as the witness testified from the witness stand? Was the
9 witness straightforward in responding to questions, or was
10 the witness hesitant or evasive in responding to questions
11 that were asked of the witness? Simply put, did the witness
12 appear to you to be telling the truth and to have knowledge
13 of the facts to which that witness has testified.

14 You should also consider whether or not the
15 testimony of a witness is consistent or is it inconsistent
16 with that witness' own testimony, as well as statements made
17 by that witness, whether it was in court or outside of
18 court. And you should consider whether or not the testimony
19 of a witness is consistent or inconsistent with other
20 testimony or other evidence received during the trial.

21 You should also consider how a witness came to
22 know the facts to which that witness has testified. In
23 other words, what was that witness' ability and opportunity
24 to be able to perceive the existence of those facts to which
25 that witness has testified by having previously used his or

1 her senses and then what is that witness' ability to be able
2 to come into court and to accurately recollect to you as to
3 what they have previously perceived.

4 You should also consider any bias or prejudice or
5 interest that a witness might have with regard to a case.
6 In other words, do you find some reason that a particular
7 witness would come into court to testify one way or another
8 to help or to hurt one side or the other.

9 And you may consider any interest that a witness
10 might have in the outcome of the case, if you determine that
11 a witness does have such an interest and you find that that
12 interest would bear upon that particular witness'
13 credibility.

14 You should also consider whether or not the
15 testimony of a witness is strengthened or is it weakened by
16 other testimony or other evidence received during the trial.

17 Now, during the course of this trial you have
18 heard certain elements relating to the defendant having a
19 prior conviction for a certain type of criminal offense.
20 Ordinarily evidence of prior convictions is not admissible
21 in the trial of a case because it's not relevant to any
22 issue that the jury has to decide. However, where a
23 witness, including the defendant, has a prior conviction for
24 particular types of criminal offenses and where that person
25 takes the witness stand and testifies, then the evidence of

1 that conviction may be introduced during the course of that
2 testimony for the purpose of impeaching the credibility of
3 that witness. Therefore, you may consider such evidence as
4 it may relate to the issue of the credibility of the
5 defendant's testimony if you determine that that evidence is
6 probative on that particular point, but you may not consider
7 it for any other purpose. That evidence is not being
8 offered as evidence of the defendant's guilt of the crime
9 for which he now stands trial, and under your oath and duty
10 as a juror you may not consider that as evidence of his
11 guilt. You may only consider that evidence, if at all, on
12 the issue of the credibility or the believability of his
13 testimony.

14 Now, because you are the finders of the facts and
15 because you are the judges of the credibility of each
16 witness, you are permitted to believe as much or as little
17 of what a witness has testified to as you deem is
18 appropriate. Now, therefore, you may believe everything
19 that a witness testified to.

20 You may choose to believe none of it.

21 You may believe one portion of a witness'
22 testimony and reject some other portion of that same
23 witness' testimony.

24 You may believe one witness as opposed to several,
25 or several as opposed to one, but whatever your good

1 judgment and common sense tells you is the most believable
2 and credible testimony is the testimony that you should
3 accept, and you should reject any testimony or other
4 evidence that you find not to be credible or believable.

5 Again, your sole objective is to simply reach the
6 truth of the matter. And by doing that you will have
7 fulfilled your obligations as jurors.

8 And it should not matter from what source that
9 truth may come, whether it be from a witness for the State,
10 or a witness for the defense, or a combination of testimony
11 and evidence received from both sides in the case.

12 Now, in this case, as you are aware, the defendant
13 is charged with eavesdropping or Peeping Tom, and that's a
14 statutory offense. And that just means that the
15 legislature, when they meet, and they are meeting right now,
16 they meet every year from January to June, they pass a
17 number of laws and rules and regulations that govern our
18 conduct in a variety of ways. Some of those statutes
19 prohibit us from engaging in particular types of conduct.
20 And where we are found to have engaged in that conduct in
21 violation of the law, then it subjects us to some form of
22 punishment or penalty.

23 Please understand that you are never to be
24 concerned about the punishment or penalty. You are not to
25 be concerned about the consequence of your decision. Your

1 sole obligation and duty as jurors is to determine whether
2 or not the defendant's guilt has been proven beyond a
3 reasonable doubt. And you should do that without any
4 consideration being given to any consequence of that
5 decision.

6 But the statute that the defendant is alleged to
7 have violated is Section 16-17-470, and that statute
8 provides, in its relevant part, as follows: It is unlawful
9 for a person to be an eavesdropper or a Peeping Tom on or
10 about the premises of another, or to go upon the premises of
11 another for the purpose of becoming an eavesdropper or a
12 Peeping Tom.

13 And the term Peeping Tom, as used in this
14 particular section, is defined as a person who peeps through
15 windows, doors, or other like places on or about the
16 premises of another for the purpose of spying upon or
17 invading the privacy of the person spied upon and any other
18 conduct of a similar nature that tends to invade the privacy
19 of another.

20 Now, ladies and gentlemen, I am not in any way
21 concerned with what your decision is, but I do tell you that
22 the verdict must be unanimous. All twelve of you must be in
23 agreement before any decision may be reached.

24 So, Madam Forelady, as you know, you are going to
25 be called upon to preside over the jury deliberations,

1 simply to ensure that those deliberations are carried out in
2 some orderly fashion, but all jurors are expected to
3 participate, because, as I have stated, the verdict has to
4 be unanimous. All of you must be in agreement.

5 Now, Madam Forelady, as you go back, along with
6 the other exhibits, you will have the indictment which will
7 serve as the verdict form, but other than serving as the
8 verdict form, the indictment serves no purpose, as far as
9 you jurors are concerned. It's not proof of anything. It
10 doesn't establish anything. It's not evidence of anything.
11 It's simply the charging paper and it will serve as the
12 verdict form.

13 On the back of the indictment you will see in the
14 lower left-hand corner the word verdict. It's beneath that
15 word, Madam Forelady, that you will indicate the jury's
16 decision.

17 In this case you have two possible verdict forms.
18 Those two forms are guilty and not guilty. So whichever
19 that decision is, please indicate in the space provided,
20 sign your name as the foreperson. You are the only juror
21 that needs to sign the verdict form, and also place the
22 appropriate date.

23 If during -- I don't know if we have smokers on
24 the jury, but if we do, you can smoke, but you can't smoke
25 in the jury room, so if you want to smoke, let the bailiff

1 know. He will take you outside to accomplish that purpose,
2 but you are instructed that the deliberations have to stop
3 and they may only be engaged in when all twelve jurors are
4 present so you all may participate.

5 If at any time you ever have a question about the
6 facts or the evidence in the case, I am never permitted to
7 answer questions that relate to facts or evidence, but I
8 will tell you that if you wonder if there is something else;
9 in other words, as you go back to the deliberate and you
10 think, well, I wonder if they have something else that might
11 help us and you wonder if you can have it, you cannot,
12 because no additional evidence can be received, now that you
13 are going back to begin deliberations. So even if something
14 existed that might benefit you, it cannot be provided,
15 because the evidence has closed.

16 If you need -- or if a question can be answered by
17 having testimony replayed in whole, or in part, I can bring
18 you back to have a witness' testimony reheard. I don't have
19 transcripts of that testimony, but you can come back into
20 the courtroom and the court reporter can replay a witness'
21 testimony in whole, or in part, if that is required.

22 But if at any time you have a question about the
23 law that is applicable, I am permitted to answer those
24 questions. So if you need any type of a clarification or
25 explanation of the law that you are to apply, I am always

1 permitted to answer those questions.

2 So, Madam Forelady, if at any time you need to
3 address some matter to me, if you will write it on a piece
4 of paper, give it to the bailiff. He will provide it to me
5 and I'll respond accordingly.

6 Once you and your fellow jurors have reached a
7 unanimous verdict, Madam Forelady, and you have indicated
8 that decision on the back of the indictment, if you will
9 knock on the jury room door, let the bailiff know that you
10 have reached a decision, we will bring you back to receive
11 the verdict.

12 You will maintain possession of the verdict form.
13 Don't give it to the bailiff. You hold onto it and I will
14 receive it after you come back into the courtroom and are
15 seated in the jury box.

16 I think that covers everything, but if not, I'll
17 have to bring you back, but right now I'll ask the jurors to
18 go back into the jury room, but do not yet begin
19 deliberations. I'll address some matters with Mr. Kendall
20 and Mr. Rainey, but if I don't need to bring you back for
21 any reason, I'll send by word by way of the bailiff that you
22 may begin with your deliberations. In that event he will
23 bring to the jury room all of the exhibits which have been
24 introduced. And to you, Madam Forelady, he would also bring
25 the indictment which will serve as the verdict form.

1 So please retire to the jury room, but don't begin
2 deliberations until I send you word to do so.

3 Ms. Davidson, you can stay. Just stay in the
4 courtroom.

5 (Whereupon, at 2:18 p.m., the jury panel retired
6 to the jury room, awaiting instructions to begin
7 deliberations)

8 THE COURT: Ms. Davidson, as you know, you are an
9 alternate juror and so you can't participate in the
10 deliberations, because the original twelve are able to do
11 that, so that will conclude your service for the case, and
12 you can also be excused for the afternoon.

13 I would ask that you please call back after six
14 o'clock tonight to receive further reporting information,
15 okay? Thank you again for your participation.

16 (Whereupon, the alternate juror was discharged
17 from this case)

18 THE COURT: Are there any exceptions taken to the
19 instructions, or requests for additions to the instruction,
20 by the State?

21 MR. KENDALL: None from the State, Your Honor.

22 THE COURT: By the defendant, Mr. Rainey?

23 MR. RAINEY: What does that mean, Your Honor?

24 THE COURT: Well, do you want me to charge them
25 anything differently than what I did?

1 MR. RAINEY: Your Honor?

2 THE COURT: Yes, sir.

3 MR. RAINEY: No, sir, Your Honor.

4 THE COURT: Okay.

5 Let me ask y'all to verify the exhibits before
6 they go back.

7 (Off the record)

8 (Back on the record)

9 MR. KENDALL: All right, the State has verified
10 that, Your Honor, and we believe that --

11 THE COURT: All exhibits are accounted for?

12 MR. RAINEY: Yes, sir, Your Honor.

13 THE COURT: Okay. Send them back. Tell the jury
14 to begin deliberations. Notify us when they have concluded.

15 (Whereupon, at 2:19 p.m., the jury panel was
16 instructed to begin deliberations)

17 THE COURT: We will be at ease while the jury is
18 deliberating.

19 (Whereupon, at 2:20 p.m., proceedings were
20 recessed, pending the verdict of the jury panel)

21 (Whereupon, at 2:35 p.m., proceedings were
22 reconvened)

23 THE COURT: All right, the jury has reached a
24 decision. Are we ready to receive it?

25 MR. KENDALL: We are, Your Honor.

1 MR. RAINEY: Yes, sir, Your Honor.

2 THE COURT: Okay. Bring them in.

3 (Whereupon, at 2:35 p.m., the jury returned to
4 open court to render its verdict)

5 THE COURT: Madam Forelady, have you and your
6 fellow jurors reached a decision?

7 JURY FORELADY: Yes, sir.

8 THE COURT: Have you indicated that decision on
9 the back of the indictment, as requested?

10 JURY FORELADY: Yes, sir.

11 THE COURT: Did you sign your name as the
12 foreperson?

13 JURY FORELADY: Yes, sir.

14 THE COURT: If you would please hand it up by way
15 of the bailiff.

16 You may publish the verdict.

17 THE CLERK: 2011-GS-11-493, the State of South
18 Carolina versus William Jerome Rainey, indictment for
19 Peeping Tom, the jury finds the defendant guilty.

20 Ladies and gentlemen of the jury, if this the
21 verdict of you all, please indicate by raising your right
22 hand.

23 Thank you.

24 THE COURT: All have responded in the affirmative..

25 Are there any other matters we need to address

1 with the jury present?

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

3 MR. RAINEY: I had wanted to ask the plaintiff and
4 the officer a couple questions. As far as deliberating, I
5 didn't know they was going to deliberate. Them -- him
6 saying he was the first officer on the scene for the charge,
7 and I know he wasn't the first officer.

8 THE COURT: We have already been through that.

9 MR. RAINEY: I know. I'm saying -- I'm just
10 saying I want him to be able to ask that question.

11 THE COURT: You already asked him about all that.

12 MR. RAINEY: I don't have anything further, Your
13 Honor.

14 THE COURT: Okay.

15 Thank you, ladies and gentlemen, for your
16 participation. You are excused for the balance of the
17 afternoon. Please call back after six tonight to receive
18 further reporting information. Have a good afternoon.

19 (Whereupon, at 2:37 p.m., the jury panel was
20 discharged from this case)

21 THE COURT: Mr. Rainey, if you will come around.
22 Stand right there in front of the clerk.

23 Anything further to be presented on behalf of the
24 State?

25 MR. KENDALL: The victims do not wish to speak,

1 Your Honor. They did wish a no-contact provision. They do
2 wish for a no-contact provision, Your Honor.

3 THE COURT: All right. Mr. Rainey, is there
4 anything that you would like to tell me before I impose a
5 sentence?

6 MR. RAINEY: Your Honor, I would like to appeal
7 this case, Your Honor.

8 I just ask the mercy of the court. I apologize to
9 the plaintiff. I apologize to the court and the ladies and
10 gentlemen of the court, Your Honor. Thank you.

11 MR. KENDALL: Your Honor, I apologize. The
12 defendant did have a criminal history outside of what we
13 have brought up in court.

14 THE COURT: Tell me about it.

15 MR. KENDALL: From 1981, petit larceny. Grand
16 larceny. Housebreaking. Store breaking. Attempted arson.
17 1983, housebreaking. Grand larceny.

18 1983, also a grand larceny and escape.

19 1990, trespassing. Forgery.

20 1996, possession of drug paraphernalia. Breaking
21 arrest.

22 1997, shoplifting, third offense.

23 1998, shoplifting, \$1,000, or less. Possession of
24 drug paraphernalia. DUS. Shoplifting, third or subsequent
25 offense. DUS. Habitual traffic offender.

1 2001, possession of 28 grams, or less, of
2 marijuana. DUS.

3 2002, burglary in the second degree. Public
4 intoxication.

5 I believe that's all, Your Honor.

6 MR. RAINEY: Your Honor, I have been out of
7 trouble almost ten years now, Your Honor, since 2002. I
8 work. I have been working at the same job for four years.
9 I go to work every day.

10 THE COURT: All right. Anything else, Mr. Rainey?

11 MR. RAINEY: No, sir, Your Honor.

12 THE COURT: All right. On Indictment 2011-493,
13 wherein you have been found guilty by a jury of
14 eavesdropping, or Peeping Tom, the sentence of the court is
15 that you, William Jerome Rainey, be confined to the South
16 Carolina Department of Corrections for a period of three
17 years and pay a fine of \$500. However, that sentence is
18 suspended upon the service of 18 months and the payment of
19 \$250, plus the costs and assessments. You are placed on
20 probation for five years.

21 The conditions of probation, you are to have no
22 contact, directly nor indirectly, with Kimberly and/or Sybil
23 Wilkins.

24 You are also required to register as a sex
25 offender, pursuant to 23-3-430.

1 Now, Mr. Rainey, you have the right to appeal the
2 verdict of the jury and the sentence of the court. You must
3 file a notice of your intention to appeal within ten days of
4 today's date.

5 MR. RAINEY: All right. Thank you, Your Honor.

6 MR. KENDALL: Thank you, Your Honor.

7 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 15th day of MARCH, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

FEBRUARY 21, 2013 .



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Cherokee)

Jerome W. Rainey #293814)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

012CP-110561

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 3 AM 11:06
BRANDY W. MOORE

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 EVANS Correction Institution
2. Name and location of Court which imposed sentence Cherokee County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 11-GS-11-0493
 - (b) _____

DA still open
20121414 (Att say app & isuid)
1 duplicate 5?
20121538 - closed DA
DA 5

7 WS

ATTORNEY GENERAL'S OFFICE

RECEIVED AUG 10 2012

[Signature]

[Signature]

✓

✓

✓

Cal - 60 days

Reg. Att 1

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 3-15-2012
- (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
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. failed to provide ~~any~~ proof of service
- ii. of Notice of Appeal
- iii. _____
- (c) the date of each such result:
- i. 7/3/12
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully. (A) Conviction, obtained in violation of my 14th
 (a) ~~Officer lied. About been first officer on the scene~~
 (b) ~~Temper with evidence~~ Amendment Right to Due Process
 (c) of LAW (B) Conviction obtain in violation of my eighth Amendment
Right Against CRUEL AND UNUSUAL Punishment.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) TRIAL COURT Sentence me in Violation of the Required
 (b) Statutory Punishment.
 (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? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- 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) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. _____
- ii. _____
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

I request that the excessive punishment namely the Five years Probation be vacated.

20. Are you now under sentence from any other court that you have not challenged?

012CP-10561

STATE OF SOUTH CAROLINA)

County of Cherokee)

VERIFICATION

I, Jerome W. Rainey, 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.

Jerome W. Rainey

SWORN to and subscribed before me this 1
day of August, 2012.

Pamela Duggan McDonald (L.S.)
Notary Public

My Commission Expires: 8-28-18

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 3 AM 11 06
BRANDY W. MCBEE

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jerome W. Rainey, 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.

Jerome W. Rainey
Applicant

SWORN or affirmed to and subscribed before me this
1 day of August, 2012
Brandi W. McBee
Notary Public

My Commission Expires: 8-18-18

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 AUG 3 AM 11 06
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

Jerome W. Rainey,)

Applicant,)

vs.)

The State of South Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUITAMENDED APPLICATION FOR
POST-CONVICTION RELIEF

2012- CP-11-0561

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 OCT 14 PM 3:36
BRANDY W. MCNEE

Applicant, by and through his attorneys, Harrison, White, Smith, and Coggins, P.C.,
pursuant to SC Code 17-27-40 et seq., alleges the following:

1. Applicant, Jerome W. Rainey was tried for eavesdropping or peeping tom (2011-GS-11-0493) on March 15, 2012, but he was convicted unlawfully:

a. this trial resulted in a conviction in violation of Applicant's Fifth Amendment rights in that this conviction is double jeopardy.

i. This conviction for eavesdropping or peeping tom is for the same offense that Mr. Rainey plead guilty to in the Municipal Court on December 9, 2011. See ticket attached (Exhibit A).

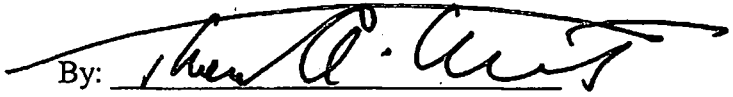
2. Applicant's conviction is a violation of his Fourteenth Amendment right of due process.

3. Applicant's conviction is a violation of his Eight Amendment right against cruel and unusual punishment, in that;

a. Trial Court sentenced Applicant in violation of the required statutory punishment.

WHEREFORE Applicant moves this Court for a new trial or other relief that the Court deems just and proper.

Harrison, White, Smith, & Coggins, P.C.

By: 

Thomas A. Killoren, Jr.
Attorney for Applicant
Post Office Box 3547
178 West Main Street
Spartanburg, SC 29304
(864)585-5100

Spartanburg, South Carolina

October 11, 2013

CLERK OF COURT
JEROME COUNTY, S.C.
2013 OCT 14 AM 8 36
BRANDY W. MCREE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Jerome W. Rainey, #293814,	)	2012-CP-11-0561
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 3, 2012¹, would respectfully show this Court:

I.

The Applicant is presently on probation pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the Cherokee County Grand Jury in August 2011 for eavesdropping or peeping tom (2011-GS-11-0493). Applicant proceeded to trial on the charge and represented himself *pro se*. On March 15, 2012, the Applicant was convicted of the charge and sentenced by the Honorable J. Derham Cole to a sentence of three years and fine of \$500 provided that upon the service of eighteen months and fine of \$250 the balance is suspended with probation for five years. The Applicant failed to file a timely Notice of Appeal.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject conviction(s) and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations.

¹ Applicant also filed a *pro se* Motion for Discovery on September 12, 2012. However, the Motion does not request specific items and Applicant is now represented by Counsel.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully based upon the following:

1. Violation of Fourteenth Amendment right of due process; and
2. Violation of Eight Amendment right against cruel and unusual punishment, in that;
 - a. Trial court sentenced Applicant in violation of the required statutory punishment.

III.

The Applicant alleges that he was denied due process of law and claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based other than a claim that his sentence is outside the statutory guidelines. The Uniform Post-Conviction Procedure Act requires that the Applicant 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).

The Applicant alleges that his sentence is too harsh. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State,

277 S.C. 70, 283 S.E.2d 826 (1981). The Court should summarily dismiss this ground for relief.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 20, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Jerome W. Rainey,

2012-CP-11-0561

Applicant,

v.

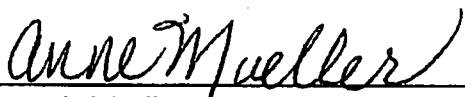
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Thomas A. Killoren, Jr., Esquire
Harrison, White, Smith & Coggins, P.C.
P.O. Box 3547
Spartanburg, South Carolina 29304



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 20th day of August, 2013.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

2012-CP-11-0561

Jerome W. Rainey,

-VS-

The State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

November 13, 2013
Spartanburg, South Carolina

Ordered: April 8, 2014

Delivered: June 2, 2014

B E F O R E:

The Honorable Robin B. Stilwell, Presiding Judge.

A P P E A R A N C E S:
Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Mr. Thomas A. Killoren, Jr., Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter
I N D E X

Jerome W. Rainey PCR - November 13, 2013

Page 2

Jerome W. Rainey PCR

Page:

Ms. White's Recitation of Facts..... 3

W I T N E S S E S

Mr. Jerome W. Rainey:

Page:

Direct by Mr. Killoren..... 5
Cross by Ms. White..... 16

E X H I B I T S

Applicant's Exhibits:

Marked:

Received:

1 - (Copy of Ticket)

6

6

Respondent's Exhibits:

Marked:

Received:

(None)

Court's Exhibits:

Marked:

Received:

(None)

Court's Ruling:..... 13

Reporter's Certification:..... 17

Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 November 13, 2013

9:25 A.M.

2 (Off-the-Record Comments)

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

1 (Brief pause while the Applicant is brought into the courtroom.)

2 THE COURT: Yes, ma'am?

3 MS. WHITE: Your Honor, thank you. This is the case of
4 *Jerome Rainey vs. The State*. It's case number 2012-CP-11-0561. He's
5 represented today by Mr. Tom Killoren.

6 The Applicant was indicted for — in August of 2011 for eavesdropping
7 and peeping tom, proceeded to trial on the charge, at which he represented
8 himself pro se.

9 March 15th, 2012, he was convicted of the charge and was sentenced
10 by Judge Cole to three (3) years and five hundred dollars (\$500), suspended
11 upon the service of 18 months and two hundred and fifty dollars (\$250) to a
12 probation sentence of five (5) years.

13 And there was no notice of appeal filed.

14 He's alleged ineffective -- well, excuse me, I'm so used to saying that
15 — not ineffective assistance of counsel, violation of the 14th Amend — 14th
16 Amendment right to due process and violation of the 8th Amendment right
17 against cruel and unusual punishment in that the trial Court sentenced him to
18 a violation with — in violation of the required statutory punishment.

19 There was an amended application filed. And, Your Honor, I think the
20 same situation happened yesterday. I'm passing that up ----

21 THE COURT: Okay.

22 (Off-the-Record Comments)

23 (Documents handed up.)

24 THE COURT: Thank you.

25 MS. WHITE: — where he's alleging that the conviction was —

1 was unlawful because it was the same offense to which he had pled guilty to
2 in a Municipal Court in December of 2011.

3 And I believe those are only allegations so I can turn it over to Mr.
4 Killoren.

5 **THE COURT:** Okay. Mr. Killoren?

6 **MR. KILLOREN:** Yes, sir. And, thank you, Your Honor. May it
7 please the Court?

8 We're here today to present our application for post-conviction relief
9 based on the — on — on our allegations. And we believe the evidence will
10 show that, because Mr. Rainey pled guilty to the indecent exposure in the
11 Municipal Court, that this is — that the subsequent charge and conviction in
12 the Court of General Sessions was double jeopardy.

13 And, as a consequence, Mr. Rainey's conviction should be reversed
14 and he should be entitled to a new trial. And we ask that Mr. Rainey be
15 allowed to testify.

16 **THE COURT:** Okay. Sure. Mr. Killoren, you may call your
17 witness to the stand, sir.

18 **(No Response)**

19 **THE COURT:** Mr. Rainey, if you would, walk on up. And you get
20 into the witness box.

21 **(The witness complied with the request.)**

22 **THE COURT:** And put your left hand on the Bible and raise your
23 right, please, sir?

24 **(The witness complied with the request.)**

25 **(Whereupon,**

Jerome W. Rainey

having been first duly sworn, testified as follows:)

THE COURT: Okay. You may have a seat, sir. If you will, please, state your full name for the record.

THE APPLICANT: Jerome William Rainey (phonetic).

THE COURT: Mr. Killoren, your witness, sir.

MR. KILLOREN: Thank you, Your Honor.

Direct Examination by Mr. Killoren:

9:48 A.M.

Q. Mr. Rainey, you're here today to testify in regard to your post-conviction relief application; is that correct?

A. Yes, sir.

Q. You — tell the Court just briefly about yourself. Are you employed?

A. Yes, sir. I work for Brown Packing.

Q. And how long?

A. I've only been there about five (5) months.

Q. And your arm is in a sling. I know it's unrelated to this case.

A. Yes, sir.

Q. What happened to you?

A. I got hit by a car on my moped.

Q. Okay.

A. I was at the stop — that on a straight straightway and a car was at a stop sign and just pulled right out in front of me.

Q. Okay. And you're a resident of Cherokee County; is that correct?

A. Yes, sir.

Q. And you've lived there basically your whole life?

1 A. Yes, sir.

2 Q. Let's talk a little bit about this case. You -- were you charged with
3 indecent exposure and eavesdropping where you were given two tickets in Municipal
4 Court?

5 A. Yes.

6 Q. And what happened to those tickets?

7 A. Well, they -- they took me and tried me in -- in Magistrate Court for
8 indecent exposure.

9 Q. Okay. And what ----

10 A. And charged me four hundred and -- four hundred and seventy dollars
11 (\$470) or six (6) days community service.

12 Q. Okay.

13 A. It was two days I stayed in jail before I made bond, so two days, so he
14 said four (4) days of community service.

15 Q. All right.

16 A. So I completed that.

17 Q. All right. And I want to show you what we'll refer to as Exhibit Number
18 1, which is the ----

19 **(Whereupon, Applicant's Exhibit 1 was marked for identification**
20 **and admitted into evidence.)**

21 Q. (By Mr. Killoren) I'm showing you what's been previously marked as
22 Applicant's Exhibit Number 1. Is that your -- is that the ticket that you were given for
23 indecent exposure?

24 A. Yes, sir.

25 Q. And is that the ticket that you were sentenced to by the Magistrate

1 Court in December of 2011?

2 A. Yes, sir.

3 Q. Okay.

4 (Brief Pause)

5 Q. And, then, you subsequently had a trial in the Court of General
6 Sessions on a peeping tom charge; is that correct?

7 A. Yes, sir.

8 Q. And that trial took place March 15th, of 2012; does that sound about
9 right?

10 A. Yes, sir.

11 Q. And did you represent yourself in that trial?

12 A. Yes, sir, I was pro se.

13 Q. Okay. Tell — and what happened as a result of that proceeding?

14 A. Well, the police officer got up there and said what he said about that I
15 was — they got a 911 call saying that — people called saying someone was outside
16 the — their home with their penis out.

17 Officer Merendez (phonetic) got there as far as getting there, the first
18 officer being there. And he asked me what I was doing. And I told him I had to take
19 a leak outside, you know.

20 And he was — they was like, "Well, the people that called said that you
21 had your penis out. So they charged me with decent — indecent exposure. And
22 Officer Bolton (phonetic), he came and said people was talking about that I was —
23 that I had my penis in my hand and I was procrastinating (phonetic) or something
24 like that.

25 Q. Let me stop you for just a moment.

1 A. Okay.

2 Q. What happened in the trial in General Sessions?

3 A. Well ----

4 Q. Were you convicted?

5 A. I was convicted because ----

6 Q. Were you convicted? Did the jury find you guilty?

7 A. Yes, because they was bringing up what the — asking if the — the
8 Defendant — the Plaintiff, was I urinating. They was asking — they was bringing up
9 something I had already been tried for. And she could not bring that back up.

10 Q. Okay.

11 A. Not in a double jeopardy case — I mean, as far as double jeopardy in
12 *The Honorable Brown v. Ohio*, (phonetic) saying a person can't be tried and
13 convicted for a crime which he — which has ver — various — various incidences
14 (phonetic) included and cannot be tried a second time one of these being incidences
15 without being twice put in double jeopardy for the same offense.

16 Q. So the Court understands your position in the case, is it your position
17 that the evidence that was presented in the trial was evidence that would have been
18 presented at — in the Municipal Court case?

19 A. Yes, sir.

20 Q. Okay. And so did — tell the judge what you believe is your claim and
21 why it was double jeopardy to you to be convicted in General Sessions Court.

22 A. Because I — I tell them — when they asked what the — why was that
23 — I told them that I was outside urinating and they charged me for indecent
24 exposure.

25 And hey tried me in Magistrate Court. Then, it was General Sessions

1 bringing up the same things that I had been tried for already to convict me of that
2 charge. And I don't think you can get no voyeurism (phonetic) out of no — if you
3 don't have an indecent exposure charge, which they ain't supposed to be brought up
4 in no jury trial.

5 Q. All right. Is there anything else that you think is important that you
6 would want the Court to know about this case or your application?

7 (Brief Pause)

8 A. As meaning...?

9 Q. Just is there anything that you think is important that the judge should
10 know about your case or what — that — that you believe supports your position in
11 the case?

12 A. Well, they brought up the indecent exposure to convict me on the
13 peeping tom. They brought that in the — in the trial. You know, they — they
14 mentioned that before — before the trial began.

15 The officer done said, "Well, he — they got a 911 call and I told Officer
16 Merandez (phonetic) that I was — that I was taking a urinate — I was urinating. So
17 they going to bring — he's done mentioned that already.

18 So that right there already convict me for him telling the jury that I was
19 already urinating. And he ain't supposed to have said nothing about that as far as
20 they didn't have no proof on — of — of no shadow of a doubt to convict me of that
21 charge without bringing that indecent exposure up.

22 Q. Yes, sir. Anything else that you want to make sure that the Court
23 knows or is important to your case?

24 A. Well, I can't really think of nothing else talking about the case except
25 I'm all messed up with this charge, you know what I'm saying, but....

1 (Brief Pause)

2 A. I can't think of nothing else. They took a lesser charge and convicted
3 me on a greater charge.

4 Q. Okay. All right. You said you were taking some medication. Are you
5 okay to testify today?

6 A. Yes, sir.

7 Q. Okay. All right.

8 A. I think I can get through this.

9 Q. Okay. You're understanding my questions okay?

10 A. I think I'm understanding you, saying — asking me is there anything
11 else I could — as far as explaining to the Court.

12 (Brief Pause)

13 A. They tried me on a — they tried as far as...

14 (Brief Pause)

15 A. Is there anything else I need to let the Court know?

16 Q. I think we've covered just about everything, but if there's anything else
17 that you wanted to testify to ---

18 A. Oh, yeah.

19 Q. — you're welcome to do it.

20 A. Yes, sir, 'm — I'm asking to — to be compensated in — in punitive
21 damage.

22 Q. Well, remember, Mr. Rainey, we talked about that. Those are — those
23 are separate issues that are — that — that you're not eligible to bring those up today.
24 Do you remember our conversation about that?

25 A. All right.

1 Q. Okay. So, other than — other than that issue, anything about what
2 happened in your trial or what happened in the Municipal Court that you think is
3 important?

4 **(Brief Pause)**

5 A. I can't think of nothing.

6 Q. Okay. All right. Thank you very much.

7 **MR. KILLOREN:** No further questions, Your Honor.

8 **THE COURT:** All right. Thank you, sir. Yes, ma'am?

9 **MS. WHITE:** Thank you, Your Honor. Just briefly.

10 **Cross Examination by Ms. White:**

9:59 A.M.

11 Q. Mr. Rainey, you testified that you did get two separate tickets on that
12 day, May 5th, 2011; is that right? One for indecent exposure and one for the
13 eavesdropping and peeping tom?

14 A. Yes, ma'am.

15 Q. And the one that you pled guilty to in Municipal Court was only on the
16 indecent exposure?

17 A. Yes, ma'am.

18 Q. Okay. And, then, you went to trial on the eavesdropping and peeping
19 tom charge?

20 A. Yes, ma'am.

21 Q. And your problem essentially is they were able to bring up your prior
22 conviction for indecent exposure in this trial?

23 A. Yes, ma'am.

24 Q. Okay. Do you remember the — recall the judge talking with you a little
25 bit about, because you were representing yourself too, that the solicitor was going to

1 be able to ask you questions about some prior convictions?

2 A. Yes, ma'am.

3 Q. Okay. And do you remember talking with him about which — where he
4 kind of explained which convictions he was going to talk about. And I think it was
5 some burglary charges and everything?

6 A. Yes, ma'am.

7 Q. Okay. And, ultimately, after hearing your side of the story and the
8 police, as the main witnesses, the jury found you guilty of the peeping tom; is that
9 right?

10 A. Yes, ma'am, they brought the --- they — they was asking them — the
11 Plaintiff was — was I urinating and all this and that. You know what I'm saying?

12 They was leading the jury on as far as just telling them, "Well, he had
13 his penis already exposed," so, you know what I'm saying? You're going to lead the
14 jury to convict — that's already going to let the jury convict me as it was.

15 Q. Okay. All right. Thank you.

16 MS. WHITE: Your Honor, that's all the questions I have for this
17 witness.

18 THE COURT: Okay. Any redirect, Mr. Killoren?

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

20 THE COURT: Okay. All right. Mr. Rainey, you may step down,
21 sir. Thank you for being here. I do appreciate that.

22 (The witness complied with the request.)

23 THE COURT: Anything further from the Applicant?

24 MR. KILLOREN: No, sir, Your Honor.

25 THE COURT: Okay. Anything from the State?

1 **MS. WHITE:** No, Your Honor.

2 **(Brief Pause)**

3 **THE COURT:** All right. Any arguments you'd like to put on the
4 record?

5 **(No Response)**

6 **THE COURT:** You certainly aren't compelled to. I think I
7 understand from your opening arguments what the point is and from the
8 testimony. But you're welcome to — to close it out if you'd like.

9 **MR. KILLOREN:** Yes, sir, just briefly. As — as Mr. Rainey stated,
10 the — the conviction — the evidence that — that was used by the State, in the
11 General Sessions case, is evidence that was used in convicting him in the
12 Municipal Court.

13 And those charges overlap and we believe it's double jeopardy and the
14 Applicant should have the conviction overturned and a new trial. Thank you.

15 **THE COURT:** Okay. Good enough. Any response from the
16 State?

17 **MS. WHITE:** Your Honor, the State would just respond that we
18 do not feel that he's met the burden of proof of establishing there were any
19 constitutional violations that would warrant granting him a new trial on this
20 charge. And we would ask that you deny the application.

21 **THE COURT:** Okay. All right. I'm going to respectfully deny the
22 post-conviction relief application. I respectfully disagree that there was a
23 double jeopardy charge.

24 In this instance, you did have two competing tickets which were issued.
25 One of which could be disposed of in the Summary Court because Summary

1 Court had jurisdiction over it because of the punishment that could have been
2 imposed, as a consequence of a conviction, which is less than 30 days, less
3 than five hundred dollars (\$500).

4 The peeping tom, indecent exposure, had — carried a — an amount of
5 — carried — excuse me — a punishment that was over the jurisdictional limit
6 of the Summary Court. Therefore, they could not have heard that case.

7 (Brief Pause)

8 **THE COURT:** I recognize that factually, there was some overlap
9 because it all arose out of the same operative facts and the same date and
10 time. However, there were two separate and distinct charges. And the law
11 related to double jeopardy would suggest that they would comprise the same
12 elements.

13 But, of course, they didn't in this instance because one was the original
14 Summary Court charge. And that charge was what? I can't remember. That
15 was — the Summary Court charge was...?

16 **MS. WHITE:** That was indecent exposure.

17 **THE COURT:** Indecent exposure.

18 **MS. WHITE:** Yes, sir.

19 **THE COURT:** And, then, the other one was the peeping tom.

20 **MR. KILLOREN:** Correct.

21 **THE COURT:** And those are two separate and distinct
22 indictments — allegations. Therefore, double — double jeopardy doesn't
23 attach under the circumstances.

24 With respect to the introduction of evidence, I know that there were
25 some objections, Mr. Rainey, that you had to the introduction of some of the

1 evidence. And, in reading the transcript, I see that you did lodge those
2 objections. And I also see that Judge Cole sent the jury out and you all had
3 some discussions about what was appropriate for objection and what wasn't.

4 And I note that you disagreed with and took exception to the
5 representations that the witnesses made and even objected to the same.
6 And I know you still object to the same and you take exception to what they
7 said.

8 But, you know, that was a matter of credibility for the jury at the time.
9 You posed the objection, it was overruled. And the jury looked at all of the
10 evidence as a whole and came to a determination that — that the witnesses
11 were credible.

12 **(Brief Pause)**

13 **THE COURT:** I recognize, again, there was some overlap of
14 some of that evidence that was presented at Summary Court, but that's
15 because it all arose out of the same set of operative facts; therefore, it
16 necessarily would have had some — some overlap.

17 But, ultimately, the matter to be proved and the facts to be determined
18 by the trier of fact; i.e., the jury, in the case ultimately were those facts which
19 supported the charges before the General Sessions Court; that is, the
20 peeping tom as opposed to the indecent exposure.

21 So, for all of those reasons, I am going to respectfully deny the post-
22 conviction application. And, Mr. Rainey, I wish you luck, sir.

23 **MR. KILLOREN:** Thank you, Your Honor.

24 **MS. WHITE:** Thank you, Your Honor.

25 **(Off-the-Record Comments)**

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(Whereupon, the proceeding concluded at 10:05 a.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 16, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

May 3, 2014


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA											
UNIFORM TRAFFIC TICKET											
CITY OR COUNTY OF <u>CAFFNEY</u>										VERSUS	
FIRST NAME		MIDDLE NAME		LAST NAME		STREET AND NO.		CITY		STATE	
<u>WILLIAM</u>		<u>JEROME</u>		<u>KAINEY</u>		<u>209 CAMELIA CR</u>		<u>CAFFNEY</u>		<u>SC</u>	
STATE LICENSED		DRIVER'S LICENSE NO.		COL		DRI. LIC. CLASS		HAZ. MT.		MOPED	
<u>SC</u>		<u>004010407</u>		<u>NO</u>		<u>MOPED</u>		<u>NO</u>		<u>NO</u>	
VEH. LIC. NO.		STATE		MAKE OF VEH		YEAR		DOM. VEH.		AUTO	
<u>N/A</u>		<u>SC</u>		<u>N/A</u>		<u>N/A</u>		<u>NO</u>		<u>NO</u>	
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT											
NAME OF TRIAL COURT				STREET AND NO.							
<u>17th COURT</u>				<u>201 N. Limestone St.</u>							
DATE		TIME OF TRIAL		CITY		STATE		ZIP CODE		VIOLATION SECTION NO.	
<u>5/19/11</u>		<u>2:30pm</u>		<u>CAFFNEY</u>		<u>SC</u>		<u>29540</u>		<u>16-17-0470</u>	
VIOLATION - COURT APPEARANCE REQUIRED YES ☒ NO ☐											
LEAVES DROPPING / TIEING TORN											
OWNER OF VEHICLE						DATE OF ARREST					
<u>N/A</u>						<u>5/5/11</u>					
ADDRESS OF OWNER						DATE OF VIOLATION					
<u>N/A</u>						<u>5/5/11</u>					
BAIL DEPOSITED				NAME OF ARRESTING OFFICER				RANK			
<u>CASH</u>				<u>J.H. BOLTON</u>				<u>PFC</u>			
SEX		BIRTH DATE		EYES		COUNTY		BADGE		TROOP	
<u>M</u>		<u>1/31/64</u>		<u>BLU</u>		<u>CHER</u>		<u>424</u>		<u>4</u>	
DATE BAIL REC'D		BY		CASE BEFORE		MAGISTRATE		JURY		FEDERAL COURT	
<u>5/19/11</u>		<u>CHER</u>		<u>CHER</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>	
CIRCUIT COURT		FAMILY COURT		NAME OF TRIAL COURT		IF DIFFERENT FROM ABOVE		TIME OF VIOLATION		WEATHER	
<u>NO</u>		<u>NO</u>		<u>CHER</u>		<u>NO</u>		<u>1:40 PM</u>		<u>CL</u>	
DEFENDANT DID NOT APPEAR		APPEARED		MILES		N E S W		DISTANCE IN FEET FROM INTERSECTION		W. FLOYD CRICK	
<u>NO</u>		<u>NO</u>		<u>1.5</u>		<u>1 2 3 4</u>		<u>1.5</u>		<u>1.5</u>	
TRIAL BY		TRIAL JUDGE		JURY		HWY NO.		CITY		OFFENSE CODE	
<u>CHER</u>		<u>CHER</u>		<u>NO</u>		<u>109</u>		<u>CAFFNEY</u>		<u>94(12D)</u>	
VERDICT OF		DATE OF TRIAL IF ANY		LAI		D		25		F	
<u>NOT GUILTY</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>	
TRIAL IF ANY		NOT GUILTY		LAI		D		25		F	
<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>NO</u>	
COMMITTED TO		Vehicle Search		Arrest as Result of Collage		OFFENSE CODE		B.A. LEVEL		DATE	
<u>NO</u>		<u>NO</u>		<u>NO</u>		<u>94(12D)</u>		<u>94(12D)</u>		<u>86785 FJ</u>	
CERTIFIED CORRECT		DATE		1		20		1092		1092	

AGENCY I.D.
SCO 0110200

INCIDENT REPORT
CITY OF GAFFNEY POLICE DEPT.

CASE NUMBER

2011-5944

NCIC

INO. ENTD.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. INDECENT EXPOSURE		YES ☐ NO ☐	YES ☐ NO ☐	RESIDENCE	1	Individual	
2. EAVES DROPPING / PEEPING TOM		YES ☐ NO ☐	YES ☐ NO ☐	RESIDENCE	1	Business	
3.		YES ☐ NO ☐	YES ☐ NO ☐			Financial Inst.	
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE			WEAPON TYPE		
[REDACTED] N. [REDACTED] [REDACTED] [REDACTED] D.		29340			N/A		
INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME
5-5-11	1330	5-5-11	1400	5-5-11	1355	1356	1410
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
Borton-James H. (424)		ST #2		JSOU	W	M	42
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
GAFFNEY POLICE DEPT.		GAFFNEY		SC	29340	4	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
Wilkins, Kimberly M		ST #1		JSOU	B	F	31
HEIGHT		WEIGHT		TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.			
50		160		28-80			
VISIBLE INJURY (VICT. 1) YES ☐ NO ☐ EXPLAIN:		COMPLAINT OF ANY NON-VISIBLE INJURIES: YES ☐ NO ☐					
VICTIM (NO. 1) USING ALCOHOL YES ☐ NO ☐ UNK ☐		DRUGS: YES ☐ NO ☐ UNK ☐		TYPE:			
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐		ALONE ☐		ASSISTED ☐ *J - This Jurisdiction. S - State. O - Out of State. U - Unknown.			
X SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
- RUNAWAY		RAINEY - JEROME WILLIAM		B	M	47	N
- WANTED		FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
- WARRANT		55 # [REDACTED]					
- ARREST		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
- SUMMONS		[REDACTED]		GAFFNEY	SC	29340	1
SUBJECT (NO. 1) USING ALCOHOL YES ☐ NO ☐ UNK ☐		ARRESTED NEAR OFFENSE SCENE YES ☐ NO ☐		DATE / TIME OF OFFENSE		DATE / TIME OF ARREST	
DRUGS: YES ☐ NO ☐ UNK ☐ TYPE:		TOTAL # ARRESTED		SOME		SOME	
ON DATE & TIMES INDICATED C/V * WITNESS THAT SUBJECT #1 HAD SO IN FACT, COME ONTO PROPERTY W/ VIEWING DISTANCE OF BATHROOM WINDOW EXPOSING HIS PENIS AND WAS EJACULATING WHILE SHE WAS TAKING SHOWER. I/O OBSERVED THAT BATHROOM WINDOW DID NOT HAVE CURTAIN. C/V * WITNESS ALSO STATED THAT SAME SUBJECT HAD IN FACT BEEN SEEN PERFORMING SAME ACT ON A PRIOR DATE. SUBJECT #1 WAS LOCATED W/ PROPERTY AREA OF RESIDENCE W/ ZIPPER UNZIPPED. SUBJECT #1 MIRANDIZED, WHOM'S STATEMENT AFTER MIRANDIZED WAS THAT HE HAD URINATED AT SAID AREA WHILE CUTTING GRASS TO ADJACENT PROPERTY. I/O OBTAINED WRITTEN STATEMENTS FROM BOTH C/V * WITNESS. SUBJECT ARRESTED & CHARGED AS INDICATED.							
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)						TOTAL VALUE	
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM. CLOSED	
X		X		X		X	
ARRESTED UNDER 18		EX-CLEAR UNDER 18					

Violation Status Maintenance									
File Edit Options Help									
Cit #	86786FJ	Viol #	1	Long Cit#		Docket #	86786FJ 01		
Name	RAINEY, WILLIAM JEROME				* Adult *	Age at time of Violation	47		
	B. M. 004010407-SC				In Queues	None			
Violation Fees History Receipts Clerk Comments Docket Comments Prosecutor Comments Judgment									
Judgment Template		PLED GUILTY - 470 OR 6 DAYS COM. SERV. CONFIRMED COMPLETE ON 1/12/12.					Teen Court		
Verdict	<none>								
Drivers License	<none>	From		To		Interlock	<none>		
Jail Sentence									
Confinement									
Probation									
Suspended									
		Programs ☐ Alcohol/Drug Traffic ☐ Alcohol/Drug Rehab ☐ Driver Improvement ☐ Domestic Violence ☐ Community Service				Other ☐ SIS ☐ Waive Attorney ☐ Additional Points ☐ DWI Related ☐ Other Programs ☐ Probation			
Prosecutor		none	BAC %		.000	Sentence Distinction		<blank>	
Amend Charge									
Offense	INDECENT EXPOSURE OR DRESS						Exit		
		View	cmarlin						

Violation Status Maintenance

File Edit Options Help



Cit #	86786FJ	Viol #	1	Long Cit#		Docket #	86786FJ-01
Name	RAINEY, WILLIAM JEROME			* Adult *	Age at time of Violation	47	
	B. M. [REDACTED] 004010407-SC			In Queues	None		

Violation | Fees | History | Receipts | Clerk Comments | Docket Comments | Prosecutor Comments | Judgment |

Status	AS	FINE SUSPENDED	Date	12/09/2011	Fri	Time	09:30	AM
Alt. Status #1	FG	FOUND GUILTY	Date	12/09/2011	Fri	Time	12:00	AM
Alt. Status #2			Date			Time	12:00	AM
Plea			Date			Docket Weight Override		
Judge	WSW	WADE S. WEATHERFORD III						
Court Location	UPG	INCODE Upgrade Location						
Type of Trial	by Judge							
Conviction Date	12/09/2011							
Attorney		<no Attorney>						
County	CJ	CHEROKEE						
Review Attorney		<none>						

Bonds	
Bond Set Override ☐	
Set	0.00
Posted	0.00
Fine/Costs	
Fine	0.00
Fees	0.00
Totl	0.00
Credits	
Cash	0.00
NCsh	0.00
Pend	0.00
Bal	0.00

Collect Fees Only ☐	
Collections	
Collections	
Send to Queue	

Offense	INDECENT EXPOSURE OR DRESS	✓ Ok	⊗ Cancel
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Edit cmartin

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Jerome W. Rainey, #293814,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-11-0561

ORDER OF DISMISSAL

CLERK OF COURT
JANUARY 6 2013
6 11 13
CLERK OF COURT
JANUARY 6 2013
6 11 13

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 3, 2012, and amendment filed September 26, 2013. The Respondent made its Return on or about August 20, 2013. An evidentiary hearing into the matter was convened on November 13, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Thomas A. Killoren, Jr., Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the pre-trial motion hearing transcripts, trial transcript, and Exhibits.

PROCEDURAL HISTORY

The Applicant is presently on probation pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the Cherokee County Grand Jury in August 2011 for eavesdropping or peeping tom (2011-GS-11-0493). He represented himself at trial *pro se*. On March 15, 2012, the Applicant was convicted of the charge was

sentenced by the Honorable J. Derham Cole to a sentence of three years and fine of \$500 provided that upon the service of eighteen months and fine of \$250 the balance is suspended with probation for five years for peeping tom, eavesdropping, peeping. The Applicant failed to file a timely Notice of Appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Violation of Fourteenth Amendment right of due process; and
2. Violation of Eighth Amendment right against cruel and unusual punishment, in that;
 - a. Trial court sentenced Applicant in violation of the required statutory punishment.
3. Violation of Fifth Amendment right against double jeopardy, in that;
 - a. The conviction for eavesdropping or peeping tom is for the same offense that Applicant pled guilty to in Municipal Court on December 9, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Violations of Fifth Amendment

The Applicant alleged his Fifth Amendment rights were violated when he was convicted and sentenced to a crime which had already been resolved via his guilty plea in municipal court. The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect

against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently-granted mistrial. The Applicant testified that he received two tickets from Gaffney City Police for charges of indecent exposure and eavesdropping/peeping tom. Applicant introduced into evidence a copy of the ticket for the indecent exposure charge to which Applicant pled guilty in December 2011 and was sentenced to pay a fine as Applicant's Exhibit #1. Applicant then testified that he proceeded to trial on the eavesdropping/peeping tom charge and was found guilty on March 15, 2012. The Applicant testified that he believed his conviction violated the double jeopardy clause because the Assistant Solicitor used the indecent exposure incident against him at trial. The record reflects that the eavesdropping charge resulted from the same event that led to the indecent exposure charge. Applicant testified that he objected to witness testimony at trial regarding the event when he was alleged to have had his penis exposed while he looked through the victim's window. However, Applicant testified that the court overruled his objection and stated that the issue was one of credibility for the jury.

This Court finds that the Applicant has failed to meet his burden of proof as to this claim. This Court finds that the municipal court had jurisdiction to hear and resolve the indecent exposure charge, but the eavesdropping/peeping tom charge could not be resolved in municipal court once the Applicant was indicted by the Cherokee County Grand Jury because the charge had different elements, although it resulted from the same facts and situation. The South Carolina Supreme Court has found the Blockburger test appropriate to determine if two charges result in violations of the double jeopardy clause. "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact

which the other does not." Blockburger v. United States, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932). This Court finds that there was no violation of the Applicant's rights when he was allowed to plead guilty to indecent exposure, but then was charged and convicted of eavesdropping/peeping tom related to the same incident. Therefore, this claim is denied and dismissed.

Violations of Eighth Amendment

The Applicant alleged that his Eighth Amendment rights were violated when the court sentenced him to a sentence which was beyond the statutory requirement. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). The Applicant was sentenced to three years and a fine of \$500 provided that upon the service of eighteen months and a fine of \$250 the balance would be suspended to probation for five years, which is well within the sentence allowed by statute. S.C. Code Ann. § 16-17-470 (1976). Additionally, the Applicant did not object to the sentence following his conviction, so Applicant waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Therefore, this Court finds that there were no constitutional violations and this claim is denied and dismissed.

Violations of Fourteenth Amendment

The Applicant alleged in his application that his due process rights were violated;

however, he failed to pursue this allegation at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this allegation.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of MARCH, 2014.


Robin B. Stilwell
Presiding Judge

WITNESSES

Gaffney Police Dept.

07-16-2014

09:33:32 p.m.

86785FJ

ARREST WARRANT NUMBER

ACTION OF GRAND JURY

TRUE BILL

Paul W. Stedman
Foreperson of Grand Jury
Date: 8-18-11

VERDICT

guilty

Paul W. Stedman
Foreperson of Petit Jury
Date: 3/15/12

8644872754

DOCKETING
11-GS-11-0493

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 18 2011

TERM

THE STATE

VS.

William Jerome Rainey

FILED
CLERK OF COURT
CHEROKEE COUNTY, S.C.

AUG 18 A 10:21

CANDY W. MCBEE

Indictment for
EAVESDROPPING OR PEEPIG TOM

SC Code: 16-17-470 (A)
CDR Code: 0120
Class MIS/A

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHEROKEE)

At a Court of General Sessions, convened on AUG 18 2011 the
Grand Jurors of Cherokee County present upon their oath:

EAVESDROPPING OR PEEPING TOM

That William Jerome Rainey, did in Cherokee County on or about May 5, 2011, willfully and unlawfully go about or upon the premises of Kimberly M. Wilkins, for the purpose of spying on and into the victim's home by peeping through the victim's window and invading the said victim's privacy, in violation of §16-17-470, *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.


Assistant Solicitor