

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Horry County
Steven H. John, Circuit Court Judge

S.C. Supreme Court

LEWIS E. PIPHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000176

APPENDIX

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY)

STATE OF SOUTH CAROLINA)
) **Original**
)

-VS-) 2009-GS-26-04401;
) and 00215
LEWIS PIPHER; AND SHELLY MAUNEY,)
)
DEFENDANTS.)

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE
 THE HONORABLE LARRY HYMAN;
IN THE CIRCUIT COURT OF HORRY COUNTY, BEGINNING AT 9:53
AM, ON THE 15TH DAY OF JUNE, 2010, AT THE HORRY COUNTY
COURTHOUSE, 15TH JUDICIAL DISTRICT, HORRY COUNTY GENERAL
SESSIONS COURT, CONWAY, SOUTH CAROLINA.
REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

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OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
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(NOW SHELLY HINES PIPHER)

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JURY SELECTION

5

1 WHEREUPON: The jury venire
2 panel for this case entered the courtroom at 9:53 AM,
3 June 15th, 2010.

4 THE COURT:

5 All right. Good morning. Good
6 to see you all again.

7 Uh -- As I told you -- uh --
8 yesterday, I'm Larry Hyman. I'm a Circuit Judge. And
9 I've been assigned to preside over this particular case.

10 You have all been qualified on
11 Monday -- uh -- as -- as jurors. And what we are going
12 to do is requalify you today as to this particular case
13 that we are about to try.

14 The reason we do that is:

15 The -- The cornerstone of our
16 judicial system is the jury. And we do everything that
17 we possibly can to make sure that we have a fair and
18 impartial jury; a jury that can give both the State and
19 the Defense a fair trial in these cases. And for that
20 reason, we go through this.

21 Uh -- We do a general
22 qualification to find out if you're qualified to serve as
23 jurors. And then, we do a specific qualification to
24 determine whether there's anything about this particular
25 case that would cause you to have con -- some concerns

JURY SELECTION

6

1 about your ability to be fair and impartial.

2 We're about to begin the case of
3 the State of South Carolina -- uh -- versus Lewis Edward
4 Pipher, Jr., and Shelley Hines -- uh -- Mauney.

5 Uh -- Is that correct, Mr.
6 Floyd?

7 MR. FLOYD:

8 What?

9 THE COURT:

10 Mauney?

11 DEFENDANT:

12 Lewis.

13 THE COURT:

14 Mauney.

15 MR. FREDERICK:

16 It's actually Pipher now, Judge.
17 They're married.

18 THE COURT:

19 Pipher? And -- And she is now
20 a Shelley Hines Pipher.

21 Is that correct?

22 MR. FLOYD:

23 Yes sir.

24 THE COURT:

25 Ladies and gentlemen, Let me

JURY SELECTION

7

1 tell you that I have before me, two indictments that have
2 been true-billed by the Horry County Grand Jury.

3 I want you to understand from
4 the get-go and throughout this trial that an indictment
5 is not evidence against anyone, and should not be
6 considered as evidence in a trial.

7 The fact that a person has been
8 indicted is not a matter that you should consider in your
9 deliberations if you are placed on this -- this jury.

10 Furthermore, the facts alleged,
11 or the statement of facts set out in the indictment, is
12 not evidence. It is not for your consideration.

13 During this trial, you will only
14 consider the evidence and testimony that you hear from
15 the witness stand.

16 But an indictment is a document
17 that puts the Defendant on notice of what he or she is
18 charged with. And it brings the case before The Court.

19 Now in that regard, I want to
20 tell you a little bit about this case.

21 Uh -- It is alleged that Lewis
22 Edward Pipher, Jr. and Shelley Hines -- uh -- Mauney and
23 -- Mauney-Pipher -- uh -- did in Horry County on or about
24 August the 31st, of 2009 -- uh -- enter the dwelling of
25 Carolyn Duncan, located at Road in the

JURY SELECTION

8

1 Conway section of Horry County without consent and with
2 the intent to commit a crime therein; and that the
3 Defendant did so in the nighttime.

4 And -- uh -- that is essentially
5 the facts that give rise to this particular case.

6 Now I tell you that because I'm
7 going to ask you some questions about this case to
8 determine whether or not you have any prior knowledge
9 about the case whatsoever. And then we're going to go
10 into the actual jury selection process.

11 And let me tell you a little bit
12 about that.

13 You may have had an opportunity
14 in the past to serve on a civil jury. Yesterday, I
15 explained to you that in this courtroom we try both civil
16 and criminal cases.

17 The process that we use to
18 select the jury is different in the two cases. A civil
19 case is different from a -- a criminal case.

20 In a civil case, the way we do
21 it is that we will have a -- a panel like this. We
22 qualify them. And then, a list is made up of -- of
23 juror's -- potential jurors.

24 And each juror is given a new
25 number. And the attorneys will strike from that sheet --

JURY SELECTION

9

1 or the sheet that shows the new numbers. And you don't
2 even come forward. You simply see sit in the gallery
3 there.

4 And after that has been
5 completed, we call the names of the jurors who have been
6 selected and you take your seat -- uh -- a -- a very nice
7 process where you don't even know if you were considered
8 as a juror, and you certainly don't know if anyone struck
9 you as a juror.

10 On the criminal side we do
11 things a little differently. Uh -- Our process requires
12 you, as your name is called, to come forward and stand
13 right down here in front of me.

14 Today, I'm going to ask you to
15 tell the -- uh -- the attorneys when you turn around and
16 face them, what you do for a living; what you did for a
17 living, if you are retired; if you're unemployed, what
18 you did before you were unemployed; and what your spouse
19 -- uh -- may do if your spouse is employed.

20 That's something we usually
21 don't do; but the attorneys have requested it in this
22 case, and it's proper that I do that.

23 But you have to come forward and
24 turn around and sort of face the music.

25 Some people find that

1 intimidating and they are -- and they are somewhat
2 embarrassed if they -- if they happen to be struck.

3 I'm telling you that; and
4 probably all of you are thinking:

5 I hope I get struck. Uh -- It
6 won't embarrass me to get stuck. (Laughter.)

7 But -- uh -- that's process that
8 we follow.

9 And what will happen when you
10 come and stand is, the State will go first. And the
11 State -- uh -- Mr. O'Sullivan is representing the State.

12 Mr. O'Sullivan will say:

13 Judge, present the juror.

14 And in that case, the State will
15 then have an option to accept or reject you. Or he can
16 say:

17 Excuse the juror.

18 If he says:

19 Excuse the juror.

20 Of course, you return to your
21 seat.

22 If he says:

23 Present the juror.

24 Then, since we have two

25 Defendants, each Defendant has an opportunity to either

JURY SELECTION

11

1 say:

2 Swear or -- or seat -- it means
3 the same thing -- swear or seat the juror. Or:

4 Excuse the juror on this case.

5 And let me say this:

6 I practiced law for -- Well,
7 these young lawyers were -- were probably in diapers when
8 I started practicing law. Uh -- I'm so much older than
9 they are.

10 But I can say one thing from
11 experience.

12 We don't have a clue as to what
13 process you're supposed to follow, or do follow, or what
14 process we may employ in selecting a jury. We don't
15 know. And attorneys don't know that.

16 It's often nothing more than a
17 gut feeling.

18 You may be excused because you
19 part your hair on the left; you part it on the right, or
20 you got no hair to part, or your hair's on your chin like
21 me.

22 They don't know. So you should
23 not be embarrassed at all. It's typically just a gut
24 feeling.

25 They have a little bit of

1 information about you. When you send in your jury
2 questionnaires, you kind of told them what you did for a
3 living and where you lived.

4 In most instances, it's nothing
5 more than a -- than the attorneys looking at the jury
6 panel and saying:

7 Well here's a juror down the --
8 the list here that might be more sympathetic to the
9 State's position or the Defense's position.

10 And that's all there is to it.

11 And I tell you that so that you
12 understand that you should not -- uh -- be concerned or
13 embarrassed at all by the fact that you may -- uh -- get
14 stuck on this case.

15 The same attorney might be glad
16 to have you on -- uh -- the next case.

17 But before we begin that
18 process, they need to know a bit more about you. And I'm
19 going to ask you some questions in that regard.

20 First of all let me ask you all
21 to stand and raise your hands and be sworn by the clerk.

22 We ask you to -- uh -- again --
23 You get a lot of swearing when you're about to be on a
24 jury or affirming. And that simply because we need to
25 make sure that everyone is answering -- answering

JURY SELECTION

13

1 truthfully.

2 If you would, Madame Clerk?

3 WHEREUPON: The jury venire
4 panel was sworn by the Clerk in open court at 10:02 AM,
5 June 15, 2010.

6 THE COURT:

7 All right. You may be seated.

8 Is there anyone --

9 WHEREUPON: The attorneys in an
10 impromptu manner approached the bench and a conference
11 was held at the bench at 10:02 AM

12 THE COURT:

13 All right.

14 MR. FLOYD:

15 I didn't mean to interrupt you,
16 Judge.

17 THE COURT:

18 That's all right. Okay.

19 First of all, let me -- uh --
20 ask you:

21 Was there anyone who did not
22 just take the oath that they would answer truthfully?

23 (No response.)

24 THE COURT:

25 And let the record reflect that

1 there was no response to that inquiry.

2 Now, has anyone on this jury
3 panel -- potential jury panel -- ever been related by
4 blood or marriage to either of the Defendants in this
5 case?

6 And I'm going to ask the
7 Defendants to please stand so the jury can see you.

8 WHEREUPON: Both Defendants did
9 as instructed by The Court.

10 THE COURT:

11 All right. You may be seated.
12 Thank you.

13 Or the victim -- uh -- in -- uh
14 -- this case -- or alleged victim?

15 And that would be -- uh --
16 Carolyn Duncan.

17 Is Ms. Duncan present, Mr. -- uh
18 -- O'Sullivan.

19 MR. O'SULLIVAN:

20 She's present. She's not in the
21 courtroom, Your Honor.

22 THE COURT:

23 Okay. Uh -- But that would be
24 Ms. Carolyn Duncan who lives -- uh -- on Altman Road here
25 in the Conway section of Horry County.

JURY SELECTION

15

1 (No response.)

2 THE COURT:

3 And there is no response.

4 Does anyone have a close
5 personal -- uh -- or social relationship with either of
6 the Defendants or the alleged victim in this matter?

7 (No response.)

8 THE COURT:

9 And again, there is no response.

10 I've been provided with a copy
11 of potential witnesses in this case. And these witnesses
12 -- uh -- uh -- may or may not be called. You should not
13 attach any importance at all to the fact that you may
14 have heard a witness's name called -- or potential
15 witness's name called -- and you don't see or hear from
16 that witness in a trial.

17 I ask the attorneys to provide
18 me with the names of anyone who might possibly be -- be
19 called in this case. And they have done that. And I
20 want to give you the names of people who may potentially
21 be witnesses in this case.

22 Lewis Pipher.

23 Shelley Pipher.

24 Thomas Washington.

25 Mary Roberts.

JURY SELECTION

16

1 Becky Johnson.
2 Carolyn Duncan.
3 Jackie Eodler.
4 Angela Robbins.
5 Larry Robbins.
6 Officer Anthony Sawyer.
7 Officer Jeremy Crews.
8 Officer Donnie Mile -- Miles.
9 Or: Anita Daniels.
10 Uh -- Has anyone of you -- uh --
11 ever had a -- a personal or social relationship with any
12 of these potential witnesses, or are you related by blood
13 or marriage?
14 Do you have any relationship
15 with any of these witnesses that might affect your
16 ability to be fair and impartial juror?
17 (No response.)
18 THE COURT:
19 And the record will reflect that
20 there was no response to that question. Okay.
21 Has anyone on this jury panel
22 ever been represented by the attorneys in this case?
23 Now let me tell you who they
24 are.
25 I have Mr. Bobby Frederick,

JURY SELECTION

17

1 who's seated here at the Defense table and Laura Hiller
2 who -- uh -- is his associate.

3 Uh -- They -- uh -- have been
4 practicing law in Horry County for some time, and are in
5 the private sector.

6 I think Mr. -- uh -- uh --
7 Frederick's firm does civil and criminal work.

8 Is that correct, Mr. Frederick?

9 MR. FREDERICK:

10 That's right.

11 THE COURT:

12 All right. You may be seated.

13 And of course, we have Mr. Tom
14 Floyd, who is seated here.

15 Mr. Floyd is employed by the
16 Horry County Public Defender Corporation. He has been
17 here in Horry County for a number of years, and -- uh --
18 has always -- or practically always -- uh -- been with
19 the -- uh -- Public Defender -- uh -- Corporation.

20 I think maybe 20 years ago he
21 may have been in private practice.

22 Also we have, over at the
23 State's table -- uh -- Mr. Michael O'Sullivan. Mr.
24 O'Sullivan has been with the 15th Circuit Solicitor's
25 Office. He works for Mr. Greg Hembree, your Solicitor.

1 Uh -- He is assigned to -- I think exclusively the Horry
2 County, are you not, Mr. Sullivan (sic).

3 MR. O'SULLIVAN:

4 Yes, Your Honor.

5 THE COURT:

6 Of course, the Solicitor's
7 Office goes over to Georgetown County; but Mr. O'Sullivan
8 is here.

9 And Mr. O'Sullivan, I don't
10 think you've ever been in private practice; have you?

11 MR. O'SULLIVAN:

12 No sir.

13 THE COURT:

14 You've always worked with the
15 Solicitor.

16 MR. O'SULLIVAN:

17 (Nods in the affirmative.)

18 THE COURT:

19 All right, sir.

20 Has anyone -- Thank you, sir.

21 Has anyone -- uh -- ever been
22 represented by either of these attorneys? Or do you
23 have a -- a close social or personal relationship? Or
24 are you related -- uh -- by blood or marriage? Or have
25 you been related by blood marriage to any of the

JURY SELECTION

19

1 attorneys that are involved in this case?

2 (No response.)

3 THE COURT:

4 And there is no response.

5 Now I'm going to ask you some

6 very important questions. And that's this:

7 Has anyone on this jury panel
8 expressed an opinion about any issue or matter involved
9 in this case?

10 Now I told you a little bit
11 about the case. I told you when it occurred. I told you
12 that it involved a burglary. I told you who the victim
13 was. And I told you generally where this occurred.

14 Now, what I would like to know
15 is:

16 Do you know anything about this
17 case?

18 Have you heard about it?

19 Have you read about it?

20 Uh -- You've told me that you
21 don't know victim. But is there a possibility that you
22 may have known some of the -- the -- uh -- the people in
23 the neighborhood? You may have talked about it?

24 Uh -- Do you know anything at
25 all about this case?

JURY SELECTION

20

1 (No response.)

2 THE COURT:

3 And -- or these cases. And
4 there is no response.

5 Is there any member of the jury
6 panel that's aware of any prejudice or bias that you may
7 have against either the State or the Defense in this
8 case?

9 WHEREUPON: A juror in the
10 venire panel stood up.

11 THE COURT:

12 Yes ma'am?

13 JUROR JENNINGS:

14 Uh --

15 THE COURT:

16 Ma'am, could you do this?

17 Could -- Could you come forward
18 and let -- and -- and let me discuss that with you in
19 private?

20 Attorney's you may approach.

21 WHEREUPON: The juror did as
22 instructed by The Court.

23 THE COURT:

24 Yes ma'am.

25 JUROR JENNINGS:

JURY SELECTION

21

1 Uh -- My name is Susan Jennings.

2 My father was a victim of a home invasion.

3 THE COURT:

4 Okay.

5 JUROR JENNINGS:

6 Left dis -- uh -- He was left

7 disabled --

8 THE COURT:

9 All right.

10 JUROR JENNINGS:

11 -- and --

12 THE COURT:

13 Well, let me ask you this:

14 Would that fact -- uh -- would
15 that prevent you from being and impartial -- uh -- juror?

16 JUROR JENNINGS:

17 I don't believe so. But I just
18 wanted to be known.

19 THE COURT:

20 Okay. Do you think you could
21 still give the State and the Defense a fair trial?

22 JUROR JENNINGS:

23 I believe so.

24 THE COURT:

25 You can set that aside?

JURY SELECTION

22

1 JUROR JENNINGS:

2 (Nods in the affirmative.)

3 THE COURT:

4 All right. Thank you.

5 JUROR JENNINGS:

6 Thank you.

7 MR. FREDERICK:

8 What's the juror number?

9 THE COURT:

10 What is your number?

11 JUROR JENNINGS:

12 186.

13 THE COURT:

14 186. And your name again?

15 JUROR JENNINGS:

16 Susan Jennings.

17 THE COURT:

18 Thank you Ms. Jennings. Please
19 have a seat.

20 WHEREUPON: The jury venire
21 panel member did as instructed by The Court.

22 THE COURT:

23 All right. Was anyone else that
24 I didn't see?

25 (No response.)

JURY SELECTION

23

1 THE COURT:

2 Okay.

3 Is there any member of the jury
4 panel who was a member of the grand jury which issued
5 these indictments?

6 And that would of course require
7 you to on the grand jury within the last year. And I
8 think we covered yesterday.

9 But let me ask you that question
10 again.

11 Has anybody been on the grand
12 jury in the last year?

13 (No response.)

14 THE COURT:

15 All right.

16 Is any member of the jury panel
17 a contributor or a member of any group whose primary
18 concern is the promotion of law enforcement and/or
19 victim's rights?

20 And there are many. And you
21 would certainly know if you were -- if you were a member
22 of such group.

23 But I'll give you -- uh -- just
24 a few -- uh -- as an example, such as: MADD, SADD, CAVE,
25 which is Citizens Against Violent Crimes; any of those --

JURY SELECTION

24

1 uh -- groups.

2 Uh -- If you are a member or
3 contributor, would you please raise your hand?

4 WHEREUPON: A member of the jury
5 venire panel raised their hand in response.

6 THE COURT:

7 Yes ma'am? And you are?

8 JUROR GOLDMAN:

9 Laureen Goldman, 134.

10 THE COURT:

11 All right.

12 JUROR GOLDMAN:

13 I belong to Mothers Against
14 Drunk Driving.

15 THE COURT:

16 All right. And Ms. Goldman,
17 would that in any way effect your ability to be a fair
18 and impartial juror?

19 JUROR GOLDMAN:

20 Yes.

21 THE COURT:

22 It would?

23 JUROR GOLDMAN:

24 Definitely.

25 THE COURT:

JURY SELECTION

25

1 Uh -- You could not set that
2 aside?

3 JUROR GOLDMAN:

4 (Nods in the negative.)

5 THE COURT:

6 All right. I am going to excuse
7 you, then, from the trial of this case.

8 And again, your number was?

9 JUROR GOLDMAN:

10 134.

11 THE COURT:

12 134. Thank you for sharing that
13 with us.

14 All right. Anyone else?

15 (No response.)

16 THE COURT:

17 Okay.

18 Uh -- Is there any member of
19 this jury panel who knows any reason whatsoever why you
20 should not serve -- uh -- on this case, with particular
21 emphasis, again, on your ability to a fair and impartial?

22 That's what I want. I want a
23 fair and impartial jury.

24 Is there anyone who has a
25 problem with that?

JURY SELECTION

26

1 WHEREUPON: A member of the jury
2 venire panel stood in response.

3 THE COURT:

4 Yes ma'am? And I'm going to let
5 you come around and -- and speak to me privately about
6 that; okay.

7 WHEREUPON: The jury venire
8 panel member did as instructed by The Court.

9 THE COURT:

10 Yes ma'am. And you are?

11 UNKNOWN JUROR:

12 (Whispers in a barely audible
13 voice.)

14 I work with Tommy Brittain.

15 And even though I don't know him
16 personally, I work with his office every day. I know
17 Thomas. So --

18 THE COURT:

19 Okay.

20 UNKNOWN JUROR:

21 I know you. (Laughs.)

22 THE COURT:

23 And you think that would -- uh
24 -- cause you a problem?

25 JUROR:

JURY SELECTION

27

1 No. I don't know if it would;
2 but I know everybody.

3 THE COURT:

4 Well, could you set that aside
5 and still be a fair and impartial juror?

6 UNKNOWN JUROR:

7 No, I know everybody.

8 THE COURT:

9 You said you know everybody;
10 that's fair.

11 UNKNOWN JUROR:

12 (Whispering directly to The
13 Court much too low to be audible to court reporter.)

14 THE COURT:

15 All right.

16 UNKNOWN JUROR:

17 I could --

18 THE COURT:

19 I mean, you -- Would it really
20 make you uncomfortable to serve on this jury?

21 UNKNOWN JUROR:

22 No.

23 THE COURT:

24 It would not? You could still
25 do it?

JURY SELECTION

28

1 UNKNOWN JUROR:

2 Because I don't know the victims
3 or the persons.

4 THE COURT:

5 Okay. All right.

6 Then, you're still qualified.

7 Have a seat.

8 UNKNOWN JUROR:

9 Thank you, then.

10 THE COURT:

11 Thank you.

12 WHEREUPON: The jury venire
13 member returned to her seat with the panel.

14 WHEREUPON: Juror Panel Member
15 134, Laureen Goldman, again stood.

16 THE COURT:

17 Yes ma'am. I -- I have already
18 excused you.

19 WHEREUPON: Another member of
20 the jury venire panel stood.

21 THE COURT:

22 Yes ma'am?

23 JUROR FOX:

24 Uh -- Juror 117, Amanda --

25 THE COURT:

JURY SELECTION

29

1 Come on around, please.

2 And the reason I do that is:

3 Sometimes potential jurors say
4 things that could contaminate or influence the rest of
5 the panel, so I like to bring them up.

6 WHEREUPON: The jury venire
7 panel member did as instructed by The Court.

8 JUROR FOX:

9 Uh --

10 THE COURT:

11 Yes ma'am?

12 JUROR FOX:

13 My son works at J. Reuben Long.

14 THE COURT:

15 Uh-huh.

16 JUROR FOX:

17 My husband was killed by a drunk
18 driver in '99.

19 THE COURT:

20 And you think that that might
21 affect --

22 JUROR FOX:

23 Yeah.

24 THE COURT:

25 -- to be a fair and impartial --

JURY SELECTION

30

1 JUROR FOX:

2 She never went to jail. She got
3 nothing.

4 THE COURT:

5 Okay. And your number?

6 JUROR FOX:

7 117.

8 THE COURT:

9 Okay. I will excuse you, then,
10 okay.

11 JUROR FOX:

12 Thank you.

13 THE COURT:

14 All right. All right.

15 Now, is there any member of the
16 jury panel who has ever been -- uh -- the victim of a
17 crime?

18 WHEREUPON: Some members of the
19 jury panel began to slowly stand up in response (while
20 evidently initially being unseen by The Court).

21 THE COURT:

22 And there is no response?

23 Is there any member of the jury
24 panel -- oh, excuse me -- who has a family member -- Well
25 let's -- let's put them both together -- who's been a

JURY SELECTION

31

1 victim of a crime.

2 All right. So if you have a
3 family member, or if you -- Let me ask you this. I'll
4 start with the first lady.

5 Has -- Could you set that aside and give fair and
6 effective jury service? Could you give each side a fair
7 trial?

8 JUROR JENNINGS:

9 Yes sir.

10 THE COURT:

11 All right. Thank you very
12 much. And your number again was?

13 JUROR JENNINGS:

14 186.

15 THE COURT:

16 186.

17 All right, sir, on the back
18 regardless of whether?

19 JUROR HERR:

20 Number 166.

21 THE COURT:

22 All right. And were you a
23 victim or a family member?

24 JUROR HERR:

25 Uh -- Victim.

JURY SELECTION

32

1 THE COURT:

2 All right. And could you set
3 that aside and render a fair and effective jury service?

4 JUROR HERR:

5 (Shrugs.)

6 THE COURT:

7 Could you be fair to both the
8 State and the Defense?

9 JUROR HERR:

10 I think so.

11 THE COURT:

12 I have to know.

13 JUROR HERR:

14 Well, can I explain to you what

15 --

16 THE COURT:

17 I'll let you do so up here;
18 okay.

19 WHEREUPON: The jury venire
20 panel member approached the bench.

21 THE COURT:

22 All right, sir?

23 JUROR HERR:

24 We -- We were on vacation down
25 here a number of years ago and we had a break-in in our

JURY SELECTION

33

1 home.

2 THE COURT:

3 All right.

4 JUROR HERR:

5 And we felt very violated at

6 that time.

7 THE COURT:

8 Okay. Do you think that you
9 could completely and totally set that aside? I need for
10 you to tell me for sure whether you can do that?

11 MR. HERR:

12 Hey, I believe I can; but --

13 THE COURT:

14 That's not quite good enough.
15 You've got to be able to tell me that you can set aside
16 and give a fair trial..

17 MR. HERR:

18 Well, I --

19 THE COURT:

20 Because if you have questions
21 about it, I have questions about it.

22 MR. HERR:

23 All right. Yes. It -- It has
24 gone away from me for the past couple of years. But it's
25 difficult when I know that in this case it's a break-in.

JURY SELECTION

34

1 THE COURT:

2 Okay.

3 JUROR HERR:

4 Breaking and entering,
5 especially if --

6 THE COURT:

7 What I'm going to do is, excuse
8 you from this case. And your number is?

9 JUROR HERR:

10 166.

11 THE COURT:

12 166. All right, sir. Thank
13 you.

14 WHEREUPON: That juror returned
15 to his seat in the jury venire panel.

16 THE COURT:

17 Yes ma'am; right on the front
18 row. And your number?

19 JUROR MOORE:

20 247.

21 THE COURT:

22 All right. And you have been a
23 victim, or a family member has been a victim?

24 JUROR MOORE:

25 Victim.

JURY SELECTION

35

1 THE COURT:

2 All right. And could you set
3 that aside and render fair and effective jury service?

4 Could you give both the Defense
5 and the State a fair trial in this matter?

6 JUROR MOORE:

7 Yes.

8 THE COURT:

9 Thank you very much.

10 MR. O'SULLIVAN:

11 Your Honor, could I just have
12 that number again?

13 THE COURT:

14 And your number?

15 JUROR MOORE:

16 247.

17 THE COURT:

18 247.

19 And the lady in the green?

20 JUROR DAVIS:

21 82.

22 THE COURT:

23 And were you a victim or were --
24 you have a family member who was?

25 JUROR DAVIS:

JURY SELECTION

36

1 Family member.

2 THE COURT:

3 And could you set that fact
4 aside and still render fair and effective jury service?

5 JUROR DAVIS:

6 Yes sir.

7 THE COURT:

8 Could you be fair to both the
9 State and the Defense?

10 JUROR DAVIS:

11 Yes sir.

12 THE COURT:

13 Thank you, ma'am. And your
14 number was, again?

15 JUROR DAVIS:

16 82.

17 THE COURT:

18 82.

19 And the lady with the black?

20 JUROR REID:

21 296.

22 THE COURT:

23 All right.

24 Were you a -- a victim, or a
25 family member was a victim?

JURY SELECTION

37

1 JUROR REID:

2 Uh -- Family member.

3 THE COURT:

4 All right.

5 Could you set that aside?

6 JUROR REID:

7 Yes.

8 THE COURT:

9 Could you give fair and
10 effective service in this matter?

11 JUROR REID:

12 Yes.

13 THE COURT:

14 Be fair to both the State and
15 the Defense?

16 JUROR REID:

17 Yes.

18 THE COURT:

19 Thank you, ma'am.

20 And yes ma'am; the -- the last
21 lady standing?

22 JUROR KING:

23 Juror 211.

24 THE COURT:

25 All right. And were you a

1 victim, or a family member?

2 JUROR KING:

3 My daughter.

4 THE COURT:

5 All right. And could you set
6 that aside and render fair and effective jury service?

7 JUROR KING:

8 Yes sir.

9 THE COURT:

10 Could you be fair to both the
11 State and the Defense?

12 JUROR KING:

13 (Nods in the affirmative.)

14 THE COURT:

15 Thank you very much.

16 COURT REPORTER:

17 What was her number again?

18 JUROR KING:

19 211.

20 THE COURT:

21 211; okay. It's 211. Okay.

22 All right.

23 Has any member of the jury panel

24 -- uh -- ever been employed by civilian or military law-

25 enforcement?

JURY SELECTION

39

1 WHEREUPON: Some members of the
2 jury venire panel stood in response.

3 THE COURT:

4 Yes sir. And your number?

5 JUROR MARLOW:

6 232.

7 THE COURT:

8 All right. And were you
9 employed -- uh -- as a police officer?

10 JUROR MARLOW:

11 Uh -- Yes sir.

12 THE COURT:

13 And when was that?

14 JUROR MARLOW:

15 I'm currently a police officer
16 in the Navy Reserve.

17 THE COURT:

18 In the Navy Reserve? So
19 Military Police?

20 JUROR MARLOW:

21 Yes sir.

22 THE COURT:

23 All right. Would the fact that
24 you are a -- a -- uh -- a law enforcement officer with
25 the military affect your ability to be fair and impartial

JURY SELECTION

40

1 in this case?

2 JUROR MARLOW:

3 No sir.

4 THE COURT:

5 Could you give both the State
6 and the Defense a fair trial?

7 JUROR MARLOW:

8 Yes sir.

9 THE COURT:

10 All right, sir. Thank you very
11 much.

12 And you sir?

13 JUROR VANMARTER:

14 I was a part-time corrections
15 officer a couple of summers and also a -- a special
16 investigator in the Air Force.

17 THE COURT:

18 All right. And you -- That was
19 -- uh -- you're retired now?

20 JUROR VANMARTER:

21 Yes.

22 THE COURT:

23 Okay. And would --

24 JUROR VANMARTER:

25 From the military.

JURY SELECTION

41

1 THE COURT:

2 And your -- your number?

3 JUROR VANMARTER:

4 Uh -- 377.

5 THE COURT:

6 Could you set that aside and
7 still render fair and effective jury service?

8 JUROR VANMARTER:

9 (Nods in the affirmative.)

10 THE COURT:

11 Could you be fair to both the
12 State and the Defense?

13 JUROR VANMARTER:

14 Yes sir.

15 THE COURT:

16 Thank you very much. Okay.
17 Has any member of the jury panel
18 -- uh -- heard or read any media reports -- uh -- about
19 this -- this case?

20 And I don't know there were any.

21 (No response.)

22 THE COURT:

23 Is there any member of the jury
24 panel who is retired from law enforcement?

25 (No response.)

JURY SELECTION

42

1 THE COURT:

2 Is there any member of the jury
3 panel who has law enforcement in your family or close
4 friends?

5 WHEREUPON: Some members of the
6 jury venire stood in response.

7 THE COURT:

8 Okay. Yes ma'am?

9 Would that affect your ability
10 to render fair and effective jury service?

11 JUROR DAVIS:

12 No sir.

13 THE COURT:

14 Could you be fair to both the
15 State and the Defense?

16 JUROR DAVIS:

17 Yes sir.

18 THE COURT:

19 And your number was, again?

20 JUROR DAVIS:

21 82.

22 THE COURT:

23 Number 82.

24 And the lady on the front row
25 here? And your number again was?

JURY SELECTION

43

1 JUROR JENNINGS:

2 186.

3 THE COURT:

4 I want to ask you those same
5 questions.

6 Could you be fair and -- to both
7 the State and the Defense?

8 JUROR JENNINGS:

9 Yes sir.

10 THE COURT:

11 Could you set it aside?

12 JUROR JENNINGS:

13 Yes sir.

14 THE COURT:

15 Thank you.

16 The gentleman by her?

17 And could you likewise be fair?

18 JUROR TOPPINGS:

19 Yes sir.

20 THE COURT:

21 Uh -- To both the State and the
22 Defense?

23 JUROR TOPPINGS:

24 Yes sir.

25 THE COURT:

JURY SELECTION

44

1 Set aside the fact that you have
2 friends that might be in law enforcement?

3 JUROR TOPPINGS:

4 Yes sir.

5 THE COURT:

6 All right, sir.

7 And the gentleman who I just
8 spoke to a moment --

9 COURT REPORTER:

10 Wait one minute, sir. I need
11 his number.

12 THE COURT:

13 And your number?

14 JUROR TOPPINGS:

15 372.

16 THE COURT:

17 372.

18 The gentleman with the striped
19 shirt that I spoke to just a second ago?

20 JUROR VANMARTER:

21 377.

22 THE COURT:

23 And could you set that aside?

24 JUROR VANMARTER:

25 (Nods in the affirmative.)

JURY SELECTION

45

1 THE COURT:

2 Could you be a fair and
3 effective juror?

4 JURY VANMARTER:

5 Yes sir.

6 THE COURT:

7 Thank you very much, sir.

8 And by him?

9 JUROR JONES:

10 Number 197.

11 THE COURT:

12 And could you set the fact that
13 you have friends -- uh -- that -- uh -- are -- uh -- in
14 law-enforcement, or family in law enforcement aside?

15 JUROR JONES:

16 Yes sir.

17 THE COURT:

18 And could you be a fair and
19 effective juror?

20 JUROR JONES:

21 Yes sir.

22 THE COURT:

23 And your number again?

24 JUROR JONES:

25 197.

JURY SELECTION

46

1 THE COURT:

2 197. Thank you.

3 And the lady by him?

4 JUROR STILLWAGON:

5 350.

6 THE COURT:

7 And I'll ask you the same
8 questions. Could you be fair and effective?

9 JUROR STILLWAGON:

10 Yes sir.

11 THE COURT:

12 Set it aside and give both the
13 State and the Defense? a fair trial?

14 JUROR STILLWAGON:

15 Yes sir.

16 THE COURT:

17 All right.

18 And the lady right on the front
19 row?

20 JUROR WALDRUP:

21 Three -- Oh, I'm sorry. Uh --
22 381; and yes.

23 THE COURT:

24 Yes ma'am? And you could?

25 JUROR WALDRUP:

JURY SELECTION

47

1 Yes.

2 THE COURT:

3 You could be fair to both sides?

4 JUROR WALDRUP:

5 Yes sir.

6 THE COURT:

7 Thank you very much.

8 And the lady right behind her
9 who was in such a hurry to answer?

10 JUROR JOLSTAD:

11 194. (Laughs.)

12 THE COURT:

13 And could you be fair and effect
14 -- uh -- effective as a juror?

15 JUROR JOLSTAD:

16 (Nods in the affirmative.)

17 THE COURT:

18 Could you set aside the fact
19 that you might know or have family members involved in
20 law enforcement?

21 JUROR JOLSTAD:

22 Yes.

23 THE COURT:

24 Okay. Thank you.

25 And the lady by her?

JURY SELECTION

48

1 JUROR SINGLETON:
2 333.
3 THE COURT:
4 Yes ma'am?
5 JUROR SINGLETON:
6 Yes sir.
7 THE COURT:
8 And you could be fair and
9 effective?
10 JUROR SINGLETON:
11 (Nods in the affirmative.)
12 THE COURT:
13 Thank you very much.
14 JUROR CARFOLITE:
15 50.
16 THE COURT:
17 And lastly, the lady right here?
18 JUROR CARFOLITE:
19 50.
20 THE COURT:
21 Num -- Number 50. And could you
22 be a fair and effective juror?
23 JUROR CARFOLITE:
24 Yes.
25 THE COURT:

JURY SELECTION

49

1 You could set aside the fact
2 that you have friends or family in law-enforcement?

3 JUROR CARFOLITE:

4 Yes sir.

5 THE COURT:

6 Give everybody a fair trial?

7 JUROR CARFOLITE:

8 Yes sir.

9 THE COURT:

10 Thank you ma'am. Okay.

11 That's all the questions I have
12 for you. We're going to begin the selection process
13 now.

14 I find that -- uh -- you are
15 qualified as jurors -- uh -- other than the -- the couple
16 of jurors that I have excused.

17 Uh -- I am going to -- uh -- ask
18 you when you come forward -- remember I -- I made this
19 request a few moments ago.

20 When you come forward and you
21 turn around, state your occupation.

22 If you're retired, what your
23 primary occupation was when you were working.

24 If you're unemployed, what sort
25 of work you're trained to do or did in your primary

JURY SELECTION

50

1 employment.

2 And any work that your spouse --
3 uh -- may be engaged in, or your spouse was engaged in,
4 if your spouse is retired.

5 Okay. Madame Clerk?

6 Please bring all of your
7 property with you. If you -- uh -- a -- I don't think
8 anybody would have a jacket with the weather we're
9 having, but if you have a -- a book or a purse or
10 anything, please bring it forward.

11 All right.

12 CLERK:

13 50, Bonnie Carfolite.

14 (WHEREUPON: The juror came
15 forward as instructed.)

16 THE COURT:

17 Just come forward here just a
18 little bit.

19 JUROR CARFOLITE:

20 Uh-huh.

21 THE COURT:

22 Turnaround. All right.

23 And tell us about your
24 employment?

25 JUROR CARFOLITE:

JURY SELECTION

51

1 Uh -- I'm currently a business
2 education teacher at Horry County Schools. I've done so
3 for probably 10 years, sir.

4 Uh -- I live in Waterford
5 Plantation.

6 Before I was -- uh -- teaching I
7 worked in broadcasting and advertising. And my husband
8 also worked in broadcasting. We worked in the same firm

9 THE COURT:

10 Excellent. She did a good job
11 there; don't you think. It's everything we needed.

12 All right.

13 What says the State?

14 MR. O'SULLIVAN:

15 Please present the juror, Your
16 Honor.

17 CLERK:

18 Defense?

19 MR. FREDERICK:

20 Please -- uh -- excuse this
21 juror in this case.

22 THE COURT:

23 Very well.

24 MR. FREDERICK:

25 And Judge, could we ask the

JURY SELECTION

52

1 spouses occupation also.

2 THE COURT:

3 I think she told you.

4 MR. O'SULLIVAN:

5 She did.

6 MR. FREDERICK:

7 Okay.

8 THE COURT:

9 She did.

10 JUROR CARFOLITE:

11 He currently (trails off to

12 inaudible).

13 COURT REPORTER:

14 I'm sorry ma'am. What did you

15 just say?

16 JUROR CARFOLITE:

17 He currently works for the Sun

18 News.

19 THE COURT:

20 Okay. Thank you.

21 CLERK:

22 132 Terence Gerlach, Jr.

23 (WHEREUPON: The juror came

24 forward and turned and faced counsel table as

25 instructed.)

JURY SELECTION

53

1 JUROR GERLACH:

2 I'm an HVAC Technician. Been
3 one al my life. Uh -- I work with K&C (? phonetic)
4 Heating and Air.

5 CLERK:

6 Married?

7 JUROR GERLACH:

8 What?

9 THE COURT:

10 Are you married, sir?

11 JUROR GERLACH:

12 No; divorced.

13 THE COURT:

14 Okay. And you're single.

15 JUROR GERLACH:

16 (Nods in the affirmative.)

17 THE COURT:

18 All right.

19 CLERK:

20 What say the State?

21 JUROR GERLACH:

22 What?

23 CLERK:

24 I'm sorry. What say the State?

25 MR. O'SULLIVAN:

JURY SELECTION

54

1 Uh -- Please present the juror.

2 CLERK:

3 Defense?

4 MR. FREDERICK:

5 Please seat this juror.

6 THE COURT:

7 All right, sir. Come around

8 and have a seat. Come around this way.

9 BAILIFF:

10 Sir?

11 DEPUTY:

12 Sir?

13 THE COURT:

14 Sir; right around this way.

15 DEPUTY:

16 Over here in the jury box. You
17 have been selected.

18 (Laughter erupts in the
19 courtroom.)

20 (WHEREUPON: This juror, having
21 been accepted by the parties, was seated as a juror in
22 this case.)

23 CLERK:

24 152, Adalyn Harrelson.

25 (WHEREUPON: The juror came

JURY SELECTION

55

1 forward and turned and faced counsel table as
2 instructed.)

3 JUROR HARRELSON:

4 I'm a phlebotomist at
5 Reflections Assisted Living. And my husband's a
6 construction worker for Anderson Construction.

7 CLERK:

8 What say the State?

9 MR. O'SULLIVAN:

10 Please present the juror.

11 CLERK:

12 Defense?

13 MR. FREDERICK:

14 Please seat this juror.

15 THE COURT:

16 All right. Come around and be
17 seated.

18 MR. FREDERICK:

19 Thank you, ma'am.

20 (WHEREUPON: This juror, having
21 been accepted by the parties, was seated as a juror in
22 this case.)

23 CLERK:

24 130, Shannon Genda.

25 (WHEREUPON: The juror came

JURY SELECTION

56

1 forward and turned and faced counsel table as
2 instructed.)

3 JUROR GENDA:

4 Uh -- I have worked at Home Depo
5 phonetic) for the past 10 years; Department Manager
6 (trails off to inaudible)

7 COURT REPORTER:

8 I'm sorry ma'am. I didn't hear
9 you. Can you stand closer to the mike, please ma'am.

10 THE COURT:

11 And you worked for who ma'am?

12 JUROR GENDA:

13 Home Depot as Department
14 Manager; and I'm single.

15 THE COURT:

16 Home Depot; is that correct?

17 JUROR GENDA:

18 Home Depot.

19 COURT REPORTER:

20 Home Depot. Okay.

21 THE COURT:

22 Home Depot. Okay.

23 CLERK:

24 What say the State?

25 MR. O'SULLIVAN:

JURY SELECTION

57

1 Please present the juror.

2 CLERK:

3 Defense?

4 MR. FREDERICK:

5 Please seat the juror. Thank

6 you ma'am.

7 CLERK:

8 Please be seated in the jury

9 box.

10 (WHEREUPON: This juror, having
11 been accepted by the parties, was seated as a juror in
12 this case.)

13 CLERK:

14 194, Lisa Jolstad.

15 (WHEREUPON: The juror came
16 forward and turned and faced counsel table as
17 instructed.)

18 JUROR JOLSTAD:

19 I -- I hope that -- uh -- I'm
20 currently not working right now.

21 That's because two and a half
22 years ago -- uh -- I lost my husband (trails off to
23 inaudible).

24 Uh -- I did recently get married
25 six months ago and my last name is now (trails off to

JURY SELECTION

58

1 inaudible).

2 COURT REPORTER:

3 I'm sorry ma'am. I'm not
4 picking you up. Could you stand a little closer to the
5 mike?

6 THE COURT:

7 Mr. O'Sullivan, could you kind
8 of help them with the mike there and get it right there.

9 There you go.

10 JUROR JOLSTAD:

11 My name's Lisa Jolstad. I -- uh
12 -- currently am not working -- uh -- haven't worked for
13 two years -- uh -- because I -- uh -- lost my husband in
14 Minnesota -- of 35 years.

15 Uh -- Before that, I was a Tax
16 Assessor and Appraiser for three different counties in
17 Minnesota.

18 Uh -- I moved here for a change.

19 Uh -- I did recently just get
20 remarried. And my last name is now Cartwright.

21 THE COURT:

22 Cartwright? Okay.

23 JUROR JOLSTAD:

24 And my number again is: 194.

25 CLERK:

JURY SELECTION

59

1 What say the State?

2 MR. O'SULLIVAN:

3 Please present the juror.

4 CLERK:

5 Defense?

6 MR. FREDERICK:

7 Please excuse the juror. Thank
8 you ma'am.

9 CLERK:

10 You're excused from this
11 particular case.

12 (WHEREUPON: This jury panel
13 member, not being accepted by all parties, returned to
14 the panel and was not seated as a juror in this case.)

15 CLERK:

16 350, Stacy Stillwagon.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 JUROR STILLWAGON:

21 I'm Stacy Stillwagon. I'm a
22 second grade teacher at -- uh -- in Horry County Schools,
23 and my husband is a bursar director in operations.

24 CLERK:

25 What say the State?

JURY SELECTION

60

1 MR. O'SULLIVAN:

2 Please present the juror.

3 THE COURT:

4 Defense?

5 MR. FREDERICK:

6 Please excuse this juror. Thank
7 you ma'am.

8 CLERK:

9 You're excused from this
10 particular case.

11 (WHEREUPON: This jury panel
12 member, not being accepted by all parties, returned to
13 the panel and was not seated as a juror in this case.)

14 CLERK:

15 372, John Toppings.

16 (WHEREUPON: The juror came
17 forward and turned and faced counsel table as
18 instructed.)

19 JUROR TOPPINGS:

20 Johnnie Toppingss. I'm retired
21 FAA Air Traffic Controller. My wife's an unemployed nail
22 technician.

23 CLERK:

24 What say the State?

25 MR. O'SULLIVAN:

JURY SELECTION

61

1 Please present the juror.

2 CLERK:

3 Defense?

4 MR. FREDERICK:

5 Please excuse this juror.

6 THE COURT:

7 Okay.

8 MR. FREDERICK:

9 Thank you, sir.

10 CLERK:

11 You are excused from this
12 particular case.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 344, Royal Spain.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 JUROR SPAIN:

22 I'm Royal Spain. I'm -- I'm
23 unemployed (trails off to inaudible).

24 COURT REPORTER:

25 I'm sorry. Could you get by the

JURY SELECTION

62

1 mike.

2 THE COURT:

3 Just need to move over there by
4 the mike.

5 Y'all are all doing perfect.

6 It's good. We just can't hear you back here.

7 JUROR SPAIN:

8 I'm Royal Spain. I'm
9 unemployed. I used to do brickwork. Single.

10 CLERK:

11 What say the State?

12 MR. O'SULLIVAN:

13 Please excuse this juror from
14 this matter -- for this trial.

15 You're excused from this
16 particular case.

17 (WHEREUPON: This jury panel
18 member, not being accepted by all parties, returned to
19 the panel and was not seated as a juror in this case.)

20 CLERK:

21 186, Susan Jennings.

22 JUROR JENNINGS:

23 My name is Susan Jennings. I
24 work for HD Spokes. My husband is a professional truck
25 driver.

JURY SELECTION

63

1 CLERK:

2 What say the State?

3 MR. O'SULLIVAN:

4 Please present this juror.

5 CLERK:

6 Defense?

7 MR. FREDERICK:

8 Please excuse this juror. Thank
9 you ma'am.

10 You're excused from this
11 particular case.

12 (WHEREUPON: This jury panel
13 member, not being accepted by all parties, returned to
14 the panel and was not seated as a juror in this case.)

15 CLERK:

16 373, David Traver.

17 JUROR TRAVER:

18 My name is David Traver. I'm
19 currently employed as a special-needs bus driver for
20 Horry County Schools.

21 I also am a 30 -- uh -- year
22 retiree from Ford Motor Company. And my wife's a
23 homemaker.

24 CLERK:

25 What say the State?

JURY SELECTION

64

1 MR. O'SULLIVAN:

2 Please present this juror.

3 CLERK:

4 Defense?

5 MR. FREDERICK:

6 Uh -- Please excuse this juror.

7 Thank you, sir.

8 CLERK:

9 You're excused from this
10 particular case.

11 (WHEREUPON: This jury panel
12 member, not being accepted by all parties, returned to
13 the panel and was not seated as a juror in this case.)

14 CLERK:

15 65, James Cook.

16 (WHEREUPON: The juror came
17 forward and turned and faced counsel table as
18 instructed.)

19 JUROR:

20 My name is James Cook. I'm
21 currently unemployed. I live in Myrtle Beach. And I'm
22 divorced.

23 CLERK:

24 What say the State?

25 MR. O'SULLIVAN:

JURY SELECTION

65

1 Please excuse the juror from
2 this matter.

3 CLERK:

4 You're excused from this
5 particular case.

6 (WHEREUPON: This jury panel
7 member, not being accepted by all parties, returned to
8 the panel and was not seated as a juror in this case.)

9 CLERK:

10 343, Lynn Sostrin.

11 (WHEREUPON: The juror came
12 forward and turned and faced counsel table as
13 instructed.)

14 JUROR SOSTRIN:

15 Uh -- My name is Lynn Sostrin.

16 I'm retired. I was working as a dental assistant.

17 My husband is also retired. He
18 -- uh -- previously worked for the State of Maryland in
19 parole and probation division.

20 CLERK:

21 What say the State?

22 MR. O'SULLIVAN:

23 Please present this juror.

24 CLERK:

25 Defense?

JURY SELECTION

66

1 MR. FREDERICK:

2 Please excuse this juror. Thank
3 you, ma'am.

4 CLERK:

5 You're excused from this
6 particular case.

7 (WHEREUPON: This jury panel
8 member, not being accepted by all parties, returned to
9 the panel and was not seated as a juror in this case.)

10 CLERK:

11 206, Kathleen Carr.

12 MR. O'SULLIVAN:

13 What number?

14 CLERK:

15 206.

16 (WHEREUPON: The juror came
17 forward and turned and faced counsel table as
18 instructed.)

19 JUROR CARR:

20 My name is Katherine Carr. I
21 work for Spot Floor Cleaning and my husband is unemployed
22 construction.

23 CLERK:

24 What say the State?

25 MR. O'SULLIVAN:

JURY SELECTION

67

1 Please present this juror.

2 CLERK:

3 Defense?

4 MR. FREDERICK:

5 Please seat this juror. Thank

6 you ma'am.

7 CLERK:

8 Please be seated in the jury

9 box.

10 (WHEREUPON: This juror, having

11 been accepted by the parties, was seated as a juror in

12 this case.)

13 CLERK:

14 47, Lou Moore.

15 (WHEREUPON: The juror came

16 forward and turned and faced counsel table as

17 instructed.)

18 JUROR MOORE:

19 I'm Lou Moore. I'm employed

20 with Horry County schools. I'm a high school teacher.

21 My husband is in the water and

22 sewer -- uh -- cleaning and caring of lines working in

23 self-employed utility office.

24 CLERK:

25 What say the State?

JURY SELECTION

68

1 MR. O'SULLIVAN:

2 Please present this juror.

3 CLERK:

4 Defense?

5 MR. FREDERICK:

6 Please excuse this juror. Thank
7 you ma'am.

8 You're excused from this
9 particular case.

10 (WHEREUPON: This jury panel
11 member, not being accepted by all parties, returned to
12 the panel and was not seated as a juror in this case.)

13 CLERK:

14 284, Dianne Porter.

15 MR. FLOYD:

16 284?

17 CLERK:

18 Yes sir.

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 JUROR PORTER:

23 I'm Dianne Porter. I employed
24 with the Carolina Opry in group sales. My husband is
25 retired -- uh -- in sales.

JURY SELECTION

69

1 CLERK:

2 What say the State?

3 MR. O'SULLIVAN:

4 Please present this juror.

5 CLERK:

6 Defense?

7 MR. FREDERICK:

8 Please seat this juror. Thank
9 you ma'am.

10 CLERK:

11 Please be seated in the jury
12 box.

13 (WHEREUPON: This juror, having
14 been accepted by the parties, was seated as a juror in
15 this case.)

16 CLERK:

17 381, Melinda Waldrup.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 JUROR WALDRUP:

22 My name is Melinda Waldrup. I
23 am a housewife. I was formerly a supervisor for a finance
24 company; and my husband is an electrician.

25 CLERK:

JURY SELECTION

70

1 What say the State?

2 | MR. O'SULLIVAN:

3 Please present this juror.

4 CLERK:

5 | Defense?

6 MR. FREDERICK:

7 Please excuse this juror. Thank
8 you ma'am.

9 | CLERK:

10 You're excused from this
11 particular case.

12 (WHEREUPON: This jury panel
13 member, not being accepted by all parties, returned to
14 the panel and was not seated as a juror in this case.)

15 CLERK:

16 282, Kerry Pilkey.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 | JUROR PILKEY:

21 My name is Kerry Pilkey. I
22 teach fourth graders at Socastee Elementary School.

23 Uh -- My wife is the director of
24 gifted and talented programs of Horry County Schools.

25 COURT REPORTER:

JURY SELECTION

71

1 Director of what? I'm sorry.

2 JUROR PILKEY:

3 Gifted and talented programs of
4 Horry County Schools.

5 CLERK:

6 What say the State?

7 MR. O'SULLIVAN:

8 Please present the juror.

9 CLERK:

10 Defense?

11 MR. FREDERICK:

12 Please excuse this juror. Thank
13 you, sir.

14 CLERK:

15 You're excused from this
16 particular case.

17 (WHEREUPON: This jury panel
18 member, not being accepted by all parties, returned to
19 the panel and was not seated as a juror in this case.)

20 CLERK:

21 377, Raymond VanMarter.

22 (WHEREUPON: The juror came
23 forward and turned and faced counsel table as
24 instructed.)

25 JUROR VANMARTER:

JURY SELECTION

72

1 I -- uh -- presently work for
2 Horry-Georgetown Tech College as the -- uh -- network
3 engineer.

4 And -- uh -- my prior experience
5 was retired military, both Army and the Air Force; and my
6 wife is a bank teller.

7 CLERK:

8 What say the State?

9 MR. O'SULLIVAN:

10 Please present this juror.

11 CLERK:

12 Defense?

13 MR. FREDERICK:

14 Please seat this juror.

15 CLERK:

16 Please be seated in the jury
17 box.

18 (WHEREUPON: This juror, having
19 been accepted by the parties, was seated as a juror in
20 this case.)

21 CLERK:

22 105, Joseph Esposito.

23 (WHEREUPON: The juror came
24 forward and turned and faced counsel table as
25 instructed.)

JURY SELECTION

73

1 JUROR ESPOSITO:

2 My name is Joe Esposito. Vice
3 President of Ginsins Incorporated (? phonetic). We build
4 and develop -- uh -- retirement communities.

5 My wife is a office manager for
6 St. Michael's Catholic School.

7 CLERK:

8 What say the State?

9 COURT REPORTER:

10 Office manager for what, sir?

11 THE COURT:

12 St. Michael's Catholic School.

13 JUROR ESPOSITO:

14 St. Michael's Catholic School.

15 THE COURT:

16 St. Michael's Catholic School.

17 MR. O'SULLIVAN:

18 Please present this juror.

19 CLERK:

20 Defense?

21 MR. FREDERICK:

22 Please seat this juror. Thank
23 you, sir.

24 CLERK:

25 Please be seated in the jury

JURY SELECTION

74

1 box.

2 (WHEREUPON: This juror, having
3 been accepted by the parties, was seated as a juror in
4 this case.)

5 CLERK:

6 197, Randy Jones.

7 (WHEREUPON: The juror came
8 forward and turned and faced counsel table as
9 instructed.)

10 JUROR JONES:

11 My name is Randy Jones. I'm
12 formerly -- unemployed. I'm a tile installer. And my
13 ex-wife is a schoolteacher.

14 CLERK:

15 What say the State?

16 MR. O'SULLIVAN:

17 Please present this juror.

18 CLERK:

19 Defense?

20 MR. FREDERICK:

21 Please excuse this juror.

22 Thank you, sir.

23 CLERK:

24 You're excused from this
25 particular case.

JURY SELECTION

75

1 (WHEREUPON: This jury panel
2 member, not being accepted by all parties, returned to
3 the panel and was not seated as a juror in this case.)

4 CLERK:

5 324, Mark Schaffer.

6 (WHEREUPON: The juror came
7 forward and turned and faced counsel table as
8 instructed.)

9 JUROR SHAFFER:

10 My name is Mark Schaffer. I'm a
11 retired fire chief. And my wife is a retired secretary.

12 CLERK:

13 What say the State?

14 MR. O'SULLIVAN:

15 Please present this juror.

16 CLERK:

17 Defense?

18 MR. FREDERICK:

19 Please excuse this juror. Thank
20 you, sir.

21 CLERK:

22 You're excused for this
23 particular case.

24 (WHEREUPON: This jury panel
25 member, not being accepted by all parties, returned to

JURY SELECTION

76

1 the panel and was not seated as a juror in this case.)

2 CLERK:

3 239, Troy McCollum.

4 (WHEREUPON: The juror came
5 forward and turned and faced counsel table as
6 instructed.)

7 JUROR MCCOLLUM:

8 I'm Troy McCollum. I'm self-
9 employed (trails off to inaudible). And I'm single.

10 COURT REPORTER:

11 Self Employed what, sir?

12 JUROR MCCOLLUM:

13 (No response.)

14 THE COURT:

15 Self-employed what?

16 JUROR MCCOLLUM:

17 Uh -- Floor covering.

18 COURT REPORTER:

19 Floor covering?

20 JUROR MCCOLLUM:

21 Yes sir.

22 CLERK:

23 What say the State?

24 MR. O'SULLIVAN:

25 Please present this juror.

JURY SELECTION

77

1 CLERK:

2 Defense?

3 MR. FREDERICK:

4 Please seat this juror. Thank
5 you, sir.

6 CLERK:

7 Please be seated in the jury
8 box.

9 (WHEREUPON: This juror, having
10 been accepted by the parties, was seated as a juror in
11 this case.)

12 CLERK:

13 285, John Poston Jr.

14 (WHEREUPON: The juror came
15 forward and turned and faced counsel table as
16 instructed.)

17 JUROR POSTON:

18 My name is John Poston. I am
19 currently a projectionist at IMAX Theaters. And I'm
20 single.

21 COURT REPORTER:

22 I'm sorry, sir. Could you get
23 by the mike?

24 THE COURT:

25 Projectionist at IMAX Theaters.

JURY SELECTION

78

1 CLERK:

2 What say the State?

3 MR. O'SULLIVAN:

4 Please present this juror.

5 CLERK:

6 Defense?

7 MR. FREDERICK:

8 Please seat this juror. Thank
9 you, sir.

10 CLERK:

11 Please be seated in the jury
12 box.

13 (WHEREUPON: This juror, having
14 been accepted by the parties, was seated as a juror in
15 this case.)

16 CLERK:

17 370, Jimmy Todd.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 JUROR TODD:

22 Good morning; Jimmy Todd. I'm
23 retired from the auto parts business over in Loris. My
24 wife's a secretary and bookkeeper for Lori Drugstore.

25 CLERK:

JURY SELECTION

79

1 What say the State?

2 MR. O'SULLIVAN:

3 Please present the juror.

4 CLERK:

5 Defense?

6 MR. FREDERICK:

7 Please seat this juror. Thank
8 you, sir.

9 CLERK:

10 Please be seated in the jury
11 box.

12 (WHEREUPON: This juror, having
13 been accepted by the parties, was seated as a juror in
14 this case.)

15 CLERK:

16 148, James Hardee.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 JUROR HARDEE:

21 James Hardee. I am a -- I work
22 for UPS as a tractor-trailer driver. And my wife is
23 employed by the Horry County School District as a -- uh
24 -- one-on-one with a special needs child.

25 CLERK:

JURY SELECTION

80

1 What say the State?

2 MR. O'SULLIVAN:

3 Please present the juror.

4 CLERK:

5 Defense?

6 MR. FREDERICK:

7 Please excuse this juror. Thank
8 you, sir.

9 CLERK:

10 You're excused for this
11 particular case.

12 (WHEREUPON: This jury panel
13 member, not being accepted by all parties, returned to
14 the panel and was not seated as a juror in this case.)

15 CLERK:

16 216, Bernhard Kulesar.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 JUROR KULESAR:

21 My name is Bernard Kulesar. I
22 work with Piggly Wiggly. I am a manager with them.

23 My wife works for South Atlantic
24 and she is a bank officer.

25 CLERK:

JURY SELECTION

81

1 What say the State?

2 MR. O'SULLIVAN:

3 Please present this juror.

4 CLERK:

5 Defense?

6 MR. FREDERICK:

7 Please seat this juror. Thank
8 you, sir.

9 CLERK:

10 Please be seated in the jury
11 box.

12 (WHEREUPON: This juror, having
13 been accepted by the parties, was seated as a juror in
14 this case.)

15 CLERK:

16 199, Victor Jones.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 JUROR JONES:

21 My name's Victor Jones. I work
22 at Coastal Carolina University as Maintenance
23 Superintendent.

24 Uh -- My wife currently home --
25 uh -- recovering from back surgery. She's a waitress.

JURY SELECTION

82

1 CLERK:

2 What say the State?

3 MR. O'SULLIVAN:

4 Please present this juror.

5 CLERK:

6 Defense?

7 MR. FREDERICK:

8 Please excuse this juror. Thank
9 you, sir.

10 CLERK:

11 You're excused from this
12 particular case.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 300, Pamela Richardson.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 JUROR RICHARDSON:

22 Pamela Richardson. I'm
23 currently a hair stylist at Loris Solon and Spa.

24 My husband is in management,
25 retired, town of Myrtle Beach.

JURY SELECTION

83

1 CLERK:

2 What say the State?

3 MR. O'SULLIVAN:

4 Please present the juror.

5 CLERK:

6 Defense?

7 MR. FREDERICK:

8 Please seat this juror. Thank
9 you, ma'am.

10 CLERK:

11 Please be seated in the jury
12 box.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 THE COURT:

17 All right. Two alternates.

18 CLERK:

19 296, Cindy Reid.

20 (WHEREUPON: The juror came
21 forward and turned and faced counsel table as
22 instructed.)

23 JUROR REID:

24 I am Cindy Reid. And I'm an
25 unemployed secretary, and my husband is a retired

JURY SELECTION

84

1 elevator mechanic.

2 CLERK:

3 What say the State?

4 MR. O'SULLIVAN:

5 Please present the juror.

6 CLERK:

7 Defense?

8 MR. FREDERICK:

9 Please excuse this juror. Thank

10 you, ma'am.

11 CLERK:

12 You're excused from this

13 particular case.

14 (WHEREUPON: This jury panel
15 member, not being accepted by all parties, returned to
16 the panel and was not seated as a juror in this case.)

17 CLERK:

18 336, Priscilla Smalls.

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 JUROR SMALLS:

23 My name is Priscilla Smalls. I
24 work for Goodwill Industries, and I'm single.

25 CLERK:

JURY SELECTION

85

1 What say the State?

2 MR. O'SULLIVAN:

3 Please present the juror.

4 CLERK:

5 Defense?

6 MR. FREDERICK:

7 Please seat the juror. Thank

8 you, ma'am.

9 CLERK:

10 Please be seated in the jury

11 box.

12 (WHEREUPON: This juror, having
13 been accepted by the parties, was seated as a juror in
14 this case.)

15 CLERK:

16 63, Brian Conlon.

17 (WHEREUPON: The juror came
18 forward and turned and faced counsel table as
19 instructed.)

20 JUROR CONLON:

21 Uh -- My name is Brian. I
22 currently work two jobs. I work at Sam's Club and I sell
23 Kirby Vacuums.

24 CLERK:

25 You single?

JURY SELECTION

86

1 JUROR CONLON:

2 Yeah, I'm single.

3 CLERK:

4 What say the State?

5 MR. O'SULLIVAN:

6 Please present the juror.

7 CLERK:

8 Defense?

9 MR. FREDERICK:

10 Please seat the juror. Thank
11 you, sir.

12 CLERK:

13 Please be seated in the jury
14 box.

15 (WHEREUPON: This juror, having
16 been accepted by the parties, was seated as a juror in
17 this case.)

18 THE COURT:

19 All right. Counsel?

20 WHEREUPON: The jury selection
21 was completed at 10:42 AM, June 15, 2010; and a bench
22 conference was held with counsel summoned to the bench
23 immediately after the selection was completed.

24 THE COURT:

25 All right.

JURY SELECTION

87

1 The rest of you are excused from
2 this jury; but we're going to ask you to return to your
3 jury room downstairs at noon -- 12 o'clock.

4 Thank you very much.

5 You may leave.

6 Mr. Roth, would you take this
7 jury to their jury room.

8 Ms. Smalls in Mr. --

9 JUROR CONLON:

10 Conlon.

11 THE COURT:

12 Would you always occupy those
13 two seats.

14 The rest of you can sit anywhere
15 you want until I select a Foreman.

16 Would you take them to their
17 jury room, please.

18 BAILIFF:

19 Yes sir.

20 (WHEREUPON: The jury empanelled
21 in the case withdrew from the courtroom at 10:43 AM, June
22 15, 2010; and was no longer present during the following
23 proceedings.)

24 THE COURT:

25 We're going to be at ease for

JURY SELECTION

88

1 just a few minutes.

2 (WHEREUPON: The court was
3 declared in recess at 10:43 AM, June 15, 2010.)

4 (WHEREUPON: The court was
5 called to order by the Bailiff at 10:59 AM, June 15,
6 2010; and all pertinent parties, along with their
7 counsel, were back and present in the courtroom.)

8 BAILIFF:

9 Order in the court.

10 THE COURT:

11 All right.

12 BAILIFF:

13 All rise, please.

14 THE COURT:

15 Okay. Thank you. Have seat.

16 Any challenges -- For the
17 record, any challenges to the panel from the State?

18 MR. O'SULLIVAN:

19 None from the State, Your Honor.

20 THE COURT:

21 From the Defense?

22 MR. FREDERICK:

23 None, Your Honor.

24 MR. FLOYD:

25 No sir.

MOTIONS IN LIMINE

89

1 THE COURT:

2 All right. Do we have any
3 pretrial matters we need to take up?

4 MR. O'SULLIVAN:

5 Your Honor -- uh -- yeah, I
6 believe we do.

7 Uh -- In this particular
8 matter, I'm going to seek to introduce evidence per the
9 statute of the Defendant Lewis Pipher's prior two
10 burglary convictions.

11 Uh -- I've got certified
12 convictions -- uh -- here for those from Tioga County
13 Clerk of Court in New York State.

14 THE COURT:

15 Uh-huh. All right.

16 Let me hear from the Defense?

17 MR. FREDERICK:

18 Judge, the -- First off, I'd say
19 that's a matter for sentencing, not a matter for the
20 jury.

21 Uh -- Next, I'd say that their
22 allegation is that it occurred in the night time. And --

23 MR. O'SULLIVAN:

24 And that's -- I'm sorry. Go
25 ahead.

1 THE COURT:

2 The indictment says both. Uh --
3 And it is an element under the statute.

4 So how does he avoid having to
5 prove that?

6 MR. FREDERICK:

7 We'll stipulate to the priors,
8 Judge.

9 THE COURT:

10 You can stipulate to a prior
11 offense under a DUI, and there's case law to that effect.
12 But the case law says it's specific to a DUI statute
13 because a DUI -- DUI statute itself says -- or provides
14 that a stipulation is -- uh -- is -- uh -- appropriate.

15 It's not for a burglary.

16 Uh -- That's the distinction
17 that I see.

18 Uh -- How do you get around
19 that?

20 MR. FREDERICK:

21 Well Judge, burglary is quite a
22 bit more serious than a DUI.

23 THE COURT:

24 I understand that.

25 And I think that's why the State

MOTIONS IN LIMINE

91

1 -- uh -- allowed -- I mean, The Courts have allowed you
2 to simply stipulate on a DUI.

3 MR. FREDERICK:

4 Well I think --

5 THE COURT:

6 And they require the State to
7 prove beyond a reasonable doubt the -- uh -- the prior
8 convictions in a -- uh -- in a burglary case.

9 Let me from Mr. Floyd.

10 I -- This doesn't affect your
11 client, does it, Mr. Floyd?

12 MR. FLOYD:

13 Well in a way it does, Judge.

14 Even though it's being
15 introduced -- uh -- solely against Mr. Pipher, it would
16 have quite a prejudicial affect, with them being tried
17 together, on my client also.

18 Uh -- And I think -- I had this
19 issue just a couple months ago. And I -- I think
20 actually that Mr. Frederick could stipulate to it.

21 But I think then, that the State
22 still has the right under the law --

23 THE COURT:

24 That is correct.

25 MR. FLOYD:

MOTIONS IN LIMINE

92

1 -- to -- to introduce them.

2 It would be up to the State

3 whether to accept the stipulation --

4 THE COURT:

5 To --

6 MR. FLOYD:

7 -- or not.

8 THE COURT:

9 That -- That -- That's correct.

10 And that's -- Either the State can accept the stipulation

11 or the State can -- uh -- uh -- choose to -- to make the

12 proof.

13 MR. FREDERICK:

14 My concern over it at this point

15 for Mrs. Pipher is the prejudice that she may suffer as a

16 result of those convictions; them being tried together.

17 And that --

18 THE COURT:

19 Well, the only allegation as to

20 her indictment is that it was in the nighttime. Is that

21 correct?

22 MR. FLOYD:

23 Yes sir. But trying them

24 together, that -- that -- uh -- bleed-over affect, for

25 lack of a better terminology --

MOTIONS IN LIMINE

93

1 THE COURT:

2 And I would give you a special
3 charge on that Mr. Floyd; that that could not be
4 considered -- uh -- a prior convicted -- or evident of
5 prior conviction in her case, if that's what you wish.

6 I think that would be
7 appropriate.

8 MR. FLOYD:

9 Yes sir.

10 And that -- That's what my
11 objection -- You asked my opinion.

12 THE COURT:

13 I know.

14 MR. FLOYD:

15 You let me into the dogfight.

16 THE COURT:

17 I certainly did.

18 MR. FLOYD:

19 And that would be my objection
20 as to evidence of two prior burglaries --

21 THE COURT:

22 All right.

23 MR. FLOYD:

24 -- coming in would be to the
25 prejudicial affect of my client.

1 THE COURT:

2 I think the State has the right,
3 if it chooses to do so, and rejects the stipulation -- uh
4 -- to prove its case.

5 But that still puts the burden
6 on the State to prove by a reason -- uh -- beyond a
7 reasonable doubt as an element of the offense.

8 Of course you have two. You
9 have nighttime and that; but you would certainly have to
10 prove one of them; okay.

11 MR. O'SULLIVAN:

12 Your Honor, I would just ask --
13 uh -- that -- Because I may or may not wish to mention
14 that as an element in my opening, I would ask that you --
15 if you could just review those certified convictions and
16 see if The Court has an issue with them.

17 MR. FREDERICK:

18 And Judge, just -- just so
19 that's clear --

20 THE COURT:

21 And -- And the -- the problem I
22 have here is -- uh -- these are not under seal.

23 Do you have them under seal?

24 MR. O'SULLIVAN:

25 I do, Your Honor. I have the

MOTIONS IN LIMINE

95

1 originals here with the signature from the Clerk, and
2 there is a raised seal on them.

3 THE COURT:

4 Okay. All right.

5 That was -- That was the
6 question that I had when I looked at these -- uh -- is
7 that they were not under seal.

8 Uh -- I do not have any -- any
9 issue with the certification.

10 How about Mr. -- uh --
11 Frederick, as to the form?

12 And -- And I -- I'm looking
13 here, and it -- it says that:

14 There was a burglary second on
15 April 4th -- uh -- of 1990 -- a conviction.

16 The other says:

17 An attempted burglary -- uh --
18 on May the 28th of 2004.

19 And the third is a --

20 MR. O'SULLIVAN:

21 Yes sir.

22 THE COURT:

23 -- robbery -- uh -- April 4th --

24 MR. O'SULLIVAN:

25 The robbery shouldn't be in

1 there, Your Honor.

2 They happened to send me that
3 one as well. I was --

4 THE COURT:

5 Okay. Well how about -- Does
6 the statute say: an attempted burglary.

7 MR. O'SULLIVAN:

8 Uh -- It doesn't -- It's silent
9 on that, Your Honor.

10 But the -- uh -- attempt is
11 punished the same way as the crime itself under 16 180 of
12 the South Carolina Code.

13 I do have a case --

14 THE COURT:

15 I know that's the punishment.

16 But what -- what does the
17 statute say? What does the statute --

18 MR. O'SULLIVAN:

19 The statute says:

20 Two prior burglaries or
21 housebreakings, Your Honor.

22 It does not make reference to
23 it.

24 Uh -- I will note that I pulled
25 a case here where they used -- uh -- attempted armed

MOTIONS IN LIMINE

97

1 robbery in the same way they used an armed robbery for a
2 strike, Your Honor.

3 THE COURT:

4 Do you have a case on that?

5 MR. O'SULLIVAN:

6 Yes, Your Honor.

7 THE COURT:

8 Okay. Let me -- Let me see it.

9 And what -- Cite the case so that Mr. Frederick can look
10 at it.

11 MR. O'SULLIVAN:

12 The case is a Court of Appeals
13 case. It is State v Johnson. It is 350 South Carolina
14 543.

15 THE COURT:

16 What year was that?

17 MR. O'SULLIVAN:

18 Uh -- 2002.

19 THE COURT:

20 Okay.

21 This case seems to say that what
22 we have here was a two-strikes case.

23 Isn't -- Isn't that what it is?

24 MR. O'SULLIVAN:

25 Yes, Your Honor.

1 It just -- I -- I pulled that
2 case.

3 There's nothing directly on
4 point for the issue before us. But that shows the South
5 Carolina Appellate Court's treatment of -- of attempted
6 crime as --

7 THE COURT:

8 Okay.

9 MR. O'SULLIVAN:

10 -- the same as though the crime
11 as admitted.

12 THE COURT:

13 Okay.

14 MR. O'SULLIVAN:

15 Your Honor, I would -- And
16 certainly I would argue:

17 The Defendant should not receive
18 any benefit because he was caught in the act, as opposed
19 to getting caught after the --

20 THE COURT:

21 And -- And I'm not sure what he
22 was doing.

23 Uh -- The -- The -- uh -- The
24 certification is silent to that. And I don't know what
25 the -- what an attempted burglary is in -- uh -- in North

MOTIONS IN LIMINE

99

1 -- New York State. I mean, we don't have that statute
2 here.

3 We --

4 THE COURT:

5 I do, Your Honor. I do have
6 that statute.

7 THE COURT:

8 Okay.

9 What does it say?

10 MR. O'SULLIVAN:

11 Your Honor, I'll provide a copy
12 to Defense Counsel as well.

13 Uh -- The -- This --

14 THE COURT:

15 As I all -- I just want the
16 record to be clear here too.

17 And as I always do, whenever I
18 have a first burglary, and that is one of the -- one of
19 the -- uh -- the -- uh -- aggravating circumstances.

20 I do not inform the jury --
21 potential jury panel that that is.

22 You will recall when I went over
23 the indictment, I said: under aggravating circumstances,
24 one of which was in the nighttime.

25 I did not, Mr. Frederick, speak

1 to two offenses; okay.

2 You under -- You'll recall that,

3 I hope?

4 MR. FREDERICK:

5 Yes sir.

6 THE COURT:

7 But I did not do it?

8 All right.

9 What -- What's your statute

10 research Mr. -- uh -- O'Sullivan?

11 MR. O'SULLIVAN:

12 Well, I think we -- I've got

13 burglary in the second-degree; but I think we're all

14 clear on that one.

15 That is just --

16 MR. FREDERICK:

17 There's not a attempted burglary

18 statute?

19 MR. O'SULLIVAN:

20 Yeah.

21 The burglary in the second

22 degree, then the -- the second page here talks about:

23 Uh -- A person is guilty of an

24 attempt to commit a crime when with intent to commit a

25 crime he engages in conduct which tends to affect the

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1 commission of such crime.

2 And for burglary third, is, is:

3 A person is guilty of burglary
4 in the third degree when he knowingly enters and remains
5 unlawfully in a building with intent to commit a crime
6 therein.

7 It's very similar to our
8 statutes, Your Honor.

9 THE COURT:

10 Uh -- Yeah. Okay.

11 I -- I am not -- I -- I'm not
12 going to get into the -- I don't -- I don't think it
13 qualifies.

14 If we have to have two or more
15 -- uh -- prior burglaries, I don't think the attempt
16 would qualify.

17 The statute should be construed
18 very strictly -- uh -- in a criminal matter.

19 I -- I'm going to let you go
20 forward on, of course, your nighttime.

21 Uh -- I think that's all you
22 need -- need to do.

23 Uh -- I'm just not going to get
24 into the burglary -- uh -- the aggravated circumstance of
25 two prior burglaries.

1 That is how I feel; okay.

2 MR. O'SULLIVAN:

3 Yes, Your Honor.

4 THE COURT:

5 All right.

6 What else have we got?

7 MR. FLOYD:

8 Judge, just to make sure that;

9 because I was about to consider a severance motion:

10 We aren't going to be mentioning

11 it to the jury --

12 THE COURT:

13 That's correct. That's correct.

14 I'm not going to do that.

15 MR. FLOYD:

16 Thank you, sir.

17 THE COURT:

18 All right.

19 Any other -- Anything further,

20 Mr. Frederick or Mr. O'Sullivan?

21 MR. O'SULLIVAN:

22 Your Honor, I just wanted to

23 inquire -- and I obviously at this point in time don't

24 know if the Defendant -- either Defendant -- will take

25 the stand.

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1 Uh -- I understand that a
2 burglary would probably be more prejudicial -- that it
3 would not be allowed to me -- for me to question him
4 about that.

5 THE COURT:

6 No.

7 MR. O'SULLIVAN:

8 Uh -- But he does have a long
9 list of prior crimes -- of dishonesty, theft, crimes; the
10 robbery.

11 I -- It is. -- I just want to --

12 THE COURT:

13 And of course Mr. Frederick, you
14 know that if it's -- uh -- involves -- uh -- uh --
15 matters of dishonesty and -- and that sort of thing; or
16 if it's -- uh -- uh -- punishable by more than one year
17 and occurred in the last 10 years, it's admissible.

18 You understand that?

19 MR. FREDERICK:

20 Yes sir.

21 THE COURT:

22 And of course, I'll -- I'll --
23 I'll instruct your client of his rights -- uh -- to
24 testify before -- uh -- he would be -- uh -- or he would
25 need to before the Defense goes forward; okay.

1 MR. FREDERICK:

2 Judge, typically, I would go
3 though that at the end of the State's case.

4 THE COURT:

5 Right.

6 MR. FREDERICK:

7 Uh -- It doesn't matter to --

8 THE COURT:

9 You're right. That's when I
10 typically do it. And I will consider it.

11 But you -- you are -- are on
12 notice by Mr. O'Sullivan that there are -- uh -- matters
13 in his -- uh -- criminal record that -- uh -- certainly
14 could potentially be -- uh -- uh -- used to impeach him.

15 Uh -- I mean I'm looking at a --
16 a burglary charge here. That would certainly be one that
17 would -- uh -- normally be considered; although that
18 burglary did take place almost 20 -- almost 30 -- 20-some
19 years ago; didn't it?

20 MR. FREDERICK:

21 Yes sir.

22 MR. O'SULLIVAN:

23 '92, Your Honor.

24 THE COURT:

25 All right.

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1 But -- uh -- We'll just see when
2 we get to that point; okay.

3 You -- You have put -- put Mr.
4 O'Sullivan and Mr. Floyd kind of on notice of any prior
5 criminals that didn't -- criminal acts, if you have some
6 you want to use; okay.

7 MR. O'SULLIVAN:

8 And the -- the last one --

9 THE COURT:

10 Do you know what he's talking
11 about Mr. -- uh -- Frederick?

12 MR. FREDERICK:

13 Yes sir.

14 THE COURT:

15 Has he provided you with a prior
16 record, Mr. Floyd?

17 MR. FLOYD:

18 Yes sir.

19 THE COURT:

20 Does your client have a prior
21 record, Mr. Floyd?

22 MR. FLOYD:

23 It doesn't appear that she has
24 anything --

25 THE COURT:

1 Mr. O'Sullivan, do you have a
2 prior record for her?

3 MR. O'SULLIVAN:

4 She does have a prior --

5 THE COURT:

6 Anything that would be used to
7 impeach?

8 MR. O'SULLIVAN:

9 And I will say, Judge, within
10 the last 10 years that carries more than a year; just to
11 be --

12 MR. O'SULLIVAN:

13 Yes, Your Honor.

14 She -- uh -- She does have
15 something that could be used against her.

16 THE COURT:

17 Well, even if it's been greater
18 than 10 years, it could be if it involves dishonesty and
19 that sort of thing.

20 MR. O'SULLIVAN:

21 It's a crime of dishonesty.

22 THE COURT:

23 Okay. All right.

24 We'll take that up at the end of
25 the States case; all right.

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1 MR. FLOYD:

2 Yes sir.

3 THE COURT:

4 All right.

5 MR. O'SULLIVAN:

6 Your Honor, just lastly, and --
7 and I'm -- This is not a reflection on Bobby or Tom.

8 I've not tried a general
9 sessions matter with them. But a standard motion I make
10 is that:

11 Defense be cautioned against any
12 reference to the penalties and sentences that their
13 clients may receive.

14 THE COURT:

15 Well, weren't going to talk
16 about penalties.

17 MR. O'SULLIVAN:

18 Thank, Your Honor.

19 THE COURT:

20 Everybody. The -- These
21 attorneys are -- are experienced attorneys. They know
22 better than that; okay.

23 All right.

24 MR. FREDERICK:

25 Judge, briefly.

1 THE COURT:

2 Yes sir?

3 MR. FREDERICK:

4 I have a couple.

5 Uh -- I just -- We're going to
6 move to sequester the witnesses in the case.

7 THE COURT:

8 All right.

9 Uh -- I usually grant that. But
10 I usually do it reciprocally too.

11 MR. FREDERICK:

12 Yes sir.

13 THE COURT:

14 Uh -- I'll let the Defendants
15 stay here.

16 I'll let the lead detective
17 stay; okay.

18 MR. O'SULLIVAN:

19 Yes, Your Honor.

20 THE COURT:

21 And the victim.

22 MR. O'SULLIVAN:

23 The victim may be present, as
24 well, Your Honor?

25 THE COURT:

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1 Yeah. I think we have to do
2 that; okay.

3 MR. FREDERICK:

4 The only other thing that I had,
5 Judge, was:

6 There is at least one witness
7 whose last name is Edward?

8 MR. O'SULLIVAN:

9 Jackie Bodler.

10 | MR. FREDERICK:

11 Jackie Eodler.

12 When we talked to her -- uh --
13 one of the things that -- that she was -- uh -- saying is
14 that:

There were other break-ins on
the streets and she felt that maybe Lewis was responsible
for those, although she had no basis to believe that.

18 And just in an abundance of
19 caution --

20 THE COURT:

21 That wouldn't be admissible.

22 MR. FREDERICK:

23 | Okay.

24 MR. O'SULLIVAN:

25 Your Honor, I can tell you that

1 I have already cautioned her not to mention that.

2 THE COURT:

3 Okay. Okay.

4 MR. O'SULLIVAN:

5 Uh -- If Your Honor sees fit, we
6 can call her in here and --

7 THE COURT:

8 That -- That's okay. If you
9 have cautioned her, that's good. Uh -- You know, there's
10 just no -- uh -- uh -- reason for that to be in here.

11 Uh -- Make sure she doesn't
12 testify to that.

13 MR. O'SULLIVAN:

14 Your Honor, with your permission
15 then, when she does -- right before she takes the stand,
16 I'd like to just have a moment to briefly mention that to
17 her again.

18 THE COURT:

19 All right. Certainly.

20 MR. FREDERICK:

21 That's -- That's all that I
22 have, Your Honor.

23 THE COURT:

24 All right. Any further Mr. --
25 uh -- O'Sullivan?

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1 MR. O'SULLIVAN:

2 No, Your Honor.

3 THE COURT:

4 All right.

5 MR. FLOYD:

6 Judge, there is some reference
7 -- and I don't know if the State intends to get into it
8 or not.

9 In the -- uh -- investigation of
10 statements that the Piphers made, elicited by the
11 detectives, or by the officer that -- uh -- the initial
12 report was made.

13 And -- But I think they have a
14 demo here. If the State intends to put those statements
15 out there.

16 THE COURT:

17 All right.

18 Well let's see what Mr.
19 O'Sullivan has to say about that.

20 Mr. O'Sullivan, Mr. Floyd tells
21 me -- uh -- that there may be some statements -- uh --
22 of the Defendants' that you intend to use.

23 Do you have any statements of
24 the Defendants' you intend to use?

25 MR. O'SULLIVAN:

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1 Yes, Your Honor.

2 THE COURT:

3 Okay.

4 And are those statements taken
5 by police?

6 MR. O'SULLIVAN:

7 Yes, Your Honor.

8 THE COURT:

9 Okay.

10 Do you want a Denno hearing on
11 that, Mr. Floyd?

12 MR. FLOYD:

13 Yes sir.

14 THE COURT:

15 Okay.

16 Are we prepared to go forward
17 with the Denno hearing?

18 MR. O'SULLIVAN:

19 Uh -- Your Honor, I have just
20 been informed by my assistant that the arresting officer,
21 who is the one who Mirandized -- who took a statement --
22 is on his way.

23 THE COURT:

24 Okay.

25 MR. O'SULLIVAN:

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1 I don't know why he's not here
2 yet.

3 THE COURT:

4 Well, that's probably going to
5 be one of your first witnesses. And I would suppose --

6 MR. O'SULLIVAN:

7 Uh -- He's actually going to be
8 later on, Your Honor.

9 My first witness -- uh -- my
10 first two witnesses -- I've at least got two witnesses
11 before him.

12 THE COURT:

13 Okay.

14 Well then, you probably have
15 enough that we could make out -- uh -- the morning.

16 And I could do the Denno as we
17 begin lunch; okay.

18 Right?

19 MR. O'SULLIVAN:

20 Yes, Your Honor. That's fine.

21 Uh -- I just want to say -- and

22 I'm not sure what time -- I -- my first witness, Ms.
23 Eodler -- uh -- has informed me that the -- one of the
24 Defendants did say something to her.

25 It's -- I -- I don't believe

1 it's incriminating.

2 But he just kind of -- As she
3 was following them, he yelled something out to her.

4 Uh -- I don't know --

5 THE COURT:

6 What -- What did he yell?

7 MR. O'SULLIVAN:

8 He -- He yelled:

9 Get lost.

10 You know:

11 Get out of here.

12 THE COURT:

13 I don't see anything -- I don't
14 have a problem with that.

15 MR. O'SULLIVAN:

16 Yes, Your Honor.

17 THE COURT:

18 It was just:

19 Get lost.

20 Okay.

21 MR. FLOYD:

22 Who's the -- Who? Mr. Pipher or
23 Mrs. Pipher?

24 MR. O'SULLIVAN:

25 Mr. Pipher.

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1 THE COURT:

2 All right. Okay.

3 Uh -- Roy, if you would, bring
4 them in.

5 MR. O'SULLIVAN:

6 Your Honor, I know different
7 judges have different rules.

8 Is your rule:

9 Everyone remain seated when the
10 jury's coming in and out?

11 THE COURT:

12 I always stood when the jury
13 came in when I practiced law.

14 MR. O'SULLIVAN:

15 Okay. That's what I always do.

16 THE COURT:

17 It was -- uh -- just -- uh --
18 ladies coming in the courtroom, I always stood.

19 MR. O'SULLIVAN:

20 Yes, Your Honor.

21 THE COURT:

22 Of course, Tom's dad used to get
23 on me about that, but --

24 (Laughter erupts in the
25 courtroom.)

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 11:17
3 AM, June 15, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 All right. We're all back in.

7 I see we have our jury. And we
8 have Ms. Con -- Mr. Conlon and -- uh -- Ms. Smalls, I
9 believe, as well. And they're in there seat.

10 And our -- Right on the front
11 row there, first juror; and your name again sir, was?

12 Right here. Yes sir; you.

13 JUROR VANMARTER:

14 Raymond VanMarter.

15 THE COURT:

16 Yes sir. And guess what?

17 (Laughter erupts in the
18 courtroom.)

19 THE COURT:

20 You chose the seat, so I'm going
21 to make you our Foreperson.

22 Uh -- And your juror number was?

23 FOREPERSON VANMARTER:

24 377.

25 THE COURT:

BEGINNING OF THE TRIAL

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1 377. Thank you very much.

2 You will preside over the -- uh
3 -- the -- uh -- deliberations.

4 During this trial, if there's
5 any question that the jury has or anything that the jury
6 needs, please bring it to the attention of Mr. Roth.

7 I introduced him to you
8 yesterday. He'll be taking care of you.

9 Before I begin this trial, I
10 want to have you sworn -- uh -- as jurors. And if you
11 would, Madame Clerk, that's another one of those swears;
12 and this is the last one you going to have to do.

13 (Laughter erupts in the
14 courtroom.)

15 WHEREUPON: The jury was sworn
16 in open court by the Clerk at 11:18 AM, June 15, 2010.

17 THE COURT:

18 Okay.

19 There are a couple things that I
20 like to start out a -- a case -- uh -- telling the jury.
21 Uh -- And it's basically about the process that we will
22 follow here today.

23 As I told you earlier -- uh -- I
24 know all of the attorneys that are involved in this case.
25 And they're honorable -- uh -- and professional

1 attorneys. And we expect that
2 of them.

3 You, as jurors, have taken an
4 oath to be fair and impartial in this case. Uh -- And
5 that oath places a -- a high duty of responsibility on
6 you as well.

7 You are the sole and exclusive
8 judges of the facts in this case.

9 At the end of this trial, you're
10 going to begin your deliberations. And that's sort of a
11 -- a three-part process.

12 First:

13 You, the jury, have to have
14 listened to all of the evidence and then you determine
15 what the facts are.

16 Of course, we've got evidence
17 that may sport many scenarios. I don't know. I haven't
18 heard it yet. But you, as a jury, will determine what
19 the real facts are in this case.

20 And then you will take these law
21 as I give it to you.

22 That's the second part of it.

23 And you will then apply the
24 facts, as you find them, to the law as I give it to you.
25 And that will result in a verdict.

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1 As I said, you are the sole and
2 exclusive judges of the facts. That is an -- uh -- an
3 awesome responsibility in any case, and in particular,
4 a -- a criminal case.

5 For, if I make a mistake,
6 instructing you as to the law, or I make a mistake on a
7 ruling that I may make in this case, we have the Court of
8 Appeals and the Supreme Court that can correct what I
9 have done. But there is absolutely no way that the -- a
10 mistake made by the jury can be corrected.

11 Uh -- There is no way that we
12 can review what goes on in that jury box. As I said,
13 it's almost impossible to correct a mistake made by the
14 jury. So that places an awesome responsibility on you.

15 Let me tell you that:

16 In determining what the facts
17 are in this case, you're going to have to Judge the
18 credibility or believability of the witnesses who you
19 have heard testify.

20 You're going to have to
21 determine what weight you will apply to the evidence that
22 has been presented in the case; that is physical
23 evidence, or opinions -- uh -- expert opinions that may
24 be given.

25 Let me say this:

1 In doing that, you can apply any
2 process that you have in your good common sense in your
3 daily lives have determined to be reliable in leading you
4 to the truth.

5 You can consider such things as:

6 The opportunity witness may have
7 had to see or hear -- uh -- what he or she says she heard
8 or saw in regard to the case.

9 You can consider whether a
10 witness has any interest, prejudice, or bias in the case.

11 You can consider a witness's
12 intelligence, a witness's ability to recall.

13 You can consider all those
14 things in determining what weight you will give to a
15 witness's testimony.

16 You may also consider that
17 witness's appearance on the stand. Sometimes we call
18 that a witness's demeanor.

19 In the end, and during your
20 deliberations, you must resolve all issues of doubt in
21 favor of the Defendant.

22 The State has the duty to prove
23 its case to you beyond a reasonable doubt. And I will
24 give you further instructions about what a reasonable
25 doubt is at the end of -- of this case.

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1 But remember, that all during
2 the case, and until you find otherwise, the Defendant in
3 this case in all other cases is shrouded with a cloak of
4 innocence, a presumption of innocence.

5 And it is the State's duty to
6 strip that away and convince you of his guilt beyond a
7 reasonable doubt.

8 Now, as I said -- and -- and
9 this is not -- I do not intend this to be an instruction
10 of law -- as to the law.

11 At the end of the case, I will
12 instruct you fully as to law that you will apply in your
13 deliberation process. And you will apply only the law as
14 a give it to you.

15 You might have some idea of what
16 the law ought to be, or what it should be. It may
17 disagree with what I tell you the law is.

18 But you must apply the law to
19 the facts that you have determined to be the facts in
20 this case, at -- in reaching a -- uh -- a -- uh -- a
21 verdict.

22 Now I'm going to ask you to do
23 something for me:

24 If this case should go more than
25 to -- today -- and I think that it -- it might, I want to

1 ask you, when you return home, not to discuss it with
2 your wife, or your significant other, or any -- any of
3 your friends.

4 I'm going to ask you that,
5 during the trial of this case, you not even discuss the
6 evidence between yourselves. Because that would be
7 premature deliberations.

8 There's always two sides to
9 every coin. And until you hear all the evidence in the
10 case, it's improper for you to commit yourself to an
11 opinion about a witness or what a witness may have said,
12 or about the Defendant's guilt or innocence.

13 That's highly improper.

14 I want you to wait until you
15 have heard everything and I tell you that you should
16 begin your deliberations before you start -- uh -- that
17 -- that process.

18 I want you to not listen or --
19 or read, or go on the Internet and find, any information
20 at all about this case.

21 Uh -- The only evidence that you
22 will consider will be from this jury (sic) stand.

23 I don't anticipate that the
24 newspapers are going to pick up on this case or have
25 anything to write about it, but sometime that does

25 Uh -- It's not because anybody

1 is trying to hide anything from you. The reason that we
2 do that -- the reason I -- I take these matters outside
3 of your presence is:

4 It may be in -- or it may
5 involve a piece of evidence or a -- a person -- a
6 witness's testimony. And I may have to make a ruling
7 about that testimony's admissibility or admissibility.

8 And in doing so, I might express
9 my opinion about that piece of evidence or that
10 testimony.

11 I don't have the right to have
12 an opinion about any of the evidence. That's solely
13 within your rights as a juror.

14 And we do not want you to hear
15 anything that I may say that might suggest that I have
16 some opinion about that piece of evidence or that
17 testimony. And that's why -- uh -- you are asked -- uh
18 -- to -- uh -- to go back to you jury room.

19 I've had a lot of jurors over
20 the years that have asked me:

21 Why do you do that?

22 And so, I always like to tell
23 them:

24 That's the reason -- uh -- that
25 we do it.

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1 Remember -- uh -- please pay
2 close attention to all the evidence that you hear in this
3 case. All the evidence is important.

4 It's important for you to hear
5 it. You can then -- uh -- give it such weight as you
6 deem appropriate.

7 Now let me tell you how we're
8 going to proceed.

9 The State has the burden of
10 proof, as I said, in -- in this case and every case.

11 Uh -- The State goes first -- uh
12 -- with its -- its proof. The State will be calling
13 witnesses.

14 As the State calls a witness --
15 uh -- Mr. O'Sullivan will examine that witness. And
16 then, Mr. Floyd and Mr. Frederick will have an
17 opportunity to cross-examine that witness.

18 When the State has finished with
19 its witnesses, the Defense may or may not put up
20 witnesses. It's totally up to them. They have
21 absolutely no obligation to call any witness.

22 The Defendant does not have an
23 obligation to put up any Defense. And you should not
24 consider that against him in any form or fashion if he
25 chooses, or either of them choose not to.

1 So when that is done, we will
2 closing remarks.

3 The State goes first, followed
4 by -- or has the option of going first -- followed by the
5 Defense, and then reply by the State; or the Defense may
6 go first followed by the State.

7 Uh -- Let me tell you this:
8 Before we begin this trial,
9 we're going to have what's called "opening remarks."

10 Mr. O'Sullivan gets to tell you
11 about his case.

12 Mr. Frederick and Mr. Floyd get
13 to tell you about their position in the case.

14 Let me remind you that:

15 What Mr. O'Sullivan says, what
16 Mr. Frederick says, what Mr. Floyd says, in an opening
17 remark or in a closing remark, is not evidence.

18 It's like an indictment. It's
19 their position as to the evidence -- uh -- that you will
20 or have heard during -- uh -- the case.

21 Uh -- You may -- uh -- use their
22 arguments as a -- as a guideline to take you through the
23 case. As I said, it's just their position on the case.

24 But if their statements in
25 opening remarks or closing remarks are contrary to the

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1 evidence as you saw it, you go by what you heard. And
2 you place such weight on that evidence as you feel is
3 appropriate; 'cause you're going to have to make the
4 determination of the facts in the case.

5 All right.

6 Mr. Frederick, are you ready to
7 proceed?

8 I mean, Mr. O'Sullivan?

9 MR. O'SULLIVAN:

10 Yes, Your Honor.

11 THE COURT:

12 All right.

13 Mr. O'Sullivan, call your -- uh
14 -- witness.

15 MR. O'SULLIVAN:

16 Your Honor, we just have --

17 THE COURT:

18 Oh, you want to --

19 MR. O'SULLIVAN:

20 Yes, Your Honor.

21 THE COURT:

22 -- do your opening remarks
23 first.

24 THE COURT:

25 Yes sir.

1 THE COURT:

2 I'm sorry. I got ahead of
3 myself. I was just going to shorten this case up for us.

4 (Laughter erupts in the
5 courtroom.)

6 MR. O'SULLIVAN:

7 We all live somewhere. We all
8 have a place that we call home. And we have a right to
9 feel secure in those homes.

10 It's one of the mainstays of our
11 society. Home is where the heart is. There's no place
12 like home. And when someone invades that -- that part of
13 us and takes that from us, it's a big deal.

14 We take that very seriously.

15 You have a right to believe that
16 your property is safe in your home, just as much is
17 you're safe in your home.

18 That's why you lock the door if
19 you go out of your home. It's your home.

20 And that's what this case is
21 about.

22 This case is about two
23 Defendants who went into the victim's home. And the
24 evidence will show -- uh -- that they went into the home,
25 and that they committed a theft in the home.

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1 The -- What they're charged with
2 is burglary in the first degree.

3 And as the Judge informed you,
4 he's going to at the end of the case instruct you on the
5 law. And you will take the law from the Judge.

6 If I say something different
7 than he says, he's right. He's the Judge.

8 But I want to just briefly go
9 through what it is I have to prove to you.

10 Burglary in the first degree.
11 It's not the very straightforward statute.

12 You have to enter -- enter a
13 dwelling.

14 And what do we mean by a
15 dwelling?

16 Well the law says:

17 A dwelling is somewhere where --
18 it's capable of being slept in. There's -- uh -- people
19 have lodging -- where people live.

20 It's a dwelling.

21 It does not say anybody has to
22 be living there at the time of the burglary.

23 It does not say anything about
24 that.

25 If it's capable of being lived

1 in, it's a dwelling. It meets the requirements of the
2 statute.

3 So the statute says:

4 If they enter a dwelling without
5 consent.

6 The owner of the dwelling did not
7 say:

8 Come on in.

9 Did not allow them to go in
10 there. They have no permission or authority to be in the
11 dwelling.

12 With the intent to commit a
13 crime therein:

14 That could be any crime; any
15 crime at all.

16 They could intend to go in and
17 vandalize the place. They could intend to go in and set
18 fire to it. It doesn't matter.

19 For example:

20 If they intend to go in and
21 steal something, that's an intent to commit a crime
22 therein.

23 It's very straightforward.

24 Go into the dwelling, which is
25 anyplace where someone could live, without consent, with

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1 the intent to commit a crime therein.

2 That's burglary. That's it.

3 Okay.

4 Now, for it to be in the first
5 degree, there has to be what they call an aggravating
6 circumstance.

7 And there's a whole list of
8 aggravating circumstances that it could be. But for our
9 purposes today, you only need one of those aggravating
10 circumstances.

11 That says:

12 If the burglary occurs in the
13 nighttime, it's burglary in the first degree.

14 That's it, "nighttime." It's
15 dark outside.

16 Any -- Any -- We all know what
17 nighttime is. We all know when it's dark outside.

18 Uh -- And that's really all I've
19 got to prove to you. I've got to prove to you those
20 elements:

21 Enter a dwelling without consent
22 with intent to commit a crime in the nighttime.

23 And through the evidence, I -- I
24 will prove that to you.

25 You will hear testimony from

1 police officers as well as -- uh -- ordinary citizens.

2 But what -- I'm actually going
3 to correct myself on an "ordinary citizen." One citizen
4 in particular who acted very heroically -- uh -- to
5 intervene when she believed there was a crime being
6 committed.

7 Now the Judge also touched on
8 the fact that I have the burden of proof. Absolutely
9 true.

10 Right now, as we sit here in
11 this courtroom, under the law, these two Defendants are
12 innocent. They are not guilty at this point in time
13 until I prove them guilty.

14 And I have to prove that to you
15 beyond a reasonable doubt.

16 Not beyond any doubt. Not
17 beyond -- I mean, we weren't there. But beyond a
18 reasonable doubt.

19 If I leave you firmly convinced
20 that they committed this crime, I've met my burden.

21 And again, the Judge will speak
22 to you about that at the end of the case as well.

23 I urge you to listen to all the
24 evidence and all the witnesses before you decide. Uh --
25 You may hear some facts early on that make you want to

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1 make up your mind right away. But that's not your job.

2 Your job is to listen to all the
3 evidence and then make a decision based on all the
4 evidence that's been provided to you about the guilt or
5 innocence of these two Defendants.

6 I feel confident that once the
7 cases been completed, I've presented my evidence to you,
8 you've heard from all the witnesses, that I will have
9 proved beyond reasonable doubt that these two individuals
10 are guilty of burglary in the first degree.

11 Thank you.

12 THE COURT:

13 Mr. Frederick? Mr. Floyd? Do
14 either one of you -- okay.

15 MR. FREDERICK:

16 May it please The Court?

17 I guess the first thing, before
18 I forget it -- uh -- in his opening statements -- uh --
19 Mr. O'Sullivan was talking about the law.

20 The law actually says that
21 somebody has to live in the house for it to be a
22 dwelling.

23 When you hear me talk about the
24 law, or you hear the prosecutor talk about the law -- uh
25 -- wait till you hear the Judge talk about the law. He's

1 the one that's going to give you the law that you have to
2 follow in the case.

3 I want to tell you all that:

4 Uh -- Standing up here -- uh --
5 in front of you the minute y'all came in earlier -- uh --
6 I'm nervous.

7 And I tell you that because I
8 imagine as you come in here, some of you have had
9 experience with the system before. Some of you may have
10 sat on juries before. I think most of you probably
11 haven't. And I imagine -- uh -- always imagine that you
12 guys are pretty nervous too.

13 And just listening to the Judge;
14 listening to the prosecutor; listening to me talk -- uh
15 -- looking for some kind of guidance in what the heck are
16 you supposed to be doing here?

17 I want to tell you a little bit
18 about -- uh -- Lewis and Shelly.

19 They're married now.

20 I know when the Judge --

21 MR. O'SULLIVAN:

22 Your Honor, I'm -- I'm sorry.

23 Could we take up a matter?

24 THE COURT:

25 Certainly.

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1 (WHEREUPON: Counsel for each
2 party conferred off the record with The Court at the
3 bench at 11:36 AM, June 15, 2010.)

4 THE COURT:

5 Go ahead.

6 MR. FREDERICK:

7 Shelly and -- uh -- Lewis are
8 married now. At the time that this happened, they were
9 not married.

10 You've heard, when the Judge was
11 going over the indictment -- uh -- some confusion with
12 the names; Shelly's last name. Because they were
13 recently married, her last name's Pipher now.

14 They were living together before
15 they got married when all this happened. They were
16 living together. They were living together in a trailer
17 park as -- uh -- boyfriend and girlfriend.

18 One morning, there washer broke
19 and stopped working, and they had to wash their clothes.
20 So, on this day, they set out to get a washer and dryer.

21 They went to their property
22 manager at the real estate office and told them:

23 Hey, the washer broke. Can you
24 replace it? Uh -- They didn't replace it.

25 They asked:

1 Was there a washer and dryer
2 that we could buy?

3 And they said:

4 No, we don't have a washer and
5 dryer to buy; go to the store.

6 So as the day progressed -- uh
7 -- they stopped at the unemployment office. They -- uh
8 -- talked to an individual named -- uh -- Tommy
9 Washington; learned that maybe his sister had a washer
10 and dryer that she could sell to them.

11 Uh -- Lewis gave them his phone
12 number. They went on. They went to the Wal-Mart
13 together.

14 Uh -- Lewis dropped off Shelly
15 at the Wal-Mart. She got her hair done.

16 Lewis went to the bank and he
17 took out some money.

18 They left. He came back. He
19 picked her up in the Wal-Mart. They left. They went to
20 a place called CPW -- uh -- because they had washers and
21 dryers for sale.

22 At the CPW, the washers and
23 dryers cost \$150.00 apiece that they had. So instead, he
24 bought a freezer -- like a freezer box for \$75.00, I
25 think it was.

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1 They went on to keep looking for
2 a washer and dryer.

3 He got a call from Tommy
4 Washington and learned that the sister did have a washer
5 and a dryer that she was going to sell.

6 She was going to sell it to them
7 for \$150.00 for the both of them.

8 Lewis called his neighbor. And
9 they only needed the washer. They didn't need a dryer.
10 And he was going to give the dryer to his neighbor, who
11 was going to pay half of the money to buy the washer and
12 dryer.

13 They met Tommy at a house in
14 Loris -- or near Loris -- to look at the washer and
15 dryer.

16 They went into the house through
17 the front door. The house was empty. The only thing
18 that's in the house is some kitchen furniture and the
19 washer and dryer.

20 There was no power on in the
21 house. So they couldn't test it. But he looked at it;
22 didn't see any problems with it and said:

23 Okay, we'll take it -- take it.

24 Went to try to get the washer
25 and dryer into the Jeep that they were in. And it was

1 not going to fit in the Jeep. So they left. And Lewis
2 and Shelly came back in their truck.

3 They got a washer and dryer.
4 They put it in the truck. And as they were leaving,
5 trying to turn around in the yard -- and this truck
6 doesn't have a reverse on it -- they ran over part of the
7 fence.

8 He kept going. He hit the
9 fence. He kept going.

10 Apparently, a neighbor who sits
11 on her porch heard them hit the fence; came running out;
12 said:

13 What the heck's going on?

14 Jumped in her car. Chased them
15 down the street. Called the police. Said that something
16 just happened. And the police came and pulled them over.

17 The police asked:

18 What are you doing?

19 Where did the washer and dryer
20 come from?

21 He told them that he bought the
22 washer and dryer from a guy in Loris.

23 They were arrested based on
24 everything that I just told you.

25 They were arrested. They were

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1 taken to jail.

2 The next morning when they
3 brought them up to court, Lewis was also charged with
4 destruction of personal property because he had ran over
5 a fence. And he pled guilty to the destruction of
6 personal property, because he did that.

7 He did not plead guilty to this
8 charge because he's not guilty of this charge.

9 That's the reason that we are
10 here today.

11 Let's talk about the presumption
12 of innocence just a little bit.

13 Every person that's accused of a
14 crime is presumed to be innocent; not by the police; not
15 by the public.

16 They're presumed to be innocent
17 by the jurors in a trial. They're presumed to be
18 innocent by the Judge.

19 When the police make a call and
20 investigate a crime, what they're looking for is:
21 probable cause.

22 If they find probable cause --
23 low standard of evidence -- anything that will make them
24 believe:

25 Maybe this person committed a

1 crime.

2 Then, the police have a
3 presumption of guilt. They arrest a person. They charge
4 him. That's the way it is. It's the way it's supposed
5 to be.

6 When it gets to this stage, here
7 in the courtroom, as jurors, and the Judge, in a criminal
8 trial, the Defendants have a presumption of innocence.

9 And what that means, for
10 example:

11 If this bar here in front of you
12 was a continuum, and down here -- all the way down here
13 at the end, we have innocent -- 100 percent completely
14 innocent.

15 All the way up here at the top,
16 we have guilty; 100 percent, no doubt in our mind,
17 guilty.

18 Along the way, we have maybe
19 someone is guilty; probably they're guilty; clearly
20 they're guilty.

21 Somewhere up here at the end we
22 have:

23 Beyond any reasonable doubt, the
24 person is guilty.

25 And I think it's natural if we

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1 haven't been involved in the process before, when we come
2 into the courtroom as jurors, we'll assume a person is
3 somewhere up here:

4 They must be guilty. Why else
5 would the police have charged the person?

6 And part of my job is making
7 sure that -- that we understand how that works; what the
8 law says about the presumption of innocence.

9 And when we first come into this
10 case, and throughout the case, until y'all start
11 deliberating at the end of the case, we have to assume,
12 not that the person is guilty, but that they are 100
13 percent all the way down here at the end, 100 percent
14 innocent.

15 As if that's our friend, our
16 family member, there is no question in our minds that
17 that person is innocent.

18 I'm going to turn this over to
19 -- uh -- Mr. Floyd, Shelly's attorney.

20 And I thank you all.

21 THE COURT:

22 Mr. Floyd.

23 MR. FLOYD:

24 May it please The Court?

25 THE COURT:

TESTIMONY OF JACKIE EODLER

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1 I do want to thank you for being
2 with us today.

3 THE COURT:

4 Thank you Mr. Floyd.

5 Mr. O'Sullivan, you ready for
6 your witness?

7 MR. O'SULLIVAN:

8 Yes, Your Honor.

9 Uh -- The State would call
10 Jackie Eodler.

11 Your Honor, as previously noted,
12 I'm going to briefly --

13 THE COURT:

14 Okay.

15 WHEREUPON: JACKIE EODLER WAS
16 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

17 CLERK:

18 Thank you. Please be seated.

19 MR. FLOYD:

20 Judge, may -- may we approach
21 real quick?

22 Yes sir.

23 (WHEREUPON: Counsel for each
24 party conferred off the record with The Court at the
25 bench at 11:49 AM, June 15, 2010.)

TESTIMONY OF JACKIE EODLER

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1 CLERK:

2 Okay. If you'll scoot up and
3 speak into the microphone. Please state your full name
4 and spell your last name.

5 WITNESS:

6 Uh -- It's Jacquelyn Eodler, E-
7 o-d-l-e-r.

8 DIRECT EXAMINATION BY MR. O'SULLIVAN:

9 Q. All right. Ms. Eodler, can you tell The Court
10 where you live?

11 A. You mean my address; do I have to give?

12 Q. Yes. Where -- Where do you live?

13 A. Uh -- Old Crab Pond Road, Conway, South Carolina.

14 Q. And how long have you lived there?

15 A. Uh -- 15 years.

16 Q. Were you living there on August 31, 2009?

17 A. Yes sir.

18 Q. Did you observe anything out of the ordinary on
19 August 31st, 2009?

20 A. Yes sir.

21 Q. And -- uh -- when did you observe this event?

22 A. Uh --

23 Q. What time of day?

24 A. What time of day? It was in the evening. It was
25 about my 9:00 -- maybe 9:30 in the evening.

1 Q. And can you tell The Court what it is you observed?

2 A. Uh -- I went outside to smoke a cigarette. And I
3 was blinded -- uh -- by some truck lights.

4 And my dog was growling. And it
5 just -- uh -- it threw me off for a loop, because the
6 house that was where the truck was -- uh -- hasn't been
7 lived in.

8 It's been rented out once or
9 twice in the 15 years that I've been here. So I knew it
10 was abandoned.

11 And I knew something was going
12 on, because -- uh -- I heard someone talking. I seen a
13 male figure. And I don't know what else to say.

14 Q. What did you observe this male to doing, if
15 anything?

16 A. Uh -- Well I heard -- uh -- the person yelling at
17 another person -- uh -- stating that they needed to pick
18 something up.

19 Uh -- After I sat there and
20 watched for a while, trying to figure out what was going
21 on, I heard some banging going on.

22 Then, all of a sudden, they got
23 into the vehicle -- into the truck.

24 Uh -- I heard a chain-link fence
25 being ripped out of the ground.

TESTIMONY OF JACKIE EODLER

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1 I thought the chain-link fence
2 was being stolen.

3 They didn't stop. So I ran back
4 into my house, grabbed my keys, and went after them.

5 Q. Did you notice anything about the house?

6 A. Uh -- Just knew nobody was supposed to be there,
7 basically.

8 Q. Now did you -- You -- You've testified that you
9 heard a voice telling another person to lift something?

10 Did you observe -- uh --
11 anything being lifted?

12 A. No. I couldn't see what was being lifted. Like I
13 said, I just heard noises.

14 And -- uh -- it was banging
15 noises that I heard.

16 Q. And what type -- You may have already said this. If
17 so, I apologize. What type of vehicle did you see in the
18 yard?

19 A. It was a white -- I want to say it was a white
20 truck. I know it was a truck for sure.

21 I remember because of the fact
22 that the washer and dryer was on the back of it.

23 I don't really -- Can't really
24 recall what color the truck was.

25 Q. That's fine. Uh -- Now, I believe you testified

1 you got in your car and followed?

2 Uh -- Did you -- Did you call
3 anyone?

4 A. I actually called -- uh -- First, I called my
5 sister-in-law, because my sister-in-law is -- uh --
6 married to somebody that knows the neighborhood very
7 well.

8 I knew that he would know who
9 the owners of the house belonged to.

10 Uh -- So I told her what had
11 happened. And I told her that they had to get a hold of
12 these people for me.

13 She proceeded to sit down and
14 tell me, as I was trying to catch up to the truck --
15 because I --

16 MR. FREDERICK:

17 Object to the hearsay, Judge.

18 THE COURT:

19 All right. It's hearsay. Just
20 tell her what she -- ask her what she did as a result of
21 the conversation.

22 DIRECT EXAMINATION BY MR. O'SULLIVAN CONTINUED:

23 Q. Yes. You don't need to tell us what anyone else
24 said; just what you did.

25 A. Okay. Well, they -- I then got off the phone with

TESTIMONY OF JACKIE EODLER

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1 her. By the time I caught up to them, I was still on the
2 phone with her.

3 I gave her the tag numbers of
4 the vehicle.

5 I got the phone with her. I
6 called 911. And then, I was on the phone with them until
7 we got pulled over.

8 Q. Okay. And --

9 A. And as -- as I was on the phone with 911 -- uh -- I
10 was -- uh -- a little ticked off and trying to get the
11 cops to come.

12 I was chasing them. Put it this
13 way. I was putting -- I was going through stop signs. I
14 was going through a red -- red lights.

15 They brought me through -- uh --
16 uh -- a development. And they tried to loose me there.

17 They almost lost the washer and
18 dryer that was in the back of the truck. But they didn't
19 -- When they were -- you know.

20 He also -- uh -- before we got
21 stopped by the cop -- just before we got stopped by the
22 cop -- uh -- he stopped the vehicle -- the truck, and
23 proceeded to open the door and tell me to get lost.

24 And, of course, I did not.

25 Q. When you say "he" did that, who did that?

1 A. This man right here in the light shirt (pointing to
2 Defendant Lewis Pipher).

3 Q. Now could you tell The Court what if anything you
4 observed in the truck?

5 A. I observed the washer and dryer in the back of the
6 truck.

7 Q. Now, you mentioned that you were in pursuit of them,
8 going through stop signs. Was that necessary because
9 they were doing the things?

10 A. Yes sir. And they were try -- They didn't notice
11 me at first. Uh -- That was down on Highway 90, they I
12 didn't notice.

13 Uh -- I think they did realize
14 by the time we got to the end of Highway 90.

15 I think that's when they
16 realized that somebody was following them.

17 And then, once they knew that,
18 yes.

19 They were weaving in and out of
20 cars. Uh -- And yeah. So they knew I was on them. And
21 they knew that I was following at this point in time.

22 But, yes --

23 Q. Would you say they were driving in a reckless and
24 dangerous manner?

25 A. I would; yes.

TESTIMONY OF JACKIE BODLER

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1 Q. Would you say that they were trying to avoid you and
2 get away?

3 A. Oh, definitely. They were trying to get away from
4 me, definitely.

5 Q. How long would you say you followed the truck for?

6 A. Uh -- A good -- I -- I followed them all the way
7 from my house down 501 near Piggly-Wiggly.

8 So I would say was in the car
9 for at -- at least 20 minutes -- maybe even could have
10 even been 30 minutes, following them.

11 Q. And you mentioned that you had contacted the police.
12 Did you observe them respond?

13 A. Did they respond? Yes. They -- I was on 9 -- I
14 was on the phone with 911 the whole time.

15 Uh -- They were trying to let me
16 know -- you know -- that they are cops coming. And
17 Officer Crews happened to come between me and the
18 Defendants' -- or whatever -- truck.

19 Q. Now, at any point in time throughout this whole
20 series of events, were you able to see the Defendants?

21 A. When he stopped the vehicle to tell me to -- to get
22 lost, yes. I seen his -- the only -- but -- you know --
23 side of his face.

24 But otherwise, when Officer
25 Crews turned around and stopped them and had to get them

1 out of vehicle, that's when I seen a better view of them.

2 But otherwise, yes, I did see
3 them.

4 Q. Do you see those individuals in the courtroom here
5 today?

6 A. Yes; these two right here (pointing to the
7 Defendants).

8 Q. Sitting at the Defense table?

9 A. Yes.

10 MR. O'SULLIVAN:

11 Your Honor, that's all I have
12 for now.

13 THE COURT:

14 All right. Mr. Frederick?

15 MR. FREDERICK:

16 I have no questions, Your Honor.

17 THE COURT:

18 Mr. Floyd?

19 MR. FLOYD:

20 I have no questions for her,
21 Judge.

22 THE COURT:

23 All right. You may step down.

24 Are we getting our next witness?

25 MR. O'SULLIVAN:

TESTIMONY OF OFFICER DONNIE MILES

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1 Oh, I'm sorry, Your Honor. I
2 didn't know if you were ready to proceed.

3 THE COURT:

4 Yeah. Yes. Yes. Yes.

5 THE COURT:

6 Uh -- The State would call
7 Officer Donnie Miles to the stand.

8 WHEREUPON: OFFICER DONNIE MILES
9 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

10 CLERK:

11 Thank you. Please be seated.
12 Please state your full name and
13 spell your last name.

14 WITNESS:

15 Donnie Miles, M-i-l-e-s.

16 DIRECT EXAMINATION BY MR. O'SULLIVAN:

17 Q. Mr. Miles, can you tell us what your occupation is?

18 A. Uh -- I'm a police officer.

19 Q. And what law enforcement agency are you employed by?

20 A. Uh -- In Santee, South Carolina.

21 Q. And were you have employed by the Horry County
22 Police Department?

23 A. I was; yes sir.

24 Q. And how long have you been employed with them?

25 A. From 2006, up until about a month and a half ago.

1 Uh -- Somebody had forced entry
2 there into the house.

3 Uh -- I believe you kind of
4 walked through a little area, and then over to the right,
5 you may have walked through a kitchen area.

6 But anyway, got to an area where
7 there was a -- you could tell -- was a washer and dryer
8 hookup.

9 Uh -- There was a still water --
10 uh -- standing there on the floor -- uh -- in that little
11 room.

12 Uh -- Back outside, there was a
13 chain-link fence. I believe why you pull up in the
14 driveway, on the right-hand side, there was a -- a long
15 chain-link fence. Uh -- And that also had been knocked
16 over.

17 Uh -- It's kind of what I
18 observed to be unusual aspects of the house that night.

19 Q. What did the fact that there was water on the floor
20 indicate to you?

21 A. Uh -- Being that it was in a -- a room where a
22 washer and dryer was, I would assume that there was a
23 washer that had been hooked up there.

24 Q. Uh -- Now did -- uh -- did you relay the information
25 you found at the scene to any other officers?

TESTIMONY OF OFFICER DONNIE MILES

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1 A. Uh -- I don't remember speaking with Officer Crews.
2 But I'm sure he and I were in contact that night. I
3 believe that's where we were -- the information we were
4 trying to pursue.

5 And, if -- I'm sure, I either
6 spoke with him or another officer on scene to let them
7 know that information.

8 Q. And -- uh -- And you were aware of what he was doing
9 at that point in time?

10 A. What Officer Crews was doing?

11 Q. Yes.

12 A. I believe dispatch had told us that there was a
13 possible -- he had stopped a possible burglary suspects
14 and I believe that's the investigation that he was in the
15 middle of at that time.

16 MR. O'SULLIVAN:

17 Thank you, Officer.

18 Nothing further at this time,

19 Your Honor.

20 MR. FREDERICK:

21 Thank Your Honor.

22 THE COURT:

23 Mr. Frederick.

24 CROSS-EXAMINATION BY MR. FREDERICK:

25 Q. Uh -- The door opened in -- the back door?

1 A. I believe that's correct, Mr. Frederick. It's been
2 so long ago now. But I believe just trying to recall my
3 memory, I believe that's the way that happened.

4 Q. Okay. And the -- the house -- When you went into
5 it, the house was empty; wasn't it?

6 A. I -- Well, I don't remember seeing furniture or
7 anything like that. I -- I don't recall.

8 But for the most part, I believe
9 it was empty.

10 MR. FREDERICK:

11 No further questions.

12 THE COURT:

13 Mr. Floyd?

14 MR. FLOYD:

15 Just a couple.

16 CROSS-EXAMINATION BY MR. FLOYD:

17 Q. Officer Miles -- uh -- did you take any pictures of
18 the door?

19 A. No sir. No sir.

20 Q. Did you take any pictures of the fenced area?

21 A. No sir.

22 Q. To your knowledge, did anybody?

23 A. Uh --

24 Q. Did Crime Scene or anybody?

25 A. Not that I know of; no sir.

TESTIMONY OF OFFICER DONNIE MILES

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1 MR. FLOYD:

2 Thank you.

3 MR. O'SULLIVAN:

4 Briefly, Your Honor.

5 REDIRECT EXAMINATION BY MR. O'SULLIVAN:

6 Q. In talking about the door, is it possible that it
7 might not have opened in? It might have been -- Is it
8 possible it could have been some other opening door?

9 A. Yeah, that's possible. I'm just trying to -- That's
10 been, like I said, almost a year ago, and -- and we
11 handled so much. But I was just trying to recall.

12 Uh -- I didn't see anything in
13 the report about it, but I was trying to remember as best
14 I could.

15 MR. O'SULLIVAN:

16 Nothing further.

17 THE COURT:

18 Anything further?

19 MR. FLOYD:

20 No sir.

21 THE COURT:

22 All right. You may step down.

23 MR. O'SULLIVAN:

24 Your Honor, I'd just like -- The
25 State would call Officer Jeremy Crews to the stand.

TESTIMONY OF OFFICER JEREMY CREWS

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1 THE COURT:

2 All right.

3 WHEREUPON: OFFICER JEREMY CREWS

4 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

5 CLERK:

6 Thank you. Please be seated.

7 MR. FLOYD:

8 Judge, can we approach again?

9 THE COURT:

10 Yes.

11 (WHEREUPON: Counsel for each

12 party conferred off the record with The Court at the

13 bench at 12:06 PM, June 15, 2010.)

14 CLERK:

15 If you will please state your

16 full name and spell your last name.

17 WITNESS:

18 Jeremy Crews, C-r-e-w-s.

19 THE COURT:

20 All right.

21 Let take the jury into the jury

22 room.

23 I tell you what let's do.

24 Let's let the jury go to lunch

25 until about two o'clock; all right.

TESTIMONY OF OFFICER JEREMY CREWS

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1 I have two other matters that
2 I'm going to have to consider during lunch that don't
3 involve this case.

4 So -- uh -- let's give them a
5 good -- good long lunch. Be back in your jury room
6 about two o'clock.

7 Mr. Roth, show them how to get
8 out of the courtroom from up here --

9 BAILIFF:

10 Yes sir.

11 THE COURT:

12 -- and how to get back in.

13 (WHEREUPON: The jury empanelled
14 in the case withdrew from the courtroom at 12:07 PM, June
15 15, 2010; and was no longer present during the following
16 proceedings.)

17 THE COURT:

18 All right.

19 Is it Mr. Crews that we're going
20 to have the -- uh -- Blair Hearing on -- I mean, The
21 Jackson V. Denno Hearing?

22 MR. O'SULLIVAN:

23 I believe so, Your Honor. He's
24 in here and --

25 THE COURT:

1 All right. Mr. Crews, come
2 back up and please be seated.

3 WHEREUPON: The witness did as
4 instructed by The Court.

5 THE COURT:

6 All right. Mr. O'Sullivan?
7 VOIR DIRE EXAMINATION REGARDING JACKSON V. DENNO MATTERS
8 BY MR. O'SULLIVAN:

9 Q. Officer Crews, did you take -- uh -- any oral
10 statements from the Defendants -- uh -- on the date of
11 the -- uh -- incident.

12 A. I placed them in investigative detention when --
13 with -- with their first initial call of -- you know --
14 the property that was in the back of the vehicle.

15 Uh -- The first -- They brought
16 it out in a story to me saying that they had bought this
17 from a man in Loris, and took a wrong -- When I asked
18 them why they were down on Old Altman Road, they said
19 they had taken a wrong left turn down that road.

20 Q. And -- uh -- did you place them under arrest at any
21 point in time?

22 A. Once I placed them under arrest, I read them their
23 Miranda rights.

24 And then, they both had changed
25 their stories.

TESTIMONY OF OFFICER JEREMY CREWS

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1 Q. So they gave statements post-Miranda?

2 A. Yes.

3 Q. And were you waiting for the information from -- uh
4 -- the -- the scene of the incident itself before you
5 place them under arrest?

6 A. Yes sir.

7 THE COURT:

8 Let's hear what they said; okay.

9 VOIR DIRE EXAMINATION REGARDING JACKSON V. DENNO MATTERS
10 BY MR. O'SULLIVAN CONTINUED:

11 Q. Uh -- You said what they mentioned to you when they
12 were in investigative detention.

13 What did they say one you
14 Mirandized them, Officer?

15 A. Once I Mirandized them -- uh -- the -- the Defendant
16 -- the female, she stated that they had bought it from a
17 man in Loris; and that they had picked the washer and
18 dryer up.

19 I -- I had kept her outside of
20 the car. And I put the male Defendant in the back of the
21 car.

22 And she had stated to me after I
23 had -- both -- has placed them under arrest that -- Once
24 I read her Miranda rights and asked her if she wanted to
25 talk to me, she had stated to me that they had bought it

1 from the man in Loris and they had picked it up off the
2 porch and never made entry to the house.

3 After I had presented them with
4 the evidence that the door was pried open and the door
5 was left open, and -- with the water standing on the
6 floor.

7 And after I spoke -- When I
8 spoke with him, his story was that they had went in the
9 house through an unlocked door through the front door;
10 and stated that they had picked up the washer and dryer
11 there.

12 And he had stayed -- stayed with
13 the story about buying it from a subject in Loris.

14 THE COURT:

15 All right.

16 Mr. Frederick? Mr. Floyd?

17 Do you want to -- uh -- contest
18 that statement?

19 VOIR DIRE EXAMINATION REGARDING JACKSON V. DENNO MATTERS

20 BY MR. FLOYD:

21 Q. Still was a statement you made reference to after
22 you had put them in detention, and you said:

23 I Mirandized them, and then went
24 back and talked to them.

25 What was the first statement?

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1 A. When -- When I went up to the vehicle -- I -- I had
2 approached the vehicle, and -- and basically let -- let
3 -- let them know why I was stopping them, and inform them
4 -- you know -- and asked them -- you know -- what were
5 they doing down on Old Altman Road, because we had a call
6 of a -- a burglary to a house.

7 And they had -- they had stated
8 to me that they had bought this washer and dryer from a
9 subject in Loris. And they had made a left turn down Old
10 Altman Road and got lost down there. And ended up going
11 down Highway 90.

12 Q. And you had them pulled-over at that point?

13 A. They were pulled over, yes.

14 Q. Blue lights flashing? They weren't free to leave?

15 Had you Mirandized them at the
16 time of that statement?

17 A. No sir.

18 MR. FLOYD:

19 Thank you.

20 THE COURT:

21 All right.

22 MR. O'SULLIVAN:

23 I don't have any further
24 questions, Your Honor. But if there's -- I --

25 THE COURT:

1 Anything further?

2 MR. FREDERICK:

3 Well, we moved to exclude any
4 statements made pre-Miranda.

5 Judge, they're on the side of
6 the road. They had a report of a burglary --

7 THE COURT:

8 I mean, the pre-Miranda
9 statement's exactly the statement as the post-Miranda
10 statement; isn't it?

11 MR. FREDERICK:

12 It's not, Judge. He says that
13 they changed their statement after they were Mirandized.

14 So we move to exclude anything
15 previous --

16 THE COURT:

17 I -- I -- I'm sorry. I -- Could
18 you help me out with that, Mr. -- uh -- Frederick.

19 I -- I don't -- I -- I thought
20 that they said they bought a washer and dryer from a
21 person. They picked it up. And -- uh -- they got lost
22 -- uh -- coming back on the pre-Miranda statement.

23 And on the post-Miranda
24 statement, they said they -- they gave a little more
25 detail, but I -- Was it in conflict with the pre-Miranda

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1 statement?

2 MR. FREDERICK:

3 I believe it was Judge. I
4 don't remember the exact language.

5 MR. O'SULLIVAN:

6 He -- uh -- The pre-Miranda
7 statement was:

8 We bought it somewhere else.
9 Nowhere -- It hadn't nothing to do with that house.

10 We bought it somewhere else.
11 Took a wrong turn down that road. That's why we knocked
12 over the fence.

13 Post-Miranda statement was --
14 from here:

15 We picked it up on the porch
16 from that house.

17 From him:

18 We went in the house and got it.

19 You know, it was consistent.

20 They still said they bought it from someone else.

21 THE COURT:

22 Was it the -- the pre-Miranda
23 statement -- in response to direct questions by you,
24 Officer?

25 WITNESS:

1 I -- I had informed them that we
2 had a call for a burglary, and we had somebody following
3 them, and their -- their truck matched the description;
4 that's why I was stopping them.

5 And I asked them if they had
6 been down Old Altman Road?

7 And that's when they gave me
8 that story.

9 THE COURT:

10 Well, I -- I'll exclude the pre-
11 Miranda; but not the post-Miranda.

12 MR. O'SULLIVAN:

13 Could I -- Could I be heard on
14 that, Your Honor?

15 THE COURT:

16 Yes. Okay.

17 MR. O'SULLIVAN:

18 Uh -- Your Honor, I've got a
19 case here, State v. Corely (? phonetic).

20 THE COURT:

21 All right.

22 MR. O'SULLIVAN:

23 And I'm going to provide that to
24 the Defense; and I'll provide a copy to Your Honor.

25 THE COURT:

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1 Okay.

2 MR. O'SULLIVAN:

3 It specifically states that --
4 uh -- investigative detention does not require Miranda be
5 read in order to ask questions.

6 If Your Honor -- It's a -- uh --
7 Court of Appeals case from 2009, decided not that long
8 ago, December of 2009.

9 If you will turn to Page 7 out
10 of 10 -- uh -- it discusses -- The top of the page -- The
11 first paragraph goes through some elements.

12 But if you look at the third
13 paragraph, they talk about analysis of investigative
14 detentions.

15 Uh --

16 THE COURT:

17 On Page 7?

18 MR. O'SULLIVAN:

19 Page 7, yes, Your Honor.

20 THE COURT:

21 All right.

22 MR. O'SULLIVAN:

23 Uh -- It says:

24 Typically this means that the
25 Officer may ask the detainee a moderate number of

1 questions to determine his identity and to try to obtain
2 information confirming or dispelling the officer's
3 suspicions. Uh -- The detainee is not obliged to
4 respond. Uh -- And unless his answers provide probable
5 cause, he must then be released.

6 Uh -- Your Honor, that's exactly
7 what this officer was doing.

8 It did not require -- It's --
9 It's detaining under -- If you look at this paragraph, in
10 the law's sight, it's akin to a Terry Stop. It does not
11 require that -- uh -- that Miranda be read.

12 And it goes on to talk about the
13 fact that:

14 Even if he puts them in cuffs
15 and puts them in the car, it does still not trigger
16 Miranda at that point in time if it's a reasonable amount
17 of time for an investigative detention.

18 The officer testified that he
19 was waiting on the crime scene people to get back to him
20 and let him know if there was any evidence of a crime
21 being commit --

22 THE COURT:

23 Well, how long was that?

24 MR. O'SULLIVAN:

25 Uh -- I don't know exactly how

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1 long, Your Honor.

2 THE COURT:

3 Well, let's ask him. And let's
4 put it on the record.

5 WITNESS:

6 I'd say approximately maybe 10
7 to 15 minutes, maybe.

8 MR. O'SULLIVAN:

9 Uh -- But Your Honor, it -- it
10 does talk about the fact:

11 Persons temporarily detained
12 pursuant -- uh -- to stops are not in custody for the
13 purposes of Miranda.

14 Uh -- Only if the motorist is
15 detained to a degree associated with formal arrest will
16 he be entitled to Miranda.

17 Uh -- Even drawing weapons,
18 handcuffing a suspect, placing a suspect in a patrol car
19 for questioning, or using threatening -- uh -- or
20 threatening to use force does not necessarily elevate a
21 lawful stop into a custodial arrest for Miranda purposes.

22 Uh -- Miranda typically applies
23 only when the Defendant is placed under arrest.

24 An investigative detention does
25 not trigger Miranda.

1 I would submit it is completely
2 reasonable for this officer to wait on a report from the
3 crime scene before placing these Defendants under arrest.

4 THE COURT:

5 Well, this -- this is what it
6 says. It makes this Terry type analysis. And the
7 Supreme Court addressed it in Rodriquez.

8 And this is what they said:

9 Typically this means an officer
10 may ask detainee a moderate number of questions to
11 determine his identity and try to obtain information
12 confirming or dispelling the officer's suspicions.

13 That's the Berkemer (? phonetic)
14 case.

15 However, the detainee is not
16 obliged to respond. And unless his answers provide
17 probable cause to arrest him, he must then be released.

18 What do you say about that, Mr.
19 Floyd?

20 MR. FLOYD:

21 Judge, he was not free to leave.
22 His -- The questions went beyond just establishing the
23 identity.

24 Uh ---

25 THE COURT:

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1 How about confirming or
2 dispelling the officer's suspicions?

3 | MR. FLOYD:

4 That -- He wasn't really -- They
5 could have said anything. He couldn't leave. It wasn't
6 confirming or dispelling, one way or another, these
7 answers.

8 Because he's testified they were
9 not free to leave.

10 Judge, there's been a lot with
11 Miranda. They've watered it down a good bit. But I
12 don't think they've just thrown it out the window.

13 He was not -- uh -- Again, he

14 THE COURT:

15 All right. Mr. Frederick?

16 | MR. FLOYD:

17 -- was locked in detention and
18 not free to leave.

19 MR. FREDERICK:

20 Judge, I'd -- I'd point you to
21 the top of Page H.

22 And the -- The Court in this
23 case does make a point that this guy was free to leave;
24 that -- uh -- It was a traffic stop. --

25 The officer stopped him because

1 he was near a -- a known drug house. However, the driver
2 was free to leave and didn't have to answer the
3 questions.

4 That's not the case here.

5 MR. O'SULLIVAN:

6 Your -- Your Honor, I'll note
7 that the Defense keeps mentioning the free to leave
8 aspect. But if you look at Page 8 -- uh -- the paragraph
9 before the last paragraph of that page, the last sentence
10 says:

11 Thus, even though a motorist on
12 a routine traffic stop may be detained and is not free to
13 leave, such a motorist is not in custody form Miranda
14 purposes.

15 THE COURT:

16 And that was Berkemer actually -
17 - the Berkemer case that came down a while back.

18 And that was the point that I
19 was -- uh -- about to make, Mr. Floyd and Mr. -- uh --
20 and Mr. Frederick.

21 Uh -- If they say a person who's
22 been stopped is free to leave, they haven't been stopped
23 by the same officers that I have.

24 Uh -- You're pretty much locked
25 in. You're going to stay there until -- uh -- until

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1 they're done with you.

2 Uh -- I -- I still have a
3 problem -- uh -- with this statement.

4 I mean, they -- The police knew
5 what was going on. They knew that there was a -- uh -- a
6 possible burglary -- burglary. They were asking
7 questions in reference to that?

8 Uh -- I think that the pre-
9 Miranda statement, I -- I -- is essentially the same.

10 I -- I don't see where it really
11 prejudices the State to exclude it.

12 Uh -- I am going to exclude it
13 in -- in this particular case; the pre-Miranda statement;
14 but not the post-Miranda statements; okay.

15 MR. O'SULLIVAN:

16 I understand, Your Honor. I --

17 THE COURT:

18 All right.

19 MR. O'SULLIVAN:

20 -- will say it is prejudicial to
21 the State because it shows an inconsistency in the story
22 --

23 THE COURT:

24 I understand --

25 MR. O'SULLIVAN:

1 -- that goes to the credibility
2 of the Defendants.

3 THE COURT:

4 And -- And I think there's some
5 -- the same -- uh -- inconsistency in the post-Miranda
6 statements.

7 I mean, you've got your
8 inconsistency there. I don't think the statement of the
9 two Defendants matched up; did it?

10 Anyway, we're going to do it
11 that way.

12 Okay, let's -- uh -- break for
13 lunch. Uh -- I will allow you, if you gentlemen want to
14 take -- uh -- a -- the lunch period and -- and look a
15 little more closely at this matter, I will let you brief
16 it -- briefly discuss it -- uh -- when we get back; okay.

17 MR. FREDERICK:

18 Yes, Your Honor.

19 THE COURT:

20 All right.

21 All right, Ms. Wilson and -- uh
22 -- Ms. Richardson, let's do your pleas, okay.

23 (WHEREUPON: The court was
24 declared in recess on this particular matter at 12:18 PM,
25 June 15, 2010.)

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1 (WHEREUPON: The court was
2 called to order by the Bailiff at 2:09 PM, June 15, 2010;
3 and all pertinent parties, along with their counsel, were
4 back and present in the courtroom.)

5 THE COURT:

6 All right.

7 Mr. Roth is bringing in the --
8 uh -- the juror.

9 WHEREUPON: Juror Bernard E.
10 Kulesar, Juror Number 216, white male, entered the
11 courtroom alone, with none of the remaining jurors
12 selected in this case present.

13 THE COURT:

14 Yes sir. Come around.

15 And Mr. Kulsack; is it?

16 JUROR KULESAR:

17 Kulesar.

18 THE COURT:

19 Kulesar. Mr. Kulesar -- uh --

20 Mr. Roth tells me that:

21 After you saw that first witness
22 yesterday --

23 JUROR KULESAR:

24 Yes sir.

25 THE COURT:

1 -- that you believed that you
2 recognized her from an employment that you had -- you
3 both had at some time.

4 JUROR KULESAR:

5 We worked together at Piggly
6 Wiggly for about eight months in Carolina Forrest.

7 THE COURT:

8 Okay.

9 And I believe that you -- uh --
10 told him -- uh -- and correct me if I'm wrong, that:

11 When she started testifying
12 about chasing the -- uh -- alleged Defendants, that -- uh
13 -- you recalled her coming back to work and telling her
14 fellow employees that.

15 Is that correct?

16 JUROR KULESAR:

17 Yes sir.

18 Uh -- Next day she came to work,
19 basically the testimony she gave was what she had told
20 me.

21 THE COURT:

22 Okay.

23 Now, have you discussed this
24 with your other jurors?

25 JUROR KULESAR:

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1 No sir.

2 THE COURT:

3 Okay. Very well. That's good.

4 I tell you what I'm going to do:

5 I'm going to -- uh -- excuse you

6 on this case.

7 Uh -- You haven't done anything

8 -- uh -- wrong. There's no way that we can give you all

9 the information that you need. And sometimes this

10 happens.

11 And you did exactly the right

12 thing by bringing this to The Court's attention once you

13 saw that witness and you heard her testimony.

14 And we certainly appreciate

15 that.

16 I've already discussed it with

17 these attorneys and they know the full circumstance of

18 it.

19 And we all believe that the best

20 thing to do is to pick an alternate to take your place,

21 and release you for today; okay.

22 JUROR KULESAR:

23 Okay.

24 THE COURT:

25 Well you call in a six o'clock

1 and -- uh -- this afternoon, and they'll tell you whether
2 you need to come back; okay.

3 JUROR KULESAR:

4 Okay.

5 THE COURT:

6 And hopefully we'll get you on
7 another jury; all right.

8 JUROR KULESAR:

9 All right. Thank you.

10 THE COURT:

11 Thank you, Mr. Kulesar.

12 You -- You did exactly what you
13 were supposed to do; and we appreciate it.

14 Mr. Roth, if you'll go in and
15 get his things; escort him out; be prepared -- uh -- or
16 be on hand.

17 I'm going to -- uh -- determine
18 which alternate will be next; okay.

19 BAILIFF:

20 Yes sir.

21 THE COURT:

22 All right, gentlemen, the
23 replacement of a juror by alternate on a criminal case is
24 different than a civil case. It has to be done by lot.

25 Uh -- We have two alternates

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1 that have been selected.

2 I'm going to refer to -- as --
3 to -- uh -- Ms. Small's as Alternate 1, and Mr. -- uh --
4 Conlon is alternate 2; okay.

5 I am going to have Claire put
6 that on -- put that on an old piece of paper or something
7 Claire, if you would.

8 WHEREUPON: The law clerk did as
9 instructed by The Court.

10 THE COURT:

11 I'm just going to simply put a 1
12 and a 2.

13 Anybody have any objections to
14 allowing Heather, our Clerk of Court, to come up and --
15 and draw one of the names.

16 MR. FLOYD:

17 No objection.

18 THE COURT:

19 Any objections from the State?

20 MR. O'SULLIVAN:

21 Not from the State, Your Honor.

22 THE COURT:

23 Any objections from the Defense?

24 MR. FREDERICK:

25 No objection.

1 THE COURT:

2 All right; thank you Mr. Floyd
3 and Mr. -- uh -- Frederick.

4 If you would, Madame Clerk?

5 WHEREUPON: The Clerk of Court,
6 Heather Lewis, did as instructed by The Court.

7 THE COURT:

8 Thank you.

9 CLERK:

10 It's Juror Number 2.

11 THE COURT:

12 Juror Number 2. That will be
13 Mr. Colon -- Conlon. Conlon. Mr. Brian J. Conlon (Juror
14 Number 63, White Male), who will replace -- uh -- Mr.
15 Kulesar.

16 All right.

17 Are we ready to -- uh -- to
18 begin?

19 MR. O'SULLIVAN:

20 Your Honor, I don't know -- You
21 mentioned at the close of business in the morning that --

22 THE COURT:

23 I'll let you re -- revisit the
24 issue of -- uh -- uh -- the -- uh -- Denno Hearing; okay.

25 MR. O'SULLIVAN:

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1 Your Honor, I -- I really don't
2 have a new argument.

3 I certainly respect your
4 authority to decide --

5 THE COURT:

6 Uh-huh.

7 MR. O'SULLIVAN:

8 -- as you see fit.

9 Uh -- I will say that I believe
10 this case law is perfectly on point with exactly the
11 situation we have here.

12 The only argument I've heard
13 from the Defense is that the guy -- that the Defendant
14 wasn't free to leave, and therefore we should count that
15 as triggering Mir -- uh -- Miranda.

16 The -- The case law clearly
17 states that it doesn't matter.

18 Uh -- Even though a motorist on
19 a routine traffic stop may be detained and is not free,
20 to leave, such a motorist is not in cus -- in custody for
21 Miranda purposes.

22 THE COURT:

23 And -- And there again, you
24 know,, we're talking about -- uh -- cases that follows
25 Berkemer, and I am familiar with Berkemer. And I

1 understand the circumstances of the Berkemer case.

2 However, in this situation, we
3 don't have a -- a traffic stop. What we -- or a -- a
4 conventional traffic stop.

5 Uh -- There is no mention of a
6 -- a -- a violation of any type.

7 The officer simply stated that
8 he had received this call, and that there was certainly
9 -- uh -- uh -- the -- articulable suspicion.

10 He stopped the vehicle.

11 He stops the vehicle.

12 Uh -- He asked the -- the folks
13 to identify themselves.

14 Then he began to discuss -- and
15 -- and I understand that if he was discussing matters
16 relevant to what gave rise to his suspicion; but
17 nevertheless, it was specifics about the offense.

18 Then he -- he had them under
19 investigative detention.

20 Then he placed them under
21 arrest; Mirandized them, and asked them essentially the
22 same questions following that.

23 Separated them and followed
24 usual -- uh -- police -- uh -- uh -- interrogation.

25 I believe that it would be

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1 appropriate to limit the State to -- You can introduce
2 any -- uh -- statements they made following the Miranda
3 -- post-Miranda statements.

4 Uh -- I am going to exclude the
5 brief statement that was a pre-Miranda statement.

6 Uh -- I think essentially it's
7 the same thing. There is some argument that it does
8 cause some -- uh -- there is some discrepancy in it.

9 But I'm going to -- uh --
10 continue with my ruling that way. I -- I -- I think that
11 I'm ruling appropriately. I certainly hope so.

12 At any rate, your -- your
13 objection is noted.

14 All right.

15 Anything further, Mr. Frederick
16 or Mr. -- uh -- Floyd?

17 I did not ask you if you wanted
18 to comment, but I didn't see the need in doing so.

19 MR. FREDERICK:

20 No, Your Honor.

21 THE COURT:

22 Unless you have some additional
23 sustaining grounds --

24 MR. FREDERICK:

25 No sir.

1 THE COURT:

2 -- that you want to put on the
3 record for my ruling, I'll be glad to hear it. But I
4 don't think you need to.

5 MR. FREDERICK:

6 Nothing further.

7 THE COURT:

8 All right. Thank you.

9 Anything other we can do before
10 we bring this jury back in?

11 MR. O'SULLIVAN:

12 Uh -- Well, Your Honor, I -- I
13 believe -- you know -- having the discussion in -- in --
14 in chambers that we just had, I don't know if we want to
15 delve into that issue further before we go further in the
16 trial.

17 Uh --

18 THE COURT:

19 I -- I essentially would like to
20 have your testimony developed, and let's see where we can
21 go with it -- uh -- and give you the benefit of
22 everything you put in.

23 Uh -- Uh -- As I said, I have --
24 uh -- read the Ferebee case. I've done quite a bit of --
25 of research on this issue over lunch.

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1 Uh -- I've got the Evans case
2 now. I want to look at that.

3 I'd just like to take up that
4 issue at the end of the State's case, or at such time as
5 you have fully developed the circumstances of the -- uh
6 -- uh -- the occupancy of that dwelling, or house, or
7 whatever it might be -- building.

8 Uh -- Let's see where we go with
9 that.

10 I think a -- a -- Of course to
11 discuss that pre -- now, would be premature.

12 Let's just see what we got;
13 okay.

14 MR. O'SULLIVAN:

15 And -- And certainly we can
16 wait.

17 But can I inquire now, if -- if
18 there is a finding ultimately that there's no dwelling,
19 are we going to proceed on -- on a lesser charge?

20 THE COURT:

21 I think that you -- uh -- are
22 entitled to do so.

23 If it were to -- I were to
24 determine that it is not a dwelling, and I were to -- uh
25 -- uh -- make a ruling that it was not a dwelling based

1 on the evidence here or -- or that burglary first was not
2 applicable to the facts of this case; if I were to do
3 that, I would -- uh -- certainly -- uh -- allow you to
4 proceed on the lesser included burglary second.

5 But there again, I'm not so sure
6 that I am going to make that finding.

7 MR. O'SULLIVAN:

8 Yes, Your Honor.

9 THE COURT:

10 I may, in fact, put it to the
11 jury and -- and let the jury decide whether or not it is.

12 I simply, in chambers, raised
13 the issue and said that I had some concern about the
14 status of the -- the -- uh -- the sites -- the location
15 where this occurred; okay.

16 MR. O'SULLIVAN:

17 Yes, Your Honor.

18 THE COURT:

19 All right. All right.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 2:48
22 PM, June 15, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 Mr. Conlon?

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1 JUROR CONLON:

2 Yes.

3 THE COURT:

4 I'm going to ask you to shift
5 over. You are -- You are going to replace Mr. -- uh --
6 or Juror -- uh -- Kulesar as -- uh -- on this panel.

7 JUROR CONLON:

8 Thank you.

9 THE COURT:

10 And you will please occupy one
11 of the first 12 seats when you -- we return.

12 All right.

13 Are we ready to go forward?

14 MR. O'SULLIVAN:

15 Yes, Your Honor.

16 THE COURT:

17 Okay.

18 MR. O'SULLIVAN:

19 Your Honor, at this time, the
20 State would call Officer Jeremy Crews to the stand.

21 CLERK:

22 Judge, is he still under oath?

23 THE COURT:

24 Yes. Mr. -- uh -- Crews

25 is still under oath.

1 WHEREUPON: Officer Jeremy
2 Crews, being reminded of his earlier oath, again placed
3 himself on the witness stand for further examination,
4 this time in front of the jury.

5 DIRECT EXAMINATION BY MR. O'SULLIVAN:

6 Q. Can you state your -- uh -- occupation for The
7 Court?

8 A. Police Officer with Horry County Police Department.

9 Q. And how long have you been employed there?

10 A. February of 2007 is when I started.

11 Q. Uh -- What are your present duties?

12 A. I'm a Patrol Officer.

13 Q. Were you -- uh -- employed in that capacity on
14 August 31st, 2009?

15 A. Yes sir.

16 Q. And did you have occasion to become involved in the
17 investigation of a burglary on this date?

18 A. Yes sir.

19 Q. And how did that come about?

20 Q. I received a call from dispatch saying that there
21 was a -- a witness following a red truck down Highway
22 501 that had come from Highway 90.

23 Uh -- They had taken a right-
24 hand turn on Myrtle Ridge and tried to lose the witness.

25 And -- uh -- the development;

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1 once you turn on Myrtle Ridge, the first left, I believe
2 it's Lake Park, maybe.

3 And -- uh -- they came back out
4 on 501 and took a right. And I found them passing me in
5 front of the Hertz Dealership near China Horse Boulevard.

6 And I turned around there. And
7 I stopped them at West Perry and 501.

8 Q. Uh -- What if anything did you observe in the truck?

9 A. A washer and a dryer. They were white in color.

10 Q. Did you approach the vehicle?

11 A. Yes.

12 Q. And -- uh -- what did you do when you approached the
13 vehicle?

14 A. I got identification from the two Defendants. I
15 removed the male half. I put him in investigative
16 detention and put him in the back of my car. And then
17 removed the female half from the passenger side.

18 Q. Now, Officer, just to backtrack a little bit. When
19 you -- Where you made this stop, what county is that in?

20 A. Horry County

21 Q. And what time of day did this occur?

22 A. It was in the nighttime, about nine -- about nine oh
23 -- right around 9 o'clock maybe.

24 Q. I, Now, did you receive any information from other
25 officers about this same investigation at the time you

1 had the Defendants stopped?

2 A. I contacted dispatch and had them send an officer
3 out to the address on Old Altman Road, and had that
4 officer look -- go to the house and basically -- dispatch
5 had contacted the victim and the victim was going to have
6 somebody respond over there to meet him.

7 And he met with them. I spoke
8 with him by the telephone and he relayed the information
9 to me about what the scene looked like.

10 Q. Uh -- Was it at that point in time that you decided
11 to make an arrest?

12 A. Yes sir.

13 Q. Okay. Uh -- Did you in fact arrest the Defendants?

14 A. Yes.

15 Q. Okay. Uh -- When you arrested them, did you -- uh
16 -- read them their Miranda rights?

17 A. Yes sir.

18 Q. And did they then waive those Miranda rights?

19 A. I asked them if they wanted to speak to me and waive
20 their Miranda rights. And yes, they spoke with me.

21 Q. Now -- uh -- once they were Mirandized, or -- or
22 agreed to speak with you and waived those rights -- uh --
23 what did -- uh -- each Defendant tell you?

24 A. I spoke with the -- uh -- male -- or the female
25 Defendant first. And she stated to me that they had

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1 bought the washer and dryer for a man in Loris, and went
2 to the residence to pick it up, and it was on the porch;
3 and that's where they retrieved the property from.

4 Q. And what did -- uh -- the other Defendant, Lewis
5 Pipher, tell you?

6 A. I spoke with him and explained to him about the
7 forced entry to the door, and the scene of the crime, and
8 the damage the fence.

9 And he admitted to me that he
10 had hit the fence leaving the scene; and said that they
11 had -- that he had bought it from a guy in Loris; and
12 that he had -- uh -- they had went inside the rear door,
13 and it was unlocked, and it was supposed to be the
14 property of the person that they had bought it from in
15 Loris.

16 Q. So Pipher told you they did go in the house?

17 A. Yes.

18 Q. Now -- uh -- did -- You mentioned that they both
19 said they bought from some guy in Loris?

20 A. Yes.

21 Q. Did either of them provide you with a name?

22 A. No sir.

23 Q. Any other information at all?

24 A. Nothing; it was just some guy in Loris.

25 Q. Did -- Did they comment on what -- how it was odd to

1 go to some other random house in another town and --

2 A. They had mentioned that -- you know -- that they
3 believed the guy; said that had went and picked up his
4 property.

5 But other than that, I'm -- I'm
6 not sure of their intentions on that.

7 Q. So just some random guy; and they bought it from him
8 in Loris?

9 Uh -- Now the individuals that
10 you spoke with that night and ultimately arrested, are
11 they present here today?

12 A. Yes sir.

13 Q. Can you identify them?

14 A. They're sitting at that table (pointing to the
15 Defendants).

16 Q. Now you mentioned you were initially dispatched
17 from a 911 call and there was a pursuit of the
18 Defendant's vehicle?

19 A. Uh-huh.

20 Q. How long --

21 MR. FREDERICK:

22 Objection to hearsay, Judge.

23 THE COURT:

24 The question was that you
25 received some message from dispatch and responded.

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1 Wasn't that what you asked him?

2 MR. O'SULLIVAN:

3 I was going to ask him -- yeah

4 -- How long did the pursuit last?

5 THE COURT:

6 You can answer that question.

7 WITNESS:

8 It was probably maybe -- I --I

9 believe I was on Forrestbrook when I got the call,
10 because that's the area I work.

11 And they were coming down --
12 They had just got onto, I believe, 501, when I was
13 actually given the call.

14 Because, the way it works is
15 there's two different ant -- there's two different radio
16 channels that splits their at Myrtle Ridge.

17 So I was getting information
18 from the other central side.

19 Q. Would -- uh -- During the pursuit, wouldn't the
20 Defendants have had time to discuss with each other a
21 story?

22 A. Oh, yes. Yes sir.

23 Q. Uh -- When you arrested the Defendants, did you take
24 possession of the washer and dryer?

25 A. I spoke with the victim. She was unable to have a

1 means to pick it up. So the truck and the washer and
2 dryer were towed by -- uh -- Squeaky's and they were --
3 uh -- the washer and dryer were dropped off at the Police
4 Department for that victims pick up.

5 MR. O'SULLIVAN:

6 Thank you, Officer. Please
7 answer any --

8 COURT REPORTER:

9 They were towed by whom, Officer
10 -- by who?

11 WITNESS:

12 Squeaky's Towing Company.
13 Squeaky's Towing Company.

14 COURT REPORTER:

15 Squeaky's?

16 WITNESS:

17 Yes.

18 THE COURT:

19 Gentlemen?

20 MR. FREDERICK:

21 No questions, Judge.

22 THE COURT:

23 All right. You may step down.

24 Your next witness?

25 MR. O'SULLIVAN:

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1 Yes, Your Honor.

2 At this time, the State calls
3 Carolyn Duncan to the stand.

4 Come around, Ms. Duncan.

5 WHEREUPON: CAROLYN MARGARET

6 DUNCAN WAS DULY SWORN AND TESTIFIED UNDER OATH AS

7 FOLLOWS:

8 CLERK:

9 Thank you. Please be seated.

10 If you will, please scoot up and
11 speak into the microphone.

12 WITNESS:

13 Thank you.

14 CLERK:

15 Please state your full name and
16 spell your last name.

17 WITNESS:

18 Uh -- Carolyn Margaret Duncan;
19 D-u-n-c-a-n.

20 DIRECT EXAMINATION BY MR. O'SULLIVAN:

21 Q. Ms. Duncan, can you tell The Court where you live?

22 A. I live at Socastee.

23 Q. Are you familiar with the home located at
24 Road?

25 A. Yes, I am.

1 Q. And how do you know this house?

2 A. Uh -- It's my father's and my -- It was my mom and
3 dad's house.

4 Q. Did you -- uh -- Did you receive a phone call
5 regarding this house on August 31st, 2009?

6 A. I did.

7 Q. And who was that?

8 A. Uh -- It was my first -- my first cousin's wife that
9 lives next door.

10 She told me that someone had
11 broken in and taken a washer and dryer, and her -- and
12 one of the neighbors were following them.

13 Q. Okay. And did you speak with police on that night
14 as well?

15 A. I did.

16 MR. FREDERICK:

17 Objection, Your Honor.

18 WITNESS:

19 I talked to --

20 MR. FREDERICK:

21 I object to the hearsay.

22 THE COURT:

23 All right.

24 Uh -- Let's try to -- uh -- I --

25 I think she can answer the last question.

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1 What are you trying to ask her
2 now?

3 MR. O'SULLIVAN:

4 I just want to ask her if she
5 made contact with the police.

6 THE COURT:

7 Okay. They'll be fine. You
8 can ask her that.

9 DIRECT EXAMINATION BY MR. O'SULLIVAN CONTINUED:

10 Q. You don't need to tell us what -- what was said.

11 A. Yes.

12 Q. Uh -- After you received the call, what did you do
13 next?

14 A. Uh -- Called my niece and her husband to go over and
15 check and make sure -- you know -- that the washer and
16 dryer were -- was missing, and the house was broken into.

17 Q. Okay. And why did you not respond?

18 A. Because I had my 90 year old mother there (begins to
19 weep) -- uh -- that was dying. It was her house.

20 And she was -- She had COPV and
21 she was on oxygen.

22 And I couldn't leave her because
23 she had -- she got a breathing attack that I had to put a
24 breathing machine on her, and I couldn't leave her.

25 Q. Okay.

1 A. (Now weeping profusely.) And it -- And it upset her
2 so bad about that house.

3 Q. Okay. Uh -- Had this house been lived in prior to
4 this time?

5 A. Yes, it had.

6 Q. Was this house -- What -- What was in this house at
7 this point in time?

8 A. There was a table -- uh -- or a couch, chairs,
9 curtains -- uh -- refrigerator, stove, washer, dryer,
10 kitchen table and chairs.

11 Q. Was this house ready to be lived in?

12 A. Uh -- Yes. I had to do some work to it. But my
13 mother they sent her off this house -- uh -- 16 months
14 ago.

15 And she was so sick until I just
16 quit with everything, because I -- her -- her life was
17 more important to me.

18 Q. That's understandable. And what was your plan for
19 the residence?

20 A. Uh -- Well, we had been renting it to help pay for
21 her medicines and stuff. And I went over to -- uh --
22 work on the house myself -- uh -- my husband and I
23 together.

24 And when Mama was so sick, then
25 we just put everything down and left it alone, because it

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1 took all we could do to keep her alive.

2 Q. And at this point in time, were you in charge of
3 your mother's affairs?

4 A. Yes.

5 Q. Uh -- Have you been inside this home before?

6 A. Yes, I -- I did a lot of work in that house (still
7 weeping).

8 Q. Uh -- And I -- You may have already stated this but
9 was there a washer and dryer in that house?

10 A. Yes. I bought it for us. I paid for it. I bought
11 it. It was mine. And I put it over there so she could
12 rent the place and help pay -- you know -- for her
13 medicines and stuff, because she had to take probably 15
14 different kinds a day. And --

15 Q. Uh -- Are the doors normally locked at this house?

16 A. Yes.

17 Q. Uh -- Now, you've mentioned your mom was very ill.
18 Was she aware that the house had been broken into?

19 A. Yes. It upset her so bad, 'cause she was lying on
20 her back and she could not walk.

21 She was -- She had worked and
22 worked that house out. And anyway, we -- we kept it
23 fixed up, so she could rent it out to help pay for her
24 medicine and stuff she needed.

25 And anyway, I had bought the

1 washer and dryer. It was mind.

2 And I put it over there -- you
3 know -- so she could have it to use at her place.

4 Q. Could -- uh -- In the state that she was in --
5 Approximately how long was she living with you?

6 A. Well, she's been with -- here about 8 years. But in
7 six -- the last 16 months, that COPV has really taken its
8 toll on her.

9 Q. Would there have been any possibility that she could
10 have granted permission to someone else to go over --

11 A. No way in the world, because, like I said -- She had
12 a phone in her room. But the phone was there just for
13 her life alert system, which was across the room.

14 And she could not walk. She was
15 -- I -- I had to diaper her and everything.

16 And hospice was coming out. And
17 hospice has been there with her for 16 months.

18 And -- uh -- there's no way --
19 They would -- Anybody would have had to gone through me
20 to get to my mother.

21 And I was with her 90 percent of
22 that eight -- that 16 months.

23 Q. Did -- uh -- Did you give permission to anyone to
24 enter the home?

25 A. Never. No.

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1 Q. Did -- To your knowledge, did your mother know
2 either of these Defendants?

3 A. No, she did not, because she is very upset about it.

4 Q. Did -- Do you know either of these Defendants?

5 A. No, I do not know either one of them.

6 Q. Uh --

7 A. Never seen them.

8 Q. To your knowledge, does anyone in your family know
9 these Defendants?

10 A. No.

11 MR. FREDERICK:

12 Judge, objection; speculation,

13 Judge.

14 THE COURT:

15 I'll let her answer the

16 question.

17 DIRECT EXAMINATION BY MR. MR. O'SULLIVAN CONTINUED:

18 Q. To your knowledge, does anyone in your family know
19 these Defendants?

20 A. No, they do not.

21 Q. Uh -- Did -- uh -- Did you receive the washer and
22 dryer back from the police?

23 A. Uh -- Yes. I -- I -- Like I said, I wouldn't -- I
24 didn't leave my mother. But I hired this man to go pick
25 it up.

1 And I paid him to go pick it up
2 and let him install it back into the house.

3 Q. Uh -- Was that the washer dryer that you had
4 previously had in the house?

5 | A. That was it.

6 | Q. Uh -- Do you know anyone named Thomas Washington?

7 | A. Who?

8 Q. Thomas Washington?

9 | A. I do not.

10 Q. Do you know anyone named Mary Robert?

11	A.	No.

12 Q. Do you know anyone named Becky Johnson?

13 A. No I don't.

14 Q. Uh -- Would any of those people have authority to
15 grant entry into Road?

16	A.	No.

17 Q. Or to sell the washer and dryer?

18 | A. No way.

19 | MR. O'SULLIVAN:

20 Thank you, Ms. Duncan. I know
21 that was difficult. Answer any questions that --

22 THE COURT:

23 All right. Gentlemen.

24 . WITNESS :

25 Yes. It was hard on my mother

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1 too. (Begins to leave the witness stand.)

2 MR. O'SULLIVAN:

3 Please answer any questions the
4 Defense may have, ma'am.

5 THE COURT:

6 Ma'am. Ma'am.

7 WITNESS:

8 Oh, okay. (Sitting back in the
9 witness stand.)

10 MR. FREDERICK:

11 Sorry. Just a few questions,
12 Ms. Duncan.

13 CROSS-EXAMINATION BY MR. FREDERICK:

14 Q. So your mother -- And this -- This was recent that
15 she passed away, right?

16 A. Two years.

17 Q. Okay. And she was the owner of the house?

18 A. Yes, she was.

19 Q. And you lived in Socastee. You didn't live in the
20 house?

21 A. No, I didn't live in the house.

22 Q. Okay. How long it had been -- had been since your
23 mother lived in the house?

24 A. My mother didn't live in that house. That was her
25 rental house. She rented it out. She lived in a house

1 next to it.

2 Q. okay. And in addition to that, is it -- is it true
3 the house was being foreclosed on?

4 A. Oh, no it's not. That house is paid for. It's been
5 paid for, for years.

6 Q. Do you recall meeting with my investigator in March?

7 A. No.

8 MR. FREDERICK:

9 That's all I --

10 WITNESS:

11 That house has been paid for
12 probably 20 years.

13 MR. FREDERICK:

14 Okay. That's all the questions
15 I have.

16 WITNESS:

17 Okay.

18 THE COURT:

19 Ma'am -- uh -- let -- let The
20 Court get a little clarification.

21 You say this is not the house
22 where your mother lived; it was --

23 WITNESS:

24 Her rental house.

25 THE COURT:

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1 She was next door?

2 WITNESS:

3 Right.

4 THE COURT:

5 Her home was next door, and this
6 house was one she just rented?

7 WITNESS:

8 She rents. She rents to other
9 people.

10 THE COURT:

11 Oh, okay. All right. Thank
12 you.

13 WITNESS:

14 She rents that so that she can
15 have extra money to pay for her own -- all that
16 medication she had to take.

17 THE COURT:

18 All right. I understand. Thank
19 you.

20 That's all.

21 WITNESS:

22 Okay. Is that it?

23 THE COURT:

24 Anything further?

25 MR. O'SULLIVAN:

1 No, Your Honor.

2 THE COURT:

3 Anything further?

4 MR. FLOYD:

5 No sir.

6 THE COURT:

7 All right. You may step down.

8 MR. O'SULLIVAN:

9 Your Honor, at this point, the
10 State rests.

11 THE COURT:

12 Very well.

13 Ladies and gentlemen, I'm going
14 to ask you to go to your jury room for a few minutes and
15 -- while I take up some matters of law.

16 (WHEREUPON: The jury empanelled
17 in the case withdrew from the courtroom at 3:05 PM, June
18 15, 2010; and was no longer present during the following
19 proceedings.)

20 THE COURT:

21 Please be seated.

22 All right, gentlemen, are there
23 any motions?

24 MR. FREDERICK:

25 Yes, Judge.

1 First -- and I know we have the
2 issue of the -- the rental property and the rest --
3 residence, Judge.

4 But first -- uh -- we move for a
5 directed verdicts as to any burglary -- a kind of
6 burglary; because Judge, the owner of the house is
7 deceased.

8 And there is no evidence of lack
9 of consent -- uh -- that can be sent to the jury. And
10 that's an element of the crimes that they have been
11 charged with; is that there was no consent to enter the
12 house.

13 It's unfortunate that Ms.
14 Duncan's mother passed away.

15 But Judge --

16 THE COURT:

17 Well --

18 MR. FREDERICK:

19 -- there is no evidence of lack
20 of consent.

21 THE COURT:

22 -- Ms. Duncan made it very clear
23 in -- in her testimony that she knew of no one, and that
24 she had not given any consent.

25 There's -- uh -- It's not a

1 question of what the weight of the evidence is on a
2 directed verdict -- uh -- motion; it's whether there is
3 any evidence.

4 And in taking this case in a
5 light -- or looking at the evidence in the light most
6 favorable to the non-moving-party, that is the State,
7 there's ample evidence that would support that a burglary
8 did occur, and that there was certainly no -- uh --
9 agreement or consent by the owner of that property for
10 the entry.

11 Uh -- The theft; there's been
12 ample testimony that there was property taken from --
13 from the -- uh -- the -- uh -- location. Uh -- That is
14 certainly evidence of intent to commit a crime therein.

15 Uh -- I would deny your motion
16 on that ground; okay.

17 MR. FREDERICK:

18 Yes sir.

19 And I believe Mr. Floyd joins in
20 my motion.

21 THE COURT:

22 All right. Thank you, Mr.
23 Floyd.

24 And again, it's denied.

25 MR. FREDERICK:

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1 And Judge -- uh -- and we move
2 for a directed verdict as to the burglary first degree;
3 the reason being that:

4 It was not a residence -- uh --
5 within the definition of the stature.

6 And I would point The Court to
7 two cases -- uh -- both of which -- uh -- Your Honor has
8 already seen.

9 One is Ferebee. The other is
10 State versus Evans.

11 THE COURT:

12 I'm familiar with both cases.

13 MR. FREDERICK:

14 And Judge, in Ferebee -- uh --
15 The Court held that:

16 The place -- it says an
17 apartment -- it has to have an identifiable occupant
18 sleeping or residing therein for it to qualify as a
19 dwelling house.

20 That a house even, though
21 furnished as a dwelling house, loses its character as
22 such for the purpose of a burglary, if the occupant
23 leaves it with no intention to return.

24 THE COURT:

25 Here's what Ferebee says.

1 MR. FREDERICK:

2 Judge, Evans --

3 THE COURT:

4 Ferebee was a case involving a
5 rental property.

6 Uh -- In that case -- uh -- a --
7 a physician in Charleston had a rental poverty that was
8 partially furnished that he made available to the public.

9 There was no -- uh -- tenant in
10 the -- in the property at that -- at the time of the
11 alleged burglary.

12 The Ferebee Court held that:

13 The offense of burglary is a
14 crime against habitation. And that there was a
15 requirement that there be a -- an identifiable -- uh --
16 occupant who, while he may have been absent for a period
17 -- even an extended period of time, had an intent to
18 return.

19 In the Ferebee Court, the -- uh
20 -- the Supreme Court, or the Court of Appeals -- I
21 believe it was the Supreme Court -- reversed, because --
22 uh -- there was simply no -- uh -- inhabitant of the --
23 uh -- of the -- the property, and it was not a dwelling
24 house under the statute.

25 In Evans, what occurred was:

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1 We had an absent owner who still
2 had his property in -- uh -- this second house.

3 He testified that:

4 He and his wife had an intent to
5 return to the property. They did visit the property --
6 uh -- every -- uh -- two -- three weeks -- or every -- or
7 once a month.

8 That their only reason for being
9 out of the property was, interestingly enough, his wife's
10 sickness. But he was out of the property.

11 There is no evidence whatsoever
12 that the property had been rented.

13 The property -- uh -- contained
14 many items of personalty.

15 Uh -- There was -- uh -- even
16 some -- uh -- discussion about the fact that they were
17 using it for storage.

18 But The court said that that
19 made no difference as long as they intended to return.

20 Judge Patterson failed to grant
21 a directed verdict, and the jury convicted.

22 Uh -- The appeal was based on
23 the failure to direct the verdict.

24 Uh -- The Court of Appeals ruled
25 that:

1 Based on the testimony viewed in
2 the light most favorable to the State, that there was
3 evidence of someone -- uh -- or the owners' -- uh --
4 intent to return to the property, and to continue to
5 occupy the property. And therefore, the denial of the
6 directed verdict was appropriate.

7 And I think that is -- is the
8 key to this case.

9 In that case, Judge Patterson
10 said, essentially by his ruling:

11 There is evidence on the record
12 -- and that is key here: whether there's any evidence on
13 the record that would show that there was a -- a tenant.

14 Now, Mr. O'Sullivan, this is
15 where I've got a problem:

16 The reason I asked the last
17 witness a question is because I was under a mistaken
18 impression that the owner had actually occupied this
19 house.

20 And I'm not sure that you might
21 not have been under that impression; that the owner
22 occupied the home.

23 It would appear that this owner
24 occupied the house next door, and had not occupied this
25 house.

1 Uh -- I -- That seems to be
2 uncontroverted.

3 Also, the house had been used as
4 a rental property. And the neighbor who testified, who
5 witnessed what went on, also testified that the house had
6 been rented, but was vacant at the time of the -- uh --
7 of the alleged burglary.

8 Now, that's what I'm seeing in
9 the evidence.

10 Now let me hear from you, Mr.
11 O'Sullivan, and tell me how we're saved -- or how your
12 case is saved as to burglary in the first degree under
13 this evidence?

14 MR. O'SULLIVAN:

15 Uh -- Well, Your Honor, the --
16 the first argument I would make is:

17 If you look at the Statute 1611-
18 310, it offers definitions for 1611-311, and 1611--THE
19 COURT:

20 Absolutely. Got it right here;
21 right in front of me.

22 MR. O'SULLIVAN:

23 Okay. And it is a tenant of
24 South Carolina law that:

25 Where a statue and a case

1 conflict, the stature controls.

2 THE COURT:

3 Uh-huh.

4 MR. O'SULLIVAN:

5 I think we agree.

6 If you look at the definition in
7 the Statute for dwelling, it says:

8 Dwellings means its definition
9 found in 1611-10, where they give the definition.

10 And it also means:

11 The living quarters of a
12 building which is used, or normally used, for sleeping,
13 living, or lodging by a person.

14 Now necessarily, when someone
15 says something is normally done, that means it's not
16 always done.

17 I normally drive this way to
18 work; sometimes I go that way.

19 The point being that:

20 By that definition, this is a
21 house. It's a fully furnished house by the witness's
22 testimony; furniture, washer, dryer, refrigerator, stove.

23 It had been used -- It had been
24 lived in, in the past. Things were on hold because of
25 the -- of an illness to a family member, which is

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1 certainly understandable.

2 I would argue that this is
3 something that is normally used for sleeping, living, or
4 lodging by a person.

5 THE COURT:

6 And -- And the -- Let me back up
7 right there.

8 The problem I'm having -- I
9 mean, the real problem in this matter is the witness's --
10 last witness's testimony, that that was not the home that
11 the owner resided in.

12 Her mother was -- was ill, and
13 -- uh -- had -- uh -- uh -- been taken to her home, where
14 she was receiving hospice care.

15 I certainly understand that.

16 But it was not from this house.
17 It was -- Her home was next door. And that's -- that's a
18 real issue to me in this case.

19 MR. O'SULLIVAN:

20 I -- And I certainly understand
21 your issue with that point, especially in light of the
22 case law, which you thoroughly reviewed -- uh -- on
23 record recently here.

24 I would again say, though, that
25 where there is conflicting -- uh -- between a -- a case

1 and a statute, the statute controls. And this statute
2 makes no reference to anything that was discussed in that
3 case.

4 Uh -- This statute simply says:

5 Dwelling means: living quarters
6 of a building which is used, or normally used for
7 sleeping, living, and lodging.

8 I -- I wholeheartedly believe
9 that the house in question in this particular case meets
10 that requirement --

11 THE COURT:

12 Uh --

13 MR. O'SULLIVAN:

14 -- meets that definition, which
15 would therefore mean that it met the requirements of
16 burglary in the first degree.

17 THE COURT:

18 And I -- I respectfully -- uh --
19 uh -- uh -- receive your -- your argument.

20 But if we Evans and Ferebee,
21 Evans and Ferebee are both directed verdict cases.

22 And there, we have the Supreme
23 Court and the Court of Appeals saying:

24 This is how you approach. And
25 this is what you apply to a directed verdict situation in

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1 a burglary case when the issue of -- uh -- whether it is
2 a dwelling house arises?

3 And, I -- I think The Court has
4 -- has spoken very, very clearly in those; and this --
5 this is what we want you to apply. This is -- This is
6 the theory of law.

7 And I -- I am -- I must grant
8 the -- the -- the Defense's -- uh -- motion for a
9 directed verdict as to burglary in the first degree,
10 because I don't think there's any evidence that would
11 support a finding; there's anything that the jury could
12 consider under the facts, or the testimony that we've
13 had, that this is a dwelling house as required by
14 statute.

15 Now, what does that leave us
16 with? What does that leave us with?

17 If we looked at 1611 -- Is it
18 310? Is that the controlling statute? Or 311 -- excuse
19 me -- 311, 312, and 313.

20 311 involves burglary in the
21 first degree, which essentially is the burglary of a
22 dwelling -- uh -- under aggravating circumstances,
23 essentially; okay?

24 Burglary in the second degree
25 under 1611-312 is: a dwelling without -- uh --

1 aggravating circumstances, or a building. And if this is
2 not a dwelling, it will be a building.

3 It would be a building under
4 aggravating circumstances, which include --

5 MR. O'SULLIVAN:

6 Nighttime entry, Your Honor.

7 THE COURT:

8 Let me make sure of that.

9 MR. O'SULLIVAN:

10 It's number three.

11 THE COURT:

12 In the nighttime, which is the
13 same.

14 So I think that what we still
15 have left is: burglary in the second degree.

16 Now Counsel, what will you tell
17 me about that?

18 MR. FREDERICK:

19 I -- I agree, Judge.

20 So burglary third with a
21 aggravating -- an aggravating circumstance, if that's
22 proven --

23 THE COURT:

24 I think you're entitled to
25 burglary -- There's some case law about burglary first

1 and burglary second, where the State is proceeding under
2 the theory of it being a dwelling.

3 But we're past that.

4 So I think now you can move
5 down; and we have burglary in the second degree and
6 possibly burglary in the third degree.

7 Now, there's been some case law
8 that says that burglary in the third degree is not an
9 appropriate charge where -- uh -- there is no issue about
10 it being a building.

11 But there is an issue of
12 building here now.

13 Now the issue of aggravating
14 circumstances, if the jury were not to find that, could
15 make it a burglary third.

16 MR. FREDERICK:

17 Yes sir.

18 THE COURT:

19 Okay.

20 So I think that what we're left
21 with is a burglary second and a possible burglary third.

22 I think you're entitled to the
23 charge of it. But I want to hear from Mr. O'Sullivan on
24 that issue.

25 MR. O'SULLIVAN:

1 Uh -- Well, first, Your Honor,
2 I'd say that just for clarification, we're left with a
3 burglary second, violent.

4 THE COURT:

5 Burg -- Burglary -- Burglary
6 second, violent. Yes sir. That's correct. Aggravating
7 circumstances.

8 MR. O'SULLIVAN:

9 And -- uh --

10 THE COURT:

11 Or -- Yes, burglary second,
12 violent.

13 MR. O'SULLIVAN:

14 And -- And in fact, we can't
15 have a burglary second nonviolent -- uh -- with an
16 aggravating circumstance. That would be for dwelling
17 alone without a circumstance.

18 THE COURT:

19 Right. So we're out of a
20 dwelling; okay.

21 I -- I've ruled on that.

22 MR. O'SULLIVAN:

23 Uh -- Now, in terms of -- of
24 burglary third, Your Honor, I -- I think it's undisputed
25 at the time this occurred -- I mean, the -- the testimony

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1 has all been that it occurred about nine o'clock at
2 night.

3 Everyone has testified it was
4 dark.

5 In fact, the woman has testified
6 even the Defendants had their headlights on the truck,
7 and she -- that's why she couldn't make out clearly their
8 identity at that point in time.

9 Uh -- Certainly that's the
10 aggravating circumstance.

11 I don't think there's any
12 evidence to warrant a charge to the lesser third, when
13 the only evidence -- because no one's presented any
14 evidence that it wasn't dark or it wasn't night.

15 THE COURT:

16 Well, I haven't heard their case
17 is -- is -- is what I'm -- I said -- You remember I said:
18 Possibly.

19 MR. O'SULLIVAN:

20 Yes, Your Honor.

21 THE COURT:

22 Possibly a burglary third.
23 Possibly.

24 MR. O'SULLIVAN:

25 I would just say that:

1 Barring something from them to
2 -- to dispute that -- uh -- which, I mean, 9 clock, I --
3 I think that's accepted as night.

4 But barring something excluding
5 that, I would say there is no basis for a charge on
6 burglary in the third.

7 THE COURT:

8 What do you say about that?

9 Uh -- And -- And there again, I
10 want to show your cards now. We're -- We're at the
11 Defense; but --

12 MR. FREDERICK:

13 Well, Judge, can we take it --
14 that that up again after our case.

15 THE COURT:

16 Well, certainly we can.

17 MR. FREDERICK:

18 We -- We --

19 THE COURT:

20 Uh -- And I think it would be
21 appropriate for us --

22 MR. FREDERICK:

23 We need to take --

24 THE COURT:

25 -- to do it.

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1 But let me -- let me give you a
2 heads-up.

3 I think it would be appropriate
4 now for me to charge only those sections of 1611-312 that
5 apply to a building.

6 MR. FLOYD:

7 Yes sir.

8 THE COURT:

9 And the aggravation.

10 I'm not going to talk about a --
11 a dwelling.

12 If you want to talk about
13 dwelling, then you must think that there's still some
14 evidence of this being a dwelling. And we'll go right
15 back to -- to first.

16 You don't want to do that, do
17 you, Mr. Frederick?

18 MR. FREDERICK:

19 No sir.

20 THE COURT:

21 I didn't think so.

22 Okay.

23 So we're just going to talk
24 about the part that involved a building and the
25 aggravated circumstances; okay.

1 Right?

2 MR. O'SULLIVAN:

3 Yes, Your Honor.

4 Your Honor, I just ask:

5 Is -- Is they're going to be
6 some -- Since this case proceeded up until this point as
7 a burglary in the first-degree -- uh -- is there going to
8 be any instruction to the jury; or is that something
9 you'll leave for me to clarify in my closing?

10 THE COURT:

11 I'll let you clarify it in your
12 closing; okay.

13 MR. O'SULLIVAN:

14 Thank you.

15 THE COURT:

16 All right.

17 Is there anything else that we
18 need to take up before we proceed with this case?

19 MR. FREDERICK:

20 Judge, we -- maybe 15 or 20
21 minutes. We need to go over with our clients --

22 THE COURT:

23 Well, I'm going to give you
24 that. But before I give you that, I'm going to instruct
25 your clients as to their rights to testify or not.

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1 MR. FREDERICK:

2 No other motions, though, Judge.

3 THE COURT:

4 All right.

5 MR. FREDERICK:

6 Judge, unless we wanted to look
7 at the criminal histories of each of the Defendants.

8 THE COURT:

9 I'll let you do that during the
10 break as well; okay.

11 MR. O'SULLIVAN:

12 And Your Honor, I would ask that
13 if there are going to be -- I know -- uh -- Attorney
14 Frederick has provided three additional names.

15 If that -- they are going to be
16 called, I'll need their birthdays and Social Security
17 Numbers, so I can check their records as well.

18 THE COURT:

19 You can do that during the 15
20 minutes.

21 MR. O'SULLIVAN:

22 Thank you.

23 THE COURT:

24 Let me find the -- uh --

25 MR. FLOYD:

1 You think maybe you can bump us
2 up to 20 minutes?

3 COURT REPORTER:

4 What was that?

5 THE COURT:

6 Maybe 20 minutes, then.

7 Okay.

8 Would the -- uh -- witness -- I
9 mean, the Defendants please stand.

10 WHEREUPON: The Defendants were
11 sworn by the Clerk for the purposes of the following voir
12 dire questioning by The Court:

13 VOIR DIRE EXAMINATION BY THE COURT:

14 THE COURT:

15 Mr. and Mrs. Pipher, at this
16 time, I am going to explain to you certain of your
17 rights.

18 Uh -- If you do not understand
19 anything that I say, I want you to please let me know
20 that. And I will be happy to explain it in a more
21 detailed fashion -- uh -- because it's important to me,
22 and important to this trial, that you understand what I'm
23 saying.

24 You understand that?

25 MR. PIPHER:

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1 Yes sir.

2 THE COURT:

3 Do you understand that Mrs.

4 Pipher?

5 MRS. MAUNEY-PIPHER:

6 Yes sir.

7 THE COURT:

8 All right.

9 You have -- We have reached this
10 point in the trial now where you may present your
11 Defense.

12 You have the right to claim the
13 protection given you by the Fifth Amendment to the
14 Constitution of the United States.

15 And this amendment in part says
16 that:

17 No person shall be compelled in
18 any criminal case to be a witness against himself.

19 That sometimes referred to as
20 your right to remain silent.

21 This means:

22 You cannot be required to
23 testify in the case.

24 You have the right to testify on
25 your own behalf if you choose to.

[illegible]

3 And this is a personal right
4 that you have.

5 No one can waive -- waive this
6 right for you. Your attorneys cannot waive it for you.

7 That's why I'm having this
8 discussion for you. You must personally waive that
9 right.

10 If you decide to testify, I want
11 to would caution you that you will be subject to the same
12 rules that govern other witnesses. And you may be
13 examined, and cross-examined, on any relevant matter or
14 issue in this case.

15 In addition, if you have any
16 conviction involving dishonesty or false statement, or
17 crimes punishable by more than one year, and This Court
18 determines that the probative value of admitting the
19 evidence outweighs its presidential -- prejudicial affect
20 on you, the Solicitor will be able to introduce your
21 record to attack your credibility. And I will limit it
22 as to that purpose alone; that is: your credibility.

23 I will instruct the jury to that
24 fact.

25 If you decide to testify, this

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1 decision on your part must be freely, voluntarily, and
2 intelligently made, with knowledge of the protections
3 given you by the Fifth Amendment and the consequences of
4 your decision to testify.

5 If you decide not to testify, I
6 will instruct the jurors that they cannot give the fact
7 that you chose not to testify any consideration
8 whatsoever. And that there is to be absolutely no
9 prejudice to you because you did not testify.

10 It is left entirely up to you
11 whether or not to testify.

12 You may talk with your attorney,
13 your family, your friends, or anyone else. But the final
14 decision will be left entirely up to you.

15 Now have you understood what
16 I've told you, Mrs. Pipher?

17 MRS. MAUNEY-PIPHER:

18 Yes sir.

19 THE COURT:

20 Mr. Pipher?

21 MR. PIPHER:

22 Yes sir.

23 THE COURT:

24 All right, sir.

25 Do you have any questions about

1 what I've explained to you?

2 MR. PIPHER:

3 No sir.

4 MRS. MAUNEY-PIPHER:

5 No sir.

6 THE COURT:

7 Have you discussed with your
8 lawyers whether or not you will testify?

9 MR. PIPHER:

10 Yes sir.

11 MRS. MAUNEY-PIPHER:

12 Yes sir.

13 THE COURT:

14 Each of you have? All right.

15 And let me say this.

16 Uh -- If you tell me at this
17 point that you do or do not wish to testify, I will not
18 hold you to that.

19 At any time during your Defense,
20 I will allow you to change your mind and testify, up till
21 the time your Defense rest.

22 Do you understand that?

23 MR. PIPHER:

24 Yes sir.

25 MRS. MAUNEY-PIPHER:

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1 Yes sir.

2 THE COURT:

3 Okay.

4 Uh -- Now, do you wish to talk
5 with attorney anymore?

6 MR. PIPHER:

7 Yes, I do.

8 MRS. MAUNEY-PIPHER:

9 (Nods in the affirmative.)

10 THE COURT:

11 Okay.

12 I'm going to allow you to do
13 that. And when we come back out, I'm going to ask them
14 if you wish -- or you -- if you wish to testify.

15 Uh -- Again, I want you to
16 understand that I will not hold you to what you tell me.

17 It's just that I need to know.

18 Uh -- We're preparing charges
19 and I will give a charge, if you choose not to testify,
20 that that can't be used against you, as I've explained to
21 you; and we'll be including that.

22 Uh -- It's helpful to me if I
23 know.

24 But again, you are not bound by
25 what you tell me.

1 I will let you change your mind
2 and testify up to the time that your Defense rest.

3 You understand that?

4 MR. PIPHER:

5 Yes sir.

6 THE COURT:

7 You understand that, Mrs.

8 Pipher?

9 MRS. MAUNEY-PIPHER:

10 Yes sir.

11 THE COURT:

12 All right. Very well.

13 We'll be at ease for a few
14 minutes.

15 Uh -- Let's give it about 20
16 minutes, gentlemen, and take care of those matters that
17 you discussed.

18 We're at ease.

19 (WHEREUPON: The court was
20 declared in recess at 3:28 PM, June 15, 2010.)

21 (WHEREUPON: The court was
22 called to order by the Bailiff at 3:53 PM, June 15, 2010;
23 and all pertinent parties, along with their counsel, were
24 back and present in the courtroom.)

25 BAILIFF:

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1 Order in the court. All Rise.

2 THE COURT:

3 All right. Please be seated.

4 All right. I want this record
5 to reflect that I have received a note from -- uh -- the
6 Foreman.

7 And this, I will tell you, is
8 the second time I've been contacted by the Foreman; not
9 in writing; but I was sent a message earlier and I hoped
10 that they could work it out.

11 But I now have a note that reads
12 as follows:

13 Your Honor, I have concerns
14 about one of the jurors.

15 I've received complaints from
16 Mr. Joe Esposito, Number 105, that he was making -- and I
17 don't think this is the juror, I think it's someone
18 that's complained -- derogatory comments about the first
19 witness.

20 Uh -- He -- He started talking
21 -- uh -- about the trial. He has given the officers a
22 hard time. Signed: Ray VanMarter -- and I can't read it
23 -- Number 377 -- yes -- Mr. Raymond -- uh -- VanMarter.

24 Uh -- This is what I intend to
25 do.

1 I do not want to have -- open a
2 contempt hearing, because I don't want to bring in jurors
3 that may have overheard comments or have -- uh -- or have
4 concerns about this witness.

5 I think that that would
6 prejudice -- uh -- the parties here.

7 Uh -- I don't want to get into
8 that.

9 Uh -- I simply intend to bring
10 him out. I'm going to relieve him of his duties on this
11 jury.

12 I'm going to move up the other
13 alternate. And we're going to proceed.

14 All right.

15 Now I'll hear from you on that,
16 Mr. -- uh -- O'Sullivan, and Mr. Frederick, and Mr.
17 Floyd, in that order?

18 MR. O'SULLIVAN:

19 Your Honor -- uh -- I have no
20 objection to that. I think that's the right course of
21 action.

22 THE COURT:

23 All right.

24 Mr. Frederick?

25 MR. FREDERICK:

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1 No objection, Your Honor.

2 THE COURT:

3 Mr. Floyd?

4 MR. FLOYD:

5 What juror number was in the
6 note?

7 THE COURT:

8 The juror in the note, I don't
9 think is the one that was the problem. That was one of
10 the ones that was complaining about: during testimony,
11 him making under his breath derogatory comments about
12 witnesses.

13 THE COURT:

14 Yes sir. The juror's number
15 though. I thought you said is 150?

16 THE COURT:

17 105 was the juror who I think
18 was making the complaint.

19 MR. FLOYD:

20 Okay. All right.

21 THE COURT:

22 The -- The juror's name was
23 Terrence -- Is it Gerlach?

24 Is that Juror Number 1? It was

25 the first one that we --

1 CLERK:

2 First one on the panel.

3 THE COURT:

4 First one we sat? Okay.

5 Uh -- Mr. -- uh -- Green, if you
6 would, bring that juror in here.

7 DEPUTY:

8 Just bring him, sir?

9 THE COURT:

10 Just him.

11 WHEREUPON: Juror Number 132,
12 Terrence A. Gerlach, Jr., was ushered into the courtroom
13 by Deputy Green, as instructed, at 3:56 PM, June 15,
14 2010.

15 THE COURT:

16 Mr. Gerlach.

17 JUROR GERLACH:

18 Yes.

19 THE COURT:

20 For the second time today, I
21 have received word from the other jurors that you have
22 been disruptive in the jury room; and that you have not
23 complied with my instructions concerning not talking
24 about the case; that you've made comments about
25 witnesses; and that -- uh -- you had -- uh -- some -- uh

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1 -- conflict with my bailiffs or officers.

2 Now, Mr. Gerlach, I don't know
3 whether that's true or not.

4 I'm not going to get into a
5 contempt hearing.

6 I'm not going to find you in
7 contempt, because that would involve my bringing in the
8 other jurors and holding an evidentiary hearing in the
9 midst of this trial, which I don't think's appropriate.

10 Mr. Gerlach, you are relieved of
11 your duties as a juror in this case.

12 Mr. Green, take Mr. Gerlach down
13 to Mr. -- to Judge John's courtroom. Let him sit with
14 Judge John for the rest -- remainder of the week.

15 Thank you, Mr. Gerlach.

16 Let's put this in the record.

17 COURT REPORTER:

18 That would be Court's Exhibit 1,
19 Your Honor.

20 THE COURT:

21 Right.

22 WHEREUPON: THE AFOREMENTIONED
23 NOTE FROM THE JURY FOREMAN WAS MARKED BY THE COURT
24 REPORTER AS COURT'S EXHIBIT NUMBER 1.

25 THE COURT:

1 Okay.

2 Uh -- Mr. Hemmingway, could you

3 get the jury for me?

4 MR. FLOYD:

5 Judge?

6 THE COURT:

7 Yeah.

8 MR. FLOYD:

9 We need to take up prior record.

10 THE COURT:

11 Okay.

12 Tell them to hold up on the

13 jury, Joe. Hold up. Hold up. Okay.

14 I'm sorry.

15 Let me inquire, Mr. -- first,

16 Mr. Floyd, do you intend to put up a Defense?

17 MR. FLOYD:

18 We intend to call Shelly Pipher

19 to the stand. Mr. Frederick, I believe, is going to

20 conduct the direct examination.

21 And -- uh -- that being said, we

22 need to go over what is and is not --

23 THE COURT:

24 I understood that she has no

25 record.

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1 Is that correct?

2 MR. O'SULLIVAN:

3 That's not -- That's not
4 correct, Your Honor.

5 THE COURT:

6 What does she have?

7 MR. O'SULLIVAN:

8 Your Honor, she has a possession
9 of marijuana; criminal domestic violence; assault while
10 resisting; criminal domestic violence again, with a
11 driving under the influence; malicious damage; providing
12 false information; and a criminal domestic violence
13 second offense.

14 THE COURT:

15 And which ones do you feel were
16 -- are within the time frame -- statutory time frame, or
17 should otherwise be included?

18 MR. O'SULLIVAN:

19 Uh -- Well Your Honor, the
20 criminal domestic violence second is in 2007. So, it's
21 within 10 years. That's punishable by up to a year.

22 Uh --

23 THE COURT:

24 Doesn't it have to be more than
25 a year?

1 MR. O'SULLIVAN:

2 Okay.

3 MR. FREDERICK:

4 It does.

5 MR. O'SULLIVAN:

6 The -- uh -- These -- The one
7 that I would specifically want is from 2006, is providing
8 false information. That goes directly to her
9 credibility.

10 THE COURT:

11 All right.

12 Let me hear you on that, Mr.

13 Floyd; Providing false information to a police officer.

14 Is that -- Is that the charge?

15 MR. FLOYD:

16 Judge, I believe that's just a
17 City Court charge.

18 THE COURT:

19 But doesn't it involve false
20 statements or dishonesty?

21 MR. FLOYD:

22 I think under that prong, Judge;
23 quite honestly it probably would fit.

24 THE COURT:

25 All right.

1 MR. FLOYD:

2 I don't think it fits under --
3 certainly under the new -- uh -- statute, though.

4 THE COURT:

5 The new statute?

6 MR. FLOYD:

7 Well, the new rules of one years
8 -- uh --

9 THE COURT:

10 Yeah.

11 But I -- I think it all -- the
12 statute also provides -- or the rule provides that it may
13 be -- uh -- anything involving -- uh -- false statement
14 or dishonesty; does it not?

15 MR. O'SULLIVAN:

16 I believe so, Your Honor.

17 MR. FLOYD:

18 Does it address that, or moral
19 turpitude?

20 THE COURT:

21 Uh --

22 MR. FLOYD:

23 The old rule is moral turpitude,
24 and I thought that was --

25 THE COURT:

1 I understand.

2 Do you have the rule there, Mr.

3 -- at hand -- Mr. -- uh --

4 MR. O'SULLIVAN:

5 I'm checking, Your Honor.

6 But it's -- I mean, certainly
7 dishonesty would be moral turpitude. But --

8 MR. FLOYD:

9 There's actually a case, I
10 believe, Judge.

11 THE COURT:

12 I think my instruction say:
13 Dishonesty or false statement.
14 And I believe that that is
15 correct.

16 Evidence that a witness other
17 than an accused has been -- she -- that's an accused.

18 MR. O'SULLIVAN:

19 Evidence under -- uh -- 609-A2:

20 Evidence that any witnesses has
21 been convicted of a crime shall be admitted if it
22 involves dishonesty or false statement regardless of the
23 punishment.

24 THE COURT:

25 609-82?

1 MR. O'SULLIVAN:

2 Yes, Your Honor.

3 THE COURT:

4 Dishonesty or false statement;
5 that's correct.

6 That's where I was getting that,
7 Mr. Floyd, and it goes on to say:

8 Rule 609-A1 authorizes
9 impeachment by convictions:

10 Uh -- If the witness is the
11 accused, he may be impeached under Rule 609-A1 -- uh --
12 only if The Court finds the probative value of the
13 conviction -- but that's not what we're under.

14 I believe that it's falsity,
15 dishonesty or false statements. That what Rule 609-A2
16 says. And it says: any witness.

17 MR. FLOYD:

18 Very well, Judge, we would -- uh
19 -- I would point out that -- uh -- my feeling is that the
20 prejudicial value outweighs the probative.

21 THE COURT:

22 All right. And it must
23 substantially do that. And I think that it's admissible.

24 Okay.

25 Do you have any other conviction

1 other than that one?

2 MR. O'SULLIVAN:

3 Uh -- I don't believe so, Your
4 Honor.

5 THE COURT:

6 All right.

7 That's what you have, Mr. Floyd.

8 MR. FLOYD:

9 Yes sir.

10 THE COURT:

11 You ready?

12 MR. O'SULLIVAN:

13 Yes, Your Honor.

14 THE COURT:

15 You're ready to come back in?

16 All right. Bring the jury back
17 in.

18 MR. FLOYD:

19 Judge, on the record, I joined
20 in with Mr. Frederick on the directed verdict motions.

21 THE COURT:

22 Yes, you did.

23 (WHEREUPON: The jury empanelled
24 in the case was escorted back into the courtroom at 4:06
25 PM, June 15, 2010; and was in fact present during the

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1 following proceedings.)

2 THE COURT:

3 Ms. Smalls, if you would, please
4 move up to the last seat down there; okay. Thank you.

5 Ms. Smalls, you're now on the
6 jury.

7 JUROR SMALLS:

8 I appreciate it.

9 THE COURT:

10 Yes sir.

11 MR. FREDERICK:

12 Defense calls Shelly Pipher to
13 the stand.

14 WHEREUPON: SHELLEY MAUNEY

15 PIPHER WAS DULY SWORN AND TESTIFIED UNDER OATH AS

16 FOLLOWS:

17 CLERK:

18 Thank you. Please be seated.

19 If you will please speak into
20 the microphone. State your full name; and spell your
21 last name.

22 WITNESS:

23 Shelly Pipher; P-i-p-h-e-r.

24 DIRECT EXAMINATION BY MR. FREDERICK:

25 Q. Shelly, can you tell the jury a little bit about

1 yourself? How do you know Lewis?

2 A. Uh -- He's my husband. We got married ago -- a
3 month ago today.

4 We been together for quite a
5 while.

6 Uh -- I'm a mother of three. I
7 have two grandchildren.

8 I grew up here in Horry County
9 during the summertime with my grandparents.

10 And -- But I am originally from
11 South Carolina.

12 Q. Are you nervous?

13 A. Very.

14 Q. Let's talk about the day that you were arrested; and
15 that Lewis was arrested.

16 Can you tell the jury what
17 happened that day; just start with the beginning?

18 A. I woke up on a Monday morning. And -- uh -- I was
19 getting ready to go take care of a gentleman that I help
20 take care of -- a disabled gentleman.

21 And I needed to wash some
22 clothes.

23 Uh -- I'd been having problems
24 in the past with my washing machine. And that morning my
25 washing machine would just not cooperate so I could get

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1 some clean clothes.

2 I told my husband Lewis that we
3 needed to find a washer and dryer -- find a washing
4 machine.

5 Uh -- I called this lady that I
6 bought a mobile home from. Because a washer and dryer
7 come with out mobile home.

8 And we'd only lived there for
9 maybe four months. And the washing machine had went out
10 -- quit working on me.

11 Uh -- We went that morning to,
12 after I talk to Becky, to see if I could get a washer.

13 She said she didn't have one.

14 So we went -- We had to go by
15 the unemployment office first. And I seen a gentleman
16 there that I knew that I had spoken with about a washer.

17 And then, we went to Wal-Mart.

18 And I had my hair done in Loris; took the money out of
19 the bank so we could -- you know -- purchase a -- a
20 washing machine that day.

21 We went by CPW's Appliance Store
22 to -- to -- where Becky had instructed me to go for the
23 washer.

24 Uh -- I get there, but the
25 gentleman wanted to charge me a hundred and fifty dollars

1 for a washing machine that come out of a Laundromat, that
2 I would have to put quarters into in order to use it.

3 Uh -- I disregarded that washing
4 machine; and instead, I bought a deep freeze from him.

5 Later on that day, Thomas
6 Washington called me back. And, to my understanding, his
7 sister had a washer and dryer for sale for \$150.00.

8 So I said:

9 Well for \$150.00, I might as
10 well buy this set, instead of just a single washing
11 machine.

12 My neighbor at the time needed a
13 dryer. So I discussed it with him. And he agreed to
14 purchase the dryer from me.

15 Uh -- I met up with Thomas,
16 probably about 2:30 -- 3 o'clock that afternoon.

17 And -- uh -- picked -- went to
18 the building where the washer and dryer come from. And I
19 purchased the washer and dryer from him.

20 I tried to put it in the back of
21 my Jeep, that I had. And it wouldn't fit.

22 So, I had to go back home to
23 pick up a pickup truck for the washer and dryer.

24 And by the time I got back,
25 after I took care of my animals and stuff, it had been

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1 started getting late into the afternoon.

2 And I put -- We got the washer
3 and dryer on the back of the truck. And the reverse went
4 out of our truck and we couldn't back up.

5 But, as we were leaving, my
6 husband tried to miss the fence and he hit the chain-link
7 fence.

8 I automatically get on the phone
9 and try to call Thomas Washington to let him know that we
10 did hit the fence, and to see what we needed to do about
11 having the fence fixed.

12 I couldn't get in touch with
13 him.

14 And as I was going down -- down
15 the road, I noticed that we was being followed.

16 I lived in Charlotte, North
17 Carolina before. And I had been stomped and robbed by
18 someone following us.

19 So I told my husband to keep
20 going home. Just let's make it home. We'll call the
21 police, and we'll find out what we need to do about
22 fixing the fence.

23 We was pulled over on 501 and
24 was arrested for burglary in the first degree before I
25 could even make it home.

25 Judge, I would move to admit

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1 this into evidence.

2 MR. O'SULLIVAN:

3 Your Honor, her signature is not
4 on there. I -- I don't know how she can -- she can lay
5 the foundation for this receipt.

6 THE COURT:

7 Let me see it.

8 Who is Mary Roberts?

9 MR. FREDERICK:

10 She --

11 THE COURT:

12 Did I miss that?

13 MR. FREDERICK:

14 She -- uh -- wrote the receipt;
15 and that's Tommy Washington's --

16 THE COURT:

17 Okay. I'll admit it.

18 WHEREUPON: THE RECEIPT WAS
19 MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBIT
20 NUMBER 1, AND WAS ENTERED INTO EVIDENCE BY THE COURT.

21 DIRECT EXAMINATION BY MR. FREDERICK CONTINUED:

22 Q. And Shelly, who is Mary Roberts?

23 A. Mary Roberts is the girlfriend of Thomas
24 Washington.

25 Q. Okay. Is that who you got this from?

1 A. Yes, it is.

2 MR. O'SULLIVAN:

3 Your Honor, I -- I've -- This
4 has got a -- it's -- it's hearsay. There's no exception
5 to hearsay as to why it would come in.

6 THE COURT:

7 Well, she said she got it. That
8 she was there. And it's a -- a receipt.

9 You could certainly cross her on
10 it.

11 MR. O'SULLIVAN:

12 Yes, Your Honor.

13 DIRECT EXAMINATION BY MR. FREDERICK CONTINUED:

14 Q. Let me just try to -- You told us about a few
15 things.

16 You went to the house twice?

17 A. Yes. We went to the house twice.

18 Q. And the first time you went to the house?

19 A. The first time I went to the house -- uh -- it was
20 probably about 2:30 -- 3 o'clock in the afternoon.

21 And that's when the washer and
22 the dryer was purchased.

23 It was moved out onto the back
24 porch, and it would not fit in the vehicle I was in.

25 So I had to go get another

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1 vehicle.

2 And the time I returned, it was
3 around 8:30 that evening.

4 Q. What were you driving the first time?

5 A. The first time I was driving a '96 Jeep Cherokee.

6 Q. What were you driving the second time?

7 A. The second time it has a '97 -- uh -- Dakota pickup
8 truck.

9 Q. And you said it was about 8:30?

10 A. About 8:30, yes sir.

11 Q. Was it dark outside?

12 A. No sir. It was still light outside when I arrived.

13 Q. Are you sure? Definitely.

14 A. Definitely; I'm positive.

15 Q. What time of the year was that?

16 A. It was -- uh -- the end of August, daylight savings
17 time was still here.

18 Q. Okay. Shelly, when y'all went to the house, how did
19 you get inside? Did you break the door in?

20 A. No sir. We did not break the door in. Uh --
21 Thomas was already at the house when we got there.

22 The front door was open.

23 We went through the front door
24 and got the washer and dryer.

25 And it was moved to the back

1 porch. That was -- The back door was also open.

2 MR. FREDERICK:

3 Okay. Thank you, Shelly.

4 Answer any questions that the
5 prosecutor has for you; okay.

6 WITNESS:

7 Yes sir.

8 CROSS-EXAMINATION BY MR. O'SULLIVAN:

9 Q. Today you seem to have a lot of names. All the
10 people, we now know their names.

11 Did you ever tell the police
12 Thomas Washington's name?

13 A. Uh -- I don't really recall the names that I spoke
14 with the night that I was arrested.

15 A. So did you ever tell them Mary Roberts' name?

16 A. I told him -- uh -- there was a lady; but I wasn't
17 for sure of what her name was.

18 MR. FREDERICK:

19 Judge, can we approach?

20 (WHEREUPON: Counsel for each
21 party conferred off the record with The Court at the
22 bench at 4:17 PM, June 15, 2010.)

23 CROSS-EXAMINATION BY MR. O'SULLIVAN CONTINUED:

24 Q. Did you -- uh -- show the police that receipt?

25 A. No. I was unable to show the police the receipt at

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1 the time, because when I purchased the washer and dryer,
2 I was in the Jeep Cherokee.

3 The receipt was left in the Jeep
4 Cherokee. And I had returned back the building with a
5 pickup truck.

6 I did not have the receipt on me
7 at the time.

8 Q. What was the gentleman's name at unemployment that
9 you spoke to?

10 A. At the unemployment office?

11 Q. (Nods in the affirmative.)

12 A. Thomas Washington.

13 Q. He was in line with you at the unemployment office
14 and he told you about a washer and dryer he knew that was
15 for sale?

16 A. It was to my understanding that his sister had a
17 washer and dryer for sale.

18 Q. Now, you previously testified you went to the store
19 and they were going to charge you \$150.00 just for a
20 washer that you had to put coins in?

21 A. Yes.

22 Q. Right. And that was a washer out of a Laundromat;
23 right?

24 A. I was at CPW Appliances and he wanted to sell me a
25 washing machine for \$150.00 that you had to put coins in.

1 It came from a laundromat.

2 Q. So it's fair to say there's some wear and tear on
3 that washer?

4 A. Yes.

5 Q. Now you have a gentleman that told you, he says:

6 Well, my sisters got a washer
7 and dryer. I'm going to give both of them for \$150.00;
8 no coins required.

9 Is that correct?

10 A. Yes.

11 Q. Did that seem odd to you?

12 A. Well, not really, because I had sold a washer and
13 dryer in the past. I had two. And I sold my washer and
14 dryer set for \$150.00.

15 Q. How much money did you take out of the bank when you
16 were going to buy this washer?

17 A. I'm not for sure exactly how much money I took out
18 of the bank that day, because I also had my hair done,
19 and I bought groceries.

20 Q. Now who is Thomas Washington?

21 A. Thomas Washington -- uh -- is a guy that I knew that
22 used to stay with us when he had no place to go.

23 Q. You ever met his sister?

24 A. I've met several of his sisters.

25 Q. Did he tell you which sister had the washer and

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1 dryer for sale?

2 A. No, he did not.

3 Q. Did he tell you which sister lived in this house
4 that was in another town other than where he lived that
5 had the washer and dryer for sale?

6 A. He said: Boo.

7 Q. Boo?

8 A. That is -- uh -- a slang that is used on the street
9 for any conversation. A lot of gentlemen will called
10 their sister or the lady friend: Boo.

11 Q. Now, I believe what you testified was:

12 The first time you went to the
13 house with the Jeep, you were with Thomas Washington?

14 A. I had met him at the residence.

15 Q. And you had a problem putting the washer and dryer
16 in the Jeep?

17 A. Yes.

18 Q. And then, when you came back the second time, no
19 Thomas Washington?

20 A. He said he would meet us there. And I ask him --
21 you know -- is it okay if I come by and pick the washer
22 and dryer up?

23 He said:

24 Yes, come on back. I'll meet you
25 here. If I don't show up, go ahead, load the washer and

1 dryer up. It's paid for. You bought it.

2 Q. So you and Mr. Pipher just went back, walked into
3 the house, got the washer and dryer, put it in the truck,
4 and left.

5 A. No. We didn't walk in the house that afternoon.

6 The washer and dryer was already on the back porch.

7 Q. Would it surprise you if I told you that the
8 statement your husband gave to the police was that you
9 did go in the house and get the washer and dryer?

10 A. That was earlier in the daytime when it was moved
11 out.

12 Q. Well, would it --

13 A. Not that evening.

14 Q. Would it surprise you if I told you he told the
15 police officer that they -- that's what happened just
16 then.

17 He went in and they put it on
18 the truck and drove away.

19 A. I think maybe police officer misunderstood what he
20 was saying.

21 Q. Sure. Uh -- Now, did you not, at any way, find any
22 of this odd whatsoever?

23 This guy you kind of know, or
24 used to stay with you, had some sister -- we'll call her
25 "Boo" -- and he was selling you a washer and dryer for

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1 \$150.00, and it was -- just happened to be located in a
2 house in another town from nowhere near where he lived?

3 None of that was odd?

4 A. I had no reason not to believe him. He's never done
5 anything wrong to me.

6 Q. Now, when did you inform your lawyer that you had
7 this receipt?

8 MR. FREDERICK:

9 Objection, Your Honor.

10 THE COURT:

11 I don't have --

12 MR. FREDERICK:

13 Judge --

14 THE COURT:

15 I'm going to let him answer that
16 question.

17 MR. FREDERICK:

18 Judge, he's asking about client-
19 attorney conversation.

20 THE COURT:

21 And she's on the stand. I'm
22 going to let him ask the question.

23 WITNESS:

24 I can't really remember when I
25 notified him, because I was incarcerated at J. Reuben for

1 47 days before I was released.

2 MR. O'SULLIVAN:

3 Your Honor, can you direct her
4 to answer the question.

5 THE COURT:

6 Just answer the question.

7 WITNESS:

8 I do not recall when I spoke
9 with lawyer about the receipt.

10 CROSS-EXAMINATION BY MR. O'SULLIVAN CONTINUED

11 Q. Was it today?

12 A. No.

13 Q. Was it a long time ago --

14 A. In --

15 Q. -- you told him about the receipt?

16 A. In the past.

17 Q. Did you ever try to have him, as your
18 representative, contact the -- the Solicitor's Office to
19 say:

20 Hey, look, there's a big mistake
21 here. Look, we got a receipt. We bought it?

22 A. No. I just him about the receipt. I didn't really
23 know what to do it, except just tell my lawyer about it.

24 That would be up to the
25 attorneys when it was give to the Solicitor's Office.

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1 Q. Well, isn't it true, though, that now that it's only
2 been presented here the day of trial, that the State
3 would have no opportunity to investigate these claims and
4 these other people?

5 Isn't that true?

6 A. I don't follow you.

7 Q. Well, since you've just for the first time presented
8 it now, and I have never heard it before, isn't it true
9 that now we're in the middle of the trial, so there's no
10 chance for me to check on this story.

11 I can't contact these people.

12 Isn't that correct?

13 A. You can't contact them. But I knew that you had --
14 uh -- Thomas's name.

15 And I thought that you was going
16 to have him here.

17 Q. I do not have Thomas's name. And it's kind of
18 helpful to you that I can't investigate any of this?

19 Isn't that true?

20 A. I guess it would be helpful -- you know -- but I
21 just -- I handed it over to my attorneys.

22 It was up to their --

23 MR. FREDERICK:

24 Judge --

25 WITNESS:

1 -- discretion to give it to you.

2 MR. FREDERICK:

3 I have a matter of law.

4 THE COURT:

5 All right.

6 Send the jury out.

7 (WHEREUPON: The jury empanelled

8 in the case withdrew from the courtroom at 4:24 PM, June

9 15, 2010; and was no longer present during the following

10 proceedings.)

11 THE COURT:

12 All right.

13 MR. FREDERICK:

14 Judge, first of all, he cannot
15 keep going into her communications with her attorney.

16 It's appropriate.

17 THE COURT:

18 Well, Mr. Frederick, she has
19 testified that she has a receipt --

20 MR. FREDERICK:

21 Yes sir.

22 THE COURT:

23 -- that goes to the heart of
24 this case.

25 Now, apparently, this is

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1 something new.

2 I don't know whether it is or
3 not. But that's the position of the State; and something
4 you can certainly straighten out on redirect.

5 But

6 MR. FREDERICK:

7 But, Judge, I cannot go into my
8 communications with her.

9 THE COURT:

10 Certainly, you can go in --

11 MR. FREDERICK:

12 Judge, the distinction that I'm
13 making --

14 THE COURT:

15 Well --

16 MR. FREDERICK:

17 -- is he can question about the
18 receipt, Judge; but he cannot --

19 THE COURT:

20 You raised it.

21 MR. FREDERICK:

22 -- keep asking her what she told
23 to her attorney; what did her attorney tell to her.

24 That's extremely inappropriate,

25 Judge.

1 THE COURT:

2 You -- You raised in. You put
3 it into evidence.

4 MR. FREDERICK:

5 I did not raise client-attorney
6 privilege information, Judge.

7 THE COURT:

8 But -- But you have raised the
9 issue of this receipt. You put it into evidence.

10 Now he get's to cross-examine
11 her fully on this receipt --

12 MR. FREDERICK:

13 I --

14 THE COURT:

15 -- where it came from --

16 MR. FREDERICK:

17 I agree with that, Judge.

18 THE COURT:

19 -- what -- What did do with it
20 when you got it? Where did you take it? Where has it
21 been? When did it turn up?

22 These are all relevant questions
23 that he can ask.

24 MR. FREDERICK:

25 I agree with that. I agree with

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1 everything you just said, Judge.

2 The distinction I'm making is:

3 The prosecutor -- and by the
4 way, I told the prosecutor about Tommy Washington; and
5 it's also inappropriate for him to imply in questioning
6 that I did not do so.

7 But, Judge, for him to
8 repeatedly badger her about her attorney -- attorney-
9 client communications, there is a distinction that I'm
10 making between -- in general -- questioning about the
11 receipt, which I agree with you is appropriate -- and her
12 communications with her attorneys.

13 THE COURT:

14 What he's asked her, as I
15 remember the testimony was:

16 When did you give it to him?

17 When did it show up?

18 What have you done with it?

19 Where have you been?

20 That sort of thing.

21 I mean, he hasn't gone into any
22 conversations that you might have had with him.

23 MR. FREDERICK:

24 And Judge --

25 THE COURT:

1 He -- He -- He's asking her:

2 Where's it been?

3 Where they come from?

4 MR. FREDERICK:

5 And Judge, at -- at this point,
6 with the line of questioning that he's following, which
7 are implying things that are not true.

8 And I'm not saying that it's out
9 and out misrepresentation. It was a telephone
10 conversation that I recall.

11 I'm getting to the point where I
12 need to call the prosecutor to the stand to say:

13 Well, Mr. prosecutor, did I tell
14 you about Tommy Washington?

15 MR. O'SULLIVAN:

16 No.

17 THE COURT:

18 You don't have to do that --MR.

19 O'SULLIVAN:

20 That's the first time I've heard
21 that name.

22 THE COURT:

23 -- because he's telling you he
24 didn't.

25 MR. O'SULLIVAN:

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1 I've not heard that name.

2 You called me -- or I called
3 you, actually; and you told me that my victim had died.

4 That was -- You didn't mention
5 anything to me about anything. You didn't say anything
6 about the case.

7 That is not true. I swear on my
8 life that is not true.

9 THE COURT:

10 Well, we're not going to get
11 into that. I want this case to proceed.

12 MR. O'SULLIVAN:

13 The only thing --

14 THE COURT:

15 And you can cross-examine him.

16 Please don't get into anything
17 that's privileged; but I think that your questions
18 concerning:

19 Where did this come from?

20 When did you first bring it to
21 the attention of your lawyer?

22 Where did you get it?

23 Who wrote it?

24 Those things are appropriate.

25 Just limit it to that; okay.

1 MR. O'SULLIVAN:

2 Yes, Your Honor.

3 MR. FLOYD:

4 Judge, do you --

5 THE COURT:

6 And besides, Mr. Frederick, this
7 is Mr. Floyd's attorney -- uh -- client.

8 MR. FLOYD:

9 I'm getting to that.

10 Besides that Judge, actually
11 it's his witness. But he did make a big deal out of when
12 this was told.

13 We have the right to --

14 MR. O'SULLIVAN:

15 Your Honor -- you know --
16 anybody can argue. I mean, he's doing the direct now.
17 Tom's making the objection. They're both arguing with
18 the same -- same objection.

19 THE COURT:

20 Well, they -- You've got two --

21 MR. FLOYD:

22 This is different.

23 THE COURT:

24 You've got two attorneys. He --
25 He's making an objection about attorney-client privilege

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1 with a -- uh -- a witness that's not even his client.

2 Now Mr. Floyd -- I mean, we've
3 got two different Defendants here. We just do that when
4 we have multiple Defendants.

5 Mr. Floyd, let me hear from you.

6 MR. FLOYD:

7 Just something, Judge, a matter
8 of I guess clarification.

9 But -- uh -- we were made aware
10 of the situation January 21st of '09.

11 I had a letter written by Shelly
12 Mauney to Ms. West in my office; received by my office
13 September 23rd, of 2009.

14 However, at that time, Shelly
15 also had a crack charge pending that was dismissed
16 because it was a negative drug report.

17 There is a paragraph in this
18 letter that refers to that charge.

19 Uh -- I may consider introducing
20 this letter as evidence, but I would need to redact that
21 out of it.

22 THE COURT:

23 What do you say, Mr. O'Sullivan?

24 MR. O'SULLIVAN:

25 Your Honor, I think I have -- If

1 he's going to seek to -- I've never seen it. He is going
2 to now put in evidence. I don't know how he's going to
3 make it -- I guess he's going to do that somehow.

4 THE COURT:

5 Wasn't it for Mr. Floyd --

6 MR. O'SULLIVAN:

7 I think I have the right to --

8 THE COURT:

9 Wasn't it for Mr. -- uh -- Ms.

10 West?

11 MR. FLOYD:

12 It was addressed to Ms. West.

13 THE COURT:

14 And Ms. West would have received
15 it.

16 MR. FLOYD:

17 My office received it, and dated
18 it received September 23rd, 2009.

19 Don't know if I am or not. But
20 as far as him not seeing a copy of it, he just opened
21 this line of questioning --

22 MR. O'SULLIVAN:

23 Your Honor, if --

24 MR. FLOYD:

25 -- about when he told -- when

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1 she told her attorney.

2 MR. O'SULLIVAN:

3 I think if he's going to seek to
4 admit that document, then under the rules, I have a right
5 for the entire document to be admitted.

6 MR. FREDERICK:

7 That's not what the rules says.

8 THE COURT:

9 Well, I'm not going to admit any
10 superfluous matter that in it.

11 It's not admissible under Rule
12 403 by the State. It is prejudicial, highly prejudicial.

13 That part has no pred -- uh --
14 probative value -- the part that she may have had another
15 charge that was dismissed. That has no probative value
16 in this case whatsoever.

17 MR. FLOYD:

18 Exactly.

19 THE COURT:

20 Now, if you get, that's --
21 that's how I'm going to rule, if you get to it; if that's
22 what you want to do.

23 MR. FLOYD:

24 That's what -- That's exactly
25 what I'm broaching to The Court, that:

1 If I decide to put this into
2 evidence, I would need to redact that one paragraph.

3 THE COURT:

4 All right.

5 MR. O'SULLIVAN:

6 Your Honor --

7 MR. FLOYD:

8 But all I was trying to do is
9 make The Court aware that that's --

10 THE COURT:

11 Then, we'll see about that;
12 okay. Let's see what --

13 MR. O'SULLIVAN:

14 Your Honor, I would like to
15 review this --

16 THE COURT:

17 Show it to him.

18 MR. O'SULLIVAN:

19 -- to see if I have any
20 objection to it. I mean, that's before he presents it to
21 The Court.

22 MR. FREDERICK:

23 Judge, while -- while he's
24 looking at that, there's some additional grounds for my
25 objection.

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1 Uh -- The prosecutor is also
2 questioning the witness about trial strategy that was
3 discussed potentially between --

4 THE COURT:

5 What -- In what regard?

6 What did the prosecutor ask her
7 about trial strategy?

8 MR. FREDERICK:

9 When did you -- uh -- Did you
10 give this receipt to us today?

11 Is it your strategy to --

12 MR. O'SULLIVAN:

13 I never said anything about
14 strategy.

15 MR. FREDERICK:

16 Oh, I'm sorry. He didn't use
17 the word "strategy" Judge.

18 Is it your intention?

19 Whatever the words he used to
20 show that --

21 MR. O'SULLIVAN:

22 I said:

23 Does it not benefit you that --

24 MR. FREDERICK:

25 Whatever words he used --

1 COURT REPORTER:

2 I can't get both of you at one
3 time.

4 THE COURT:

5 Wait a minute.

6 COURT REPORTER:

7 I can't get both of you at the
8 same time.

9 THE COURT:

10 You've got to talk one at a
11 time, guys.

12 And -- And look --

13 MR. O'SULLIVAN:

14 Sorry, Your Honor.

15 THE COURT:

16 I'm going to lay this to rest
17 right now.

18 I'm going to let Mr. O'Sullivan
19 cross-examine her fully on this document as to:

20 Where it's been?

21 When it came forward?

22 Uh -- When she produced it?

23 That sort of thing.

24 Mr. Floyd seems to have a

25 document that would lay all that to rest. And perhaps

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1 he's going to move to introduce it.

2 It certainly wouldn't prejudice
3 his client.

4 I've already told him that I'm
5 not going to allow that -- uh -- prejudicial paragraph
6 that's in there. I'm going to take that out.

7 Now, you all know where we are.

8 Let's go forward; okay?

9 MR. O'SULLIVAN:

10 Yes, Your Honor.

11 I -- I'm reading this. It's
12 just basically what she's testified too.

13 I don't see -- I mean, we're not
14 -- still doing direct. So they're not just putting
15 something into evidence.

16 I don't see why on redirect -- I
17 don't -- Is there --

18 THE COURT:

19 But if you -- If you broach the
20 question on cross, he can respond on redirect. MR.

21 O'SULLIVAN:

22 I understand, Your Honor.

23 But I don't think there's any --

24 Is there a reason why you're seeking to admit it?

25 I mean, it's the same thing

1 she's already testified to.

2 MR. FLOYD:

3 You asked her:

4 When you made your attorney
5 aware of this?

6 MR. O'SULLIVAN:

7 That's right.

8 MR. FLOYD:

9 And I think you actually
10 followed it up and said:

11 Was it before today?

12 That document shows it was
13 within a month of her arrest.

14 MR. O'SULLIVAN:

15 Yeah. But I asked her:

16 When she provided you with a
17 receipt. There's no mention in here of any receipt.

18 She doesn't -- There's nothing
19 in here about a receipt.

20 The question asked was:

21 Whether she provided a receipt
22 to your attorney; not:

23 When did you tell them about --

24 THE COURT:

25 That's true, Mr. Floyd. I mean,

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1 that's what -- that's --

2 MR. O'SULLIVAN:

3 And there's nothing in here
4 about a receipt.

5 THE COURT:

6 Mr. Floyd, does it have in there
7 about that she sent the receipt?

8 That's what he was asking her
9 about?

10 MR. FLOYD:

11 It does not.

12 It does have about how she paid
13 Tommy Washington \$150.00.

14 THE COURT:

15 Okay.

16 MR. FLOYD:

17 And if I misunderstood --
18 misunderstood his question about when this information
19 was passed on, then I apologize; if I misunderstood.

20 THE COURT:

21 Well, my understanding; he was
22 asking about the receipt. We're talking about a document
23 that has been introduced into evidence.

24 And I'm going to let him ask
25 about that document; as to:

1 Where it came from?

2 When it was produced?

3 And that -- that -- that line of
4 questioning.

5 I'm going to allow him to do
6 that; okay.

7 MR. O'SULLIVAN:

8 Yes, Your Honor.

9 THE COURT:

10 All right.

11 Well let's -- let's bring the --
12 the jury in.

13 (WHEREUPON: The jury empanelled
14 in the case was escorted back into the courtroom at 4:36
15 PM, June 15, 2010; and was in fact present during the
16 following proceedings.)

17 THE COURT:

18 All right. Proceed, Mr.
19 O'Sullivan.

20 MR. O'SULLIVAN:

21 Thank Your Honor.

22 CROSS-EXAMINATION BY MR. O'SULLIVAN CONTINUED:

23 Q. Now, when did Mary Roberts give you this receipt?

24 A. The receipt was given to me on the day that I
25 purchased the washer and dryer.

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1 Q. And what was that day?

2 A. August the 31st, 2009?

3 Q. Where were you when she gave you that receipt?

4 A. I was at the place where I picked the washer and
5 dryer up.

6 Q. Okay. So maybe I misunderstood. So you didn't just
7 go to the house with Tommy Washington? You also wonder
8 went there with Mary Roberts?

9 A. There were people there that day.

10 Q. Who else was there?

11 A. There was Thomas Washington, a couple of his
12 buddies, and a couple of girls. They was like all loaded
13 up in one vehicle.

14 Q. And they all came there to sell you the washer and
15 dryer?

16 A. Yes; because Tommy didn't have a license. So he had
17 someone else drive him there.

18 Q. Why were the headlights on, on the truck, if it
19 wasn't dark?

20 A. The headlights automatically come on when the truck
21 was engaged.

22 Q. They automatically come on? There's no sensor?

23 A. No.

24 Q. Now, you're telling the truth here today; right?

25 A. Yes.

1 Q. You're an honest person; right.

2 A. Not always; but I am today.

3 Q. Just today you're honest?

4 A. No. Not just today.

5 Q. Now, weren't you convicted of providing false
6 information to the police in 2006?

7 A. 2006, I did come across a police officer that asked
8 me some questions. And I did lie to the police officer
9 about what was going on; but she had also misunderstood
10 what was happening at the time.

11 Q. Just like they misunderstood here?

12 A. I don't say where anybody's misunderstood here
13 today? What?

14 Q. Didn't you testify that the officer misunderstood
15 your husband when you said you went in the house to get
16 the washer and dryer?

17 A. Most about what time of the day it was.

18 Q. So you did go in the house to get the washer and
19 dryer?

20 A. In the daytime.

21 Q. Okay. But you didn't go in at night?

22 A. No.

23 Q. And that was someone else's misunderstanding?

24 A. When we went back at 8:30 that afternoon, it was
25 still daylight.

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1 I went there around 2:30 -- 3
2 o'clock in the afternoon.

3 That's when the washer and dryer
4 was originally put on the porch.

5 When I returned with my pickup
6 truck, no one entered the building.

7 Q. What I'm asking you is:

8 When the police officer
9 testified that your husband told him that, at night, when
10 you went back to get the washer and dryer, that you went
11 in the house to get it, he must've misunderstood?

12 Is that correct?

13 A. He must have misunderstood when my husband was
14 talking about that he went into the house to move the
15 washer and dryer.

16 Q. That's all. So there's a lot of misunderstandings
17 involving you?

18 A. There can be misunderstandings very easily. If a
19 person does not have their words in the correct way,
20 anyone can misunderstand anyone.

21 Q. Okay. Now, the last thing; just to clarify:

22 You have lied to the police in
23 the past? You were willing to do that.

24 But you're not lying today? We
25 should believe you today?

1 A. I have no reason to lie today. My life is on stake
2 here. And I'm here to tell the whole truth and nothing
3 but the truth. That's what I was sworn into.

4 And when I lied to the police
5 officer -- uh -- back in 2006, I was not sworn into
6 anything.

7 And I was scared that day.

8 Q. Well, now I'm confused. You just said your life is
9 at stake here.

10 Wouldn't that be every reason to
11 lie to protect yourself?

12 A. No. I have every reason to tell the whole truth and
13 nothing but the truth.

14 MR. O'SULLIVAN:

15 Right. Nothing further, Your
16 Honor.

17 THE COURT:

18 All right.

19 Mr. Frederick?

20 REDIRECT EXAMINATION BY MR. FREDERICK:

21 Q. Shelly, do you think it would've done any good to
22 give this prosecutor the receipt?

23 MR. O'SULLIVAN:

24 Your Honor, that ask her to
25 speculate as to what I would have done and how I would

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1 have gone about it.

2 THE COURT:

3 Read -- Ask the question again?

4 REDIRECT EXAMINATION BY MR. FREDERICK CONTINUED:

5 Q. Do you think it would have done any good to give
6 this prosecutor the receipt?

7 A. No, I don't think it would have done any good to
8 give him the receipt.

9 THE COURT:

10 I'll let her answer it.

11 REDIRECT EXAMINATION BY MR. FREDERICK CONTINUED:

12 Q. Is he trying to help you?

13 A. No, he's not.

14 MR. FREDERICK:

15 That's all the questions I have,
16 Judge.

17 Mr. Floyd may have some
18 questions.

19 THE COURT:

20 Mr. Floyd, any --

21 MR. FLOYD:

22 I don't have any.

23 THE COURT:

24 Any further questions, Mr.

25 O'Sullivan?

1 MR. O'SULLIVAN:

2 Just one, Your Honor.

3 RECROSS-EXAMINATION BY MR. O'SULLIVAN:

4 Q. As a prosecutor, is it my job to help you?

5 A. I think it is your job, is, for you to help the
6 State and to final all evidence that you can against
7 someone.

8 So I don't really think, given
9 the prosecutor the receipt would've helped me out.

10 I still do believe that he would
11 have went forward with his charges.

12 Q. I asked you the question:

13 Is it my job to help you?

14 A. It's his job to help the State.

15 MR. O'SULLIVAN:

16 So, Your Honor, can she answer
17 the question?

18 MR. FLOYD:

19 I think she did.

20 THE COURT:

21 Well, I think it's
22 argumentative, but go ahead and answer.

23 Do you think it's his job to
24 help you?

25 Is that your -- what you think?

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1 WITNESS:

1 No.

2 MR. O'SULLIVAN:

3 Thank you.

4 THE COURT:

5 All right. She's answered.

6 MR. O'SULLIVAN:

7 Nothing further.

8 MR. FREDERICK:

9 Nothing further, Judge.

10 MR. FLOYD:

11 Nothing further.

12 THE COURT:

13 Does the Defense rest?

14 MR. FREDERICK:

15 Defense rests, Judge.

16 THE COURT:

17 Very well.

18 Ladies and gentlemen, it's

19 almost 5 o'clock. So I'm going to release you for today.

20 I want to ask you to be back in

21 your jury room at 9:30.

22 Please don't discuss the case

23 within anyone or allow anyone to discuss it with you.

24 Thank you very much.

25 Mr. Roth, you going to have

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1 donuts or biscuits for this jury in the morning?

2 What do you want, Mr. -- uh --

3 VanMarter? What do you think he ought to get for you?

4 (Laughter erupts in the

5 courtroom.)

6 THE COURT:

7 Tell me what you think Bobby

8 needs to have for you?

9 FOREPERSON VANMARTER:

10 Steak and eggs.

11 (Laughter erupts in the

12 courtroom.)

13 FOREPERSON VANMARTER:

14 Biscuits will be find, I guess.

15 THE COURT:

16 All right.

17 BAILIFF:

18 Yes sir.

19 THE COURT:

20 Mr. Roth, have some biscuits for

21 them; okay.

22 BAILIFF:

23 Yes sir. I'll do that, sir.

24 THE COURT:

25 And make sure the coffee's hot.

1 (Laughter erupts in the
2 courtroom.)

3 FOREPERSON VANMARTER:

4 Thank you.

5 THE COURT:

6 All right.

7 (WHEREUPON: The jury empanelled
8 in the case withdrew from the courtroom at 4:43 PM, June
9 15, 2010; and was no longer present during the following
10 proceedings.)

11 THE COURT:

12 You may step down.

13 Motions?

14 MR. FREDERICK:

15 We renew our motion for a
16 directed verdict as to the lack of proof as to lack of
17 consent, which is an element of the crime of burglary.

18 THE COURT:

19 All right.

20 And I would, for the same -- uh
21 -- reasons I stated earlier, respectfully deny your --
22 your -- uh -- emotion.

23 Uh -- We have heard from the
24 caretaker of the owner -- uh -- that she's in charge,
25 essentially, of this property, and that there -- uh --

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1 has been no consent given.

2 Uh -- I think from that, the
3 jury could reasonably infer that there was no -- uh --
4 consent in this matter.

5 MR. FLOYD:

6 Judge, I would join in that
7 motion for a directed verdict. And I would also submit
8 to The Court that -- uh -- under the further gathering of
9 evidence, a charge of burglary in the third degree also
10 would be appropriate now.

11 THE COURT:

12 All right.

13 What you say about that -- uh --

14 Mr. O'Sullivan?

15 MR. O'SULLIVAN:

16 Your Honor --

17 THE COURT:

18 Burglary in the third degree is
19 essentially the entry into a building without consent of
20 the owner with the intent to commit a crime therein.

21 That's simply it -- that's --
22 period.

23 Now Mr. Floyd, is there anything
24 -- any possible interpretation of the evidence in this
25 case, in anyway it could be interpreted, by inference or

1 otherwise, that this did not occur in the nighttime
2 hours?

3 MR. FLOYD:

4 Her -- Shelly's testimony was
5 that this occurred during the day; that they went back at
6 night and got the washer and dryer off of the porch.

7 THE COURT:

8 But --

9 MR. FREDERICK:

10 In addition, Judge, she
11 testified --

12 THE COURT:

13 But wouldn't that be at night?

14 MR. O'SULLIVAN:

15 Yes.

16 MR. FLOYD:

17 Went in the house during the
18 day; but didn't enter the house at night.

19 She also testified that it was
20 still light outside.

21 MR. FREDERICK:

22 In addition, Judge, I asked her:

23 Was it dark outside?

24 Her answer was:

25 Yes.

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1 I said:

2 Are you sure?

3 She said:

4 Absolutely, I'm sure.

5 THE COURT:

6 If it was dark outside?

7 MR. FREDERICK:

8 Yes. I mean:

9 Was it dark outside?

10 She said:

11 No.

12 And I said:

13 Are you sure?

14 She said:

15 Absolutely, I'm sure.

16 THE COURT:

17 All right.

18 What do you say about that, Mr.

19 O'Sullivan?

20 If they've got that -- that
21 testimony in, you know it's up to the jury about whether
22 to believe it or what weight to give it.

23 You know, it's -- If it's three,
24 it's there.

25 And if -- uh -- if -- if there

1 is an inference that could be drawn from that testimony
2 that -- that it did not occur in the nighttime, then this
3 could be a straight burglary third.

4 MR. O'SULLIVAN:

5 Your honor -- uh -- what I would
6 like, if it's -- if you see fit, since we're not at the
7 -- uh -- sentencing stage and we're operating for the
8 day, is, if we could take this up in the morning briefly.

9 THE COURT:

10 Okay.

11 I'm going to give you a short
12 time in the morning; okay.

13 MR. O'SULLIVAN:

14 Yes sir.

15 THE COURT:

16 A short time in the morning.

17 I'm -- I'll give you guys 10
18 minutes on it; all right.

19 MR. O'SULLIVAN:

20 Yes, Your Honor.

21 THE COURT:

22 We're at ease. Thank you.

23 9:30 in the morning.

24 (WHEREUPON: The court was

25 declared in recess at 4:46 PM, June 15, 2010.)

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1 (WHEREUPON: The court was
2 called to order for this particular matter at 10:16 AM,
3 June 16, 2010; and all pertinent parties, along with
4 their counsel, were back and present in the courtroom.)

5 THE COURT:

6 All right.

7 Everyone, are we ready to go?

8 MR. FREDERICK:

9 Just a minute, Judge.

10 THE COURT:

11 Okay. Let's bring in the jury.

12 Gentlemen, I have made -- uh --
13 provided you all with charges.

14 Uh -- Uh -- We had a -- a charge
15 conference moment ago and I have added "mistake of fact"
16 and I have -- uh -- made another -- I think that was the
17 only -- only change we made, wasn't it? Charge on
18 "mistake of fact?"

19 MR. FREDERICK:

20 Yes.

21 THE COURT:

22 Wasn't that the only one?

23 Okay. And I've added that.

24 (WHEREUPON: The jury empanelled
25 in the case was escorted back into the courtroom at 10:18

1 PM, June 16, 2010; and was in fact present during the
2 following proceedings.)

3 THE COURT:

4 Good morning, Mr. VanMarter.
5 It's good to see you're back here with your jury. We
6 appreciate that.

7 I -- I apologize for the delay
8 this morning. I had a conference with the attorney and
9 tried -- the attorneys, and tried to take care of any
10 matters that might slow us down -- uh -- this morning.

11 So -- uh -- we were working
12 while you -- while you were back there, I hope enjoying
13 your -- your biscuits that Mr. Robert -- uh -- Roth got
14 for you.

15 Let me begin by saying that the
16 State and the Defense has now rested. And it has come to
17 that point in the trial where the attorneys will give
18 their closing remarks.

19 Let me -- uh -- remind you, as I
20 told you earlier in -- uh -- the week when we started
21 this case, that:

22 The attorneys are certainly
23 entitled to and will address the facts and the evidence
24 in this case.

25 They will also address the law

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1 in this case.

2 Please be reminded that what the
3 attorneys say in their closing arguments are not
4 evidence.

5 Uh -- You will consider only the
6 evidence that you heard from this witness stand. And you
7 will consider the law as I give it to you.

8 Uh -- You are the sole judges of
9 the facts. And I am the sole Judge of the law.

10 But I anticipate and expect
11 these attorneys to give their view on the law and their
12 view on the evidence that you have -- have received.

13 Now -- uh -- Mr. O'Sullivan, I
14 believe that you have informed The Court that you will
15 waive opening on the law.

16 Is that correct?

17 MR. O'SULLIVAN:

18 Yes, Your Honor.

19 THE COURT:

20 And I believe -- uh -- Mr. -- uh
21 -- Frederick that you indicated that you will give the
22 first opening remarks.

23 Is that --

24 MR. FREDERICK:

25 Yes sir.

1 THE COURT:

2 -- closing remarks.

3 Is that correct?

4 MR. FREDERICK:

5 Yes sir.

6 THE COURT:

7 All right, sir. We're ready.

8 MR. FREDERICK:

9 If it please The Court?

10 Good morning. I'm not sure

11 where to begin.

12 When we started the trial, both
13 Lewis and Shelly, you heard were charged with a burglary
14 in the first-degree.

15 You're going to hear in a little
16 while here now the charge is burglary in the second
17 degree.

18 And I'm not going to get into
19 that anymore, except it will change slightly what you
20 have to look as far as the law.

21 Lewis -- uh -- did not testify.

22 I'm going to ask all of you not
23 to hold that against him.

24 I know that jurors, no matter
25 what the Judge says, no matter what I say, they want to

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1 hear from the Defendant in the case.

2 But -- uh -- the Judge will
3 instruct you not told that against him; not to consider
4 it in your deliberations.

5 A lot of the time we don't put
6 anyone on the stand at all. We don't put the Defendant
7 on the stand.

8 When we put up a Defense, we
9 minimize it, because we don't have the burden of proof at
10 all.

11 The State always has the burden
12 of proof in every criminal case.

13 Shelly was brave to take the
14 stand.

15 It's a hard thing to sit in that
16 chair and to testify in a courtroom under oath, and
17 subject yourself to cross-examination.

18 Because everything that you say,
19 from someone who knows how to cross-examine someone,
20 everything that you say can be turned, can be twisted
21 just a little bit.

22 The most innocent things that
23 you say can be made to look suspicious when you're under
24 cross-examination.

25 And you heard the prosecutor

1 badgering Shelly about the receipt.

2 Why didn't you give me the
3 receipt?

4 Why didn't you give the receipt
5 to the officer when he pulled you over?

6 And Shelly told us that:

7 The receipt was given to her the
8 first time that they went to the house.

9 And let me point out that Shelly
10 told us:

11 They didn't just go to the house
12 one time, they went twice.

13 The basis of what they charged
14 them with is going to the house one time.

15 But she's telling you the full
16 story about what happened. They went to the house twice.

17 She says the first time they
18 went to the house, the receipt was given to her. They
19 were driving in a Jeep. And that receipt stayed in the
20 Jeep that she was in.

21 And when they were pulled over,
22 that were in the truck that they went back in to pick up
23 the water and dryer.

24 And for the 46 days that they
25 were in jail because of this, she didn't have access to

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1 the receipt.

2 The prosecutor says:

3 Well, why didn't you tell me
4 about Tommy Washington?

5 That wasn't their choice. That
6 was not their decision to make. It was mine. Because if
7 I think that a prosecutor is going to dismiss a bad case,
8 I'll lay it out -- everything out for them, and tell them
9 what the case is about.

10 But if I don't think that the
11 prosecutors would dismiss a bad case, then the people
12 that need to hear about it are you; not the prosecutor.

13 Usually in a closing argument, I
14 don't go through every witness's testimony blow by blow
15 telling you every single thing that they said; because
16 between the 12 of you, you all are going to remember most
17 of what was said.

18 In this case I'm going to hit
19 some of the highlights though from each of the witnesses.
20 Because what we need to do is compare with the State's
21 witnesses had to say with what Shelly had to say.

22 We need to compare what all the
23 witnesses had to say with what I told you in the opening
24 statement and what the prosecutor told you in the opening
25 statement.

1 Ms. Jackie Eodler told us that
2 she was sitting on the porch;

3 that she heard Shelly and Lewis
4 talking about picking something up;

5 that she heard Lewis hit the
6 fence as they left.

7 And then she jumped into her car
8 and chased them down the road.

9 She also told us that this was a
10 rental house that had been rented a few times in the
11 past. But it was sitting empty. And it had been
12 abandoned.

13 Uh -- Donnie Miles; I think the
14 only thing that he was really able to tell us was that to
15 the best of his recollection, this house was empty when
16 he went into it.

17 Officer Jeremy Crews told us
18 that he stopped the truck at nine o'clock. This is nine
19 o'clock after Ms. Eodler says that she had chased their
20 truck down Highway 90, through some neighborhoods, onto
21 Highway 501, and down Highway 501 for a ways.

22 The reason I mention this is
23 because that puts them at the house picking up the washer
24 and dryer somewhere around 8:30 -- 8:40 at the latest.

25 This was August.

1 Ms. Duncan told us that her
2 mother owned the house; that she had never lived there;
3 but it was a rental property.

4 Shelly told us that they bought
5 the washer and dryer; that they paid \$150.00 for it; that
6 she even got a receipt when she paid the money.

7 Shelly they told us that as far
8 as they knew, what they believed was, that they had
9 consent to pick up this washer and dryer that they had
10 paid for.

11 There was no intent to commit a
12 crime when they went to the house. Nothing -- and this
13 is important -- nothing that any of the State's witnesses
14 told us contradicts what Shelly told us.

15 When we get to this -- When we
16 get to this stage -- this point in a criminal case -- we
17 have to give the accused person every benefit of the
18 doubt.

19 That's how our system works.
20 That's why our system works.

21 Part of my job is to make sure
22 that we all understand what reasonable doubt means; what
23 the law is; what the standards of proof are that we apply
24 in a case like this.

25 And there's different standards

1 of proof in different types of cases in different
2 courtrooms.

3 And I understand some of us have
4 been in some types of courtrooms; some have been in other
5 types of courtrooms. And we've all seen television
6 shows.

7 But, depending on what type of
8 courtroom you're in, what type of situation it is,
9 there's different standards of proof.

10 So I'm going to go through some
11 of those standards of proof just to put reasonable doubt
12 into context.

13 I'm going to start with a
14 scintilla of evidence.

15 A scintilla of evidence is
16 nothing more than a real -- a mere suspicion; nothing
17 more than a mere suspicion. And it's not enough evidence
18 to prove anything at all.

19 It's not enough to convict a
20 person of a crime.

21 Reasonable suspicion is enough
22 evidence for an officer to pull a car over, to briefly
23 detain them on the site of the road just long enough to
24 write a ticket -- a traffic ticket -- and to check the
25 computer to run a check on the drivers license, and then

1 let the person go.

2 Reasonable suspicion is enough
3 evidence for an officer to pat somebody down; not to go
4 into their pockets or search them; but to pat somebody
5 down if they suspect that they have a weapon.

6 It's not enough to convict a
7 person of a crime.

8 Probable cause is enough
9 evidence to search a person; for an officer to actually
10 search a car, go into your pockets, and search you.

11 Probable cause is enough
12 evidence for somebody to be charged with a crime.

13 When a grand jury indicts a
14 case, they've found that there's enough probable cause
15 for a case to go forward to trial.

16 Probable cause is enough to get
17 you here. But it's not enough to convict a person of a
18 crime.

19 I think that when Officer Crews
20 got the phone call and was told:

21 Someone's broken into a house.
22 A washer and dryer is missing.

23 And then he pulled this truck
24 over. And in the back of the truck was a washer and
25 dryer.

1 Maybe he was justified in
2 thinking:

3 I'm putting two and two together
4 and thinking there's enough probable cause to charge a
5 person here.

6 A preponderance of the evidence
7 is the standard of proof that we use in civil cases.

8 What it means is that:

9 If one side's evidence weighs
10 slightly more than the others -- 51 percent -- then you
11 have to find in that person's favor.

12 It's like the scales of justice.
13 If all that we were fighting about here today was money,
14 ironically -- uh -- a preponderance of the evidence would
15 be the standard of proof that we used.

16 Clear and convincing evidence is
17 the standard of proof that we use in termination of
18 parental rights cases.

19 If the State wants to
20 permanently take their children away from you, then they
21 have to prove by clear and convincing evidence that you
22 are an unfit parent.

23 Even clear and convincing
24 evidence is not enough to convict a person of a crime.

25 Beyond any reasonable doubt is

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1 the highest standard of proof that we have in this
2 country in any courtroom, and I think in the world.

3 Beyond any reasonable doubt is
4 the standard of proof that we have to use in every
5 criminal case.

6 A reasonable doubt is the type
7 of doubt that would cause a reasonable person to hesitate
8 to act.

9 And listen when you hear the
10 Judge's instructions.

11 It's the type of doubt that
12 would cause a reasonable person to hesitate to act.

13 It's a doubt for which you could
14 give a reason.

15 I could go through with you all
16 of the different reasons -- all of the things that would
17 cause us to hesitate to act.

18 But it's been a short trial. I
19 think that if all of you remember the testimony, then you
20 know what those reasons are.

21 One thing I need to -- to say is
22 that:

23 This is the last chance that I
24 get to talk to you.

25 The way that works is:

1 If we don't put up any evidence;
2 if I don't call a witness; if we put no evidence up; then
3 the prosecutor has to give the first closing argument and
4 I get to go last, which means I get to respond to what he
5 says. And the last thing that you all here is my closing
6 argument.

7 Because I called a witness and
8 put in some evidence, I have to go first. The prosecutor
9 gets less closing argument. He gets to respond
10 everything that I've said.

11 No matter how bad I want to, I
12 can't get back up again and respond to anything that he
13 says to you.

14 Everything and anything that he
15 says in his closing argument, I have a response for.

16 And I ask you all when you're
17 listening, when you hear the State's argument, to take a
18 minute to think about it; and respond for me.

19 I'm going to leave you with a
20 story:

21 There was a farm boy who was
22 engaged to be married. He and his fiancée were going to
23 school. They were working at a theater at night.

24 And one night they were driving
25 home. He was driving her home from work. They were on a

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1 back road. And there was a possum in the road.

2 And he couldn't swerve to miss
3 it, and he hit possum, and stopped the car a little ways
4 down the road.

5 And his fiancée was really --
6 real upset about the possum.

7 He could care less. He grew up
8 on a farm. He didn't much like possums anyway. But he
9 stops.

10 And because she was upset, he
11 went back and checked on it. It was dead. He moved it
12 out of the road. They went on their way.

13 The next day he was talking to
14 his dad and told tell him what happened; told him:

15 I didn't really understand what
16 she got so upset about.

17 His dad says:

18 I can't do anything about that.

19 But what I can tell you is:

20 When there's an animal in the
21 road and sees your headlights, it gets caught in the
22 headlights. It's mesmerized. It can't move.

23 So what you do is:

24 You slow down. You cut your
25 lights off. You lay on your horn and scare it so it's

1 got time to get out of the road.

2 A couple of weeks later they
3 were driving home from the theater at night on the same
4 road and he saw up ahead of him a rabbit in the road.

5 So he did what he was told.

6 He slowed down. He cut his
7 lights off. He laid on the horn.

8 And about a minute later, he
9 felt a big bump and heard something slam into his car.

10 He stopped the car. He got out.
11 He checked. And there was a big, huge, dent next to his
12 car.

13 Not understanding how that
14 happened from the rabbit, he went back to see what was
15 going on. And there was a big cement block laying in the
16 middle of the road that: when he hit it, it kicked up and
17 it banged his car over the tires.

18 My point is that:

19 Things are not always what they
20 seem at first.

21 As we said, talking about
22 probable cause, the officer may, given someone had just
23 called and said:

24 We think there's been a
25 burglary. There's a washer and dryer missing.

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1 It may have been okay coming to
2 that conclusion; but there's more to the story.

3 Things are not always what they
4 seem at first.

5 This is why the most important
6 rights that we have under our Constitution are: the right
7 to proof beyond any reasonable doubt, and the right to a
8 trial by jury; so that you all are here to do the right
9 thing.

10 You all are here to do what the
11 prosecutor can't do; what the Judge can't do; find Lewis
12 and Shelly not guilty.

13 Thank you.

14 THE COURT:

15 Mr. Floyd?

16 MR. FLOYD:

17 May it please The Court?

18 Good morning ladies and
19 gentlemen.

20 Uh -- I told you yesterday when
21 we started this, that this trial wouldn't be very long
22 and that we would probably be finishing up this morning;
23 and here we are.

24 I want to start off by telling
25 you that what I'm about to say in here is not evidence.

1 The evidence is what you heard from the witness stand
2 here today.

3 And if I misquote or say
4 something that seems different than what you heard, then
5 disregard what I say; because the 12 of you'll probably
6 come closer to getting it right than I could.

7 The first thing I want to say:

8 There wasn't a whole lot of
9 cross-examination going on in this case. There was a lot
10 of arguing going on in this case.

11 What happened in this case, in
12 this particular trial, was:

13 Shelly got to tell what happened
14 in full for the first time.

15 The State of South Carolina,
16 they came up. They had a complaint. They've made an
17 arrest. Case closed.

18 No investigation was ever even
19 initiated.

20 They took brief roadside
21 statements from Lewis and Shelly.

22 They weren't the exact
23 statements. You've heard that part.

24 But they were consistent:

25 We bought this washer and dryer.

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1 Nobody ever came back and said:

2 You know, he told us he bought

3 this. Can you tell me a little bit more? We want to

4 help you.

5 Nobody did that.

6 They were taken to jail. They

7 were put there him and Shelly for 40 to 50 days. I don't

8 remember the exact number before making bond.

9 Nobody ever went back and said:

10 Well, Shelly, you said y'all

11 didn't go in the house; but he -- he said you did.

12 What's up?

13 If somebody had asked that one

14 question, they'd found out.

15 We went twice.

16 We went there the first time

17 with Tommy. Paid him. Got the receipt. Got the washer

18 dryer. But it wouldn't fit in my Jeep Cherokee.

19 And washer and dryer won't fit

20 in a Jeep Cherokee.

21 So we had to leave and get a

22 truck and come back.

23 Nobody asked them about it.

24 The minor part of an

25 investigation is to find out what happened.

1 What caused this?

2 Why this house?

3 They didn't live in the
4 neighborhood; didn't know anything about it.

5 Random.

6 Why this house?

7 Ask a question.

8 Wasn't done until today -- or
9 yesterday was the first time Shelly got her chance to
10 say:

11 Look, this up what happened.

12 This is the receipt I got.

13 No investigation whatsoever.

14 As you've already heard and
15 you're about to hear, we came into this courtroom charged
16 with burglary first degree.

17 It's not there.

18 That's not even the proper
19 charge.

20 All through the indictment
21 process and everything; we get here, all this evidence
22 comes out. And they're not even charged properly.

23 Forget being guilty. We're
24 talking way down here on the evidence, on the burden of
25 proof, way down here (knocking on the jury rail).

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1 And they don't even have the
2 charge right.

3 That's because there was
4 absolutely no investigation done in this case.

5 You heard some conflicting
6 testimony Mr. Frederick's hit on.

7 Uh -- Officer Miles said the
8 best he could remember, there wasn't anything in the
9 house.

10 Uh -- Then you heard that there
11 was things in the house.

12 Ms. Duncan testified there was
13 furniture in it, refrigerator; all this other stuff.

14 None of that was bothered.

15 None of that was moved.

16 The only thing that was taken
17 was a washer and dryer which Shelly and Lewis thought
18 belonged to them. That was only thing they got.

19 And then there was some issue
20 raised about the lights on the truck.

21 A lot of automobiles now, trucks
22 included, have lights that automatically come on when you
23 crank the car.

24 You heard Shelly say:

25 We went twice to the house.

1 The first time was during the
2 day with Tom. We moved the washer and dryer out to the
3 porch. Then, we left.

4 We came back. Loaded them in
5 the truck. And it was still light outside.

6 You've heard the testimony in
7 this case. And I'm not going to take up a whole lot of
8 your time. It wasn't a very long trial. But it was one
9 that causes concern because these are serious charges.
10 It's a serious matter.

11 And the basic follow-up wasn't
12 even done.

13 If it had been done, we might
14 not be here today.

15 The evidence in this case, I
16 believe, shows that Lewis and Shelly are not guilty.

17 Thank you.

18 THE COURT:

19 Mr. O'Sullivan

20 MR. O'SULLIVAN:

21 Thank Your Honor.

22 The first thing I want to touch
23 on, as the Defense counsel has touched on already with
24 you, is that -- is the charge, itself.

25 When I talked to you in opening,

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1 I talked about the fact that they are charged with
2 burglary first; okay.

3 Now, we went through a whole day
4 of legal arguments between myself and the Defense; back
5 and forth, back and forth.

6 The Judge -- we're all
7 researching, we're all looking. And the Judge ultimately
8 decided that:

9 Based on a technical legal
10 principle, the house that the --

11 MR. FREDERICK:

12 Objection, Judge.

13 First of all, he's testifying to
14 the jury about things that happened outside of the
15 presence of the jury.

16 And I object to the use of the
17 term "technicality," when we're talking about the facts
18 in evidence in this case.

19 It does not support a first
20 degree burglary charge.

21 THE COURT:

22 Thank you, Mr. Frederick. You
23 may continue.

24 MR. O'SULLIVAN:

25 Thank Your Honor.

1 Now -- uh -- what was said early
2 on is that:

3 There must be someone living in
4 the house in order for it to be a burglary first.

5 That's not -- That's not the
6 law.

7 When I told you that wasn't the
8 law, that was correct. But --

9 WHEREUPON: Mr. Frederick stood.
10 THE COURT:

11 Mr. Frederick.

12 MR. O'SULLIVAN:

13 -- based on a different argument
14 that was posited to the Judge, and he ultimately decided
15 that --

16 MR. FREDERICK:

17 Judge, objection.

18 THE COURT:

19 Mr. Frederick.

20 MR. FREDERICK:

21 Matter of law.

22 THE COURT:

23 Mr. Floyd addressed it. You
24 addressed it in your -- in your closing. I'm going to
25 let the Solicitor address the issue of what the charge is

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1 now. Thank you.

2 This is closing argument. It's
3 not evidence.

4 MR. FREDERICK:

5 Judge, can we approach?

6 THE COURT:

7 Yes.

8 (WHEREUPON: Counsel for each
9 party conferred off the record with The Court at the
10 bench at 10:48 AM, June 16, 2010.)

11 THE COURT:

12 Proceed Mr. -- Mr. O'Sullivan.

13 MR. O'SULLIVAN:

14 Thank Your Honor.

15 Now, as I was saying, just to be
16 clear:

17 Nothing that you were told was
18 incorrect.

19 The Defendants -- uh -- weren't
20 charged incorrectly. There was a matter of law that was
21 taken up here in the courtroom and the Judge ultimately
22 decided:

23 I don't think that charge fits
24 specific to these facts and these incidents; some of the
25 facts that weren't even known until everybody testified.

1 MR. FREDERICK:

2 Judge --

3 THE COURT:

4 Mr. --

5 MR. FREDERICK:

6 I've got a separate objection;
7 and I need to make a record.

8 THE COURT:

9 All right. And I'll let you do
10 it when he's completed.

11 Thank you, sir.

12 MR. O'SULLIVAN:

13 Thank you.

14 MR. FREDERICK:

15 And Judge, my objection, for the
16 record, is that:

17 He is saying that the Judge made
18 an opinion on the facts.

19 THE COURT:

20 All right. Sit down, sir.

21 MR. FREDERICK:

22 Yes sir.

23 MR. O'SULLIVAN:

24 I just say this to explain it to
25 you. Nothing is being hidden from you. There was not --

1 There was no wrongdoing by any party.

2 We come in here all the time.

3 That's the point of a trial. That's the point of coming
4 to court. That's the point of appearing in front of a
5 Judge.

6 The State makes arguments. The
7 Defense makes arguments. That's what we do. That's our
8 jobs.

9 And sometimes the Judge finds in
10 favor of the State. And sometimes he finds in favor of
11 the Defense.

12 There's nothing odd or unusual
13 about any of that.

14 Now, I talked to you about
15 burglary first requirements --

16 MR. FREDERICK:

17 Judge, and every time he does
18 it, I got to object.

19 THE COURT:

20 All right. And then your
21 objection's preserved Mr. Frederick and I'm telling you
22 not to do it again.

23 Thank you, sir.

24 MR. O'SULLIVAN:

25 An entry into a dwelling.

1 Okay. We don't have to worry
2 about that anymore. We don't have to worry about a
3 dwelling. That's been taken care of.

4 Now all that I have to prove to
5 you for burglary in the second degree is that:

6 The Defendants entered a
7 building; any building.

8 It's uncontroverted that in this
9 case, there was a house. It's a building. There's no
10 dispute on that.

11 So that element is down. It's a
12 business.

13 I have to prove to you that they
14 entered into this building.

15 The Defendant's own statement
16 was:

17 Yeah, we went in the building.

18 Now the -- uh -- Ms. Mauney, I
19 believe, it's now Ms. Pipher; she on the stand and she
20 said:

21 Well, we didn't actually go in
22 the house. We just went on the porch.

23 Well, a porch can be part of a
24 building. It's attached to the building. There's no
25 reason for it not to be part of the building.

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1 By anybody's statements, they
2 went in the building. That's also undisputed.

3 Two elements down.

4 MR. FREDERICK:

5 And Judge, I object to the
6 incorrect statement of the law.

7 THE COURT:

8 All right. Thank you sir.

9 MR. FREDERICK:

10 Is that overruled?

11 THE COURT:

12 It's overruled.

13 MR. FREDERICK:

14 Thank you.

15 MR. O'SULLIVAN:

16 There's a -- a building that
17 they entered into.

18 Now: without consent.

19 Well, you heard from this
20 witness stand, Carolyn Duncan, the victim got up there
21 and she said:

22 I don't know those Defendants.

23 I don't know Thomas Washington.

24 I don't know any of the people
25 that they're talking about.

1 I never get anyone consent to go
2 in that house.

3 And she told you that her mother
4 was in grave condition in hospice care; never gave anyone
5 consent to go in the house.

6 There's element three: No
7 consent to go in the house.

8 Now: with the intent to commit
9 a crime therein.

10 Well guess what, they were
11 caught with the washer and dryer from that house in the
12 back of their truck.

13 I would say that's a crime.

14 You go in and you steal
15 something from the house; not only was there intent to
16 commit a crime, you've committed a crime.

17 You went in and stole something.

18 That elements down.

19 The last one is: in the
20 nighttime.

21 I don't know anyone in the world
22 who says:

23 Nine o'clock at night is not the
24 nighttime.

25 No one's saying:

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1 Hey, I want to go throw the ball
2 around. What do you say we meet about nine o'clock.

3 You know why?

4 Because it's dark at nine
5 o'clock. It's just -- It just is.

6 You heard -- From the stand, you
7 heard the neighbor.

8 The neighbor doesn't have a dog
9 in this fight.

10 She didn't even know the victims
11 until this happened. She -- She -- She has no axe to
12 grind.

13 She told you:

14 It was dark. It was dark.

15 The reason I couldn't tell who
16 the people were, was 'cause the headlights from the truck
17 were blinding me.

18 Then you heard the Defendant get
19 up here and:

20 Well, the -- the lights
21 automatically come on.

22 I don't know. Maybe they do.

23 I do know that daytime running
24 lights often only come on when the car is in motion.

25 And I also know that daytime

1 running lights are -- are designed to let other cars see
2 you. They're not designed to shine light on the road so
3 you can see. They're not bright. They're not bright at
4 all.

5 You heard from the neighbor.

6 She said:

7 I was blinded by these lights.

8 I couldn't see exactly what was going on because the
9 lights were in my eyes.

10 They were bright lights.

11 Why?

12 Because it was dark. You need
13 the lights to drive. It was dark.

14 And in fact, they ran over a
15 fence.

16 Maybe they didn't quite see the
17 fence when they first turned the car around because it
18 was dark.

19 It was dark out.

20 Everyone you heard from said it
21 was dark out except for the Defendant, who has everything
22 to lose by the fact that it was night; self servicing.

23 And let's -- let's go through
24 the Defense's story of what happened here.

25 Their story, if -- if not for

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1 the suffering of the victim, for the fact that she had to
2 come back into this courtroom talking about her dying
3 mother and how it upset her dying mother that they -- her
4 house had been broken into and robbed.

5 If not for that fact, this would
6 be laughable. This is ridiculous.

7 Well, we met some guy in Loris.
8 And he sold us a washer and dryer for \$150.00. And then
9 we went to another town with a house that wasn't his.

10 And we went in and got the
11 washer and dryer. And -- uh -- you know -- we even got a
12 receipt.

13 I don't know if anyone in this
14 courtroom has ever bought anything from a friend. And
15 she said this guy used to live with them. He's a friend.

16 You don't receipt.

17 You get a receipt from your
18 friend?

19 No. No. No.

20 Isn't it convenient that she had
21 a receipt this time?

22 Her friend gave her a receipt.

23 Are -- Are you kidding me? Are
24 you kidding?

25 No one had heard anything about

1 this receipt -- saw this receipt until the date of trial.

2 She -- you know -- She talked
3 about the fact they had to spend time in jail.

4 You got a chance to stay out of
5 jail 'cause you could prove that you didn't commit a
6 crime, and you don't say anything? You go sit in jail
7 for a month.

8 I don't think so. I don't think
9 so.

10 But that's what they did.

11 They come here today -- or
12 yesterday when they testified:

13 Tommy Washington. Tommy
14 Washington.

15 Who's Tommy Washington?

16 That name's never popped up
17 before. They didn't tell the police anything.

18 We don't know anything about
19 that.

20 And isn't that convenient?

21 Come into court the date of
22 trial. And all of a sudden now you know everybody's
23 name.

24 This is the story.

25 I bought it here.

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1 Here's my receipt.

2 Well, what that does; it means
3 that:

4 I can't investigate.

5 And you heard -- you saw
6 Attorney Floyd up here.

7 He was very angry that no
8 investigation had been done.

9 No one cared.

10 No one knew.

11 No, we -- we didn't know
12 anything about Tommy Washington.

13 We didn't know anything about
14 any receipt.

15 We didn't know anything about
16 any of that.

17 What we knew, was that:

18 The Defendants gave con --
19 conflicting statements that night on the roadside.

20 She said they didn't go in the
21 house. He said they did go in the house.

22 When the police responded to the
23 scene, guess what?

24 The door had been pried open and
25 there was forced entry. Someone forced open that rear

1 sliding door.

2 Is that another coincidence?

3 There was water on the floor
4 where the hoses had recently been detached from the wall;
5 fresh water on the floor; not from two o'clock earlier in
6 the day when she said she was there; but fresh water.

7 Now, the -- the -- the thing
8 about the receipt -- Well -- Well, let me go back to her
9 testimony -- her testimony.

10 First of all, she has testified
11 that sometimes she doesn't tell the truth.

12 I said:

13 Are you honest?

14 Well -- you know -- a lot -- a
15 lot of times. Sometimes I lie to the police.

16 In fact, I've been convicted of
17 lying to the police.

18 But not today.

19 Today when I'm in trouble, you
20 all should believe me, 'cause I'm telling the truth
21 today.

22 I don't always tell the truth.

23 But today, I'm -- I'm telling the truth; believe me.

24 And what did she tell you?

25 She said:

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1 Well, I got this receipt.

2 I said:

3 Okay. When did you get the
4 receipt?

5 I got the receipt the day I
6 bought the washer and dryer. I got the receipt standing
7 in front of the house on that day.

8 And I said:

9 All right. What day was that?

10 She said:

11 August 31st, 2009.

12 I said:

13 You sure?

14 She said:

15 Yes.

16 Well, this is in evidence.

17 You're going to be able to take it back there with you;
18 but you can look at it for yourself, but I'm going to
19 tell you this receipt is dated August 30th, 2009.

20 They couldn't even keep their
21 own make-believe story straight.

22 She couldn't keep her own made
23 up story straight.

24 All -- That's all they had to
25 do. They made up this crazy story. And all she had to

1 do was -- She couldn't even keep all that straight; too
2 much had to be made up.

3 And this receipt -- this -- this
4 is so make-believe, it might as well be made out of pixie
5 dust; this receipt.

6 You walk into court the day of
7 your trial:

8 Oh, look, here's a receipt; the
9 receipt from a friend that I bought the washer and dryer
10 from.

11 Where's Mary Roberts? She
12 signed the receipt. Where is she?

13 MR. FREDERICK:

14 Judge, we don't have the burden
15 to call any witnesses in this case --

16 THE COURT:

17 I understand that.

18 MR. FREDERICK:

19 -- and the prosecutor knows
20 that.

21 THE COURT:

22 And I'll instruct the jury that.

23 MR. O'SULLIVAN:

24 Now, if you'll just give me one
25 second, I want to talk to you about some of the things

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1 that were said in Defense's closing.

2 Well, one thing I wanted to
3 touch on is:

4 The Defense Attorney commented
5 on how brave Shelly Pipher was for taking the stand.

6 How brave that is.

7 You know who's brave?

8 This victim and this neighbor.

9 Those are the brave people.

10 Those are the people that did
11 nothing wrong.

12 There's nothing brave about what
13 they did; kicking in a old woman's door and stealing her
14 stuff. There's nothing brave about that.

15 And getting on the stand or
16 lying about it, there's nothing brave about that.

17 This neighbor, she saw a crime
18 being committed. She risked her own safety. She got in
19 her car and followed them.

20 I don't know if I would do it.
21 But I sure want a neighbor like her.

22 She saw a crime. And she put a
23 stop to it. That's brave.

24 And the victim, Carolyn Duncan,
25 came in here; had to get up on that stand in front of

1 everybody; cry in front of everybody and be embarrassed
2 about it.

3 Although, she's got nothing to
4 be embarrassed about; reliving her mother laying in that
5 hospice bed, and how upset this -- how -- how upsetting
6 this all was for them.

7 Those are the brave people.
8 Don't be confused about any
9 bravery from that table.

10 Now, all these standards of
11 proof here, that the Defense Attorney went through, you
12 know how many of them apply to this case?

13 One.

14 Nothing to do with the case.
15 Nothing to with the case. Nothing to do with the case.
16 Nothing. (Pointing to Mr. Fredericks illustrations.)

17 Just thrown up there for
18 confusion purposes to try to distract from the case
19 that's in front of you.

20 And he talked about:

21 I'm not going to get into the
22 testimony; but -- You know why?

23 Cause all the testimony is
24 against their clients. Everything points to their guilt.

25 I wouldn't get into it either.

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1 Why would I want to do that,
2 when I could come up and say:

3 Well, look at all these
4 different levels of evidence here.

5 I would probably come up with
6 something like that too if knew that all the evidence was
7 against my people.

8 Only thing you need to be
9 concerned with is reasonable doubt. That's it. That's
10 all. That's the only thing.

11 And all that means is:

12 If you are firmly convinced that
13 they are guilty, I have met my burden and you must find
14 them guilty.

15 The only thing just to briefly
16 touch on is, he talked about: beyond any reasonable
17 doubt, which con -- which has a connotation that it's
18 beyond any doubt.

19 First of all, that's not what it
20 says. It says:

21 Beyond a reasonable doubt.

22 And it doesn't mean: any doubt.

23 Just like I told you in my
24 opening:

25 Unless we were there were

1 ourselves, can we -- it's -- we can't go beyond any
2 possible doubt.

3 That's not my burden. My burden
4 is to convince you of their guilt. That's it.

5 Uh -- He also talked about:
6 hesitate to act.

7 And that's confusing; okay.

8 That can be confusing. Because
9 we're going to tell you at the end of the case -- or more
10 correctly, the Judge is going to tell you to go back in
11 that jury room and deliberate.

12 Don't rush to judgment.

13 He's basically going to tell you
14 to hesitate to act, before you decide the case.

15 But that's not what that means
16 when they talk about reasonable doubt and hesitate to
17 act. That's not what that means. Don't be confused.

18 All it means is:

19 Are you firmly convinced of
20 their guilt? That's it.

21 WHEREUPON: Mr. O'Sullivan goes
22 over to his counsel table to review some documents.

23 MR. O'SULLIVAN:

24 And I apologize for the delay.

25 I just want to make sure -- there's a lot of things

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1 touched on.

2 Uh -- They also wanted to talk
3 about the house being abandoned. The house was not
4 abandoned.

5 You heard Carolyn Duncan talk
6 about the fact that: it's still their house. They didn't
7 abandon it. It's full of furniture. It's got a washer
8 and dryer; or it did until they stole it.

9 Uh -- It has a stove, a
10 refrigerator. It's ready to be lived in. Everything was
11 put on hold.

12 In fact, she told you it was
13 being rented in the past to help offset the medical bills
14 that her mother had.

15 It -- It wasn't being rented at
16 the time because her mother was gravely ill and required
17 around-the-clock care. As she told you, she was with her
18 90 percent of the time.

19 That doesn't mean the house was
20 abandoned. It's their house. They're going to rent it
21 out again. It's ready to go.

22 Uh -- I just note that the other
23 -- the other thing that Defense wanted to talk about is
24 that:

25 Things aren't always what they

1 seem.

2 I will tell you that:

3 Uh -- In this case, things are
4 absolutely what they seem.

5 And I -- I just want to recap
6 one more time.

7 This -- This is -- This is as
8 straightforward as it gets:

9 Eyewitness sees these two people
10 at the victim's house load something on a truck with
11 their headlights on, blinding her, in the nighttime,
12 about nine o'clock.

13 Then she -- They take off. Run
14 over a fence.

15 Which, by the way, if you
16 haven't done anything illegal, you going to rush our of
17 their and drive over a fence?

18 Then when you notice someone's
19 following you:

20 You're going to weave in and out
21 of traffic?

22 You're going to cross the double
23 yellow line?

24 You're going to run red lights.

25 You're going to run stop signs.

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1 You're going to scream out at --
2 from your car:

3 Get lost?

4 When you know you didn't do
5 anything wrong?

6 Does that sound like escape to
7 anybody?

8 Sound's like escape.

9 Sounds like they're trying to
10 avoid anyone detecting them.

11 But she follows them.

12 They're trying to get away from
13 her. They tell her to get lost.

14 She's dealing with it. She's on
15 the phone. She's talking to the police. They respond.

16 So yeah -- And -- Now -- And the
17 police didn't rush to judgment. This officer didn't rush
18 to judgment.

19 He found them with a washer and
20 dryer in the car. He didn't say:

21 You're under arrest.

22 He didn't do that.

23 He said:

24 Well look, I'm going to just
25 detain you for a little bit. We got an officer going out

1 to the scene. We're going to see what the deal is.

2 That officer went out the scene
3 and it was forced entry. The door had been pried open.
4 The locked door had been pried open.

5 They had been in the house.
6 There was water on the floor from they removed the washer
7 and dryer. And the washer and dryer was missing.

8 He said:

9 Yep. It sure looks like a
10 burglary.

11 And at that point, he arrested
12 them. It was at that point.

13 There was no rush to judgment.
14 Then he read them their Miranda
15 rights.

16 And you've probably all seen it
17 on TV; Miranda:

18 You have the right to remain
19 silent. You don't have to talk to me. You can have a
20 lawyer.

21 He went through all their
22 rights. They said:

23 No. We want to talk to you.

24 And then they went ahead and
25 gave conflicting stories about what happened.

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1 As I said, the evidence is so
2 solid against them, there's no doubt that they have been
3 proven guilty beyond a reasonable doubt.

4 There's no doubt.

5 The only question you have to
6 ask yourself is:

7 Do you -- Are you firmly
8 convinced they're guilty, or do you want to believe the
9 absolute nonsense that came from them about some random
10 guy nobody knows -- no one's heard from -- selling them
11 some washer and dryer -- uh -- which she said she tried
12 to pick up at a Jeep Cherokee.

13 Nobody thinks you can get a
14 washer and dryer in a Jeep Cherokee. Nobody thinks that.
15 Nobody's ever thought that.

16 That part's even ridiculous.
17 There's no part about it that's not completely
18 ridiculous.

19 Well, I went there with my Jeep
20 Cherokee. I thought could get a washer and dryer in it.

21 No you didn't. No, you didn't.

22 The point is, all the evidence
23 points to their guilt.

24 Nothing -- Nothing -- uh --
25 establishes any mistake here.

1 The receipt; she -- that
2 couldn't even be right. The receipt, which is bogus,
3 that didn't even -- She couldn't even get that right.
4 The date is wrong.

5 So, there it is again. She's
6 clearly lied to you about the date.

7 I've -- I have faith, and I know
8 that I have presented this case and proved to you beyond
9 a reasonable doubt that these two Defendants are guilty
10 of burglary in the second degree.

11 Thank you.

12 THE COURT:

13 Ladies and gentlemen of the
14 jury, I -- uh -- am now going to instruct you as to the
15 law.

16 I told you at the beginning of
17 this trial I want to give you some instructions, which I
18 did. Uh -- But I also told you that at the end of the --
19 the -- uh -- case, I would give you a full instruction on
20 the law.

21 I understand how difficult it
22 can be sometimes for laypersons to absorb everything
23 about a case, or all the law pertaining to a case during
24 the brief period in which the Judge instructs them. So I
25 do things a little differently.

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1 Uh -- I don't know that there's
2 any other judges who do it; but it's something that I do;
3 and that is I prepare a written transcript of my charge
4 on the law. And I give it to you and allow you to take
5 it into your jury room so you can reference it during
6 your deliberations.

7 However, our Supreme Court has
8 said:

9 While that is a -- a proper --
10 uh -- thing for a judge to do, a judge can do that -- uh
11 -- he must provide the jury with a verbatim transcript of
12 the law.

13 And so you might notice that I
14 will be reading from my transcript as I instruct you on
15 the law.

16 I would like to you to please
17 pay close attention. Remember, I'm going to give you a
18 copy. But I still need for you to pay close attention to
19 the law as I instruct you.

20 I remind you that, during this
21 trial, you and I have certain duties to perform.

22 And as trial judge, it's my
23 responsibility to preside over the trial of the case.
24 And I also have the duty to rule on the admissibility of
25 the evidence offered during the trial. And you are to

1 consider only the competent evidence before you.

2 If there was any testimony
3 ordered stricken from the record in this case during the
4 trial, you must disregard that testimony.

5 You are to consider only the
6 testimony which has been presented from this witness
7 stand, any exhibits which have been made a part of the
8 record in this case, and any stipulations of counsel.

9 I have the additional duty to
10 charge you the law applicable to the case.

11 As the presiding judge, I am the
12 sole judge of the law of this case. And it is your duty
13 as jurors to accept and apply the law as I now state it
14 to you.

15 If you already have an idea as
16 to what the law is or what the law ought to be, and it
17 does not agree with what I now tell you the law is, you
18 must abandon the idea, because you are sworn to accept
19 the law and apply the law exactly as I state it to you.

20 In every case tried in this
21 court before a jury, the jury becomes the sole and
22 exclusive judge of the facts in the case.

23 A trial judge cannot intimate,
24 state, comment on, or make any statement to a jury -- uh
25 -- uh -- about the facts in a case.

1 Since you, the jury, are the
2 sole judge of the facts in this case, you are not to
3 infer from what I have said during the progress of this
4 trial in ruling upon the admissibility of evidence, or
5 otherwise, or anything that I say now during the course
6 of this instruction to you, that I have any opinion about
7 the facts in this case.

8 The law does not allow me to
9 have an opinion about the facts in this case. This is a
10 matter solely for you, the jury, to determine.

11 As jurors, it is your duty to
12 determine the effect, value, weight, and truth of the
13 evidence presented during the trial.

14 Now the defendants have pled not
15 guilty to these indictments. And that plea puts the
16 burden on the State to prove the Defendants guilty.

17 A person charged with committing
18 a criminal offense in South Carolina is never required to
19 prove himself or herself innocent.

20 I charge you that it is -- that
21 this is an important rule of law that:

22 The Defendant in a criminal
23 trial, no matter what the seriousness of the trial -- or
24 the charge may be, will always be presumed to be innocent
25 of the crime for which the indictment was issued unless

1 guilt has been proved by evidence satisfying you of that
2 guilt beyond a reasonable doubt.

3 This presumption of innocence
4 does not end when you begin your deliberations; but it
5 accompanies the defendant throughout the trial until you
6 reach a verdict of guilt based on the evidence satisfying
7 you of that guilt beyond a reasonable doubt.

8 The presumption of innocence is
9 like a robe of righteousness placed about the shoulders
10 of -- uh -- the Defendant which remains with the
11 Defendant until it has been stripped from the Defendant
12 by evidence satisfying you of the Defendants' guilt
13 beyond a reasonable doubt.

14 The presumption of innocence is
15 not mere legal theory. It is not just a legal phrase.

16 It is a substantial right to
17 which every Defendant is entitled unless you, the jury,
18 are satisfied from the evidence of the Defendant's guilt
19 beyond a reasonable doubt.

20 Now, the State has the burden of
21 proving the Defendant's guilt beyond a reasonable doubt.

22 Some of you may have served as
23 jurors in a civil case, where you were told that it is
24 only necessary to prove that a fact is more likely true
25 than not true; such as: by the greater weight or

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1 preponderance of the evidence.

2 In criminal cases, the State's
3 proof must be more powerful than that. It must be proof
4 beyond a reasonable doubt.

5 Proof beyond a reasonable doubt
6 is:

7 Proof that leaves you firmly
8 convinced of the Defendant's guilt.

9 There are very few things in
10 this world that we know with absolute certainty. And in
11 criminal cases, the law does not require proof that
12 overcomes every possible doubt.

13 If, based on your consideration
14 of the evidence, you are firmly convinced that the
15 Defendants are guilty of the crime charged, you must find
16 the Defendants guilty.

17 A reasonable doubt is the kind
18 of doubt that would cause a reasonable person to hesitate
19 to act.

20 It is a doubt for which you
21 could give a reason.

22 If on the other hand, you think
23 there is a real possibility that a defendant is not
24 guilty, you must give the Defendant the benefit of the
25 doubt and find him or her not guilty.

1 Now, there are two types of
2 evidence which are generally presented during a trial:

3 Direct evidence and
4 circumstantial evidence.

5 Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a
7 fact, such as an eyewitness.

8 It is evidence which immediately
9 establishes the main fact to be proved.

10 Circumstantial evidence is proof
11 of a chain of facts and circumstances indicating the
12 existence of a fact.

13 It is evidence which immediately
14 establishes collateral facts from which the main fact may
15 be inferred.

16 Circumstantial evidence is based
17 on inference and not on personal knowledge or
18 observation.

19 The law makes no -- absolutely
20 no distinction between the weight or value to be given to
21 either direct or circumstantial evidence. Nor is a
22 greater degree of certainty required of circumstantial
23 evidence than of direct evidence.

24 You should weigh all the
25 evidence in the case.

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1 After weighing all the evidence,
2 if you are not convinced of the guilt of the Defendant
3 beyond a reasonable doubt, you must find the Defendants
4 not guilty.

5 Now, the indictments charge the
6 Defendants with burglary in the first degree.

7 I remind you that the fact that
8 the Defendants were arrested, charged, and indicted in
9 this case, is not evidence in this case and cannot be
10 considered by you as evidence of guilt in this case; nor
11 does it create any presumption or inference of guilt.

12 These documents, the
13 indictments, are simply the formal written instruments
14 which contain the charges made against the Defendants.

15 It is the formal document by
16 which this case -- or these cases are brought into this
17 court.

18 I charge you that there are two
19 Defendants in this case, each of whom is charged with
20 burglary second degree.

21 The case of each Defendant and
22 the evidence and the law concerning that Defendant should
23 be considered separately and individually.

24 Your verdict does not have to be
25 the same for both Defendants.

1 The fact that you may find one
2 Defendant guilty or not guilty should not control your
3 verdict as to the other Defendant.

4 Where more than one person is
5 charged with a crime, if the evidence warrants it, you
6 may convict one and acquit the other. You may acquit
7 both, or you may convict both. It will depend upon your
8 view of the testimony and evidence.

9 You must take each Defendant and
10 consider the evidence as to that Defendant and my
11 instructions to you on the law.

12 You will then write a separate
13 verdict of guilty or not guilty for each individual
14 Defendant.

15 Necessarily, you must determine
16 the credibility of witness who -- witnesses who have
17 testified in this case.

18 Credibility simply means
19 believability.

20 It becomes your duty as jurors
21 to analyze and to evaluate the evidence and determine
22 which evidence convinces you of its truth.

23 In determining the believability
24 of witnesses who have testified in this case, you may
25 believe one witness over several witnesses, or several

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1 witnesses over one witness.

2 You may believe a part of the
3 testimony of a witness and reject the remaining part of
4 the testimony of that same witness.

5 You may believe the testimony of
6 a witness in its entirety, or reject the testimony of a
7 witness in its entirety.

8 You may consider whether any
9 witness has exhibited to you any interest, bias,
10 prejudice, or other motive in this case.

11 You may often -- also consider
12 the appearance and manner of a witness while on the
13 witness stand.

14 Now, you have heard evidence
15 that the Defendant Ms. Pipher was convicted of a crime
16 other than the one for which she is now on trial.

17 This evidence may not be
18 considered by you, if you concluded -- I'm sorry.

19 This evidence may be considered
20 by you, if you conclude it is true, only in deciding
21 whether that Defendant's testimony is believable, and for
22 no other purpose.

23 You must not consider the
24 Defendant's prior record as any evidence of the
25 Defendant's guilt of the charge we are trying here today.

1 I instruct you and emphasize
2 that:

3 The fact that the Defendant Mr.
4 Pipher did not testify is not a factor to be considered
5 by you in any way in your deliberation and in your
6 consideration on the question of the guilt or the
7 innocence of the Defendant.

8 It must not be considered by you
9 in any manner whatsoever.

10 A Defendant has the
11 constitutional right to remain silent. And the assertion
12 of this right must not be considered by you in your
13 deliberations.

14 I repeat:

15 Under your oath, you are to draw
16 no conclusions whatsoever from the fact that the
17 Defendant in this case did not testify.

18 The fact that this Defendant did
19 not testify should not even be discussed in the jury
20 room.

21 The burden of proof, as I have
22 stated to you, is on the State.

23 The Defendant is not required to
24 prove his innocence or her innocence.

25 The proof remains -- The burden

1 of proof remains on the State to prove guilt beyond a
2 reasonable doubt.

3 Now, to prove second degree
4 burglary, the State must prove beyond a reasonable doubt
5 that the Defendant entered a building without consent
6 with the intent to commit a crime in the building.

7 A building is any structure,
8 vehicle, watercraft, or aircraft where any person lodges
9 or lives; or where people assemble for the purposes of
10 business, government, education, religion, entertainment,
11 public transportation, or public use; or where goods are
12 stored.

13 Finally, the State must prove
14 beyond a reasonable doubt that:

15 The Defendant entered or
16 remained in the building in the nighttime.

17 Nighttime is the period between
18 sunset and sunrise during which there is not enough
19 daylight to recognize a person's face, except by
20 artificial light or moonlight.

21 If you find that the Defendant
22 (sic) has failed to prove beyond a reasonable doubt that
23 the Defendant committed second degree burglary, you may
24 consider whether the State has proved beyond a reasonable
25 doubt that the Defendant committed third degree burglary.

1 Third degree burglary includes
2 all the elements of second degree burglary of a building
3 except the circumstances of aggravation, that
4 being: entry in the nighttime.

5 Now, the Defendant has raised
6 the defense of mistake of fact.

7 The State must prove beyond a
8 reasonable doubt that the Defendant intended to commit a
9 crime upon entering the building.

10 However, where a person, in
11 ignorance or honest mistake as to a fact, commits an act
12 which, but for the mistake, would be a crime, there is no
13 criminal intent; and the person cannot be guilty of the
14 crime.

15 An example of a possible mistake
16 of fact -- uh -- fact would be:

17 If I took someone's umbrella,
18 mistakenly thinking that it was my umbrella, that is an
19 example of a possible mistake of fact.

20 Now, there are two possible
21 verdicts which you may find in each indictment in this
22 case. That is:

23 Guilty or not guilty.

24 And there is no significance
25 whatsoever in the order which I state these possible verd

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1 -- verdicts. It's simply that one must be stated first.

2 Ladies and gentlemen, your
3 verdict must be a unanimous verdict.

4 Mr. Foreperson, when the jury
5 agrees on a verdict, you will write the verdict on the --
6 uh -- verdict form.

7 I'm not going to send in the
8 indictment. I'm going to send in a verdict form.

9 And sign your name as
10 Foreperson.

11 Then, you will knock on the door
12 and inform the Bailiff that you have reached a verdict at
13 that time; and we will receive you back into the
14 courtroom.

15 Now, I'm going to ask you to
16 return to your jury room; but not begin deliberations.
17 There may be further matters that I have to instruct you
18 on the law.

19 If that is the case, I will
20 bring you back into the courtroom and give you a proper
21 instruction.

22 However, if that is not
23 necessary, what I will do is:

24 I will have the Bailiff bring
25 you the -- uh -- I think that we had one exhibit -- uh --

1 perhaps in this trial -- bring you the exhibit and -- and
2 form -- and the charge on the law in your verdict form.
3 And that will be your signal to begin your deliberations.

4 Is that clear?

5 FOREPERSON VANMARTER:

6 (Nods in the affirmative.)

7 THE COURT:

8 All right.

9 So you just wait until I have,
10 either brought you back and given you further
11 instructions, or until I send into you, the exhibits, the
12 charge on the law, and the verdict form.

13 And let me -- uh -- tell you
14 something about your verdict forms.

15 I have provided a different
16 verdict form for each Defendant, as my instructions would
17 require.

18 The verdict form begins with a
19 sentence that says:

20 As to the charge of burglary in
21 the second degree, we the jury unanimously find the
22 Defendant -- and you will circle one of the two verdicts.

23 And again, we have guilty and
24 not guilty; no significance whatsoever to the order in
25 which they're listed. We just have to list -- list them

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1 in some order.

2 Under that, you will see a
3 sentence that says:

4 If you found the Defendant
5 guilty of burglary in the second degree -- and this is
6 certainly not a suggestion as to what you should do --
7 stop your deliberations here.

8 If you find the Defendant guilty
9 of burglary in the second degree, that's where you stop.

10 If you have found the Defendant
11 not guilty of burglary in the second degree, you may
12 consider the charge of burglary in the third degree.

13 And you can move down to there.

14 The point I'm trying to make is:

15 You could not find the Defendant
16 guilty of second degree and third degree.

17 You could find them not guilty
18 as to both. But one is a lesser included offense of the
19 other. And I think that's clear on our verdict form;
20 okay.

21 Now if you would, Mr. Roth, take
22 this jury into their jury room.

23 Uh -- We'll be a few minutes
24 before I am ready to send this back into you; or, I may
25 again want to bring you back out. We'll see; all right.

1 Mr. VanMarter, if you would,
2 take your jury in your jury room.

3 (WHEREUPON: The jury empanelled
4 in the case withdrew from the courtroom at 11:25 AM, June
5 16, 2010; and was no longer present during the following
6 proceedings.)

7 THE COURT:

8 All right.

9 Let's -- uh -- first of all take
10 up the matter of additions or deletions from the charge.

11 Mr. O'Sullivan?

12 MR. O'SULLIVAN:

13 None from the State, Your Honor.

14 THE COURT:

15 Mr. Frederick? Mr. Floyd?

16 MR. FLOYD:

17 Judge, just in regard to third
18 degree burglary, when you were charging, the first
19 sentence you -- uh -- said Defense -- Defendant rather
20 than the State in:

21 If you find the State.

22 You said:

23 If you find the Defendant has
24 failed to prove beyond a reasonable doubt.

25 THE COURT:

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1 Okay.

2 I'll certainly bring -- If
3 that's what I said, I'll bring them back in and clarify
4 that.

5 Uh -- I did not mean to read it
6 that way.

7 MR. FREDERICK:

8 And Judge, I -- I caught that
9 also; but I -- I don't think it's necessary to bring them
10 back in.

11 MR. FLOYD:

12 They're going to have it written
13 down, aren't they, Judge.

14 THE COURT:

15 Yeah, they have it written.

16 MR. FREDERICK:

17 They'll have the written
18 instructions.

19 THE COURT:

20 And it clearly says that in the
21 writing.

22 Would that satisfy you, Mr.
23 Floyd?

24 MR. FLOYD:

25 Yes sir. I was just bringing

1 it to your attention --

2 THE COURT:

3 Okay. All right.

4 MR. FLOYD:

5 -- to handle however you --

6 THE COURT:

7 And I think this jury would
8 reasonable understand that.

9 Okay.

10 Then in that regard, we'll put

11 Mr. -- uh -- we'll -- we'll get the charge. We'll get
12 the verdict forms, and we'll -- Was there more than one
13 exhibit?

14 COURT REPORTER:

15 Only a Court's Exhibit about
16 that juror, Your Honor.

17 THE COURT:

18 Okay. Well, I'm not going to
19 put that. But wasn't there an -- an exhibit -- The
20 receipt was never put in?

21 COURT REPORTER:

22 Yes. The receipt was put in.

23 That's the only --

24 THE COURT:

25 All right. That is an exhibit?

25 WHEREUPON: Mr. Floyd examines

1 the verdict forms.

2 MR. FLOYD:

3 You did good.

4 THE COURT:

5 All right. Yes, that charge.

6 Uh -- Have Gene mark that charge as Court's Exhibit B --

7 or -- or --

8 COURT REPORTER:

9 Two.

10 THE COURT:

11 -- or two.

12 COURT REPORTER:

13 Court's Exhibit 2.

14 WHEREUPON: THE JUDGE'S CHARGE

15 WAS MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT

16 NUMBER 2.

17 WHEREUPON: The jury was given

18 Defendant's Exhibit Number 1 and Court's Exhibit Number 2

19 and told to begin their deliberations at 11:29 AM, June

20 16, 2010.

21 THE COURT:

22 All right.

23 Now, put your mo -- Are you

24 joining in these, Mr. Floyd?

25 MR. FLOYD:

DEFENSE MOTIONS BEFORE THE VERDICT

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1 Yes sir. I was.

2 I wanted to put on the record, I

3 -- I was about to jump at one point when Mr. Frederick
4 did.

5 THE COURT:

6 Okay.

7 MR. FLOYD:

8 And I didn't both of us jumping
9 up in front of the jury. But I do join in with his
10 motions.

11 THE COURT:

12 All
13 right. I'll let you join in his mo -- his -- his
14 objections.

15 All right, Mr. Frederick, I'll
16 hear you fully on your objections.

17 MR. FREDERICK:

18 Just for further clarification
19 from what I said during the closing argument:

20 Judge, the prosecutor was
21 telling the jury what the Judge -- the Judge's view of
22 the facts were.

23 And there's no way that that was
24 appropriate in closing argument to the jury.

25 THE COURT:

1 Well, if they -- if -- I don't
2 think he did. But if he did, it would be advantageous to
3 you.

4 Uh -- What he was saying was
5 essentially acknowledging what Mr. Floyd had said -- and
6 I think you said too -- that that was no longer a charge
7 before them; that The Court had dismissed or ended the
8 charge for burglary first degree; and that it was going
9 to proceed as burglary in the second degree or possibly
10 third degree.

11 I mean, I don't see where
12 there's any prejudice. I think it's fair comment.

13 It was certainly raised during
14 -- uh -- the fact that we were not going to have a
15 burglary in the first degree.

16 It was raised during closing by
17 the Defense.

18 I think it's fair comment; okay.

19 All right, sir.

20 MR. O'SULLIVAN:

21 Could I -- Can I just say one
22 thing about that, Judge?

23 THE COURT:

24 Yeah.

25 MR. O'SULLIVAN:

DEFENSE MOTIONS BEFORE THE VERDICT

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1 I -- I specifically steered
2 clear of your specific ruling on that. I did not get
3 into what was your cause for doing it.

4 THE COURT:

5 I understand that.

6 MR. O'SULLIVAN:

7 I just want to put it on the
8 record. I -- What I did was:

9 Simply state that you had made
10 the ruling and we were not going forward on a burglary
11 first.

12 And -- And the reason why I
13 specified to them:

14 It's not because no one was
15 living in the house;

16 is because that was something I
17 said to them in my opening. And that was a true fact.

18 But I don't believe I did
19 comment on your view of the facts.

20 THE COURT:

21 All right.

22 And I quite frankly don't think
23 it would've been an error if you had said:

24 The judge has told us this was
25 not a dwelling. We made a mistake.

1 It's essentially agreeing with
2 what the Defense said. They made a mistake. They
3 charged him wrong.

4 You agreed with it; or you --
5 you told the jury that The Court did.

6 MR. O'SULLIVAN:

7 Right.

8 THE COURT:

9 All right. What else?

10 MR. FREDERICK:

11 Nothing further.

12 THE COURT:

13 Mr. Floyd?

14 MR. FLOYD:

15 No, that's all, Judge.

16 THE COURT:

17 Okay. Thank you very much. MR.

18 O'SULLIVAN:

19 Thank you.

20 THE COURT:

21 We'll wait on the jury.

22 All right, gentlemen, thank you
23 very much. I enjoyed it. Uh -- We'll just wait and see
24 what we got.

25 MR. O'SULLIVAN:

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 Thank you, Judge.

2 (WHEREUPON: The court was
3 declared in recess at 11:31 AM, June 16, 2010.)

4 WHEREUPON: We were informed at
5 2:14 that the jury had reached a verdict.

6 (WHEREUPON: The court was
7 called to order for this particular matter again at 2:22
8 PM, June 16, 2010; and all pertinent parties, along with
9 their counsel, were back and present in the courtroom.)

10 THE COURT:

11 All right.

12 Mr. O'Sullivan, I'm -- uh --
13 informed that we've got a verdict. We're going to see.

14 MR. O'SULLIVAN:

15 Yes, Your Honor.

16 (WHEREUPON: The jury empanelled
17 in the case was escorted back into the courtroom at 2:23
18 PM, June 16, 2010; and was in fact present during the
19 following proceedings.)

20 THE COURT:

21 All right.

22 Mr. Foreman, have you reached a
23 verdict?

24 FOREPERSON HAMMERER:

25 Yes, Your Honor.

1 THE COURT:

2 And it was a -- Was it a
3 unanimous verdict?

4 FOREPERSON VANMARTER:

5 Yes sir.

6 THE COURT:

7 And was it unanimous as to both
8 Defendants?

9 FOREPERSON VANMARTER:

10 Yes Your Honor.

11 THE COURT:

12 All right. Madame Clerk, if you
13 would, receive the verdict.

14 Let me see it first. Thank you.

15 THE COURT:

16 All right. You may publish the
17 verdict.

18 CLERK:

19 State of South Carolina versus
20 Lewis Edward Pipher:

21 As to the charge of burglary
22 second, we the jury unanimously find the Defendant
23 guilty.

24 That's it, isn't it.

25 THE COURT:

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 And there's a second one for the
2 other Defendant.

3 CLERK:

4 State of South Carolina versus
5 Shelly Hines Mauney Pipher:

6 As to the charge of burglary
7 second degree, we the jury unanimously find the Defendant
8 guilty.

9 Signed by the Foreman --

10 THE COURT:

11 Mr. VanMartin, I believe, isn't
12 it?

13 CLERK:

14 Yes, it is.

15 FOREPERSON VANMARTER:

16 Marter.

17 THE COURT:

18 Marter. Mr. VanMarter.

19 CLERK:

20 Ladies and gentlemen of the
21 jury, is this your verdict?

22 And if so, signify by raising
23 your right hands.

24 WHEREUPON: All jurors raised
25 their right hand to signify that was their unanimous

1 verdict.

2 THE COURT:

3 Let the record reflect that all
4 the jurors responded affirmatively.

5 All right.

6 Mr. -- uh -- Frederick, Mr.
7 Floyd, is there a request for individual polling?

8 MR. FREDERICK:

9 Yes.

10 THE COURT:

11 All right. Would you poll the
12 jury individually.

13 CLERK:

14 When I call your name, would you
15 stand, please.

16 Uh -- Number 152, Adalyn
17 Harrelson.

18 WHEREUPON: This juror stood as
19 requested by the Clerk.

20 CLERK:

21 Is this your verdict and still
22 your verdict?

23 JUROR HARRELSON:

24 Yes ma'am.

25 CLERK:

1 You may be seated.
2 Number 130, Shannon Genda.
3 WHEREUPON: This juror stood as
4 requested by the Clerk.
5 CLERK:
6 Or Gender -- excuse me.
7 Is this your verdict and still
8 your verdict?
9 JUROR GENDER:
10 (Nods in the affirmative.)
11 CLERK:
12 Number 206, Kathleen Karr.
13 WHEREUPON: This juror stood as
14 requested by the Clerk.
15 CLERK:
16 Is this your verdict and still
17 your verdict?
18 JUROR KARR:
19 Yes.
20 CLERK:
21 284, Diane Porter.
22 WHEREUPON: This juror stood as
23 requested by the Clerk.
24 CLERK:
25 Is this your verdict and still

1 your verdict?

2 JUROR PORTER:

3 Yes.

4 CLERK:

5 377, Raymond J. VanMarter.

6 WHEREUPON: This juror stood as
7 requested by the Clerk.

8 CLERK:

9 Is this your verdict and still
10 your verdict?

11 FOREPERSON VANMARTER:

12 Yes ma'am.

13 CLERK:

14 105, Joseph Esposito.

15 WHEREUPON: This juror stood as
16 requested by the Clerk.

17 JUROR ESPOSITO:

18 Esposito.

19 CLERK:

20 Is this your verdict and still
21 your verdict?

22 JUROR ESPOSITO:

23 Yes ma'am.

24 CLERK:

25 239k, Troy McCollum.

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1 WHEREUPON: This juror stood as
2 requested by the Clerk.

3 CLERK:

4 Is this your verdict and still
5 your verdict?

6 JUROR MCCOLLUM:

7 (Nods in the affirmative.)

8 CLERK:

9 Number 285, John W. Poston, Jr.

10 WHEREUPON: This juror stood as
11 requested by the Clerk.

12 CLERK:

13 Is this your verdict and still
14 your verdict?

15 JUROR POSTON:

16 Yes ma'am.

17 CLERK:

18 Number 370, Jimmy Todd.

19 WHEREUPON: This juror stood as
20 requested by the Clerk.

21 CLERK:

22 Is this your verdict and still
23 your verdict?

24 JUROR TODD:

25 Yes ma'am.

1 CLERK:

2 Number 300, Pamela Richardson.

3 WHEREUPON: This juror stood as
4 requested by the Clerk.

5 CLERK:

6 Is this your verdict and still
7 your verdict?

8 JUROR RICHARDSON:

9 (Nods in the affirmative.)

10 CLERK:

11 336, Priscilla Smalls.

12 WHEREUPON: This juror stood as
13 requested by the Clerk.

14 CLERK:

15 Is this your verdict and still
16 your verdict?

17 JUROR SMALLS:

18 CLERK:

19 And Number 63, Brian J. Colon.

20 WHEREUPON: This juror stood as
21 requested by the Clerk.

22 CLERK:

23 Is this your verdict and still
24 your verdict?

25 JUROR CONLON:

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 Yes ma'am.

2 CLERK:

3 The jury's been polled.

4 THE COURT:

5 All right.

6 Ladies and gentlemen of the
7 jury, I want to thank you so much for your service.

8 As -- uh -- I think the Clerk
9 has indicated to you, we've ordered your lunch. It
10 should be here soon. I'm going to let you go back to
11 your jury room.

12 I hope they have it for you in
13 just a few minutes and that you enjoy your lunch.

14 Let me tell you that you have
15 performed a -- a -- a significant service -- uh -- by
16 sitting on a jury this week.

17 I hope that it was an
18 informative and an educational experience for you.

19 Most people who sit on juries do
20 get that -- uh -- uh -- feeling from being on jury
21 service. They certainly have a greater understanding of
22 how important this system is once they have served.

23 Uh -- Again, thank you very
24 much. I hope I see you again.

25 If you see me out and about in

1 the community, please remind me that you were my -- my
2 jury.

3 I have quite a few that come to
4 -- through -- and I -- I don't remember a lot of them.
5 But I always like it when you -- when I do -- uh --
6 encounter a juror and they remember me.

7 And -- And I love to talk with
8 you about your experience.

9 Thank you very much.

10 Uh -- Mr. Roth, take them back
11 to their jury room and make sure that they get their
12 lunch and that they are taken care of.

13 BAILIFF:

14 Yes sir.

15 (WHEREUPON: The jury empanelled
16 in the case withdrew from the courtroom at 2:28 PM, June
17 16, 2010; and was no longer present during the following
18 proceedings.)

19 THE COURT:

20 Okay.

21 Mr. Floyd, Mr. -- uh --
22 Frederick, would you like to review the form of the
23 verdict?

24 MR. FLOYD:

25 Yes sir.

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 THE COURT:

2 Any objection as to the form,

3 Mr. Floyd?

4 MR. FLOYD:

5 No.

6 THE COURT:

7 Uh -- Mr. Frederick, you rely on

8 Mr. Floyd's judgment?

9 MR. FREDERICK:

10 I do. Thank you very much.

11 THE COURT:

12 All right. Thank you very

13 much.

14 Motions?

15 MR. FLOYD:

16 Yes sir.

17 We would move for a new trial;

18 or -- or in the alternative for an order and arrest of

19 judgment -- uh -- the criminal equivalent of a JNOV

20 motion.

21 Uh -- We make that on the -- uh

22 -- objections made during the trial, rulings during the

23 trial; and we don't believe that the conforms with the

24 verdict.

25 THE COURT:

1 All right.

2 MR. FLOYD:

3 Thank you.

4 THE COURT:

5 Mr. -- uh -- Frederick, you want
6 to join his motion, or do you want to add additional
7 grounds?

8 MR. FREDERICK:

9 I join in his motion, Judge.

10 THE COURT:

11 All right, gentlemen -- uh --
12 there was -- uh -- uh -- significant evidence both ways
13 in this trial.

14 Uh -- There was certainly
15 evidence from which the jury could have reasonably have
16 inferred -- uh -- that -- uh -- your clients committed
17 this act that supports the finding of guilt beyond a
18 reasonable doubt. I believe my rulings were correct.

19 Uh -- I -- uh -- will
20 respectfully deny your motions.

21 You didn't need -- want to be
22 heard on that, Mr. O'Sullivan?

23 They basically addressed my
24 rulings.

25 MR. O'SULLIVAN:

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 (Nods in the negative.)

2 THE COURT:

3 Okay.

4 All right. Any reason why
5 sentence should not be imposed?

6 MR. FLOYD:

7 None, Judge.

8 THE COURT:

9 Okay.

10 Mr. O'Sullivan, I'll hear from
11 you and the victims if you -- uh -- if they choose to
12 speak.

13 MR. O'SULLIVAN:

14 Your Honor, I've -- uh -- I've
15 got some sentencing sheets.

16 THE COURT:

17 You've have some sentencing
18 sheets for me?

19 Thank you.

20 All right.

21 MR. O'SULLIVAN:

22 Your Honor, as you're aware, the
23 victim is present. She does not wish to speak at this
24 point in time.

25 Uh -- I guess we'll take them

1 one by one.

2 Uh -- Certainly -- uh -- Mr.
3 Pipher as notified -- as -- uh -- noticed, not only by
4 his NCIC, but the certified convictions that we talked
5 about during the trial, has:

6 a prior burglary conviction, and
7 a prior attempted burglary conviction;
8 a prior robbery conviction.

9 Uh -- In addition to that --

10 THE COURT:

11 And there were several other,
12 were there not?

13 MR. O'SULLIVAN:

14 Yeah. He's got:
15 conspiracy, petty larceny -- uh
16 -- another petty larceny;
17 driving under the influence;
18 possession of contraband;
19 fraudulent check;
20 another driving under the
21 influence.

22 Uh -- Your Honor, I think that
23 -- uh -- arguably -- and I understand your ruling and I'm
24 -- I'm here to dispute that -- but arguably this could
25 have been a burglary first because of his prior burglary

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 convictions.

2 I think based on his record --
3 uh -- I think a 15 year sentence is in order.

4 I think that -- uh -- we have --
5 the statute allows for a 15 year sentence for this
6 offense.

7 It's hard to think of a worse
8 burglary second violent than this thing, as it really
9 arguably could be a first.

10 Uh -- He's got three prior
11 serious crimes he's been convicted of in addition to a
12 number of other crimes.

13 Uh -- Your Honor, I -- I further
14 note that -- uh -- especially under the new -- uh --
15 sentencing guidelines, that it states for burglary second
16 pursuant to Subsection B, which is what this would be,
17 its punishable by not more than 15 years, provided that
18 no person convicted is eligible for parole in less than
19 one third.

20 And with the State of DOT being
21 what it is, one third is probably all that's going to be
22 served on this --

23 THE COURT:

24 Right.

25 MR. O'SULLIVAN:

1 Uh -- The State would --

2 THE COURT:

3 Well actually, this is the --
4 the violent clause.

5 Although it didn't involve a --
6 a dwelling, it's my understanding that although the
7 statute says one quarter, the -- uh -- for both sections,
8 the case law has overridden -- uh -- is -- it says that
9 the -- the new statute, or the statute providing that
10 one was violent and one what not violent, has repealed
11 the statute saying that pro -- uh -- the pro -- parole
12 would be available after a quarter by implication.

13 MR. O'SULLIVAN:

14 Well -- uh --

15 THE COURT:

16 So I -- I think that it's one
17 third.

18 MR. O'SULLIVAN:

19 Yes, Your Honor. That's right.
20 It's minimum of one third, which would be five years on a
21 15 year sentence.

22 THE COURT:

23 I think it's one third period.

24 Okay. All right.

25 MR. O'SULLIVAN:

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 And Your Honor, so for Lewis
2 Edward Pipher, the State would request a maximum 15 year
3 sentence.

4 THE COURT:

5 And as to Mrs. Pipher, I believe
6 that her record was minimal?

7 Is that correct?

8 MR. O'SULLIVAN:

9 She has a profession of
10 marijuana, criminal domestic violence, assault while
11 resisting arrest.

12 Another criminal domestic
13 violence;
14 a driving under the influence;
15 a malicious damage;
16 providing false information; and
17 a CDV second offense, Your
18 Honor.

19 THE COURT:

20 Okay.

21 MR. O'SULLIVAN:

22 Uh -- Certainly, we feel a
23 lesser sentence would be appropriate for Mrs. Mauney.

24 THE COURT:

25 Okay. All right.

1 Mr. Floyd, I'll hear from you.

2 MR. FLOYD:

3 May it please The Court, Your
4 Honor?

5 The majority of the troubles
6 that Mr. O'Sullivan addressed are over 10 years old.

7 She has got some convictions --
8 uh -- within the last 10 years. You've heard about them,
9 really when we were addressing her ability to testify.

10 She is 39 years old, Judge.

11 Back in November of 2009, she
12 had open heart surgery -- uh -- bypass -- double bypass.

13 As a result of this -- uh -- She
14 had just recently purchased a home.

15 When this occurred -- uh -- she
16 ended up losing the home; all of her -- all of the stuff
17 that was in it while she was incarcerated.

18 Uh -- The truck that was
19 allegedly used in this was impounded and they lost it
20 too.

21 She does have three children --
22 uh -- also two grandchildren in this area.

23 She is working.

24 Uh -- She does housecleaning
25 work.

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 Judge, we would ask you for what
2 leniency you can give in the sentencing.

3 THE COURT:

4 Who took care of these children
5 while she and her husband were incarcerated?

6 DEFENDANT MAUNEY:

7 My mother.

8 MR. O'SULLIVAN:

9 Her mother.

10 THE COURT:

11 All right.

12 All right; let me hear from Mr.

13 Frederick.

14 MR. FLOYD:

15 And, Judge, actually this was a

16 -- an unoccupied filing.

17 THE COURT:

18 I understand. I -- It was not a
19 dwelling, Mr. Floyd. I've --

20 MR. FLOYD:

21 Yes sir. Yes sir.

22 THE COURT:

23 I've made that ruling.

24 MR. FLOYD:

25 Yes sir.

1 THE COURT:

2 It was not a dwelling. Uh --

3 And that's the reason this is not burglary in the first
4 degree; okay.

5 MR. FLOYD:

6 Yes sir. I'm -- I've --

7 THE COURT:

8 All right. Mr. -- uh --

9 Frederick?

10 MR. FREDERICK:

11 Judge -- uh -- Lewis's prior
12 convictions, most of them -- not all of them, but most of
13 them are also more than 10 years old.

14 The burglary conviction, as we
15 saw with the certified -- uh -- convictions that were
16 handed up, was about 20 old.

17 Judge, he's 39 years old. He's
18 40 years old.

19 Uh -- These two were -- were
20 just married about a month ago. They have been trying to
21 make a life together.

22 As far as the severity of the
23 offense, I think it's a bit overstated. Uh -- They
24 picked up a washer and dryer from an empty house.

25 He has a 10th grade education.

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 But he went back to school and he got his GED.

2 He went to community college for
3 a while.

4 He is a member of a construction
5 unit. He's certified in asbestos removal.

6 He works -- uh -- full-time.
7 He's working at Prime South of the Carolinas. What he
8 does is -- uh -- condo restoration.

9 Up until the -- the day the
10 trial started, he's worked in his job full-time.

11 Judge, if you'll give me just
12 one second.

13 There is some people that
14 brought us letters speaking on behalf of Lewis when they
15 found out what was happening.

16 Uh -- Shirley Patrick has known
17 Lewis for four to five years.

18 A Marie Feaster (? phonetic)
19 that's known him for some time.

20 Jonathan Roy, who's his boss at
21 Prime South; the man that he works for.

22 And Darrell Centerprice (?
23 phonetic) also wrote us --

24 THE COURT:

25 All right.

1 MR. FREDERICK:

2 -- some letters.

3 THE COURT:

4 If you would, pass those up.

5 MR. FREDERICK:

6 Michael, I don't have copies of
7 these.

8 MR. O'SULLIVAN:

9 I'm sure that's fine. Talking
10 about character?

11 MR. FREDERICK:

12 There's nothing out of the
13 ordinary.

14 MR. O'SULLIVAN:

15 They're fine.

16 THE COURT:

17 All right. Let me see those.

18 Okay.

19 MR. FREDERICK:

20 Judge, his family lived here at
21 the beach, in addition to Shelly.

22 He's got the support of his
23 family. His father, who has met with me numerous times,
24 is out of town today.

25 He had to travel to New York or

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 he would have been here.

2 THE COURT:

3 All right.

4 Mr. Floyd, would your client
5 like to -- uh -- would she like to say anything to The
6 Court?

7 DEFENDANT SHELLY MAUNEY PIPHER:

8 I'd like to start off by
9 apologizing to The Court and to the victims.

10 When I purchased this washer and
11 dryer, I had no intent of harming anyone. I was just led
12 to believe that the washer and dryer belonged to this
13 gentleman's sister. And I was in need of a washer, so I
14 purchased it.

15 I meant no harm at all
16 whatsoever to the victims -- to -- uh -- to the -- to the
17 lady that was sick and on bed rest.

18 Uh -- I apologize to them for
19 any inconvenience that me and my husband have caused
20 them; any heartache that we brought to their family.

21 Your Honor, we have really tried
22 to bring our life together over this.

23 It was a mistake that we
24 purchased something from an individual. We should have
25 continued looking and bought from someone professional.

1 But we just have married a month
2 ago. Uh -- We've been together for four years.

3 We have gentleman and
4 grandchildren that need us; that love us.

5 We're not bad people, just
6 because we had been in trouble before.

7 I go to church. Uh -- And --
8 And we try to live right, you know.

9 Uh -- And I ask that you be as
10 lenient as possible with me and my husband both.

11 We would -- We don't want to go
12 to prison, because I feel that what we -- what happened
13 was a huge mistake. And I do feel sorry for the family
14 that we have upset over this.

15 And like I said, just be as
16 lenient as possible, Your Honor.

17 I don't know if probation's in
18 line for me and my husband; if there's something that you
19 would consider for us to where we could continue our
20 lives; pay restitution to the lady for the washer and
21 dryer; for -- restitution for the -- uh -- Ms. Duncan, I
22 believe is her name -- for where she had to pay the
23 gentleman to pick the washer and dryer up and reinstall
24 it.

25 Community service? Anything to

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 serve the -- the County, the State.

2 We just really want to return
3 back home to our family and love our children; make sure
4 that they get the education they need; and continue on
5 with our lives.

6 Thank you.

7 THE COURT:

8 Thank you.

9 Mr. Pipher, you like to make a
10 statement?

11 DEFENDANT LEWIS PIPHER:

12 Yes sir.

13 I know a lot of this -- what
14 you're going to sentence me to has to do with my
15 background.

16 Uh -- I think my lawyer said to
17 you that most of it's been 20 years ago.

18 Uh -- Yes. I -- I did a robbery
19 when I was 19. I did a burglary when I was 19. I went
20 to prison for 3 to 9 years.

21 And I ask you, Judge, don't send
22 my wife there please. Please don't.

23 I don't care what you do to me.
24 Please don't send her; okay.

25 Thank you.

1 THE COURT:

2 All right.

3 Anything further from the State?

4 MR. O'SULLIVAN:

5 Your Honor, just to clarify:

6 Uh -- He does have a number of
7 charges that are old.

8 He -- The attempted burglary
9 conviction was from 2004; and that is not 20 years ago.

10 THE COURT:

11 Okay.

12 MR. O'SULLIVAN:

13 That's a recent --

14 THE COURT:

15 All right.

16 Anything further from Defense?

17 MR. FLOYD:

18 No sir.

19 THE COURT:

20 All right.

21 The sentence of The Court as to
22 Lewis Pipher is that:

23 He should be confined to the
24 State Department of Corrections for a period of 15 years.

25 That is suspended upon service

VERDICT, POST TRIAL MOTIONS, AND SENTENCING

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1 of 9 years, followed by 3 years probation.

2 As to Mrs. -- uh -- Shelly

3 Pipher:

4 Uh -- The sentence of This Court

5 that:

6 She be confined for a period of

7 15 years.

8 That is suspended upon service

9 of 5 years -- uh -- and followed by 5 years probation.

10 Thank you.

11 DEFENDANT SHELLEY MAUNEY PIPHER:

12 (Weeping.) Your Honor --

13 THE COURT:

14 Thank you.

15 WHEREUPON: There being nothing

16 further in this matter, these proceedings were concluded

17 at 2:44 PM, June 16, 2010.

18

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CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceedings were taken on the 15th and 16th days of June, 2010;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 28th day of October, 2010.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Lewis E. Pipher Jr. #341432)
Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

12

6426

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

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 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 Trenton Correctional Institution 84 Greenhouse Rd Trenton S.C. 29847
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Shelly Pipher - Manney
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2009-GS-2604401

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 16, 2010 Sentenced 15 years suspended to 9 years

(b) with 3 years probation following service of sentence.

12 AUG 20 AM 9:03
CLERK OF COURT

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty Found guilty at trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes / conviction
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. Court of appeal affirmed my conviction
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 7, 2012 ; affirming my conviction
- 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) Ineffective Assistance of Counsel
 (b) Bias By Trial Judge
 (c) subject matter jurisdiction

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See " Attachment A "
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Direct Appeal
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Court of Appeals
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. affirmed my conviction
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. August 7, 2012

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? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Bobby G. Frederick, Frederick Defense Firm P.O. Box 8219
- ii. Myrtle Beach SC 29578 / Kathrine H. Hudgins, Division
- iii. of Appellate Defense 1330 Lady Street Suite 401 Columbia SC 29201
- (b) the proceedings at which each such attorney represented you:
- i. Bobby G. Frederick arraignment, trial, sentencing
- ii. Kathrine H. Hudgins; Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
modification of sentence, reduction in sentence and remand conviction to lesser offense Burglary 3rd as supported by evidence or lack of.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Horry)
Lewis E. Pipher Jr.)

VERIFICATION

12

6424

I, Lewis E. Pipher Jr., 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.

Lewis E. Pipher Jr.

SWORN to and subscribed before me this 14th
day of August, 2012.

Brenda L. Williams (L.S.)
Notary Public

My Commission Expires: 3/3/2014

HORRY COUNTY
12 AUG 20 AM 9:03
CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Lewis E. Pipher Jr.

12

6426

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lewis E. Pipher Jr.
Applicant

SWORN or affirmed to and subscribed before me this

14th day of August, 2012

Brenda L. Williams
Notary Public

My Commission Expires: 3/3/2014

HORRY COUNTY
12 AUG 20 AM 9:03
MEL ABELE, JUDGE
CLERK OF COURT

"Attachment A"

Ineffective Assistance of Counsel

Page 1 of 7

The Applicant alleges counsel was ineffective which is a violation of the VI Amendment of the United States Constitution, right to effective assistance of counsel.

The Applicant alleges Counsel failed to cross-examine (3) State witnesses Eodler, officer Jeremy Crawford, Carolyn Margaret Duncan

Witness Jackie Eodler testimony did not match her statement she gave to Horry County Police on 8/31/2009. In testimony given at trial, Jackie Eodler states that she went outside and was blinded by some truck lights. In Jackie Eodler statement to Police, she says that she walked outside and saw a truck in a yard across the way. Counsel failed to attack this inconsistency. Furthermore, the police arrest report states that Jackie Eodler observed a rear door open and a red truck that did not belong. (S.C App. 2005 Testimony on prior statement made by witness. State v. Crawford 608 S.E.2d 886, 362 S.C 627) (State v. Anders 503 S.E. 2d 443, 331 S.C 474) S.C. 1998 Admission of prior inconsistent statement of witness) (Ankjer v. Spagnoli 352 S.E. 2d 503 291 S.C. 165) Every witness under cross-examination may be asked whether he/she has made any former statement relative to subject matter of action and inconsistent with his/her

HORRY COUNTY
12 AUG 20 AM 9:00
CLERK OF COURT

present testimony. (State v. Stokes, 673 S.E.2d 434, 381 pg 2 of 2 SC 390) S.C. 2009. A prior inconsistent statement may be admitted as substantive evidence. When the declarant testifies at trial and is subject to cross examination Rules of Evid. Counsel failed to cross examine Jackie Eodler to provide a defense about burglary nighttime.

Officer Jeremy Crews testimony stated that he made a traffic stop at or around 9:00 PM. Jackie Eodler testified that she chased the alleged suspects for approximately 30 minutes which would have put the alleged burglary around 8:30 pm. This is crucial due to the fact the Applicant was convicted of Burglary 2nd degree, with nighttime as an aggravating circumstance. Counsel failed to argue that at or around 8:30 PM on August 31, 2009 is in fact enough daylight to contest the element of nighttime used as an aggravating circumstance. Counsel failed to cross-examine officer Jeremy Crews and failed to provide a defense about burglary, nighttime.

Counsel failed to question and/or offer any evidence of a ⁹¹¹ ~~911~~ call made by Jackie Eodler, to try and establish an accurate time line as to when the alleged burglary occurred.

Counsel failed to object to witness Duncan's Carolyn testimony in which she said her mother could not have given anyone permission to enter the residence which is hearsay. Testimonial evidence was admitted via hearsay Crawford v. Washington, 124 S.Ct 1354 (2004) Criminal Law Keys 641.13 (7) In prosecution

for criminal defense counsels failure to raise on appeal pg. 30f7
 issue of admissibility of victims daughter hearsay testimony
 which would have entitled defendant to reversal, constituted
 ineffective assistance of counsel 359 S.E. 2d 46 (Rules of Evid.
 Rule 801 (c) State v. Vick 682 S.E. 2d 275 384 S.C. 189)
 Smith v. State (S.C. 2010) 386 S.C. 562, 689 S.E. 2d 629

Counsel failed to cross-examine Carolyn Margaret Duncan,
 about knowing the defendants or ever seeing them and to
 her knowledge that anyone in her family knew them. The
 Horry County Police Arrest Report on pg 30f6 shows defendant
 Shelly Hines Mauney address as 4101 John Luther Rd Myrtle
 Beach S.C. 29588. Carolyn Margaret Duncan's address
 shown on page 40f6 of the Horry County Police Report
 is 4181 John Luther Rd. Myrtle Beach, SC 29588 Rule
 608 Evidence of Character Conduct and BIAS of Witness
 Rule 611 mode and order of interrogation and presentation

Counsel failed to cross-examine Carolyn Duncan. The defendant
 has constitutional right under Confrontation Clause to cross
 examine prosecution witnesses for bias, by showing their
 possible motivation to falsify their testimony against
 him.

Carolyn Margaret Duncan Testimony on pg. 201 of Transcripts
 she stated that she was in charge of her mother's affairs
 Counsel failed to object or cross-examine. There is no
 documents showing she had Power of Attorney in evidence.
 Keys 125 Witnesses S.C. 2000 The Deadman's statute prohibits

any interested person from testifying concerning conversations or transactions Code 1976 14-11-20 pg. 4 of 7

The Applicant asserts he was subjected to ineffective assistance of trial counsel. *Strickland v. Washington*, 464 U.S. 668 (1984)

On August 7, 2012 Applicant received a copy of the opinion of the Court of Appeals affirming his conviction. One of the Statement of issues on appeal was Did the judge err in overruling the objection to the prosecutor's improper statement to the jury that entry onto a porch can be considered entry into a building sufficient for a conviction for burglary second degree. Response from the Court of Appeals

As to whether the trial court erred in overruling Counsel's objections to the state's comment that entry on a porch could satisfy the building element of second-degree burglary: *State v. Stahlmecker*, 386 S.C. 609, 617, 690 S.E. 2d 565, 570 (2010) (For an issue to be properly preserved it has to be raised to and ruled on by the trial court. A party need not use the exact name of a legal doctrine in order for the issue to be preserved, but it must be clear the argument has been presented on that ground) (citation omitted); *State v. Head* 330 S.C. 79, 89, 498 S.E. 2d 389, 394 (Ct. App. 1997) ("In order to object to an improper statement of law, the objector must specify why it is not a correct proposition.

Even though Counsel objected to the incorrect statement of the law. Counsel did not properly preserve it. Counsel failed to specify why it wasn't a correct proposition of the law.

pg. 5 of 7

The Applicant must overcome the presumption that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement, *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989)

BIAS BY A Trial Judge

The applicant alleges that trial judge failed to sustain the objection(s) of trial counsel regarding Prosecutor's questioning of the defendants Shelly Pipher - Mauney about her conversations with her attorney. It is clear that any and all conversations between a client and their lawyer is completely confidential. Anything that the defendant discussed with her attorney about a receipt is confidential the trial judge erred in not sustaining the objection of trial counsel. *Litky v. U.S.* 510 U.S. 840 (1994); and *Arizona v. Fulminante* 499 U.S. 279 (1991)

Subject Matter Jurisdiction

The Court lacked subject matter jurisdiction in convicting the defendants with Burglary and the conviction was based on a factual basis different

than as charged. Russell v. U.S. 369 U.S. 745 (1962) pg 6 of 7
 There was no factual basis that the alleged burglary occurred in the nighttime. Burglary that occurs in the nighttime is an aggravating circumstance. In a charge of burglary it is very clear that one element involves consent must be given by the owner to enter a dwelling / building and if no consent is given, the owner can make a complaint to the authorities. In this case, there is no evidence that the owner did not give consent. The owner did not file a complaint and did not give any written or verbal statements to police. Therefore, the Criminal court was without subject matter jurisdiction to convict the Applicant. Keys 125 Witnesses Deadman's Statute
 The Deadman's statute was founded on the principle that it is against public policy to allow a witness thus interested to testify as to such matter when such testimony if untrue cannot be contradicted Code 1974 14-11-20

Indictment At a Court of General Sessions convened on Oct. 29, 2009, the Grand Jurors of Horry County present upon their oath.

That Lewis Edward Pipher JR. did in Horry County State of South Carolina, on or about August 31, 2009 enter the dwelling of Carolyn Rinean located at 2759 old Altman Rd in Conway section of Horry County without consent and with the intent to commit a crime there in and the defendant did so in the

in the nighttime, having a prior record of two or more convictions for burglary or housebreaking in violation of section 16-11-311 (A) S.C. Code of Law 1974 as amended. pg. 7 of 7

The element of second degree burglary at issue here is the requirement that the perpetrator entered a building without consent S.C. Code Ann § 16-11-312(B). The term "enter a building without consent" is statutorily defined to mean "to enter a building without the consent of the person in lawful possession S.C. Code Ann § 16-11-310 (a) Supp. 1997".

Carolyn Duncan. stated in her testimony that the House was her mother's ~~that all documents~~ There is no documents showing that Carolyn Duncan had power ~~over~~ of attorney over her mother's belongings just her hearsay.

TATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

2012-CP-26-6426

Lewis E. Pipher, Jr., 341432

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 20, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the November 2009 term of the Horry County Grand Jury for burglary (2009-GS-26-4401). Bobby Frederick, Esquire, represented Applicant.

On June 16, 2010, the Applicant was tried before the Honorable Larry B. Hyman and a jury. Judge Hyman sentenced Applicant to fifteen years imprisonment, suspended to nine years with three years probation following service of the sentence. Applicant appealed the conviction and the South Carolina Court of Appeals affirmed his conviction and sentence. The remittitur was submitted August 3, 2012.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the transcript will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Bias by trial judge"
2. "subject matter jurisdiction"
3. "Ineffective Assistance of Counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

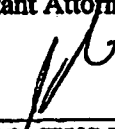
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
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11-28, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

LEWIS E. PIPHER, JR., #341432

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

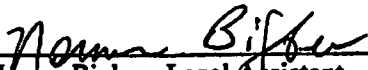
2012-CP-26-6426

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jarrold M. McPherson, Esquire
P.O. Box 2117
Murrells, Inlet, SC 29576

DATED this 28th day of November, 2012.


Norma Bigbee, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NON-JURY
2 COUNTY OF HORRY) (2012-CP-26-06426)
3 LEWIS E. PIPHER, JR.)
4)
5 vs.) TRANSCRIPT OF RECORD
6)
7 STATE OF SOUTH CAROLINA) December 16, 2013
8) Conway, S. C.
9)

10 B E F O R E:

11 HONORABLE STEVEN H. JOHN, Judge

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

13 JARROD M. McPHERSON, ESQ.
14 ATTORNEY FOR APPLICANT

15 JOSHUA L. THOMAS, ESQ.
16 ASSISTANT ATTORNEY GENERAL
17 STATE OF SOUTH CAROLINA
18 ATTORNEY FOR STATE
19
20
21

22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT
25

I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
LEWIS EDWARD PIPHER, JR.				
MR. McPHERSON	4			
MR. THOMAS		9		
BOBBY G. FREDERICK				
MR. McPHERSON	15			
MR. THOMAS		23		
APPLICANT'S SUMMATION (McPHERSON)			32	
STATE'S SUMMATION (THOMAS)			32	
COURT			32	

1 (THE FOLLOWING TAKES PLACE ON DECEMBER 16, 2013.)

2 THE COURT: The last matter then is Lewis E -- is it
3 Pipher or Pipher? How do we pronounce his name?

4 MR. McPHERSON: Pipher.

5 THE COURT: Pipher.

6 MR. McPHERSON: Pipher.

7 THE COURT: Pipher. All right. All right, sir, and --
8 I'm sorry -- you, sir, are?

9 MR. McPHERSON: I'm Jarrod McPherson. I was appointed
10 to represent ---

11 THE COURT: Represent the Applicant in this matter?

12 MR. McPHERSON: Yes sir.

13 THE COURT: All right. And is Mr. Pipher in custody,
14 or is he present?

15 MR. McPHERSON: He's ---

16 THE COURT: Okay. And they've gone to get him?

17 MR. THOMAS: Yes sir.

18 THE COURT: Very good. Okay.

19 All right. This is (2012-CP-26-06426), State of South
20 Carolina, County of Horry, versus Lewis -- I'm sorry -- Lewis
21 E. Pipher, Jr., Applicant, versus the State of South Carolina,
22 Respondent. This is the Post-Conviction Relief Applicant of
23 the Applicant, where he has alleged in his Application bias by
24 the Trial Judge, subject matter jurisdiction, and ineffective
25 assistant of counsel.

LEWIS EDWARD PIPHER, JR. - DIRECT BY McPHERSON

4

1 Is the State ready to proceed?

2 MR. THOMAS: We are ready, Your Honor.

3 THE COURT: Defense ready? Or the Applicant ready --
4 I'm sorry?

5 MR. McPHERSON: Yes, Your Honor.

6 THE COURT: All right. Be glad to hear from you, Mr.
7 McPherson.

8 MR. McPHERSON: Thank you, Your Honor. May it please
9 the Court. Call Lewis Pipher, Jr.

10 THE COURT: All right. Please come around to be sworn,
11 sir. Come around up here, be sworn.

12 LEWIS EDWARD PIPHER, JR., being
13 first duly sworn, testifies as follows:

14 DIRECT-EXAMINATION BY MR. McPHERSON:

15 THE COURT: All right, Mr. McPherson, you may proceed,
16 sir.

17 MR. McPHERSON: Thank you, Your Honor.

18 Q. Mr. Pipher, what was your original conviction?

19 A. Burglary first.

20 Q. Okay. What was the initial charge on that conviction?

21 A. Burglary second.

22 Q. How long have you been incarcerated currently?

23 A. Since June, 2010.

24 Q. Okay. And what sentence are you serving out right now?

25 A. Fifteen, suspended to nine years, with three years

1 probation.

2 Q. Okay. And tell us why you are here today.

3 A. I feel that my lawyer, Mr. Frederick, didn't do his
4 job.

5 Q. Okay. And you mean didn't do his job; what do you feel
6 he did?

7 A. I feel that he should have cross-examined some of the
8 witnesses.

9 Q. Okay. Who was your trial attorney?

10 A. Attorney?

11 Q. Your ---

12 A. Mr. Frederick, Bobby Frederick.

13 Q. Okay. And you filed a Petition based on ineffective
14 assistance of counsel?

15 A. Yes sir.

16 Q. Okay. Now, Mr. Frederick, did he go over the matter
17 and prepare for trial with you prior to the trial?

18 A. Not really.

19 Q. Did you review the witness statements and discuss those
20 with Mr. Frederick?

21 A. No sir.

22 Q. Okay. Did you tell Mr. Frederick your version of
23 events, and how they differed from any other witness
24 statements?

25 A. We tried. I mean, he kept on saying that he had it

LEWIS EDWARD PIPHER, JR. - DIRECT BY MCPHERSON

6

1 covered.

2 Q. Okay. Well, is there anything that you requested of
3 Mr. Frederick that you feel he didn't take care of?

4 A. Like I said, at the time I didn't have -- I didn't have
5 my motion of discovery, so I really didn't know what the State
6 had against me; he did. He never -- he never went through
7 that stuff with me saying, well, the State has this against
8 me, I have this statement against me, or I got a statement
9 against -- you know, from my wife, a statement from you, and
10 if you look in my motion of discovery it says from the police
11 file that there is no statements from either one of us, my
12 wife or me, that my Miranda Rights were never even done on me,
13 so what statements can you use?

14 Q. Okay. What testimony, or what witnesses do you feel
15 that Mr. Frederick should have cross-examined?

16 A. Jackie Elder, the witness. She states in her testimony
17 that she seen nothing, that she only heard noises. The police
18 report states that she seen the back door open, and stuff like
19 that. She's saying it was dark out; she didn't see nothing,
20 but the police statement says well, I noticed that the back
21 door was part open, da, da, da; I could see that the back door
22 was open, so that pretty much tells me that it was daylight
23 out, not dark, like we kept on saying it was daylight.

24 Q. And you feel that that -- by cross-examining those
25 witnesses you could have shown that it was daylight out?

1 A. Well, I mean, I've done a little bit of reading the law
2 when I've been locked up and stuff, and it just -- it just
3 shows that there's a -- her statement and her testimony don't
4 add up. You know, maybe -- maybe there would have been a good
5 chance that, you know, that I would have never been found
6 guilty of burglary second because of night time, you know,
7 because like I said, it was never at night time, but nobody
8 wanted to believe us.

9 Q. Okay. Now, during the trial did Mr. Frederick consult
10 with you often?

11 A. No, not really. He just kept on telling us that, you
12 know, I -- you know, don't worry about it, you know, I've got
13 it covered, you know, everything is going to be fine, you
14 know, you are going to be going home, stuff like that, you
15 know.

16 Q. And what do you feel that he could have done
17 differently that would have resulted in a different outcome?

18 A. I think like -- I just think that if he would have
19 cross-examined the witnesses, the alleged victim and stuff,
20 because the victim straight up lied, I mean, she said that she
21 didn't know us. I mean, if you look at my wife's -- my wife's
22 address they are neighbors. Come on. You tell me you don't
23 know your neighbor? That she's never seen us?

24 Q. Okay. All right, Mr. Pipher, is there anything else
25 you would like to say to the Judge today, before you finish

LEWIS EDWARD PIPHER, JR. - DIRECT BY McPHERSON

8

1 testifying?

2 A. I'm just -- I just feel like I was wronged. I mean,
3 I'm not -- I'm not saying that there wasn't a crime that
4 happened, but it should have never have been considered a
5 burglary second. I mean, me and my wife were doped into this,
6 or whatever -- mistakenly, you know, bought a washer and dryer
7 from a person. I went into the house during the daytime with
8 the man, took out the washer and dryer and put it on the back
9 porch.

10 Well, the other point is too, is that my lawyer, he
11 never preserved objection of -- that the back porch was
12 considered going into the building, where that's not the law.
13 I mean, the back porch has to be screen in; it has to be
14 enclosed. The back porch was a deck; it wasn't a porch, it
15 was a deck, with a -- with a wheelchair ramp. That's all it
16 was, you know, and that's where we got the -- later that day
17 we got the washer and dryer and put it on the back of my
18 truck, and stuff.

19 I mean, the Court of Appeals said that he didn't -- he
20 didn't preserve the objection right, so if the Court of
21 Appeals is saying that he didn't do it right then to me that's
22 ineffective.

23 Q. Okay. Thank you, Mr. Pipher. Please answer any
24 questions the State has.

25 A. Yes sir.

1 THE COURT: Mr. Attorney General.

2 CROSS-EXAMINATION BY MR. THOMAS:

3 Q. Good morning, Mr. Pipher.

4 How many times did you meet with your attorney before
5 going to trial?

6 A. About three times.

7 Q. And you said that he never discussed any of the State's
8 discovery with you?

9 A. No sir.

10 Q. And ---

11 A. Oh, I'm sorry. A mistake. He -- the only thing he did
12 say about us is that, not to worry because the victim had
13 passed away. I'm sorry. That they did not have nobody to
14 consent the -- you know, not having consent to go into the
15 building.

16 Q. And so was that the only defense you discussed with
17 your attorney, or did you discuss any others?

18 A. My stepfather gave me a Thousand Dollars to hire his
19 investigator to investigate, and nothing ever came of that.

20 Q. And you said that there were some other statements that
21 he didn't address?

22 A. Yes sir.

23 Q. That was a statement by you, or by your wife?

24 A. What do you mean by ---

25 Q. Which statements do you think that your attorney didn't

1 address?

2 A. Like I said, he addressed that the so-called victim,
3 the daughter of the victim didn't know us - I mean, we were
4 neighbors - she didn't -- she had never seen us, stuff like
5 that. He didn't object when the Judge took a juror off the
6 stand because he said that he didn't want to have a contempt
7 hearing and stuff because he thought it would perjure the
8 parties here. Well, because he thought that if they overheard
9 what the juror was saying that that would perjure the parties
10 here. Well, the jurors are the ones that freaking brought it
11 to his attention to begin with, so what do you mean they
12 didn't overhear it? So he just -- he dismissed the -- you
13 know, the juror and stuff, and he asked my lawyer and my
14 wife's lawyer was there any objection, and my lawyer said no.
15 Mr. Floyd said nothing. They just said, oh, we'll just go on
16 with this trial.

17 Q. Okay. And as far as the trial goes, were you offered a
18 plea in this case?

19 A. No sir.

20 Q. You were not offered one?

21 A. No sir.

22 Q. And you said, in your direct testimony, that a crime
23 did happen?

24 A. Yes sir.

25 Q. What crime was that?

1 A. The crime that me and my wife -- I mean, we were the
2 victims, I mean, we were the ones what bought the washer and
3 dryer, I mean, you know, we bought stolen property, I mean ---

4 MR. THOMAS: I think that's all I have, Your Honor.

5 THE COURT: All right. Any redirect?

6 MR. McPHERSON: No, Your Honor.

7 THE COURT: All right. The -- there was an issue about
8 subject matter jurisdiction. Is that being waived by the
9 Applicant?

10 MR. McPHERSON: Yes, Your Honor, I believe it is.

11 MR. PIPHER: Yes sir.

12 MR. McPHERSON: Yes sir.

13 THE COURT: All right. Very good.

14 The -- and the bias by the Trial Judge. You said that.
15 What is that, Mr. Pipher?

16 MR. PIPHER: The bias is -- like I was ---

17 THE COURT: I mean, you've raised that as a ground, so
18 I'm asking you ---

19 MR. PIPHER: Right. Um ---

20 THE COURT: ---What is it that you are trying to tell
21 me?

22 MR. PIPHER: Was because of the juror being dismissed,
23 where I thought he was in the wrong. I mean, it should have
24 been, you know, a mistrial, or something. I mean, the Judge
25 even -- I mean, it's all in my transcripts. The Judge

1 stated -- sat there and stated that, you know, he thought if
2 he had a -- you know, felt that the juror was in, you know,
3 misconduct that, you know, he felt the parties would be
4 perjured here.

5 **THE COURT:** I'm looking at the transcript ---

6 **MR. PIPHER:** Yes sir.

7 **THE COURT:** ---And what it indicates is that -- says,
8 The Court: For the Second time today I've received word from
9 the other jurors that you have been disruptive in the jury
10 room, that you have not complied with my instructions
11 concerned not talking about the case, that you made comments
12 about witnesses, and you've had some conflicts with the
13 bailiffs and/or officers. The Court says: I'm not going to
14 get into a contempt hearing; I'm not going to find you in
15 contempt because that would involve bringing in other jurors
16 and holding an evidentiary hearing in the midst of this trial;
17 I don't think it's appropriate, and he relieved him of his
18 duties as a juror in the case.

19 And I don't see where the Court addressed the matter any
20 more. Okay. So what are you trying to tell me about that?

21 **MR. PIPHER:** Well, like -- and the transcripts I got
22 just said -- it said that -- it said that he felt that if he
23 brought in the other jurors that heard his comments that it
24 would perjure the parties here.

25 **THE COURT:** I -- I've read to you what's in the

1 transcript of record. Says, I'm not going to find you in
2 contempt because that would involve my bringing in the other
3 jurors and holding an evidentiary hearing in the midst of the
4 trial, which I don't think it's appropriate. Mr. Gurlock, you
5 are relieved of your duties as a juror in this case.

6 That's the transcript of record from the court reporter
7 that was present.

8 MR. PIPHER: I've got mine over there -- I've got mine
9 over there on the table, sir, and mine says totally different.

10 THE COURT: Very good. Counsel, find it, bring it to
11 the Court's attention, because I've got the official
12 transcript. I want to see where it's completely different.

13 MR. McPHERSON: It's actually the same transcript.

14 THE COURT: All right. Find that in there, please sir.

15 MR. PIPHER: (READING FROM THE TRANSCRIPT)

16 I do not want to have an open contempt hearing because I
17 don't want to bring the jurors that may have overheard
18 comments or have ---

19 THE COURT: What page are you on, sir?

20 MR. PIPHER: Huh?

21 THE COURT: What page are you on?

22 MR. PIPHER: I'm not page two thirty-six, sir.

23 THE COURT: Okay. All right.

24 MR. PIPHER: The very top lines, one through ten.

25 THE COURT: Okay. (READING FROM THE TRANSCRIPT)

LEWIS EDWARD PIPHER, JR. - CROSS BY THOMAS

14

1 "I don't want to have an open contempt hearing because I
2 don't want to bring in jurors that may have overheard
3 comments, or have concerns about the witness. That would
4 prejudice the parties here. Okay. I'm going to bring him out
5 and I'm going to relieve him of his duties."

6 Okay.

7 MR. PIPHER: UH HUH (INDICATING POSITIVE)

8 THE COURT: All right. Tell me why you think -- sit
9 down. Tell me why you think that's bias?

10 MR. PIPHER: I -- maybe it's not bias, but I think it's
11 wrong.

12 THE COURT: Okay. In what way?

13 MR. PIPHER: Because he states his -- himself, that he
14 thinks that if he brought in jurors that overheard these
15 comments it would perjure the party. Where did these comments
16 come from to begin with was from the jurors, because the
17 foreman brought it to his attention to begin with.

18 THE COURT: Okay.

19 MR. PIPHER: So they had to overhear the comments.

20 THE COURT: All right. Any further questions from the
21 State?

22 MR. THOMAS: No, Your Honor.

23 THE COURT: Any further questions from the Applicant's
24 attorney?

25 MR. McPHERSON: No, Your Honor. Thank you.

1 THE COURT: You may step down, sir.

2 MR. PIPHER: Thank you.

3 THE COURT: Further presentation by the Applicant?

4 MR. McPHERSON: Yes, Your Honor. I would like to call
5 Bobby Frederick at this time.

6 THE COURT: All right, Mr. Frederick, come around to be
7 sworn, sir.

8 BOBBY G. FREDERICK, being first
9 duly sworn, testifies as follows:

10 DIRECT-EXAMINATION BY MR. McPHERSON:

11 Q. Mr. Frederick, do you remember representing Lewis
12 Pipher, Jr. in a burglary charge in 2009?

13 A. I do.

14 Q. Okay. At that time you were currently practicing law
15 in Horry County, South Carolina?

16 A. I was.

17 Q. And how much of your practice was devoted to criminal
18 defense would you say?

19 A. One hundred percent.

20 Q. Okay. Now during that trial with Mr. Pipher did you
21 confer with him often ---

22 A. Well ---

23 Q. ---Prior to the trial? I'm sorry.

24 A. Prior to the trial. I mean, he may be about right. I
25 think he said we met three times. I would say three or four

BOBBY G. FREDERICK - DIRECT BY McPHERSON

16

1 times. I don't have that in front of me, but I think I agree
2 with that.

3 Q. Okay. And during those meetings did you discuss with
4 him the different witnesses in the case and what their
5 statements were?

6 A. I don't recall the specifics of our meetings, I really
7 don't.

8 Q. Okay. Prior to testifying here today what materials
9 did you review?

10 A. I skimmed the transcript. I looked at the
11 investigator's notes.

12 Q. Okay. And you have a copy of the trial transcript with
13 you today?

14 A. I do.

15 Q. Okay. One of the issues that Mr. Pipher cites in his
16 Petition for PCR, he says that you, as his trial counsel, was
17 ineffective because you failed -- or did not cross-examine the
18 witnesses, Jackie Edler and Officer Cruise. Why didn't you
19 cross-examine those witnesses?

20 A. I -- I have no idea. I looked at the transcript. I
21 see that there are at least those witnesses that I did not
22 cross-examine, and I can't tell you. I really don't know.

23 Q. Okay. Now during the trial Mr. Pipher was --
24 ultimately he was convicted of second degree burglary; is that
25 correct?

1 A. That's right.

2 Q. Okay. One of the elements of aggravating circumstances
3 was found in that case that was to be that the crime was
4 committed at night time; is that correct?

5 A. That was the only aggravating circumstance, right.

6 Q. Okay. Do you feel that had you cross-examined the
7 witnesses you may have been able to show evidence that it was,
8 in fact, day time when the crime was committed?

9 A. Just from reviewing, you know, the case, and looking at
10 the PCR Application if it's true the time, you know, of the
11 incident was -- I guess he said 8:30, in the Incident Report -
12 - and I have not looked at it; I don't know if that's true.
13 If that's true then that is something we could have brought
14 out on cross-examination.

15 Q. Okay. And did you investigate or try to determine what
16 the time of day it was prior to the trial?

17 A. I don't know. I mean, I -- I -- I really -- I don't
18 know what we did off the top of my head.

19 Q. Did you review a copy of the police report?

20 A. Before trial?

21 Q. Before trial, yes.

22 A. Yes, absolutely.

23 Q. Okay. Now, if you would -- you have a copy of your
24 trial transcript. I would like to reference a couple parts of
25 that.

BOBBY G. FREDERICK - DIRECT BY McPHERSON

18

1 A. Sure.

2 Q. In the testimony of Officer Cruise -- it's on page one
3 ninety-one.

4 A. Okay.

5 Q. Okay. If you would -- page one ninety-one, lines
6 twenty-two and twenty-three, what time does Officer Cruise say
7 was the time when the stop occurred?

8 A. He says that it was about nine o'clock.

9 Q. Okay. Thank you. And then further in Mr. -- in
10 Officer Cruise's testimony, on page one ninety-five.

11 THE COURT: I'm sorry is -- you are talking about page
12 one ninety-one, line ---

13 Q. Yes, Your Honor.

14 THE COURT: ---Twenty-two?

15 Q. Yes, Your Honor, line twenty-two.

16 THE COURT: Twenty-two and twenty-three?

17 Q. Yes sir.

18 THE COURT: It was in the night time about nine, right
19 around nine o'clock.

20 Okay. Go ahead.

21 Q. Your Honor, thank you.

22 Further on page one ninety-five, line nine.

23 A. Okay.

24 Q. Officer Cruise was asked where he was when he got the
25 call. Where does he say he was at the time of the call?

1 A. He says that he was on , Road, I
2 assume, and he believes that Mr. Pipher and his wife were on
3 at that time, but he was on Road.

4 Q. Okay. Thank you, sir.

5 Now, as far as the other testimony of Jackie Edler, I
6 believe her name is pronounced. If you would flip back to
7 that on page one forty-five, I would like to reference a part
8 of that testimony, on lines twenty-four and twenty-five. What
9 time does Ms. Edler say she witnessed the event occurring, or
10 the supposed burglary?

11 A. She says that it was nine-thirty. She says it was
12 about nine, maybe nine-thirty in the evening.

13 Q. Okay. And then also on page one fifty-one in Ms.
14 Edler's testimony, if you would turn to that, on lines nine
15 through ten.

16 A. Can you repeat the page number?

17 Q. One fifty-one.

18 A. She says that she was in the car for at least twenty
19 minutes, possibly thirty minutes, following them.

20 THE COURT: This is the lady that chased the people
21 in ---

22 MR. McPHERSON: Yes, Your Honor. This -- that's right.

23 THE COURT: ---And was there, and says that the
24 Defendant approached her, correct, in the transcript?

25 MR. McPHERSON: Yes, Your Honor.

1 THE COURT: All right. Very good.

2 MR. McPHERSON: This is the neighbor that ---

3 A. Well, Judge, what actually happened is, she says that
4 she was on her front porch, she heard some sounds, and then
5 Mr. Pipher hit a fence as he was leaving the house across the
6 street. She jumped into her car and chased them.

7 THE COURT: And chased them. And then she had a face
8 to face meeting with him later on, correct?

9 A. I -- I don't think so, Judge. I think she called 911,
10 and she ---

11 THE COURT: When is it that he told her to basically
12 back off, get out of here, don't -- don't get involved?

13 MR. McPHERSON: Yes sir.

14 THE COURT: Isn't that -- when was that? When he had -
15 - when she had this face to face meeting with him, and he
16 indicated that in some fashion? Where was that?

17 A. I'm not sure, Judge.

18 MR. McPHERSON: I'm not sure that's during the thirty
19 minute chase.

20 THE COURT: That was -- that was after the chase, or
21 during the chase, or at the house?

22 MR. McPHERSON: During the chase.

23 THE COURT: Okay.

24 MR. McPHERSON: They stopped along the way.

25 THE COURT: Stopped along the way. Okay. Great.

1 Okay. That's what I thought. All right, go ahead.

2 Q. Mr. Frederick, did you review the 911 call records to
3 see what time they said they called 911?

4 A. I'm going to say I do not know. When I have skimmed my
5 file in preparation for today I don't remember seeing any
6 reference to the 911 call, so I may not have.

7 Q. Okay. Do you think -- could you have cross-examined
8 Ms. Edler as to whether or not she called 911 right away, or
9 if she called later, after she had already begun to follow the
10 truck?

11 A. If I had requested and reviewed the 911 tape I could
12 have cross-examined her as to what time it was made, but I
13 don't know what time that was, and maybe we didn't get the
14 tap. I really don't know if we did or not. I also could have
15 cross-examined her as to the time in the Incident Report when
16 the officer said it happened.

17 Q. Okay. Now, if Ms. Edler said that she followed the
18 truck driven by Mr. Pipher, or around twenty to thirty
19 minutes, and then Officer Cruise said he pulled him over
20 around nine PM, could it be possible that you could have shown
21 that the time of the offense was, in fact, around eight-
22 thirty, based on that fact?

23 A. I think so.

24 Q. Okay. Now, the date of the incident, August 31st of
25 2009, is there a possibility that it's still light outside at

1 8:30 on August 31st?

2 A. I think that it probably would be light outside, I
3 mean, it's August, it's the ---

4 MR. THOMAS: Objection, Your Honor. He's ---

5 A. ---Longest days of the year.

6 THE COURT: I appreciate that. It's the Applicant's
7 duty to present evidence of sunrise and sunset, so I'm
8 assuming he will do that.

9 Q. Are you familiar with the Farmers Almanac?

10 A. Yes.

11 Q. Okay. Is that a pretty reliable source as sunrise and
12 sunset ---

13 THE COURT: You are not asking the Court to take
14 judicial notice of the Farmers Almanac, are you?

15 MR. McPHERSON: I was just asking Mr. Frederick.

16 THE COURT: I appreciate that.

17 MR. McPHERSON: Yes sir.

18 THE COURT: You -- there are official records of
19 sunrise and sunset by official government agencies. That's
20 what the Court will recognize, not some almanac that is
21 produced some year or more before the actual date in question.
22 There are actual records of when sunrise and sunset is on
23 every single day by official government agencies. That's what
24 you need to present.

25 MR. McPHERSON: Yes, Your Honor.

1 **THE COURT:** Very good. Continue on.

2 Q. Mr. Frederick, I was just going to ask that -- if you -
3 - if you had done some investigation, if you had determined
4 what time the sunset was on that day in question?

5 A. I could have. I do not believe that I did that. I'm
6 not a hundred percent.

7 Q. Just for example, as Your Honor stated, government
8 agencies will keep records of the actual darkness ascending on
9 that day; is that correct?

10 A. That's correct.

11 Q. Okay. All right.

12 **MR. MCPHERSON:** Thank you, Mr. Frederick. Please
13 answer any questions the State or His Honor has.

14 **THE COURT:** Go ahead, Mr. Attorney General.

15 **CROSS-EXAMINATION BY MR. THOMAS:**

16 Q. Okay, Mr. Frederick, do you recall whether you were
17 appointed or retained in this case?

18 A. Retained.

19 Q. And when you were retained did you review the
20 indictment and the arrest reports?

21 A. I probably reviewed the indictment just before trial.
22 Typically the Solicitor's Office files it; they don't give it
23 to us, but yes.

24 Q. And did you have an opportunity to file any of the
25 standard Rule 5 Brady Motions?

1 A. I did.

2 Q. And did the State respond to those?

3 A. They did.

4 Q. Did you have an opportunity to review that material
5 with the Applicant?

6 A. Immediately after receiving it we forwarded a copy of
7 it to the client. That's the same in every single case. I do
8 not know if we sat down during one of our meetings and went
9 over it or not. All I can say for sure is that we provided
10 him with a copy of it.

11 Q. So you don't specifically recall at any point
12 discussing the witness statements with him?

13 A. I really don't. I don't have a recollection of it is
14 all. I think that ordinarily I would, but I don't have a
15 specific recollection of that, no.

16 Q. But you ordinarily -- is it your standard practice to
17 meet with the client and discuss those things?

18 A. Yes.

19 Q. Any reason you would have deviated from that in this
20 case?

21 A. No.

22 Q. Do you recall what his version of the facts of the case
23 were?

24 A. I do.

25 Q. And what were they?

1 A. Bear with me for just a minute. Lewis and his
2 girlfriend at the time -- they were married before trial --
3 purchased a washer and dryer. They had spent the day looking
4 for a washer and dryer, talked to several people. Ultimately
5 paid someone a Hundred and Fifty Dollars for a washer and
6 dryer. They were going to split that with a neighbor who was
7 going to take one or the other, and they went to pick up that
8 washer and dryer that they had paid for at the incident
9 location. The person that they purchased the washer and dryer
10 from was Thomas Washington. His girlfriend, Mary Roberts,
11 wrote a receipt to them for the washer and dryer, and when
12 they went and picked up the washer and dryer the lady across
13 the street heard them at the house, panicked, freaked out,
14 thought they were breaking into the house, particularly when
15 they hit the fence on the way out. She chased them and they
16 got arrested.

17 Q. And I notice you are reviewing something. Is that --
18 are those your investigative notes that you reference in your
19 direct-examination?

20 A. It is. It's the Investigator's Report.

21 Q. And that is your investigator that you hired?

22 A. That's correct.

23 Q. And did he -- I guess, did he discover anything
24 regarding witness statements that Applicant has said you
25 didn't review with him? Did he interview any witnesses, is

BOBBY G. FREDERICK - CROSS BY THOMAS

26

1 what I'm asking you?

2 A. He did interview witnesses, yes.

3 Q. Okay. And who did he interview?

4 A. Well, bear with me a minute. He spoke with Carolyn
5 Duncan, who was listed as the victim in the case, however, it
6 was -- he attempted to locate Carolyn Duncan, who was listed
7 as the owner of the house, and the victim in the case. He did
8 not speak with her, but he talked with her son-in-law, and
9 found out that she had passed away in December of 2009, so the
10 people he did speak to, he spoke to Ms. Duncan's son-in-law,
11 and he spoke with Jackie Edler, he spoke with Becky Johnson,
12 he spoke to Mary Roberts, and that is all.

13 Q. Okay. Based upon your investigation did you ever
14 discuss a plea offer with the Solicitor's Office?

15 A. I believe his plea offer was fifteen on a burg first.

16 Q. Did you communicate that to him?

17 A. Yes.

18 Q. And whose decision was it to reject that plea?

19 A. I'm sure it was Mr. Pipher's on my advice.

20 Q. And why did you advise him to reject the fifteen year
21 offer to a burglary first?

22 A. Because it's not a fair or a reasonable plea offer,
23 under the circumstances.

24 Q. Did you feel like you had ample time to prepare for
25 this trial?

1 A. I do.

2 Q. What was your trial strategy going into it?

3 A. Tell his story.

4 Q. And to do that you had ---

5 A. Also to get a directed verdict on the burglary first
6 degree.

7 Q. That's -- I'm glad you brought that up. Were you
8 successful to getting a DV on the burglary first?

9 A. We were.

10 Q. And so Judge -- Trial Judge then charged the jury on
11 all the lesser-included, burg first, burglary second, and
12 burglary third?

13 A. I assume he did.

14 Q. Let's go back to that, I guess the elements of burglary
15 second real quick. I know we talked about the transcript,
16 where Ms. Edler -- Elder, said she -- she testified she saw
17 everything between nine and nine-thirty. Is that your
18 recollection of the transcript, from your review of it?

19 A. I mean, the section we looked at just a few minutes ago
20 she said she believed it was nine, and then she said nine-
21 thirty.

22 Q. Okay. And on page one fifty-one of the transcript I
23 know we had some discussion about whether she followed the car
24 for the whole time, or whether she broke off her pursuit of
25 it. It appears from reading page one fifty-one of the

1 transcript that she followed it until it was stopped by the
2 police officers. Specifically I'm on page twenty-four, or --
3 I'm sorry -- page one fifty-one, lines twenty-four, going onto
4 the next page. She says, "When Officer Cruise turned around
5 and stopped them, and got them out of the vehicle she saw
6 better of them." Is your recollection of that that she was
7 with them until they were stopped by the police officer?

8 A. I believe so.

9 Q. Okay.

10 A. I think that's what he testimony was, yes.

11 Q. And regarding her testimony, she also testified it was
12 dark outside when she saw everything happening; isn't that
13 correct?

14 A. That's right.

15 Q. And Officer Cruise also testified it was dark when he
16 stopped the Defendant at 9:30?

17 A. I believe he -- excuse me -- I believe he did.

18 Q. And you argued to the jury, didn't you, that the -- the
19 testimony was not consistent with it being dark outside? You
20 made that argument to the jury, didn't you, in your closing?

21 A. If I may rely on the transcript. I don't recall.

22 Q. And I guess two other -- two other issues were the --
23 the issue with the juror who was making comments, I guess, in
24 the jury room. Why didn't you object to the Judge relieving
25 him of his duties?

1 A. I don't know. He sounds like a juror I would have
2 wanted to keep. I don't know.

3 Q. And I guess briefly going back to your notes, Applicant
4 also said that the victim lived -- and correct me if I'm
5 wrong, Jarrod, but I believe he said the victim lived next
6 door to the co -- to his wife, that their addresses were next
7 door to each other? Do you have any recollection of that from
8 your investigation?

9 A. I have a vague recollection of that from the
10 transcript.

11 MR. THOMAS: I think that's all the questions I have,
12 Your Honor.

13 THE COURT: Redirect?

14 MR. McPHERSON: Nothing further, Your Honor. Thank
15 you.

16 THE COURT: Mr. Frederick, you indicated your basic
17 strategy, besides getting the burglary first charge dismissed
18 by the Court was to tell the Applicant's story, his version of
19 what occurred, correct?

20 A. That's right, Judge.

21 THE COURT: And how did you accomplish that, or try to
22 accomplish that at the trial?

23 A. Judge, I'm just going from memory. I skimmed the
24 transcript. I did not read it ---

25 THE COURT: Okay.

BOBBY G. FREDERICK - CROSS BY THOMAS

30

1 A. ---Thoroughly, but assuming I told that story in
2 opening statement, through his wife ---

3 THE COURT: So that was ---

4 A. ---Who testified, and then in closing argument.

5 THE COURT: Okay. So that was Shelley Monte Pipher?

6 A. Yes sir.

7 THE COURT: All right. And through -- through her
8 testimony, which is in the transcript of record, that was how
9 you were to tell the story as you indicated it was the
10 Defendant's version of the facts, correct?

11 A. Yes sir.

12 THE COURT: Was there a specific decision not to put
13 the Applicant on the stand?

14 A. Judge, from memory - and this has been a long time - I
15 think what happened is, we did not know if he was going to
16 testify until the last minute.

17 THE COURT: Okay.

18 A. I think that Lewis had some prior record ---

19 THE COURT: Okay.

20 A. ---That he could have been impeached with, and Shelley
21 did not, and that is why we left it with Shelley's testimony.

22 THE COURT: Okay. All right. And the -- the Court did
23 question your client about his Constitutional Rights to
24 testify in the transcript, right?

25 A. I'm sure that he did, Judge. I don't recall seeing

1 that, but I'm sure he did.

2 THE COURT: Okay. All right. Very good.

3 On the Court's questions to Mr. Frederick, any questions
4 by the Applicant's attorney?

5 MR. McPHERSON: No, Your Honor.

6 THE COURT: By the State's attorney?

7 MR. THOMAS: Just one, Your Honor.

8 CROSS-EXAMINATION BY MR. THOMAS CONTINUED:

9 Q. From your investigation did the Applicant -- did Mr.
10 Pipher's story differ any from Mrs. Pipher's story about what
11 happened?

12 A. No. No, they were both consistent.

13 MR. THOMAS: Thank you.

14 THE COURT: Very good. You may step down, Mr.
15 Frederick.

16 A. Thank you.

17 THE COURT: Further presentation or testimony by the
18 Applicant in this matter?

19 MR. McPHERSON: No, Your Honor, I don't believe so.

20 THE COURT: All right.

21 MR. PIPHER: No sir.

22 THE COURT: All right. Very good.

23 All right. State?

24 MR. THOMAS: The State would rest on the record that
25 has already been made.

APPLICANT'S SUMMATION (McPHERSON)
STATE'S SUMMATION (THOMAS)

32

1 **THE COURT:** All right. Very good.

2 All right, then Mr. McPherson, be glad to hear any
3 arguments that you have.

4 **MR. McPHERSON:** I would just say in closing, Your
5 Honor, that Mr. Pipher's main issue as far as ineffective
6 assistance of counsel, we would ask that the Court recognize
7 that, through cross-examination Mr. Frederick may have been
8 able to show that the aggravating -- aggravating circumstance
9 at night time was not met in that case.

10 And ask the Court to take it under advisement, and issue
11 a new trial.

12 **THE COURT:** All right. From the State, arguments?

13 **MR. THOMAS:** Just in response to that, Your Honor. I
14 think everybody that testified was fairly consistent about the
15 time this happened, and they all testified that it was dark.
16 I believe the co-defendant did testify that it was not dark
17 when they went in, and so I just -- I would represent that he
18 has not met his burden, and let the Court take it under
19 advisement.

20 **THE COURT:** Very good. All right.

21 All right. Thank you very much. The Court will take it
22 under advisement at this point in time.

23 Thank you very much.

24 **MR. PIPHER:** Thank you.

25 **MR. McPHERSON:** Thank you.

CERTIFICATE OF COURT REPORTER

33

1 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

2 C E R T I F I C A T E

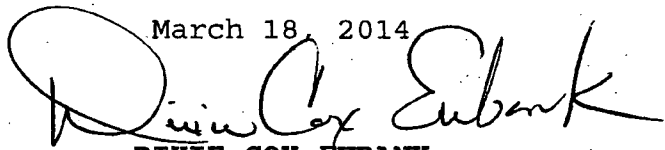
3 I, the undersigned, DIXIE COX EUBANK, Official Court
4 Reporter for the Fifteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate and complete Transcript of Record of all the
7 proceedings had and evidence introduced in the POST-CONVICTION
8 RELIEF HEARING of the captioned case, relative to appeal, in
9 the COURT OF COMMON PLEA NON-JURY for HORRY COUNTY, SOUTH
10 CAROLINA, on the 16th day of December, 2013.

11 I DO FURTHER CERTIFY that I am neither of kin, counsel
12 nor interest to any party hereto.

13 March 18, 2014

14

15


DIXIE COX EUBANK

16

CIRCUIT COURT REPORTER

17

FIFTEENTH JUDICIAL CIRCUIT

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Lewis E. Pipher, #341432,)

Case No. 2012-CP-26-6426

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

CLARE HUGGINS-WARD
CLERK OF COURT
JUL 10 PM 12:49
COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 20, 2012. Respondent made its return on or about November 30, 2012. The Court convened an evidentiary hearing into the matter on December 16, 2013, at the Horry County Government and Judicial Complex. Applicant was present at the hearing and represented by Jarrod M. McPherson, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Bobby G. Frederick, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In November 2009, the Horry County Grand Jury indicted Applicant for first degree burglary (2009-GS-26-4401). Bobby G.

[Signature]

Frederick, Esquire, ("trial counsel") represented Applicant. On June 16, 2010, Applicant proceeded to trial before the Honorable Larry B. Hyman, Jr., and a jury. Judge Hyman directed a verdict as to the first degree burglary indictment and submitted the lesser included offenses of second and third degree burglary to the jury. The jury found Applicant guilty of second degree burglary. Judge Hyman sentenced Applicant to fifteen (15) years imprisonment, suspended upon the service of nine (9) years of incarceration and three (3) years of probation.

Applicant filed a timely notice of appeal and Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on July 18, 2012. State v. Pipher, 2012-UP-424 (S.C. Ct. App. filed July 18, 2012). The remittitur was returned to the circuit court on August 3, 2012.

II. ALLEGATIONS

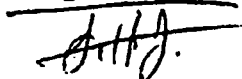
In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Bias by trial judge"
3. "subject matter jurisdiction"

At the PCR hearing, Applicant withdrew his allegation regarding subject matter jurisdiction. Applicant proceeded on only the allegations of ineffective assistance of trial counsel and trial judge bias.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety and heard the testimony and arguments presented at the PCR hearing. Further, this Court had the opportunity to observe each witness



who testified at the hearing, and to closely pass upon their credibility. This Court 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).

A. Summary of Testimony

Applicant testified he was initially charged with first degree burglary. He testified he only met with trial counsel three (3) times before trial, and they did not go over his case. Applicant testified he never discussed any witness statements with trial counsel. He also testified they did not review any of the State's evidence together. Applicant further testified he attempted to tell trial counsel his version of events, but trial counsel did not listen and merely said he would take care of things.

Applicant testified trial counsel should have cross-examined Jackie Eolder about inconsistencies in her initial statement to police and her trial testimony. Applicant claimed Eolder's initial statement indicated she saw the door to the victim's house open. Applicant believes this statement indicates the sun had not set when Eolder witnessed him leaving the victim's property.

Applicant also testified trial counsel should have done a better job cross-examining the victim's daughter, Carolyn Duncan. He testified Duncan lied when she testified she did not know Applicant or his co-defendant because his co-defendant's address is next door to Duncan's. Applicant also testified trial counsel was ineffective for failing to properly preserve an objection to the State's closing argument that the porch of the victim's house was not enclosed to qualify as a part of the structure. Applicant further testified he felt the trial judge showed bias in dismissing a juror who was making inappropriate comments in the jury room.

Trial counsel testified he met with Applicant three (3) or four (4) times prior to trial. He testified he does not recall the specifics of the meetings. However, on cross-examination trial counsel testified he always sends a copy of the State's discovery response to his clients and then reviews that information with them. Trial counsel testified he did file discovery motions in this case and has no reason to believe he would have deviated from his normal practice.

Trial counsel further testified he hired an investigator to review Applicant's case. He testified the investigator interviewed the victim's son-in-law, Eodler, Becky Johnson, and Mary Roberts. He also testified the investigator uncovered the information regarding the victim's address.

Regarding the specifics of his trial strategy, trial counsel candidly testified he does not recall some specifics of his decision making. He testified he did not know why he did not cross-examine Eolder on whether it was daylight when she witnessed Applicant leaving victim's house. However, he did recall his defense strategy was to get a directed verdict on the first degree burglary charge and to tell Applicant's version of events. He testified he was successful in getting the first degree burglary indictment dismissed in favor of charges on lesser included offenses of second and third degree burglary. Trial counsel also testified Applicant's version of events was presented to the jury through the testimony of his co-defendant. Trial counsel testified the story Applicant gave him was consistent with the co-defendant's testimony, but Applicant did not testify because his record was significantly worse than the co-defendant's.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985)

(citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

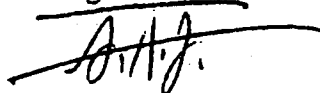
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to carry his burden of proving ineffective assistance of counsel. Specifically, the Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

Applicant's primary complaint with trial counsel's performance centers around his presentation of evidence regarding whether the burglary was committed at night. However, further cross-examination of Eolder likely would not have caused her to recant her testimony that she observed the burglary occur in the evening (Trial Tr. 145:24). Instead, trial counsel articulated his trial strategy was to tell Applicant's version of events, including the contention it was not nighttime when Applicant entered the porch, through the testimony of his co-defendant. The Court finds this is a valid trial strategy under the circumstances. Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

The evidence at trial overwhelmingly indicated the burglary occurred during the night time. Eolder testified she witnessed Applicant leaving the victim's house during the evening. (Trial Tr. 145:24). Officer Crews testified he stopped Applicant's vehicle during the nighttime. (Trial Tr. 191:22). The only evidence to rebut the State's contention the burglary occurred at night was the co-defendant's testimony, which the jury was free to believe or not believe. Furthermore, Applicant presented no evidence at the PCR hearing regarding the actual time of sunset the day of the burglary. He also did not produce any 911 records to corroborate or rebut the witnesses' testimony. Therefore, his testimony is merely speculative about what counsel could have uncovered with further cross-examination. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005).

Applicant's contention that trial counsel was ineffective for failing to preserve an objection to the State's closing argument is also without merit. The State presented evidence



Applicant actually entered the house, not just the porch where the co-defendant claimed the washer and dryer were stored. Officer Miles testified the door to the house had been pried open. (Trial Tr. 155:20-156:2). He also testified there was a puddle of water in a room where a washer and dryer hook-up were located. (Trial Tr. 156:6-23). Therefore, there was evidence for the jury to believe Applicant entered the house to remove the washer and dryer.

Regardless, a porch may be a part of a building if it is used for storage of goods. S.C. Code Ann. § 16-11-310 defines a building as "any structure, vehicle, watercraft, or aircraft: (a) [w]here any person lodges or lives; or (b) [w]here people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use *or where goods are stored.*" The South Carolina Court of Appeals has previously defined "building" as "a [s]tructure designed for habitation, shelter, *storage* ... and the like." State v. Middleton, 367 S.C. 527, 530, 626 S.E.2d 74, 76 (Ct. App. 2006) (emphasis added) (citing Black's Law Dictionary 194 (6th ed. 1990)). In State v. Stone, 350 S.C. 442, 445-47, 567 S.E.2d 244, 246-47 (2002), the South Carolina Supreme Court held a porch attached to a house was part of the "dwelling" for purposes of the first degree burglary statute where the porch was used for the protection of the homeowner's property. If an attached porch can be part of a dwelling for purposes of a first degree burglary, then it certainly can be a part of a building for purposes of a second degree burglary. Furthermore, the trial judge properly charged the jury on the statutory definition of a building, which includes a structure where goods are stored. (Trial Tr. 353:7-12). Thus, the jury could have properly convicted Applicant of second degree burglary even if they believed Applicant merely entered a porch, and not the house itself.

C. All Other Allegations

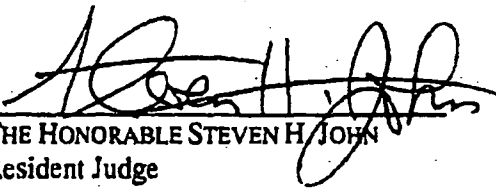
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Specifically, Applicant failed to present any evidence at the hearing in any way showing bias or error of the trial judge. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

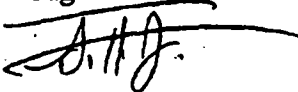
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal. It is therefore

ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice and the Applicant is remanded to the custody of the Respondent.



THE HONORABLE STEVEN H. JOHN
Resident Judge
Fifteenth Judicial Circuit

January 10, 2014
Conway, South Carolina



WITNESSES

Anthony Sawyer Horry County Police Department

DOCKET NO. 2009-GS-26- 4401

The State of South Carolina

County of Horry

Michael J. O'Sullivan
09H03655

COURT OF GENERAL SESSIONS

NOVEMBER, 2009 TERM

ARREST WARRANT NUMBER

J866705

CDR: 0079 16-11-0311

DOA: 9/1/2009

THE STATE

VS.

Lewis Edward Pipher Jr W/M

Myrtle Beach, SC 29577

DOB:

SSN:

ATTORNEY: Frederick, Bobby G.

Indictment for

BURGLARY

J. Gregory Hembree, Solicitor

SEAL OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *Shane P. Hembree*

OCT 29 2009

VERDICT

Foreperson of Petit Jury
Date:

 **ORIGINAL**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 29, 2009, the Grand Jurors of Horry County present upon their oath:

BURGLARY

CDR: 0079 16-11-0311

That **Lewis Edward Pipher Jr.**, did in Horry County, State of South Carolina, on or about August 31, 2009, enter the dwelling of Carolyn Duncan located at _____ Road in the Conway section of Horry County, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, having a prior record of two or more convictions for burglary or housebreaking, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Horry
STATE VS.
Lewis Edward Pipher Jr

AKA:

Race: W Sex: M Age: 40

DOB: SS#:

Address:

City, State, Zip: Myrtle Beach, SC 29577

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, 2nd Degree, Violent (0-1543)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS2604401

A/W#: J866705

Date of Offense: 8/31/2009

S.C. Code § : 16-11-0312(B)

CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Michael J. Sullivan 73768

O'Sullivan, Michael J.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 9 years

and/or to pay a fine of \$ 9; provided that upon the service of 9 days/months/years and/or payment

of \$ 3; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$
\$
\$100 \$ 100.00
\$100 \$
\$12 \$
\$25 \$
\$500 \$
\$25 \$
\$100 \$ 25.00
\$ \$
\$50 \$
\$40/ca \$
\$5 \$ 5.00
\$ 3.90
\$ 133.90

FUND

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk Melanie Huggins Hard

Court Reporter: Eugene Buckner

SCCA/217 (11/2009)

2152
6/16/10

ARREST WARRANT

J-866705

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

THE STATE

09-089266

against

Lewis Edward Pipher, Jr

Address:

North Myrtle Beach, SC 29582-6702

Phone: SSN:

Sex: M Race: W Height: 5 6 Weight: 165DL State: SC DL #:DOB: Agency ORI #: SC0260400Prosecuting Agency: Horry County Police DepartmentProsecuting Officer: Anthony Sawyer - 3090Offense: Burglary / Burglary (After June 20, 1985) - First degreeOffense Code: 0079Code/Ordinance Sec: 16-11-0311This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Lewis Edward Pipher Jron 9-1-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
PO Box 677
1301 2nd Avenue
Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Personally appeared before me the affiant Anthony Sawyer whobeing duly sworn deposes and says that defendant Lewis Edward Pipher, Jrdid within this county and state on or about 08/31/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Horry)

in the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on August 31, 2009, in the county of Horry, one Lewis Edward Pipher Jr did enter a dwelling located at Road, Conway, SC without consent and with intent to commit a crime therein. Lewis Edward Pipher Jr entered the dwelling at night and removed a washer and dryer belonging to the victim.

Case# 09-089266

J. Crews-hcpd

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Horry

Affiant's Address 2560 N. Main StreetConway, SC 29526-Affiant's Telephone (843)915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/31/2009 defendant Lewis Edward Pipher, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Horry) as set forth below:DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 09/01/2009

(L.S.)

Signature of Issuing Judge

Dennis Earl Phipps

Judge Code 5373Judge's Address 1201 21st Avenue, North
Myrtle Beach, SC 29577-7402Judge's Telephone (843)915-5293Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518FILED
Horry County
2009 SEP - 8 AM 9:44
CLERK OF COURT