

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-001163

Robert Hooker #00347354, Petitioner,

v.

State of South Carolina, Respondent.

APPENDIX

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4601483

Robert Hooker

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **ORDER**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ John C. Hayes, III.
Circuit Court Judge

2049
Judge Code

4/28/2014
Date

For Clerk of Court Office Use Only

This judgment was entered on April 30, 2014, and a copy mailed first class or placed in the appropriate attorney's box on April 30, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert Hooker #350619)

C.A. No.: 2013-CP-46-1483

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

2014 APR 30 AM 8:16

FILED - RECEIVED

This is a post-conviction relief application filed May 13, 2013. The case appeared before the undersigned at the Moss Justice Center in York, SC, on April 16, 2014. Applicant was represented by Bobby G. Frederick, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the June 2011 term of the York County Grand Jury for Malicious Injury to Real Property (2011-GS-46-1837), Burglary, 1st Degree (2011-GS-46-1838), and Stalking (2011-GS-46-1839). The Applicant was represented by Melissa Inzerillo, Esquire. On August 10, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant to confinement for fifteen years (15) years for Burglary, 1st Degree, five (5) years for Stalking, and thirty (30) days for Malicious Injury to Real Property.

A notice of appeal was filed on the Applicant's behalf pursuant to *Anders v. California*, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. *State v. Hooker*, Op. No. 2013-UP-100 (Filed March 13, 2013). The Remittitur was issued on April 5, 2013.

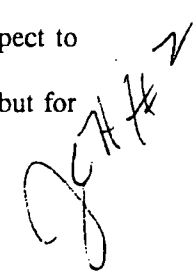
In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Petitioner's counsel's (sic) was ineffective during the course of his criminal case in General Sessions Court."

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for



counsel's alleged errors, she 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).

Applicant alleges ineffective assistance of trial counsel based on the following reasons:

(1) Trial counsel's failure to object to an indictment amendment, (2) Trial counsel's failure to object to prior bad acts entered into evidence, (3) Trial counsel's failure to impeach a witness's credibility based on the witness's alleged drug use, (4) Trial counsel's failure to object to the admission of telephone messages, (5) Trial counsel's failure to object to certain hearsay statements, (6) Trial counsel's failure to argue a directed verdict motion with specificity, (7) Trial counsel's abandonment of trying to establish what months certain photographs were taken during cross-examination, (8) Trial counsel's failure to argue, object, or say anything further to trial judge after Judge made a statement on certain issues, and finally, (9), what PCR counsel indicated was the "real issue" in this matter, Trial counsel's failure to attempt to introduce any evidence that the Applicant lived or had a right to live at the house he was charged with Burglarizing. Applicant contends that he has four witnesses that would have testified to this ninth issue.¹

I

The Court will begin by addressing issue (1), that being Applicant's contention that trial counsel was ineffective based on her failure to object to the State's amended stalking indictment.²

In *State v. Fonseca*, 383 S.C. 640, 646-47, 681 S.E.2d 1, 4 (Ct. App. 2009) aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011), the Court held:

¹ At the conclusion of the hearing PCR counsel stated to the Court the only conviction he wished for the Court to address was the Applicant's burglary conviction. The Court feels compelled to address the issues raised by Applicant's application since the burglary trial was joined with and there is an interplay of issues with the stalking and malicious injury to personal property charges.

² Based on PCR counsel's abandonment of issues relating to the stalking indictment this issue is to a degree moot, however, since it interplays with Applicant's concern regarding the introduction of "prior bad acts" evidence the Court needs to address this issue.

Appellant argues the trial court erred in allowing the State to proceed under the amended indictment, arguing it provided insufficient notice. We disagree...

An indictment is a notice document. *Id.* at 101, 610 S.E.2d at 499. "The primary purpose of an indictment [is] to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). An indictment may be amended if: (1) it does not change the nature of the offense; (2) the amended charge is a lesser included offense of the original crime charged in the indictment; or (3) the defendant waives presentment to the grand jury and pleads guilty. *State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993)....

Here, the substance and nature of the crime charged was not affected by amending the indictment. Appellant conceded the language in the amended indictment was the same as the original. The only change made to the indictment concerned the year of the alleged act. Therefore, the amendment did not prejudice Appellant. *State v. Horton*, 209 S.C. 151, 155, 39 S.E.2d 222, 223-24 (1946) (permitting the striking through of "surplusage" in an indictment where the amendment worked no prejudice on the defendant). Thus, we find the amended indictment provided Appellant with sufficient notice.

The logic set forth in *Fonseca* is directly applicable to the case at hand. Here, in the initial stalking indictment, the State alleged that the Applicant committed the crime of stalking during the time span of October 1, 2010, through February 28, 2011. Prior to the start of the trial, the State amended the indictment to change the October 1, 2010 start date to a later date, that being December 1, 2010. During the trial, the State then amended the start date back again to October 1, 2010.

Applicant alleges trial counsel was ineffective by failing to object to the amended indictment. The Court disagrees with this assertion. The Applicant was put on notice of the time frame in which the State alleged that stalking occurred by the dates listed in the original indictment. Since the indictment date was not amended until the day the trial began, trial counsel was obviously prepared to move forward with the trial based on the dates listed in the original indictment. Additionally, during the trial, upon the State's request to amend the indictment for the second time, the Honorable Lee S. Alford stated "Any objection from the defense? Obviously

you are not prejudiced by that. You were already aware of those dates." (Trial TR. p. 26, lines 2-4). The Court finds no error on trial counsel's failure to object to the amended indictment dates as trial counsel and the Applicant were already aware of such dates. There is no question the Applicant was on notice and additionally, the Court finds that Applicant failed to establish any prejudice resulting from trial counsel's failure to object to such amendments.

II

In issue (2), Applicant alleges ineffective assistance of counsel by trial counsel's failure to object to "prior bad acts" of Applicant being entered into evidence throughout the trial. The Court finds that the "prior bad acts" Applicant is referring to were introduced by the State as proof of the elements of the crime of stalking rather than for impeachment purposes. These incidents were all relevant to the crime of stalking and the fact that they happened to be other crimes in and of themselves is just the reality of the situation. There was no proper basis for objection as these acts were being introduced to prove the elements of stalking, not to impeach the Applicant based on prior bad acts. For example, during the direct examination of Ms. Shanna Graham, the solicitor asked the following question:

Okay. How often do you think total – through the whole time, let's say from October, when your relationship became rocky, through the time that the police arrested him inside your house in February, how many times could you estimate that he was inside your house when you did not give him permission to be there?

The witness responded "twenty to thirty times." (Trial TR. p. 154, lines 13-19). Applicant contends trial counsel should have objected to this testimony as it constitutes prior bad acts of the Applicant coming into evidence. At the PCR hearing trial counsel testified that her reasoning in not objecting to this testimony was to establish that there was a lengthy pattern of the Applicant being told to leave the victim's house and the victim then allowing him to come back to the house. Additionally, the pattern of behavior is very relevant to the crime of stalking. Also, the

gk
#5

time framed by the question is within the time frame of the indictment. The Court finds that trial counsel was not ineffective by failing to object to specific incidents of conduct that the State introduced into evidence in order to prove the elements of stalking.

III

In issue (4), Applicant alleges ineffective assistance of counsel by trial counsel's failure to impeach the victim of the State, that being Shanna Graham, based on her alleged drug use. Applicant contends that the witness's unconvicted drug use is relevant to her credibility. Additionally, Applicant contends that introducing evidence of her drug use would have helped explain to the jury why the Applicant got into a fist fight with another man and broke the other man's nose.

The Court requested PCR counsel to submit any case law within ten (10) days that would support the argument that evidence of a witness's unconvicted drug use is relevant to their credibility. The Court has not received any precedent from PCR counsel that supports this notion. Additionally, the Court has not found any case law supporting this argument in its' own research. Rule 608 of the South Carolina Rules of Evidence provides:

- (a) **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise. (S.C. R. Evid. 608).

South Carolina case law has made clear that "for impeachment purposes, narcotics offenses are generally not considered probative of truthfulness." *State v. Cheeseboro* (S.C. 2001) 346 S.C. 526, 552 S.E.2d 300. Here, the witness did not have any drug convictions; rather, the Applicant contends trial counsel should have attempted to impeach the witness based on her alleged drug

usage that did not result in any convictions. It has been a long established legal principle that "evidence as to a witness's drug use may not be used to attack a witness's credibility unless the evidence relates to direct observation of the effect of drug consumption on the witness' capacity to perceive or recall." (65 A.L.R.3d 705). There is nothing in the record indicating that the victim was on drugs when the Applicant committed the crimes in this case and therefore the victim's unconvicted drug use is not relevant to this case. The Court finds that the victim's unconvicted drug use in this case is not probative of truthfulness and further finds that trial counsel was not ineffective by failing to impeach the victim based on her alleged drug usage. In sum, the victim's unconvicted drug use is not relevant to this case and is not probative of truthfulness. Therefore, this argument is also without merit.

IV

The Court will now address issue (4), whereby the Applicant claims trial counsel was ineffective for failing to object to the admission of certain telephone messages. Applicant contends that the voice messages were not properly authenticated. The State relies on *State v. Aragon*, 354 S.C. 334 (2003), in maintaining that a proper foundation was laid and the voice messages were properly authenticated. In *Aragon* the Court held

We think the State, consistent with the requirements of Rule 901, SCRE,² regarding authentication, sufficiently established that the tape in question is what it claimed. The victim who made the call to Aragon testified that she had known him for over ten years and once had a relationship with him, that she telephoned Aragon from the sheriff's office and knew the conversation was taped, that she listened to the tape, that she recognized the tape from her initials on it, that the tape fairly and accurately represented the phone conversation, and that the tape had not been edited or altered in any way. *Id.* at 336.

At the PCR hearing Applicant's counsel argued that it is not enough for one to simply say they recognize another's voice; rather, there needs to be "something more" to authenticate a voice message. The Court disagrees with this contention and finds that a proper foundation was laid to

authenticate the voice messages in this case. Here, the victim testified that she was in a relationship with the Applicant from July of 2009 until December of 2010. (Trial TR. p. 150, lines 1-2). The victim also testified that the Applicant would call her as many as fifty times in one day and would leave approximately five to six voice mail messages for every twenty phone calls he would make to her. (Trial TR. p. 152, line 17, p. 153 -153, line 4). Additionally, the witness testified that she recognized the voice messages, which were marked as State's exhibits 1-7, and that the recordings truthfully and accurately reflect the messages she received from the Applicant. She also signed each recorded statement and listened to them prior to trial. (TR. p. 165, lines 5-23). "Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker." (Rule 901, SCRE). The Court finds that trial counsel was not ineffective by failing to object to the admission of the voice messages as it appears to the undersigned that a proper foundation was laid. The victim's testimony and prior interactions with the Applicant sufficiently establish that the voice messages in question are what the State claims they are. This argument is also without merit.

V

In issue (5), Applicant alleges ineffective assistance of counsel by trial counsel failing to object to certain hearsay statements. Applicant specifically alleges ineffective assistance by trial counsel failing to object to the following statement made by the Applicant's mother: "and she says . . . tell him you are going to call the police." (Trial TR. p.190, line 5). Trial counsel testified that she did not object to this statement because she believed this helped establish a lack of fear from the victim. Trial counsel testified that her case strategy was to show that the victim was not actually in fear. The fact that the victim ignored the Applicant's mother's request for her to call

the police supports the defense's overall case theory that the victim was not actually in fear, otherwise she would have called the police. The undersigned finds no fault on trial counsel's failure to object to hearsay statements that inure to the benefit of her client and support her overall case strategy.

In *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002), the South Carolina Supreme Court held:

Where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992); *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). However, counsel cannot assert trial strategy as a defense for failure to object to comments which constitute an error of law and are inherently prejudicial. See *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001)(Counsel's failure to object to prejudicial hearsay because he did not want to "confuse or upset the jury" was not valid strategy); *Gallman v. State*, 307 S.C. 273, 414 S.E.2d 780 (1992)(Trial counsel's failure to object to judge's comments inviting jury to prematurely discuss the case was not "strategic" where error of law involved and such comments are inherently prejudicial).

The Court finds that trial counsel articulated valid reasons for employing her trial strategy, that strategy being to disprove the element of fear in the victim. Trial counsel's failure to object to hearsay statements that actually support the defense's theory of the case do not constitute prejudice to the Applicant. Therefore, this claim is also without merit.

Applicant also alleges ineffective assistance of counsel by trial counsel's failure to object to the following statement made by Alice Broome: "She called crying and said that he had broken into her house. She came in and went back out because she was scared of him." (Trial TR. p. 212, line 4). Applicant contends that this statement is prejudicial hearsay. The undersigned finds that this statement does not rise to the level of prejudice. Additionally, the undersigned finds that even if this statement is deemed to be prejudicial hearsay, it would likely fall into one, if not all, of the following exceptions to hearsay: (1) Present Sense Impression, (2) Excited Utterance, and (3) Then Existing Mental, Emotional, or Physical Condition. (SCRE.

Rule 803). The statement would fall into the Present Sense Impression exception since the victim made the statement to Alice Broome immediately after discovering the Applicant had broken into her home. The statement would also fall into the Excited Utterance exception because the victim made the statement after perceiving a startling event, that event being that the Applicant had broken into her home through a second floor bedroom wall, and while still under the stress caused by the event. Additionally, the statement would fall into the Then Existing Mental, Emotional, or Physical Condition exception as the declarant's statement to Alice Broome indicated that she was "scared" of the Applicant. This statement directly speaks to the victim's then existing state of mind, specifically her mental or emotional condition. For the above stated reasons the undersigned finds that trial counsel was not ineffective in failing to object to Alice Broome's statement and further finds that this contention is also without merit.

VI

The Court will now address issue (6), whereby the Applicant claims trial counsel was ineffective by failing to make any specific and non-general arguments during her motion for a directed verdict. Upon the closure of the State's case-in-chief, trial counsel did, in fact, make a motion to the Court for a directed verdict, "just for the record." (Trial TR. 249, lines 9-11). Upon said motion, the trial judge ruled that "therefore, it's a jury issue. The court would, therefore, deny your motion for directed verdict on each of these three charges and submit it to the jury." (Trial TR. p. 255, lines 15-18). The Court is well aware that it is common practice for counsel to, at various stages of trials, make motions "for the record." These hollow motions establish no grounds for relief and actually concede the absence of grounds as the motion itself acknowledges it is perfunctory. A review of the record in this case clearly demonstrates that the State produced sufficient evidence to survive a motion for directed verdict and submit the

evidence to the jury. Counsel had no law or facts which she could articulate to the Court as grounds for a directed verdict. (See SCACR 407, Rule 3.1). The undersigned finds that trial counsel was not ineffective in failing to make any specific directed verdict arguments and additionally finds that this contention is without merit.

VII

Regarding issue (7), Applicant contends that trial counsel was ineffective by "abandoning" her attempt to establish what months certain photographs were taken during cross-examination of the victim. During the cross examination of Ms. Shanna Graham, trial counsel asked the witness if she knew whether the pictures were taken sometime during the month of January, to which she responded "I don't know the date of these pictures." (Trial TR. p.199, lines 10-15). Next, trial counsel again asked whether the witness knew if the pictures had been taken sometime during the month of February, to which the witness responded "I don't know the date of any of the pictures." (Trial TR. p. 200, line 3). Applicant contends trial counsel was ineffective by failing to further question the witness as to the dates of the photographs.

The Court finds that the trial strategy analysis set forth above in issue (5), from the *Matthews* opinion, is directly applicable to this issue as well. Trial counsel's alleged "abandonment" of attempting to establish what months these photographs were taken does not amount to an "error of law" and additionally does not prejudice the Applicant. Trial counsel asked the witness about the photograph dates not once, but twice, and the witness could not provide an answer. It appears to the undersigned that the witness did not have any personal knowledge as to when these photographs were taken and nothing could have been gained by continuing to ask the witness a question in which she already stated she did not know the answer to. At worse, this so called "abandonment" would be considered trial strategy. The Court finds

that such strategy does not constitute any error of law or amount to ineffective assistance of counsel. This claim is also without merit.

VIII

Next, the Court will address issue (8), whereby Applicant claims trial counsel was ineffective by failing to argue, object, or say anything further to the trial judge upon the judge's statement "that trespass is a crime which would be sufficient to establish" burglary. (Trial TR. p. 252, lines 18-19). In *McMillian v. State*, 383 S.C. 480, 486, 680 S.E.2d 905, 908 (2009), a PCR applicant asserted a claim of ineffective assistance of counsel on the basis that "[t]here is ambiguous precedent on whether one can infer intent [to commit a crime] from trespassing." *Id.* In *McMillian*, the Court stated:

This Court has previously held that for a charge under the old statute of housebreaking, i.e., breaking and entering into a dwelling with the intent to commit a felony or a crime of a lesser grade, found in section 1139 of the South Carolina Code of 1932, the element of intent to commit a crime of a lesser grade could be satisfied by a trespass. See *State v. Christensen*, 194 S.C. 131, 9 S.E.2d 555 (1940). In *Christensen*, "the defendant was convicted of breaking and entering with the intent to commit a misdemeanor, to wit, a trespass" after the defendant, who was an agent of the landlord, went into a tenant's dwelling with the specific intent of taking personal property to sell for overdue rent. *Id.* at 138, 9 S.E.2d at 558....

The *Christensen* Court cited a prior decision that stated the mere breaking and entering of a house is not a crime under the statute prohibiting the breaking and entering into a dwelling with the intent to commit a felony or a crime of a lesser grade, but found that if Christensen were guilty of a trespass, "[i]t was for the jury to say whether such breaking and entry under the circumstances constituted a crime under Section 1139 and the finding of the jury on this issue will not be disturbed by this Court." *Id.* at 137-39, 9 S.E.2d at 558-59. *Id.*

Based on *McMillian*, the undersigned finds that the trial judge's statement that "trespass is a crime which would be sufficient to establish [burglary]" was a correct statement of the law. The Court finds that trial counsel was not ineffective in failing to object to, or argue with, a trial judge's correct statement of the law. In addition to the judge's statement not having any objectionable basis, the South Carolina Rules of Professional Conduct also require that a lawyer

shall not "allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence." (SC R A CT RULE 407 RPC Rule 3.4.) The undersigned finds no fault on trial counsel's part in failing to make a meritless objection to a trial judge's accurate statement of the law. Additionally, the undersigned finds that Applicant was in no way prejudiced by trial counsel's failure to object to the trial judge's statement. This ground is also without merit.

IX

Finally, the Court will address issue (9), that being Applicant's contention that trial counsel was ineffective by failing to attempt to admit any evidence proving that the Applicant resided in the house, or had a right to reside in the house, which he was ultimately charged with burglarizing. Trial counsel testified at the PCR hearing that when she met with the Applicant he informed her that he knew he was not supposed to be at the victim's house. The Court finds trial counsel's testimony credible as to this issue. Applicant contends that even after informing trial counsel that her client knew he was not supposed to be at the house, trial counsel should have still called four witnesses during trial that would have testified that Applicant did in fact live, or have a right to live, with the victim in the house. The Court disagrees with this contention as this would place trial counsel in a situation in which trial counsel would have knowledge that either her client or a witness was not being honest with the court. The undersigned cannot find fault in trial counsel for building her case strategy off of information that the Applicant told her. To require trial counsel to call witnesses to the stand that would contradict what her own client told her in confidence would serve no beneficial purpose to her client's case. The undersigned finds that trial counsel was not ineffective by failing to call witnesses to the stand to testify under oath to a different story than what her client told her. Additionally, none of Applicant's proffered

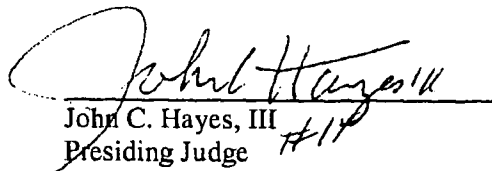
witnesses could address Applicant's right to be in the victim's house at the time of the alleged burglary. Also, regardless of what these witnesses would have presented as testimony, Applicant, at the time of the alleged burglary, was subject to a no trespassing order, and entered the victim's residence by way of knocking a hole in the wall of a second floor bedroom, and then made an attempt to conceal the hole. The witness's testimony at the PCR hearing failed to establish in any way that there is a reasonable probability that the outcome would have been different had they testified as witnesses during the trial.

CONCLUSION

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. Applicant failed to prove trial counsel was deficient and additionally failed to establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

April 28th, 2014
York, South Carolina


John C. Hayes, III
Presiding Judge #11

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
Robert Hooker

INDICTMENT/CASE#: 2011GS4601837

A/W#: J132020

Date of Offense: 2/28/2011

SOP Code § 16-11-0510(A)

CDR Code #: 3416

ORIGINAL

Race: W Sex: M Age: 28
DOB: 07-16-1983 SS#: [REDACTED]
Address: 1231 MEADOWBEND DR YORK, SC 29745
City, State, Zip: YORK, SC 29745
DL#: [REDACTED] SID#: [REDACTED]

2013 MAY 13 PM 4:09

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: MALICIOUS INJURY TO PROPERTY LESS THAN \$2000☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0510(A) of the S.C. Code of Laws, bearing CDR Code # 3415

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (ESC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted; ☐ Lesser Included Offense; ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation; ☐ Negotiated Sentence; ☐ Recommendation by the State.ATTEST: [Signature] 69419 x [Signature] 69416
Coyner, Ed M SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act, not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____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. 160 Days☐ 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

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$130	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(D) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL		\$130.00

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: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

SCCA217 (03/2011)

Presiding Judge: [Signature]

Judge Code: 2013

Sentence Date: 8/10/2011

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK) CERTIFIED TRUE COPY
STATE OF SOUTH CAROLINA) SIXTEENTH JUDICIAL CIRCUIT
JUL 13 PM 4:09

v.)
ROBERT TERRANCE HOOKER,)
DEFENDANT.) (MALICIOUS INJURY TO REAL PROPERTY)

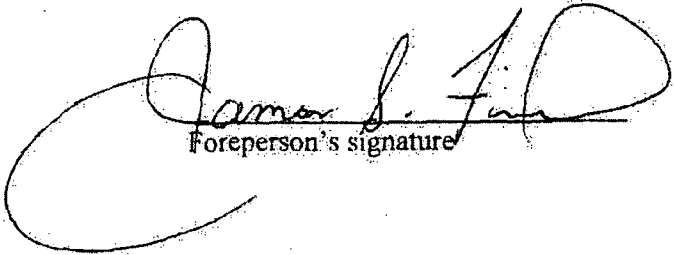
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

VERDICT

2011-GS-46-01837

✓
We, the Jury, find the Defendant, Robert Terrance Hooker, guilty of Malicious Injury to Real Property, in amount less than \$2,000.00.

____ We, the Jury, find the Defendant, Robert Terrance Hooker, not guilty.


Foreperson's signature

August 10, 2011
York, South Carolina

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Robert Hooker

INDICTMENT/CASE#: 2011GS4601838

A/W#: J132024

Date of Offense: 2/28/2011

S.C. Code §: 16-11-0311

Code #: 0079

ORIGINAL

AKA:

Race: W

Sex: M

Age: 28

DOB: 07-16-1983

SS#: [REDACTED]

Address: MEADOWBEND DR

City, State, Zip: YORK, SC 29745

DL#: [REDACTED]

SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree

☒ CONVICTED OF or ☐ PLEADS

SENTENCE SHEET

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Joyner, Erin M.

SC Bar# 69419

Defendant

Attorney for Defendant

SC Bar# 69416

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 _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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: 160 days☐ 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 SCDFPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments (07.5%))	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 36-3-2993 (DUI Assessment)	\$12	\$
§ 36-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 36-3-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL		\$ 130.00

_____ 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:

No contact with victim while on community supervision

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

8-10-11

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
CERTIFIED TRUE COPY
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA) MAY 13 4:09

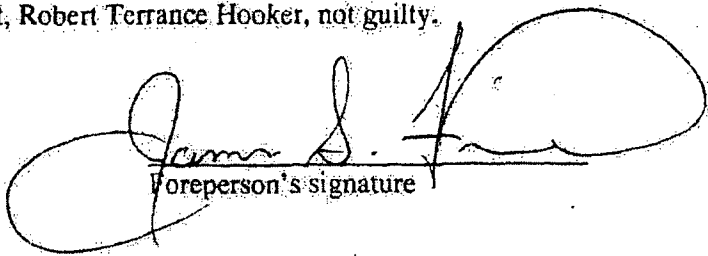
v. DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
ROBERT TERRANCE HOOKER,)
DEFENDANT.)

VERDICT
2011-GS-46-01838

(BURGLARY IN THE FIRST DEGREE)

✓
We, the Jury, find the Defendant, Robert Terrance Hooker, guilty of burglary in the first degree.

— We, the Jury, find the Defendant, Robert Terrance Hooker, not guilty.


Foreperson's signature

August 10, 2011
York, South Carolina

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
Robert Hooker

INDICTMENT/CASE#: 2011GS4601839

A/W#: J132025

Date of Offense: 2/28/2011

S.C. Code § 16-03-1730(A)

CDR Code #: 2406

SENTENCE SHEET

ORIGINAL

AKA:

Race: W

Sex: M

Age: 28

DOB: 07-16-1983

SS#: [REDACTED]

Address: 1231 Meadowbend Dr

City, State, Zip: York, SC 29745-8916

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐ In disposition of the said indictment comes now the Defendant who was

TO: Stalking

in violation of § 16-3-1730 of the S.C. Code of Laws, bearing CDR Code # 2406

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or 2nd Act) ☐ §17-25-45The 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:

Joynor, Erin M.

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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

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. 160 Days☐ 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: PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(f) (Vehicle Assessment)	\$40/ea.	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL		\$ 130.00

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/B 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:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

CERTIFIED TRUE COPY
COUNTY OF YORK MAY 13 PM 4:09 SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)

v. DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

VERDICT

ROBERT TERRANCE HOOKER,)

2011-GS-46-01839

DEFENDANT.)

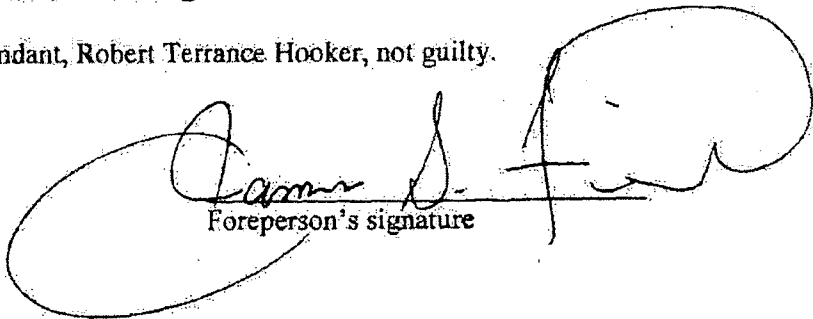
(STALKING)

☒ We, the Jury, find the Defendant, Robert Terrance Hooker, guilty of Stalking.

☐ We, the Jury, find the Defendant, Robert Terrance Hooker, guilty of the lesser included offense of Harassment, first degree.

☐ We, the Jury, find the Defendant, Robert Terrance Hooker, guilty of the lesser included offense of Harassment, second degree.

☐ We, the Jury, find the Defendant, Robert Terrance Hooker, not guilty.


Foreperson's signature

August 10, 2011
York, South Carolina

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM YORK COUNTY Court of Common Pleas

John C. Hayes, Circuit Court Judge

Case No. 2013-CP-46-01483

RECEIVED

MAY 30 2014

S.C. Supreme Court

Robert Hooker #00347354.....Appellant,
v.
The State,.....Respondent.

NOTICE OF APPEAL

Robert Hooker appeals the denial of post conviction relief in this case.
The Order of Dismissal was served on Appellant on May 4, 2014.

May 27, 2014


Bobby G. Frederick, Esq.
P.O. Box 8219
Myrtle Beach, SC 29577
843-444-6122

Other Counsel of Record:
Attorney General's Office
J. Rutledge Johnson
P.O. Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
ROBERT HOOKER #00347354)
)
v.)
)
SOUTH CAROLINA)
)
)
)
_____)

**IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT**

Case No.: 2013-CP-46-1483

Certificate of Service

I certify that on the 27th day of May, 2014, a copy of the Notice of Appeal and request for transcript in the above referenced matter was served by U.S. mail to the following addresses:

York County Common Pleas
Clerk of Court
P.O. Box 649
York, SC 29745

Attorney General's Office
J. Rutledge Johnson
P.O. Box 11549
Columbia, SC 29211

Daniel Shearouse
Supreme Court Building
1231 Gervais Street
Columbia, SC 29201



Mindi Ellison
Legal Assistant

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert Hooker #00347354

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 46- 1483

(Please Print)

Submitted By: BOBBY G. FREDERICK

Address: P.O. BOX 8219

Myrtle Beach, SC 20578

SC Bar #: 72931

Telephone #: 843-444-6122

Fax #: 843-444-6133

Other:

E-mail:

bfrederick@grandstrandl

aw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

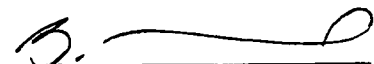
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- - | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
-
- | | | | |
|---|---|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☒ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
-
- | | |
|--|--|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) |
| | ☐ Sexual Predator (510) |

Submitting Party Signature: 

Date: 5/8/2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

ROBERT HOOKER)

SCDC ID# 00347354)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correction Institution
2. Name and location of Court which imposed sentence York County General Sessions Court, Moss Justice Center, 1675-1J York Highway, York, SC 29745-7434
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-46-1837
 - (b) 2011-GS-46-1838
 - (c) 2011-GS-46-1839
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 10, 2011. Petitioner was sentenced to 15 years for Burglary 1st Degree.

- (b) 30 days concurrent for Malicious Injury to Personal Property
- (c) 5 Years concurrent for Stalking.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The appeal was dismissed after an Anders Brief was filed by Petitioner's appellate
counsel.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 13, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-UP-100
- 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) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Petitioner counsel's was ineffective during the course of his criminal case in

General Sessions Court.

(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? No.

(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. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

Revised 3/2003

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Post-conviction relief is appropriate.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

Revised 3/2003

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Melissa Inzerillo, Esquier

York County Public Defender's Office

Moss Justice Center

1675-1E York Hwy.

York, SC 29745

- ii. Amy Sikora

York County Public Defender's Office

Moss Justice Center

1675-1E York Hwy.

York, SC 29745

- iii. Susan Barber Hackett

S.C. Commission on Indigent Defense

P.O. Box 11589

Columbia, SC 29211

- (b) the proceedings at which each such attorney represented you:

- i. All proceedings up to and including the trial of the case.

- ii. _____

- iii. _____

19. State clearly the relief you seek in filing this application:

Any relief available in post conviction relief proceedings to include a new trial.

Revised 3/2003

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of HORRY

)
)
)

VERIFICATION

I, Bobby G. Frederick, 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.

B. Frederick

SWORN to and subscribed before me this 8th
day of May, 2013.

Jera-f (L.S.)
Notary Public

My Commission Expires: 8/6/17

FILED-RECEIVED
2013 MAY 13 AM 10:07
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

ROBERT HOOKER #00347354)

v.)

SOUTH CAROLINA)

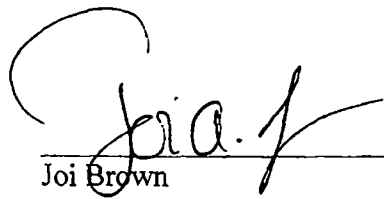
IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

Case No.: 2013-CP-46- 1483

Certificate of Service

I certify that on the 8th day of May, 2013, a copy of the Application for Post-Conviction Relief in the above referenced matter was served by U.S. mail to the following addresses:

York County Common Pleas
Clerk of Court
P.O. Box 649
York, SC 29745



Joi Brown
Legal Assistant

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2013 MAY 13 AM 10:07
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Robert Hooker, #347354

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1483

Supplement to Application for
Post-Conviction Relief

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2014 APR 10 PM 2:28

FILED-RECEIVED

Petitioner Robert Hooker, by and through his counsel, respectfully requests that the Court grant his petition for post-conviction relief, on the following grounds:

- 1) Trial counsel failed to object to the amendment of the dates encompassed by the indictment to include the months of October 2010 through December 2010.
- 2) Trial counsel failed to object to testimony regarding prior bad acts/ character evidence that allegedly occurred during the months of October 2010 through December 2010 or that were otherwise inadmissible or unrelated to the charges.
- 3) Trial counsel failed to impeach the alleged victim regarding her drug use, including the fact that the alleged victim was upset that Applicant had flushed her drugs on the night that he was arrested.
- 4) Trial counsel failed to object to the prosecutor's redaction of audio tapes to exclude information about the alleged victim's drug use.
- 5) Trial counsel failed to investigate, effectively cross-examine the state's witnesses, or present evidence at trial to show that Applicant lived at the alleged victim's house; including witness testimony, evidence of mail that Applicant had received at her address, and evidence that his belongings were in the home.
- 6) Trial counsel failed to object to hearsay statements elicited during Alice Broome's testimony.
- 7) Trial counsel failed to object to the admission of numerous prejudicial text messages and/or phone records without proper authentication.

Respectfully submitted,


Bobby G. Frederick
Frederick Law Office
Attorney for the Petitioner
P.O. Box 8219
Myrtle Beach, S.C. 29578
843-444-6122

April 7, 2014.

State of South Carolina.,)
)
)
)
)
)
)
County of York.)
_____)

In the General Sessions
Court of York

Case No.: 2013-CP-46-1483

Robert Hooker.,)
)
Applicant.,)
)
-vs-)
)
State of South Carolina.,)
)
Respondent.)
_____)

Transcript of Record
Post Conviction Relief

April 16, 2014
York, South Carolina

B E F O R E:

Honorable John C. Hayes., judge.

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

ORIGINAL

Mr. Bobby G. Frederick
P.O. Box 8219
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For the Applicant

Mr. J. Rutledge Johnson
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Columbia, South Carolina 29211-1549
803-734-3970
For the Respondent

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Melissa Inzerillo	Mr. Frederick	P.8-74
	Mr. Johnson	P.90-109
Wayne Wix	Mr. Frederick	P.76-78
	Mr. Johnson	P.78
Keith Williams	Mr. Frederick	P.79-81
	Mr. Johnson	P.81
Ghase Hooker	Mr. Frederick	P.83-85
	Mr. Johnson	P.86
Eric Howsare	Mr. Frederick	P.87-89
Court Reporter's Certificate Page		P.129

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF ROBERT HOOKER
2 VERSUS STATE OF SOUTH CAROLINA ON WEDNESDAY, APRIL 16, 2014
3 AT 10:03 A.M..)

4 THE COURT: Thank you. You may take your seats.
5 Good morning.

6 MR. JOHNSON: Good morning, Judge.

7 THE COURT: All right. First case Robert Hooker.

8 MR. JOHNSON: Robert Hooker.

9 THE COURT: Mr. Frederick.

10 MR. FREDERICK: Good morning, Judge. We're waiting on
11 the Applicant.

12 THE COURT: I did not think you were the defendant or
13 the applicant.

14 (APPLICANT ROBERT HOOKER, WHITE MALE, ENTERS
15 COURTROOM.)

16 THE COURT: All right.

17 MR. JOHNSON: May it please the court, Your Honor.

18 This is the case of Robert Hooker versus State of
19 South Carolina. Its Case No. 2013-CP-46-1-4-8-3.

20 Mr. Hooker was indicted by the June 2011 term of the
21 York County Grand Jury for malicious injury to property,
22 burglary first degree and stalking. On August 10th, 2011
23 he proceeded to a jury trial pursuant to which he was found
24 guilty of all charges as indited.

25 The Honorable Lee S. Alford sentenced him to

1 confinement for fifteen years for burglary first degree;
2 five years for stalking; and thirty years for malicious
3 injury to property. Those were to run concurrently.

4 A Notice of Appeal was filed on his behalf and an
5 appeal was perfected pursuant to *Anyers versus California*.

6 The South Carolina Court of Appeals affirmed his
7 conviction sentence. A remittitur was thereafter was
8 issued on April 5th, 20 --

9 THE COURT: I believe you misspoke. It's thirty days
10 for malicious injury to property.

11 MR. JOHNSON: Excuse me, thirty days.

12 THE COURT: Not thirty years

13 MR. JOHNSON: I do apologize. A remittitur was issued
14 on April 5th, 2013. He filed a timely PCR application May
15 13th, 2013. The State filed it's Return on August 21st,
16 2013 and he is represented here today by Mr. Bobby
17 Frederick.

18 THE COURT: Mr. Frederick, are you ready to proceed?

19 MR. FREDERICK: We're ready to proceed, Judge.

20 THE COURT: Call your first witness.

21 MR. FREDERICK: Judge, --

22 THE COURT: Tell me, state - Tell me kind of what I
23 should be looking for as far as the issues which your
24 client claims.

25 MR. FREDERICK: Yes, sir. Basically, there's several

1 issues that we're gonna be claiming, Judge, depending on
2 how the testimony develops.

3 First is there was an amendment of the indictment
4 beginning at pre-trial, I suppose the trial judge before
5 the trial began, and the prosecutor amended the indictment
6 to include the dates from December 2010 through February of
7 2011 and these were the dates that the prosecutor alleged
8 stalking her because one of the charges was stalking.

9 And then at pre-trial, defense counsel made a motion
10 to exclude evidence of prior bad acts that the prosecutor
11 was intending to elicit during the trial prior to December
12 and the judge in the case said well, he would exclude those
13 because they were not encompassed within the date range in
14 the indictment and therefore they were not admissible. And
15 then the judge suggested that the prosecutor re-amend the
16 indictment back to October which the prosecutor did without
17 objection.

18 And at the same time - Judge, let me just kind of jot
19 through these. He amended the indictment as one of the
20 claims without objection and far and from that, prior bad
21 acts that came into evidence without objection throughout
22 the trial is another ground you will be hearing.

23 Judge, the trial counsel failed to impeach the alleged
24 victim in the case with her drug use which is going to be
25 important because there is one particular prior bad act,

1 which was a fight between the defendant and the alleged
2 victim's new boyfriend, was based in large part upon the
3 fact that he was selling drugs to the alleged victim in the
4 case.

5 THE COURT: He who?

6 MR. FREDERICK: An individual named David Bruton who
7 was the new boyfriend. And at no point was that drug use
8 or those drug sales used to explain that and so that was
9 the most common prior bad act that came up during the trial
10 was the fact that the defendant broke that guy's nose.

11 Also, on the night the defendant was arrested, he was
12 in the alleged victim's house which we allege is also his
13 house so therefore he could not have been convicted of
14 first degree. He found her drugs and he flushed them down
15 the toilet and she became very angry about that and this
16 was just before the police were called and defense counsel
17 did not bring this up at trial nor object to it's exclusion
18 at trial.

19 The prosecutor redacted the voice messages to take out
20 the reference to drug use without objection from defense
21 counsel.

22 Most importantly, Judge, there are at least four
23 witnesses who will testify that the defendant lived at that
24 house and that there was a pattern of Shanna, who is the
25 alleged victim, kicking him out and then begging him to

1 come back, hence he - probably most important findings of
2 failure to investigate and call those witnesses to trial.

3 THE COURT: You may call your first witness.

4 MR. FREDERICK: Judge, we would go ahead and call
5 Melissa Inzerillo.

6 (WHEREUPON, MELISSA INZERILLO,
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION

9 MELISSA INZERILLO BY MR. FREDERICK:

10 Q. Melissa, do you have a copy of the transcript? I've
11 got an extra one.

12 A. No, I don't. Thank You.

13 Q. Mainly I'm just going to refer to the transcripts ---

14 A. Okay.

15 Q. --- if that's okay. And my first questions involve
16 the amendment of the indictment and I'm looking at page 23,
17 line 1.

18 A. Okay.

19 Q. This was pre-trial. Correct?

20 A. Yes, sir.

21 Q. And the solicitor began by amending the indictment
22 from October to December of 2010? Line 1.

23 A. Line 1 says - page 23 is what you are on?

24 Q. Page 23.

25 A. It says, "she made me aware prior to trial that she is

1 amending the indictment to read December 1st 2010 through
2 February 28th of 2011.

3 THE COURT: Wait just a minute, twenty-three - my 23,
4 line 1 starts off, "Oh, I'm sorry. One more thing."

5 A. That's what mine says too.

6 MR. FREDERICK: Yes, sir.

7 THE COURT: You asked her to read line 1.

8 Q. Well, I'm actually not asking you to read it into the
9 record so much as just take a look at it to refresh your
10 memory.

11 THE COURT: Am I on the wrong page?

12 MR. FREDERICK: Yes, sir. And this is the beginning
13 of the section to where the solicitor indicted - amended
14 the indictment.

15 THE COURT: I see line 5 is what she was looking at,
16 sorry. Go ahead.

17 MR. FREDERICK: Yes, sir.

18 Q. So the solicitor amended the indictment to include the
19 dates of December through February, as opposed to October
20 through February. Is that right?

21 A. Umm. That's - yes. She wants to amend the directory
22 December 1st through February 28th.

23 Q. Okay. And I'm going to move to page 76.

24 A. Okay.

25 THE COURT: Help me a little. I hate to ask too many

1 questions.

2 MR. FREDERICK: Yes, sir.

3 THE COURT: It says time period October 1st. Would
4 that be 2010?

5 A. I apologize, Your Honor.

6 THE COURT: Or if it goes through February 2011.

7 A. 2011.

8 THE COURT: So the amendment actually gave a smaller
9 time period than the original?

10 MR. FREDERICK Yes, sir.

11 THE COURT: Okay. Go ahead.

12 A. You said 75?

13 Q. Seventy-six.

14 A. Seventy-six. Okay.

15 Q. And just to refer you to line 24. You don't have to
16 read it out loud. I just so much as to refresh your
17 recollection. At this point you made a motion to exclude -

18 THE COURT: I'm trying to keep up. What page are you
19 on now?

20 MR. FREDERICK: Seventy-six, Judge.

21 THE COURT: Seventy-six.

22 MR. FREDERICK: The very bottom of the page going into
23 77.

24 THE COURT: I'm there now.

25 Q. So Melissa, at that point you made a motion for the

1 court to exclude any prior bad acts that were not
2 encompassed in the dates alleged in the indictment. Is
3 that right?

4 A. That is correct. She had - Ms. Joyner and I had
5 previous conversations about some - she'd given me some
6 evidence that had put me on notice about changing the dates
7 in the indictment so I didn't object to the indictment
8 based on the notice aspect of it and then when I made the
9 motion about the prior bad acts, based on Ms. Joyner's
10 response to that, it became clear that when she expanded
11 the indictment, she was going beyond what I felt was
12 permissible based upon our conversations prior to that on
13 the notice aspect of it and so based on that, I objected to
14 not only that but what I felt was improper under the
15 indictments as had been ruled upon by Judge Alford and
16 explained to Judge Alford - felt I explained to Judge
17 Alford - that based on his prior ruling amending the
18 indictment, that I felt like she should be held to that.
19 And I think based on that, I think it was actually amended
20 back to perhaps the original indictment. But that's when
21 it became clear because based on original discussions, I
22 felt like I had been on notice. I didn't have an objection
23 to the amendment of the indictment but then when I made
24 that second objection, I'm sorry, the second motion, and
25 Ms. Joyner made her comments based on that, I felt like we

1 needed to flush that out a little bit more.

2 Q. And at that point, Judge Alford did say based on the
3 dates that you have in the indictment, I would exclude
4 those acts?

5 A. Yes. That sounds like what he said.

6 Q. Okay. Let's jump to page 83. Beginning at line 1,
7 the solicitor is explaining to the court that she amended
8 the indictment to December 1st because according to the
9 State's theory, that's the date that Shanna - and Shanna is
10 the alleged victim. Correct?

11 A. That's correct.

12 Q. That's the date that Shanna said leave me alone. I
13 don't want you around here anymore. Correct?

14 A. That was what Ms. Joyner's position was. Yes. That
15 she essentially I think what she was trying to explain to
16 Judge Alford was she was trying to put forth sort of the
17 res just i type argument and put the case in context and
18 those were the dates that she was using to put the case in
19 context.

20 Q. Okay, And moving to line 8 on the same page, the
21 solicitor expressed that in her opinion what happened prior
22 to December 1st was not stalking. Is that a fair
23 assessment of what she was explaining to the judge?

24 A. Umm, Yes, but I think what she - that's kind of what
25 she was trying to say but in the context of the argument

1 being there, it was - I think she was explaining to the
2 judge it was of a more res just i argument. She was trying
3 to put everything in context. And the issue in this case
4 and the difficulty in this case was we had one instance of
5 an alleged burglary that was sort of wrapped around this
6 larger issue of the stalking issue, and so I think what she
7 was trying to pin down were dates and sort of a res just i
8 and what I was trying to do was contain that issue.

9 Q. She didn't argue res just i in the transcript. Did
10 she?

11 A. I think that is sort of what it pulled down to and I
12 want to say the judge mentioned that phrase or that was
13 sort of the -

14 Q. Focusing on?

15 A. - page everyone was one.

16 Q. And focusing on what the solicitor's arguments were.
17 She does not say res just i. Does she?

18 A. She does not say res just i. No.

19 Q. But line 8 she does say that what happened from
20 October to December is not pattern evidence? She did say
21 that?

22 MR. JOHNSON: Your Honor, I ask the counsel to either
23 ask non leading questions or not testify. This is his
24 witness.

25 MR. FREDERICK: Judge, it's in the transcript. All

1 I'm doing is referring to the transcript.

2 THE COURT: Alright, so we know just go ahead.

3 A. I'm sorry. Ask me the question again?

4 Q. On Page 83, line 8 through 9, what it says there, does
5 it say the amendment from October is not pattern evidence?

6 A. Yes. That's what she said.

7 Q. Okay. And then does she say here in the transcript,
8 we're not asking the jury to find him guilty of stalking
9 based on those things?

10 A. That's what she says.

11 Q. Okay.

12 A. To the judge, pre-trial. Yes.

13 Q. Look at page 86, line 25. Does the solicitor then
14 move to amend the indictment again?

15 A. She does.

16 Q. And she amends the indictment back to October once
17 again?

18 A. She does.

19 Q. Okay. And you did not object to that. Is that right?

20 A. That's correct.

21 Q. Okay. And just to make sure I'm clear, the court did
22 rule that if the dates of the indictment were from December
23 to February, then bad acts that occurred in October and
24 November would not be admissible prior to that?

25 A. I think the judge ruled that she could testify with

1 the amended dates that what was happening in the
2 relationship that caused her to end the relationship. That
3 seems to be what is on page 85.

4 Q. What I'm asking is -

5 A. And then he amended the dates in the indictment.

6 Q. Before she amended it back to October, -

7 A. Right.

8 Q. You with me?

9 A. I'm with you.

10 Q. You had made a motion to exclude those bad acts and
11 Judge Alford said given the dates begin in December, I'm
12 going to exclude them, is what he said. Is that right?

13 A. Right.

14 Q. Okay. And then on the record, the prosecutor had said
15 prior to December this is not evidence of stalking. We
16 just went over that.

17 A. Right.

18 Q. And then the dates were amended back to October?

19 A. That's correct.

20 Q. Okay. Without objection?

21 A. Right, but then prior to that it seems to be that he
22 was telling her that there can be some information coming
23 in about why she ended the relationship. But to be honest
24 with you, I'm not sure if it was clear about whether that
25 would be allowed in under the change of the indictment or

1 not.

2 Q. I'm going to jump to page 144. In the solicitor's
3 opening statement at line 6, she referenced that Robert,
4 the defendant, broke the guy's nose. That he had better
5 done when he ran away?

6 A. That's correct.

7 Q. Okay, That was without objection. Right?

8 A. That's correct.

9 Q. Moving to page 150. During Shanna's testimony, she
10 testified that in October, he had put holes in the doors
11 and the walls, threw beers, tore the house up.

12 A. That is correct.

13 Q. And was that prior to December?

14 A. Yes. In October.

15 Q. Okay. And that would be a crime. Independently of
16 what he was charged with, it would also be a crime.
17 Wouldn't it?

18 A. Umm, Could be.

19 Q. Okay. That was without objection. Correct?

20 A. That's correct. I cross examined her on it, but I
21 didn't object.

22 Q. Okay, Page 151, beginning at line 2. Did Shanna
23 testify that he would come over uninvited?

24 A. Umm, She did.

25 Q. And throughout her testimony, is she implying that he

1 is breaking into the house?

2 MR. JOHNSON: Objection to leading, Your Honor.

3 THE COURT: I sustain the objection.

4 Q. Is she implying that he is breaking into the house?

5 THE COURT: Well, it's leading but also, I don't know
6 how she can testify as to implication, but we don't have a
7 jury, go ahead.

8 MR. FREDERICK: It is a little difficult, Judge,
9 because I'm really trying to stick to the transcript and it
10 is what it is as far as the record.

11 THE COURT: That's fine. That's why I was wondering
12 how you testify what someone is implying. How you or
13 anybody else testify when somebody is implying. It says
14 what it says.

15 MR. FREDERICK: Yes, sir. I understand.

16 Q. Did she say in the transcript that he would come to
17 her house uninvited?

18 A. Uh-huh. Yes, that was, Yes.

19 Q. Okay. Beginning at line 3, the question that was
20 asked, "Did he come over uninvited?" and the response was,
21 "He did."

22 A. That's correct.

23 Q. Okay. If you'll go on to page 153, line 23. Did she
24 say that he threatened her and her son and a neighbor and a
25 neighbor's daughter?

1 A. She did state that.

2 Q. And the neighbor, based on the recollection from the
3 trial, who was that?

4 A. I don't recall.

5 Q. Okay. And these threats independently of what he is
6 charged with would also be considered a crime.

7 MR. JOHNSON: Objection. That's irrelevant, Your
8 Honor.

9 THE COURT: I'll allow the question.

10 Q. Were they also considered a crime?

11 A. Umm, I don't know. I guess it depends on the context
12 of it.

13 Q. Okay. We are going to go - let me just go back over
14 these last few sections of the transcript that pointed to,
15 those came in without objection. Right?

16 A. That's correct.

17 Q. Okay. Moving to page 154, line 11. What is Shanna
18 testifying to there?

19 A. Mr. Hooker's method of entry.

20 Q. Was it the night he was arrested she is talking about?

21 A. No.

22 Q. This was prior incidents?

23 A. Umm, Yes.

24 Q. She is...

25 A. Umm, Yes.

1 Q. And in response to the questions, she is talking about
2 what happened beginning in October; right? Or February.

3 A. No. December.

4 THE COURT: Line 6, let's start with December.

5 Q. Okay. But beginning was December; right?

6 A. Right.

7 Q. All right. And she is saying he came in through the
8 sliding glass door?

9 A. That's correct.

10 Q. When she wasn't home?

11 A. That's correct.

12 Q. Okay, And without objection she testified to this;
13 right?

14 A. That's correct.

15 Q. And just looking at line number 16, same page, did she
16 estimate that he broke into her house 20 to 30 times?

17 A. That's what she said.

18 Q. Okay. Without objection; right?

19 A. That's correct.

20 Q. Page 157, beginning with line 7, did she testify that
21 he destroyed her house, made holes in the walls, destroyed
22 what-nots?

23 A. Yes. She testified to that.

24 Q. And based on your experience as a criminal defense
25 lawyer but a part from what he is charged with, is that an

1 independent crime?

2 A. Yes. It could be.

3 Q. Okay. Without objection; right?

4 A. That's correct. I crossed her on but without
5 objection.

6 Q. Okay. On page 169, line 6, did she testify about the
7 fight between Robert and David Brewton?

8 A. She did.

9 Q. Okay. Without objection; right?

10 A. That's correct.

11 Q. Page 164, again line 6, did she further testify about
12 the fight with David Brewton characterizing it as an
13 assault?

14 A. Yes - the solicitor characterized it as an assault,
15 asking Ms. Graham how she felt.

16 Q. So the solicitor referenced an assault on David
17 Brewton without objection; right?

18 A. That's correct.

19 Q. And we move to line 170.

20 THE COURT: Page 170?

21 MR. FREDERICK: Yes, sir. I'm sorry.

22 Q. Page 170, line 21. Again, the solicitor says that
23 Robert broke David Brewton's nose; right?

24 A. Yes.

25 Q. Without objection?

1 A. That's correct.

2 Q. Page 200, line 7. The solicitor again referenced
3 Robert getting into a fight with David Brewton?

4 A. No, that's me.

5 Q. So you referenced Robert getting into a fight with
6 David Brewton -

7 A. That's correct.

8 Q. - on cross examination?

9 A. That's correct.

10 Q. Let's move to 267, line 19. This is the solicitor's
11 closing argument; right?

12 A. Yes.

13 Q. And in her closing argument, she says beginning at
14 line 16, "In October, he jimmied Shanna's backdoor and went
15 into her house."

16 A. He says, "In October when his relationship started to
17 disintegrate he could feel Shanna Graham drifting away and
18 it all started.

19 Q. Keep going.

20 A. Frequently, frequent calls, messages, texts, coming
21 over uninvited when he wasn't wanted, jimmied her back door
22 and coming into her house.

23 Q. Okay. And in your experience, if someone jimmies a
24 back door and goes into a house when they are not wanted,
25 that would be a burglary. Right?

1 A. If the remaining elements are there, it could be.

2 Q. Right.

3 A. Yes.

4 Q. And Shanna had previously testified this happened 20
5 or 30 times?

6 A. That was her testimony. Yes.

7 Q. At this point in closing argument, there was no
8 objection to it?

9 A. No.

10 Q. That either, 269, page 269, line 18. Does the
11 solicitor again reference Robert breaking David Brewton's
12 nose in her closing argument?

13 A. Uh-huh, she mentions - I think she meant - well, I
14 can't speculate.

15 THE COURT: On page 269, line 18, read what it says.

16 A. Line 18 says help me come get him to leave. He
17 doesn't leave until he, continuing to 19, breaks the
18 neighbor's nose.

19 Q. So that in closing arguments, she, the solicitor
20 references the fight with David Bruton, Robert breaking the
21 neighbor's nose?

22 A. I believe Mr. Bruton was the new boyfriend. He may
23 have also been the neighbor.

24 Q. That's right.

25 A. Okay. Then yes.

1 Q. Without objection. Right?

2 A. That's correct.

3 Q. Page 273, line 11, in the solicitor's closing
4 argument, she again references Robert breaking David
5 Brewton's nose? Two seventy-three, line 11.

6 A. Eleven and 12, yes.

7 Q. Okay. And at this point she is arguing to the jury
8 that you had brought that up on cross examination that he
9 broke David Bruton's nose; right?

10 A. That's correct.

11 Q. Without objection. Right?

12 A. That's correct. I think it is important to remember
13 there was a phone call entered into evidence where Mr.
14 Hooker referenced where he did break his nose.

15 Q. Without objection. Right?

16 A. That's correct.

17 Q. Page 277, line 18 - 18 and 19. The solicitor again
18 argues to the jury that Robert broke David Brewton's nose?

19 A. That's correct.

20 Q. Without objection. Right?

21 A. That's correct.

22 Q. And on page 282 -

23 A. One minute. Making sure that is still her. Okay.

24 Q. On page 282, line 7. The solicitor again references
25 Robert hitting David Bruton?

1 A. That's correct.

2 Q. Without objection. Right?

3 A. That's correct.

4 Q. Page 285.

5 A. Yes.

6 Q. Line 1 at the top of the page. The prosecutor
7 references Robert breaking into the house multiple times.
8 Did I quote you on that?

9 A. Yes.

10 Q. Without objection. Right?

11 A. That's correct.

12 Q. On page 286, line 4. The solicitor in her closing
13 argument again references Robert breaking David Brewton's
14 nose; is that right?

15 A. That's correct.

16 Q. Without objection. Right?

17 A. That's correct.

18 Q. On page 299 we're in your closing argument now.

19 A. Okay.

20 Q. Line 11, you were responding to the prosecutor's
21 closing argument and you also talked about how Robert got
22 into a fight with David Bruton. Right?

23 A. That's correct.

24 Q. And during the trial, did you refer to Shanna as the
25 victim?

1 A. Uh-huh.

2 Q. At least on 299, line 12.

3 A. Oh, yes I did.

4 Q. Okay. Melissa, I'm going to go back in the
5 transcript, okay?

6 A. Okay.

7 Q. Now I think page 45, around line 17, there was an
8 Officer Dougan who testified that Robert told him that he
9 did not live at Shanna's house. Do you remember that?

10 A. That's correct. He indicated to me he lived there
11 either.

12 Q. Okay. Page 55, line 11. This is pre-trial, I
13 believe. Right? Not in front of a jury?

14 A. Yes.

15 Q. Okay. Officer Wells testified pre-trial that - he
16 begins at line 11, page 55 through page 57, but she
17 testified that Robert had repeatedly told her that he did
18 live in the house.

19 A. That was what she said he said. That's correct.

20 Q. Okay. Page 58, beginning around line 17 through page
21 60, Officer Felmet testified that Robert also told him that
22 he lived in the house.

23 A. What's the line numbers again?

24 Q. Beginning at page 58, line 17 and then it goes on
25 through page 60. He references it a few times.

1 A. Yes.

2 Q. Question is, did he testify that Robert told him he
3 lived in the house.

4 A. That's correct.

5 MR. JOHNSON: Your Honor, while this may be admission
6 by party opponent for the State, this is self-serving
7 hearsay testimony, Your Honor. While it is in the
8 transcript, that is still to say that if he claimed that he
9 lived there, it's self serving hearsay testimony.

10 THE COURT: Well we'll make a record we'll worry about
11 how to analyze it later.

12 MR. FREDERICK: Yes, sir.

13 Q. Beginning on page 61, line 19 and on through page 63.
14 Officer Slozin also testified that Robert had told him that
15 he lived in the house.

16 A. He told Officer Slozin that he was entitled to be
17 there and that he should have been able to be there.

18 Q. Okay. So he told him he was entitled to be in the
19 house?

20 A. And that he should have been able to be there.

21 Q. Okay. Now, the judge's ruling in pre-trial, and I
22 don't have the page number but we can find it if we need
23 to, but he had ruled I think that those statements would be
24 admissible only if the prosecutor admitted them as a
25 statement by a party opponent. Do you remember that?

1 And then he ruled that they are not admissible if you
2 tried to admit them; only if the State admitted them.

3 (PAUSE.)

4 A. Uh --

5 Q. I think page 52 is where he made that ruling.

6 Your Honor, at the bottom.

7 A. 52.

8 Q. That's where he begins. And read through about
9 halfway down page 53.

10 A. Yes. He said the State had to essentially open the
11 door and then I could get into it.

12 Q. Okay. Now at the trial itself, not pre-trial, but the
13 trial itself, I think there were three officers who
14 testified? Felmet, Slozin and Culbreath.

15 A. I believe that's correct.

16 Q. Okay. Now, two of those officers testified in front
17 of the jury that Robert told them that he lived there and
18 he had a right to be there.

19 A. Okay.

20 Q. I don't have the page number but we can find it if we
21 need to.

22 A. Okay.

23 Q. They testified after Shanna testified. Do you recall
24 that or do we need to look at it?

25 A. Give me one minute.

1 Q. So the officer's testimony begins with Slozin, which
2 is at the top of page 219.

3 A. Okay.

4 THE COURT: Let's take a short break while you try to
5 find that. I was gonna take a break in a minute anyway.
6 I'll give you a chance - we'll take a break.

7 And if you need to use the restroom or anything we'll
8 do that. We'll take a real short about a five minute
9 break. Give you a chance to find what you're looking for.

10 MS. INZERILLO: Thank you, Your Honor.

11 MR. FREDERICK: Yes, sir.

12 (COURT IN RECESS AT 10:45 A.M..)

13 (COURT BACK IN SESSION AT 10:53 A.M..)

14 THE COURT: All right. Be seated.

15 (TREY WILLIAMS V. STATE OF SOUTH CAROLINA WITH MIKE
16 HEMLEPP AND MR. JOHNSON.)

17 (JOHNNY YOUNG VERSUS STATE OF SOUTH CAROLINA WITH MIKE
18 HEMLEPP AND MR. JOHNSON.)

19 (COURT BACK IN SESSION IN ROBERT HOOKER VERSUS STATE
20 AT 11:10 A.M..)

21 (APPLICANT ROBERT HOOKER, WHITE MALE, REENTERS
22 COURTROOM.)

23 THE COURT: You may proceed.

24 MR. FREDERICK: Thank you, Judge.

25 DIRECT EXAMINATION

1 MELISSA INZERILLO BY MR. FREDERICK:

2 Q. Melissa, when we left off, we were talking about the
3 direct examination of the officers. Specifically, I'll
4 direct you to page 227 at line 3 ---

5 A. Okay.

6 Q. --- Officer Slotzin in his direct.

7 A. That's correct. Okay.

8 Q. This is the end of his direct examination and the -
9 during direct examination, did he testify that Robert had
10 said that he had a right to be at the apartment?

11 A. He did.

12 Q. Okay. I'm going to move to page 236 at line 13 which
13 is the end of Officer Felment direct examination.

14 A. Uh-huh.

15 Q. Did Officer Felment also testify that Robert had told
16 him he lived there and he had a right to be there?

17 A. He did.

18 Q. Okay. Did that open the door for you to cross-examine
19 on that issue?

20 A. Yes, it would.

21 Q. Okay. But you did not cross-examine him on that issue
22 did you?

23 A. I did not.

24 MR. JOHNSON Objection to leading, Your Honor. This
25 is --

1 THE COURT: Well, I - We don't have the --

2 MR. JOHNSON: Every question asked has been leading.

3 THE COURT: We don't have a jury. I kind of -

4 MR. FREDERICK: I can reverse the words --

5 THE COURT: Well, you - Yes, -sir.

6 BY MR. FREDERICK:

7 Q. Did you cross-examine him on that issue?

8 A. I did not. I felt like he had testified to that and
9 any further cross-examination may not have been helpful but
10 that information was out in front of the jury at that
11 point.

12 THE COURT: Isn't that what you wanted to get in --

13 Isn't that what your client wanted to get in ---

14 MR. FREDERICK: Sir, --

15 THE COURT: --- that he had lived there? Isn't this
16 the kind of information your client wanted to get in?

17 MR. FREDERICK: Yes, sir.

18 THE COURT: I mean, I'm - I'm just thinking out loud.
19 Why in the world would she want to cross-examine him to do
20 damage to favorable testimony, but I - Go ahead.

21 Q. Well, Melissa, at any point during the trial, did you
22 mention that the officer said that Robert told them he
23 lived there and he had a right to be there?

24 A. I - You mean like in closing or opening?

25 Q. At any point: opening, closing, cross-examination?

1 A. No, I did not do that.

2 Q. Okay. Did anyone else testify that Robert had a right
3 to be there and he lived there apart from the officers, to
4 the best of your recollection?

5 A. No.

6 Q. Okay. Was Robert charged with burglary the night that
7 he was arrested?

8 A. No.

9 Q. Okay. And at any point, did you bring that up in
10 front of the jury?

11 A. No. I believe we did a pre-trial motion on that.

12 Q. Uh-huh. Page 20?

13 A. I think you're right. My recollection was Judge
14 Afford had indicated I would not be allowed to get into
15 that.

16 Q. Okay. Let's look at page 20, line 2, and there was
17 kind of a long, rambling discussion about it ---

18 A. Uh-huh.

19 Q. --- by the judge, but page 20 and line 2, and this was
20 the judge speaking. He said, "You could argue that they
21 could consider the fact that he wasn't charged that night,
22 that he was charged the next day, but you could not argue
23 any inferences to be drawn from that."

24 A. Okay.

25 Q. Is that right?

1 A. That is what he said.

2 Q. And then page 21, line 2, he just repeated that at the
3 end, "You can say that charges were not made that night",
4 but he didn't want you to argue any inferences from it; is
5 that right?

6 A. That is correct, he did say that.

7 Q. Okay. And you did not bring that up during the trial,
8 though, is that --

9 A. That is correct.

10 Q. Did you bring it up during the trial?

11 MR. JOHNSON: Your Honor, anything that Judge Afford
12 would have said or ruled is a direct appeal issue. She was
13 not allowed to bring it up during PCR and her testimony
14 that - at issue right now, is irrelevant. Its not before
15 the PCR Court.

16 THE COURT: Well, I'm going to take all of that into
17 consideration, but go ahead.

18 Go ahead.

19 Q. Just to clarify, Judge Afford said you could bring
20 that up. Is that what he said?

21 A. He --

22 Q. Pages 20 and 21.

23 A. He did say that.

24 Q. And did you bring it up?

25 A. No.

1 Q. Okay. Did Robert and his mother provide you with the
2 names of witnesses?

3 A. Witnesses for what?

4 Q. For Roberts case, specifically witnesses that could
5 testify as to whether he lived at the house or, I guess,
6 the pattern of Shanna kicking him out and bringing him
7 back?

8 A. No. My notes indicate that when I spoke to Robert
9 about the case, he indicated he knew Ms. Graham didn't want
10 him to live there or didn't want him there. That he never
11 indicated to me that he lived there. I - When I spoke to
12 his mother, his mother focused a lot on the type of
13 relationship that they had. That Shanna oftentimes would
14 get angry that they lived - that he would come by, but then
15 would let him come in. She gave me pictures on a disc of
16 Shanna sitting on the bed which is what I crossed Shanna
17 on.

18 She also gave me a video, but couldn't tell me how the
19 video came into effect and no evidence of any foundation
20 for the video which is why I couldn't cross - Really I
21 didn't feel like I could cross-examine Shanna on the video.
22 Because I couldn't put up a witness I didn't feel like I
23 could even put up his mom to authenticate the video,
24 because she had possession of it, but she didn't know
25 really where it came from or how it was created, and so I

1 didn't really have any witnesses to say that he lived
2 there.

3 Based on my understanding of the case from talking to
4 Mr. Hooker, as well as his mom, he was a commercial
5 fisherman so he was gone a lot and then when he w sort of
6 come back into town, he would drop by and he would sort of
7 see her, but he didn't live there and that was my
8 understanding from talking to them about the case.

9 From the facts of the case, as well, when Ms. Graham,
10 you know, sees him there on the day of the - when she finds
11 him in the house of the burglary as alleged in the case and
12 she texted the mom, the mom says call the police, tell him
13 to leave. Nothing about, well, you know he's got a right
14 to be there or just tell him to pack his bags or anything
15 like that, so I didn't see any red flags in the case that
16 would indicate that he lived there that I could see, and so
17 at the time that I had the case, I didn't have any
18 information from them.

19 Q. But you've raised several issues that I'm going to
20 come back to, okay?

21 A. Okay.

22 Q. But this specific question ---

23 A. Uh-huh.

24 Q. --- did you have information about witnesses that
25 Robert and/or his mother wanted you to contact?

1 A. Yeah, not that I see in my notes or not that I could
2 find.

3 Q. Okay.

4 A. Or not that I recall. I had - it looks like a - notes
5 of --

6 Q. Let - Melissa, this came from your notes. Can you
7 tell me if you recognize it? Your file I should say, not
8 your notes.

9 A. Yeah, I think maybe this was sent to us as a
10 mitigation - well.

11 Q. And it was his mother that provided the mitigation
12 materials?

13 A. I believe so, yeah.

14 Q. Okay. And this is a letter?

15 A. Uh-huh.

16 Q. And who's it from?

17 A. From Mr. Howsare.

18 Q. Okay. And did Mr. Howsare express in that letter
19 whether or not Robert lived with Shanna?

20 A. Yeah. He says, "their relationship was a hard one,
21 but he did live with her. It started when she lived near
22 me off 901."

23 THE COURT: All right. I'm sorry, you trailed off.
24 Will you say that again?

25 A. I'm sorry. He puts in here, "their relationship was a

1 hard one, but he did live with her. It started when she
2 lived near me off 901 and then when she moved to Brookview
3 Court."

4 Q. Well --

5 A. It seemed overnight she wanted him gone.

6 Q. Melissa what you just read to the Court, their
7 relationship was a hard one ---

8 A. Uh-huh. But he did live with her.

9 Q. --- but he did live with her. Is that what it says?

10 A. Yeah.

11 Q. Okay.

12 A. I have a note here that I'll - let me -- let me back
13 up.

14 THE COURT: Before you go to that, and this is not
15 anything in evidence of course but ---

16 A. Uh-huh.

17 THE COURT: --- did you read that he lived with her at
18 one before she moved somewhere else?

19 A. It started when she lived near me off 901.

20 THE COURT: Then, what did you say?

21 A. And then when she moved to Brookview Court. And I
22 apologize. I have a note, I talked to witnesses. Decided
23 not to call, because no one would be helpful, but I didn't
24 list which witnesses I talked to.

25 Q. Okay.

1 A. So I don't know if Mr. Howsare was one of those
2 witnesses, so I apologize for that.

3 Q. Okay. But we have this letter from Eric; is that
4 right?

5 A. Yes.

6 Q. Okay. Is that from your notes?

7 A. That's my handwriting, yes.

8 Q. Okay. And on these notes, does it reference Eric
9 Howsare?

10 A. Yes, with phone numbers.

11 Q. And is there a star next to his name?

12 A. Yes, I think it - it looks like my investigators
13 handwriting or former investigators handwriting. Its next
14 to Mr. Wix's name ---

15 Q. Okay. Just asking you about ---

16 A. --- and it says No good.

17 Q. --- Eric Howsare from now on?

18 A. Uh-huh. Yes.

19 Q. Okay. And those - those are from your notes, right?

20 A. That is correct, so I apologize ---

21 Q. Okay.

22 A. --- I think I misspoke earlier.

23 Q. Did you contact Eric and interview him?

24 A. Can you give me one moment to check?

25 Q. Sure.

1 A. I did not come across any notes but let me
2 double-check, okay?

3 Q. Okay.

4 (PAUSE.)

5 A. I don't - I don't see any notes, so I don't know if we
6 couldn't get in touch with them or if my investigator took
7 the notes and he's no longer with the office, so I don't
8 know.

9 Q. As far as you can tell sitting here now and with your
10 file in front of you ---

11 A. Right

12 Q. --- did you contact Eric Howsare in an interview?

13 A. I - I don't know.

14 Q. Okay.

15 A. I see that we contacted Mr. Chase Hooker, but I don't
16 see Mr. Howsare.

17 Q. Okay. Now, I refer you back to the last page that I
18 handed up to you, Melissa.

19 A. This one?

20 Q. Yes. Is Mr. Wayne Wix also noted there in your notes?

21 A. Yes.

22 Q. And would - He has a star next to his name. Right?

23 A. Yes.

24 Q. Okay. And I'm going to hand you another one. Can you
25 tell me whose handwriting that is? I'm not sure that's

1 yours. That was also in your notes.

2 A. I don't know. It may have been his - I don't know, it
3 may have been his mom's or somebody else's, but it's not
4 mine.

5 Q. It could be something that was provided to you?

6 A. Uh-huh. Yes, sir.

7 Q. Well, and do you recognize that as being a part of
8 your notes ---

9 A. Yes.

10 Q. --- from your file?

11 A. Yes, I do.

12 Q. Okay. And is Wayne Wix also referenced on that page?

13 A. Yes, he is.

14 Q. Okay.

15 A. Yes, with the same number and my investigators notes
16 noted that the number was no good ---

17 Q. Okay.

18 A. --- when he tried to contact him.

19 Q. To the best of your recollection, did you contact
20 Wayne Wix for an interview?

21 A. An attempt was made on July 14th and the number was -
22 it just says, no good. I don't know if it was out of
23 service or - but an attempt was made.

24 Q. Do you have the means by which to locate a new
25 telephone number for a person or does your investigator?

1 A. I don't know and that's the truth. I'm not very
2 technologically-savvy, so I don't know. Generally, we
3 would ask family members or friends or some people to help
4 us out if a phone number has been cut off or if people
5 move.

6 Q. Did you do that, did you ask Robert, or his mother, or
7 Mr. Howsare, or anyone else, to provide you with a working
8 number for Wayne Wix, or as far as you can tell to the best
9 of your recollection, was anything else done to contact,
10 locate and interview Mr. Wix?

11 A. I don't know. Generally, if we have trouble finding
12 people, I will let the client and in this case, his mom,
13 stayed in pretty constant contact with us, so I'd let them
14 know.

15 Q. I'm asking specifically about this case. Did you ask
16 any of these people for a good working number or address
17 for Wayne Wix?

18 A. I don't have in my notes that we did but, generally, I
19 would say we do.

20 Q. Are you saying you don't know?

21 A. I'm saying generally I do but in this case, I don't
22 have in my notes specifically what day that I did that.

23 Q. I want to be clear. You did or you didn't or you do
24 you know that you did?

25 MR. JOHNSON: Asked and answered, Your Honor.

1 THE COURT: No, I don't think she has answered. I
2 agree with Mr. Frederick.

3 A. I - I can't tell you that I specifically did in this
4 case is my answer.

5 Q. Okay.

6 A. Okay.

7 Q. Now, you said that you did talk to Chase Hooker?

8 A. Yes.

9 Q. Can you tell us what you discussed with Chase Hooker?

10 MR. JOHNSON There would be an objection to hearsay to
11 anything Mr. Chase Hooker would say.

12 THE COURT: I overrule the objection. Its not being
13 offered for the truth of the matter asserted. Its being
14 offered to determine her knowledge of what was originally
15 testified to regarding Mr. Hooker.

16 MR. FREDERICK: Yes, sir.

17 A. All right. I interviewed Chase on July 25th.

18 THE COURT: What year?

19 A. Two-thousand and -- prior to this in two-thousand-and
20 ---.

21 THE COURT: Well, prior to trial?

22 A. Prior to trial. I apologize, Your Honor.

23 THE COURT: Okay.

24 A. He described it - I asked him what he knew about this
25 case and the burglary in this case. He said what he

1 understood was that it was raining and cold. That Mr.
2 Hooker was sitting on Shanna's back porch talking to Gabe
3 and drinking. Gabe is her son. He went to get a beer and
4 he couldn't get in. Get into the house. He was soaking
5 and wet, so he broke into her house to get in.

6 He - I have a note Mr. Hooker saw pot on his phone.
7 I'm not sure what that's referencing. Chase indicated both
8 of them are crazy. He would call Mr. Hooker some days to
9 come over, and then they'd get mad and tell him to leave.
10 That this was the type of relationship - it kind of echoed
11 what Mr. Hooker's mom said. It was kind of a - this kind
12 of relationship. They'd get in a fight and leave and he
13 says that's always how its been.

14 I asked or I have a note here, he thought David was
15 selling her pot, meaning Shanna, but he couldn't confirm
16 that. Mr. Hooker got fed up with all the people coming
17 over and smoking pot with her son there. Again, just what
18 he had heard. He said, Mr. Hooker does drink a lot and get
19 aggravated to deal with. He's not aggressive but when he
20 does get in some fights, he always loses.

21 So there wasn't anything I felt to put him on the
22 stand in terms of he wasn't an eyewitness to this. What he
23 knew about the burglary he had heard, I guess, secondhand.
24 What he knew about - It seemed like what he knew about the
25 case, he knew secondhand. And he could give a general

1 encapsulation of the relationship, but I felt like we had
2 established that through Ms. Graham's cross and Ms. Graham
3 essentially said in her cross-examination that she had let
4 him come in and then he would leave and this was sort of
5 the relationship that they had.

6 So I've -- When I talked to him, I didn't feel like he
7 was an eyewitness to anything, and so I didn't put him on
8 the stand. I was looking more for someone that could be an
9 eyewitness to something.

10 Q. Okay. Were you made aware of Keith Williams as a
11 potential witness?

12 A. No. I had Stan Worthy, it looks like in my notes,
13 Eric Howsare, H-o-w-s-a-r-e, Wayne Wix, Chase Hooker.

14 THE COURT: What was the one before Chase?

15 A. Wayne Wix, W-i-x, and I apologize for misspeaking
16 earlier.

17 Q. Was this also from your file ---

18 A. I'm sorry about that.

19 Q. --- from the litigation materials?

20 A. Uh-huh.

21 Q. Do you recognize this?

22 A. . You said it was from mitigation?

23 Q. Yes.

24 A. All right. Give me a minute.

25 Q. The correspondence part of your file.

1 A. I'm sorry?

2 Q. I labeled it correspondence, but it was mitigation
3 materials.

4 A. Okay. I don't see it, but it's a thick file, so if
5 you say we got it - you got it through discovery then. But
6 yeah, It's a - Its an email from Keith Williams.

7 Q. Okay. And the To section in the email, that's not to
8 you?

9 A. No, it looks - I think its to his mom.

10 Q. To Roberts mother, which would mean if that's in your
11 file, she probably provided it to you?

12 A. Probably.

13 Q. And in that email, does it contain Keith Williams'
14 email address?

15 A. It does.

16 Q. And did he have some knowledge of Robert and Shanna's
17 relationship? Does he say in there that he drops Robert
18 off at Shanna's house?

19 MR. JOHNSON: Objection. First of all, its
20 speculation. Second of all, its not been authenticated and
21 anything that his knowledge is also speculation, Your
22 Honor.

23 THE COURT: Okay. I overrule your objection.

24 Go ahead.

25 A. The only thing it says is, "Although, I've dropped him

1 off at the girl's home in which he's been tried for, I've
2 never actually met her."

3 Q. Okay.

4 A. "I know nothing more about her than what I've been
5 told to me by him and another good friend of ours." And it
6 says, "I do know she tried on several occasions to use him
7 for money that he would make from long-line fishing." But
8 he doesn't know anything about this allegation or it
9 doesn't appear that he knew anything about any other
10 allegations.

11 Q. . He does say in there that he dropped her off on
12 different occasions. Right?

13 THE COURT: Dropped him off?

14 A. Right, dropped him off.

15 MR. FREDERICK: Sir? Yes.

16 THE COURT: You said dropped her off.

17 MR. FREDERICK: Yes, sir; dropped her off.

18 Q. Did you contact Keith and interview him?

19 A. No, I did not.

20 Q. Okay.

21 A. Or I - it doesn't appear that I did in my notes.

22 Q. Okay. Did - Did you receive any information from
23 anyone that after Shanna said she put him on a trespass
24 notice that she brought him back into the house to spend
25 the night? Specifically, did Robert's mother tell you

1 that?

2 MR. JOHNSON: Objection to hearsay of what Ms. --

3 THE COURT: I understand it'd be hearsay, but I'll
4 allow it.

5 A. I don't remember if she told me that specifically. I
6 know - I remember her telling me that there would be a -
7 the type of the relationship is that he would sort of come
8 and go in the house. I think there was something with - I
9 don't know if that was the pictures that she gave me, but I
10 don't recall.

11 Q. Just to refresh your recollection. ---

12 A. Okay.

13 Q. --- this is also from the correspondence in your file.

14 A. Okay.

15 Q. And can you say what this is?

16 A. It looks like a letter she wrote to me.

17 Q. And by - By she you mean?

18 A. His mom.

19 Q. His mother.

20 A. Ms. Starnes.

21 MR. JOHNSON: And, Your Honor, I will object to this.
22 First of all, this is hearsay within hearsay and which goes
23 to the truth of the matter asserted because her statement
24 is in the letter that he is not guilty of any kind of
25 burglary or stalking. I would strenuously object to this,

1 Your Honor.

2 THE COURT: Well, I'll allow it in for whatever value
3 it may have.

4 MR. FREDERICK: Now, Judge, I'm not admitting -
5 entering the letter into evidence. The question is did --

6 THE COURT: Well, I will - I will allow her to be
7 questioned about it then ---

8 MR. FREDERICK: Yes, sir.

9 THE COURT: --- for whatever value it may have.

10 BY MR. FREDERICK:

11 Q. The question is did Roberts mother make you aware that
12 Shanna had brought him back into the house to stay the
13 night? Its about halfway down the first page.

14 A. Yes. And then she said, "The only reason he broke in
15 was to dry his clothes and try to talk to her when she came
16 back. If she was so afraid, why did she come back alone
17 when she knew her dad was on her way" and that's what we
18 argued in trial.

19 Q. And the very next thing she said is what?

20 A. She was mad because Robert flushed her drugs, which I
21 explained why we couldn't - I didn't feel like we could
22 argue that.

23 Q. Okay.

24 THE COURT: Well, and I realize this is hearsay, but
25 she - she says he broke in?

1 A. Yes.

2 Q. That's the language that she uses.

3 THE COURT: Okay. Go ahead.

4 A. And then she says, "No one has given him help for his
5 real problem, alcohol" which she continuously maintained
6 was the underlying issue. "I was in the beginning going to
7 let him take care of this himself, but no one has come to
8 tell - to talk to him."

9 Q. So this --

10 A. "After talking to Robert, a trial might be the way to
11 go."

12 Q. So the specific questions that I have for you, she did
13 tell you that Shanna brought him back into the house to
14 spend the night after Shanna said she got a no trespass
15 order?

16 A. That's what she says.

17 Q. Okay. And she did tell you she was mad because Robert
18 flushed her drugs?

19 A. That's what - That's what she said and she like I say,
20 I think she brought a video or something ---

21 Q. Uh-huh.

22 A. --- and I talk with her about that, but I didn't feel
23 like when it came to trial, I didn't - wasn't sure how we
24 were going to get that piece of evidence in. I
25 cross-examined Shanna on the pictures and Shanna sort of, I

1 thought luckily for me, went along with the pictures and,
2 you know, kind of made it for a productive
3 cross-examination, but I did not ask her about the video,
4 because I didn't have a way to authenticate the video for
5 us.

6 Q. And I'm going to come back to that.

7 A. Okay.

8 Q. Okay. Is it possible that when they testified, or
9 Shanna testified, or the officers testified, that Robert
10 had been put on trespass notice, that the Jury would
11 believe, based on that, he had no right to be at the house
12 and that's reasonable. Right?

13 A. I think they could have believed that, but I think Ms.
14 Graham's testimony about, you know, all of this stuff
15 happening twenty and thirty times and she was fearful of
16 him, it was almost too outrageous to be true. I mean, she
17 - you know, when - her demeanor when she took the stand she
18 was very calm. You know, she - her testimony was he would
19 keep coming in the house and I was so afraid and I was so
20 terrified, but I never wanted him to get in trouble, I just
21 wanted him to leave.

22 And so we - I felt like certainly based on what Ms.
23 Starnes was saying and based on my, you know, what I knew
24 about the case, it seemed like there was certainly between
25 Mr. Hooker and Ms. Graham this sort of fractious

1 relationship where he would come in, perhaps they would
2 have this argument, and then she wanted him to leave or he
3 knew he didn't, you know, she didn't want him around and he
4 would come around anyway and, you know, then she took the
5 stand and the fish kept getting bigger and bigger and
6 bigger, the twenty times and he would always break in and
7 he terrified her son and he terrified her, and then she
8 left the house and knowing the child was terrified and
9 knowing she was terrified and what does she do? She comes
10 back. She never calls the police.

11 Q. Can I --

12 A. And we thought more that would strike a chord with
13 that, and so we - you know, we had the issue of the
14 trespass notice, but we thought everything else that she
15 was testifying to and the fish getting so big, that would
16 be one thing of that they would almost override that - the
17 trespass notice.

18 Q. Let me ask you, is it your job to argue the State's
19 case or Robert's case?

20 A. It's my job to counteract the State's case.

21 Q. Is it your job to tell Shanna's story or Robert's
22 story?

23 A. Its my job to at least counteract the State's story
24 and tell Roberts story as much as I am able to.

25 Q. Okay. Is it possible that if the Jury was made aware

1 that Robert was staying at her house after that trespass
2 notice, it would have impeached her testimony?

3 Let me ask it this way, is it possible that if the
4 Jury was made aware that he was staying at her house after
5 that, they could have believed that he thought he had a
6 right to be there?

7 MR. JOHNSON: Objection as to anything the Jury would
8 have thought and/or inferred, Your Honor. That is a
9 purview of the Jury and not for this court.

10 THE COURT: All right. I overrule, but I'll have to
11 take all of that into consideration.

12 A. I think it could have, but I think we established
13 through the cross that he - she was maintaining contact
14 with him. I think the Jury was well-aware of that. She as
15 maintaining contact with him. She never disclosed to the
16 police that she was maintaining contact with him. She
17 certainly hid that part of the relationship from the police
18 that all of the evidence that she would bring forward was
19 for of her own evidence .

20 And I think we put - we did put a lot of that in front
21 of the jury as, you know, as through the cross-examination
22 of her.

23 Q. Are you saying you established in cross-examination
24 that she brought him back into the house?

25 A. I think that we put that issue in front of the Jury

1 through her cross-examination.

2 Q. Can you show me in the transcript?

3 A. She - I can. She admits in her cross-examination that
4 she never tells the police that she - Now, I don't have
5 page numbers like you do.

6 Q. I'll find it. Your cross-examination begins on page
7 185:

8 A. Okay.

9 Q. Actually, they take a break. It begins on 186.

10 A. All right. All right.

11 Q. Specifically, as you look through it ---

12 A. Uh-huh.

13 Q. --- you did ask her if she let him come back into the
14 house and she said no, she did not?

15 A. Right. And then I cross-examined her on what she told
16 the police.

17 Q. And, Melissa, ---

18 A. Yes. Sorry.

19 Q. --- and my question is, did you establish on
20 cross-examination that she brought Robert back into the
21 house?

22 A. I would assert that I did, but I will ---

23 Q. Then ---

24 A. --- leave that up to the Court ---

25 Q. Show --

1 A. --- or you.

2 Q. Show us the where. I'm sorry.

3 A. Ask me the question again. That he was coming back in
4 the court - the house or they lived in the house?

5 Q. The question is did you establish on cross-examination
6 that Shanna brought Robert back into his house or allowed
7 him to stay at her house after the trespass notice?

8 A. Allowed him to stay?

9 Q. Sure.

10 A. No, I didn't. No, not that she allowed him to stay.

11 Q. Okay. And you did specifically ask her that question
12 and she said no. Right?

13 A. She said she wasn't seeing him.

14 Q. Okay. So you said - Your question was, "did you let
15 him stay at your house after the trespass order?" And her
16 response was, "I was not seeing Robert."

17 A. Right.

18 Q. And you went on and you said, "I'm not asking if you
19 were seeing him." She was being evasive. Right?

20 A. Right.

21 Q. And you again said, "Did you allow him to come and
22 stay at your house? And she said, "No."

23 THE COURT: Page and line?

24 MR. FREDERICK: The bottom of 193 to the top of 194.

25 THE COURT: Okay. Thank you.

1 MR. FREDERICK: I'm sorry.

2 A. I - Yes, that's what she says.

3 Q. So if you had called witnesses who said that Shanna
4 allowed him to stay at her house, that would have impeached
5 her testimony. Right?

6 A. It could have.

7 Q. Okay. Now, we've talked about the drugs a little bit.
8 I kept telling you we would come back to it.

9 A. Uh-huh.

10 Q. I'm going to look at page 21, line 24. This - Again,
11 this is page 1.

12 THE COURT: I'm sorry, page again?

13 MR. FREDERICK: 21, Your Honor.

14 Q. Down at the bottom, line 24, you provided the video
15 and this is a video that you were talking about earlier.
16 In that video, it shows Robert flushing the drugs down the
17 toilet?

18 A. Right.

19 Q. Okay. You provided that to the prosecutor. Right?

20 A. Yes.

21 Q. Okay. On page twenty - And also there are two phone
22 calls that referenced drug use.

23 MR. FREDERICK: The same spot in the transcript, Your
24 Honor, up to the of the next page.

25 A. Right.

1 Q. Is that - Is that right?

2 A. Yes.

3 Q. Okay. And going on page 22 down to line 13, the
4 prosecutor said that she was going to redact two of those.
5 She was removing any reference to drug use, and you had no
6 objection to that; is that right?

7 A. That's correct.

8 Q. Okay. I'm going to jump to page 131 and at line 4,
9 the Court again asked if you agreed with the redactions and
10 you told him that you did agree?

11 A. That's correct.

12 Q. Okay. Your recollection, just to - You had
13 information that at least according to Robert, David Bruton
14 was supplying Shanna with drugs?

15 A. I think Chase had said that.

16 Q. Okay.

17 A. But that he had heard that from somebody.

18 Q. Okay. And you had a video of Robert flushing the
19 drugs down the toilet?

20 A. Right.

21 Q. All right.

22 A. But I don't know if - what - who gave her the drugs,
23 where the drugs came from.

24 Q. That was the night that he was arrested, though,
25 right, as far as what he told you?

1 THE COURT: He who?

2 MR. FREDERICK: The Defendant. Or his mother.

3 A. I don't recall. To be honest with you, I don't
4 recall.

5 THE COURT: I'm not sure I understand the question.
6 Are you asking her if she knew that somebody identified in
7 the video as having been taken that night of the incident?

8 MR. FREDERICK: Yes, sir. Yes, sir.

9 Q. Okay. I'm going to move onto page 164, and this is
10 Shanna's direct examination by the prosecutor, beginning at
11 line 11, the prosecutor begins in introducing the phone
12 messages into evidence. Are you there?

13 A. Yes.

14 Q. Okay. Let's see, line 11 in her direct examination,
15 she establishes that David Bruton helped Shanna make copies
16 of the messages?

17 A. That's correct.

18 Q. Okay. Going down to 19, she establishes that Shanna
19 went to the Solicitor's Office and listened to those
20 recordings?

21 A. Yes.

22 Q. Okay. Flipping over to 165, line 5, she establishes
23 that Shanna recognizes the exhibits, which would be the
24 recordings. Right?

25 A. That's correct.

1 Q. Line 8, she asks how does she recognize them. Shanna
2 says she signed each one that she listened to; is that
3 correct?

4 A. Yes.

5 Q. Okay. Line 12, she establishes, these are messages
6 Defendant left on her phone?

7 A. That's correct.

8 Q. Line 15, she establishes they truthfully and
9 accurately reflect the messages that she received on her
10 phone?

11 A. That's correct.

12 Q. Line 18, she establishes they were received between
13 December and February?

14 A. That's correct.

15 Q. Line 21, the prosecutor moves them into evidence
16 without objection. Right?

17 A. That's correct.

18 Q. Okay. And this may be a minor point, but would you
19 agree that at no point was there testimony to authenticate
20 that that was actually Roberts voice on the recordings?

21 A. Yes.

22 Q. Do you agree with that?

23 A. I agree with that.

24 Q. Okay. Would you agree that these recordings were
25 extremely damaging?

1 A. Yes.

2 Q. Okay. I'm going to go to - And you did not object to
3 their admission, right?

4 A. No, I didn't.

5 Q. I'm going to jump to 271, line 14, and this would be
6 the Solicitor's closing argument. She argues those
7 messages in some detail in her closing argument?

8 A. She does.

9 Q. Okay. And during her Closing Argument, she suggests
10 that the Jury listen to them again in the deliberation
11 room?

12 A. Yeah, I think she does.

13 Q. Yeah, I don't remember which spot that was. Okay.
14 During the trial, I think during Shanna's direct
15 examination, she did play those messages ---

16 A. Yes.

17 Q. --- for the Jury?

18 A. That's - Yes, That's correct.

19 Q. Okay. Now, I'm going to go back to page 189, line 20,
20 and this would be your cross-examination of Shanna.

21 A. Okay.

22 Q. And you questioned Shanna about text messages from
23 Robert's mother?

24 A. Yes.

25 Q. Okay. And, specifically, on page 190, line 8,

1 Robert's mother told Shanna to call the police?

2 A. That's correct.

3 Q. Okay. Page 190, line 10, Roberts mother tells Shanna
4 to call the police while he's sober?

5 A. That's correct.

6 Q. Was that hearsay? If the prosecutor elicited that
7 testimony, could you have objected on the grounds of
8 hearsay?

9 A. Yes.

10 Q. Okay. On page 207, line 12, on redirect the Solicitor
11 then goes into great detail about the text messages and
12 looking at 207, beginning at around line 12.

13 A. Okay.

14 Q. Going down to line 17, she reiterates that Robert's
15 mother told Shanna to call the police?

16 A. Right.

17 Q. Line 24, Shanna testifies that Robert's mother told
18 her to call the police he's not going to leave, going over
19 to page 208; is that right?

20 A. Yeah, she said - she says, You can talk to him and
21 tell him its over. Tell him you're going to talk to the
22 police, tell him he's not going to leave, don't worry about
23 the crying.

24 Q. Uh-huh.

25 A. Which I didn't think was so damaging, because it

1 reiterated again they were in this sort of fractious
2 relationship. It does - in this - In these text messages,
3 he's not violent. He's more crying. He's more begging.
4 He's not this violent person that the State ---

5 Q. Robert ---

6 A. --- is referring.

7 Q. --- Robert's not making the text messages though,
8 these are statements by Roberts mother to Shanna ---

9 A. Right, but they serve ---

10 Q. --- testified to by Shanna. Right?

11 A. Right. But they're serving our purpose in putting him
12 in a different light than the sort of, you know, violent,
13 crazy monster the State has been portraying him as.

14 Q. Okay. Down to line 14 she testifies that Robert's
15 mother told her, if you call the law while he's sober, they
16 might just tell him to leave. He's never, ever going to
17 stop.

18 A. He has nothing else. He's --

19 Q. He has nothing else.

20 A. It's the relationship part of this.

21 Q. And he's charged with stalking. Right?

22 A. Right. She's also telling - That's correct. She's
23 also telling the victim to call the law which Shanna never
24 did. That was our whole point in the case. She's saying
25 she's terrified of him. She's saying he's, you know, using

1 her child as a pawn and she's, you know, he comes and he's
2 violent and he's yelling and he's screaming and all of this
3 and, you know, his own mom is saying call the law and she
4 doesn't --that - in our --

5 In our view, we had to dispel the fear element of
6 this, because we knew the State was using that in the
7 burglary, using that in the stalking and so, I mean, I knew
8 getting into the text on cross was going to open the door
9 and she was going to get into it on redirect, but it
10 portrayed him in a different light than what they had
11 previously heard in direct of Ms. Graham, that he is - he's
12 not violent.

13 If anything, he's in this fractious relationship that
14 she's feeding into, even when other people are saying stop
15 it, you know, let it go. Even if he can't stop it, you be
16 the mature one and you stop it. She's not doing that and
17 that's what, ultimately, we wanted to portray the
18 relationship as not as him as the violent stalker or out
19 there, but, you know, but as her - it not stopping and, you
20 know, maybe I'm a little bit old fashioned in dealing with
21 the juries up here but to me, when someone's own mother is
22 saying, you need to stop this. You know, when she's
23 getting involved saying, you know, call the police that
24 stop this, I thought that would resonate with our jury that
25 she's even getting involved saying, you know, stop this and

1 - and, you know, I'm almost giving you permission to call
2 the police. And even with that, the victim's not calling
3 the police. That shows no fear. When - when, you know,
4 your boyfriend or whoever is allegedly stalking you and his
5 own mom is saying call the police and you don't call the
6 police, I thought that with our jury that would resonate,
7 she must not have been that afraid of him.

8 Q. But you agree with what she actually said in the text
9 messages was, call the police. Call the police before he
10 is drunk. He's never, ever going to stop. Right?

11 A. Right. And then we argued, you know, she never did.

12 Q. Okay. Page 278 around line 24, 23-24, the Solicitor
13 argues these text messages in her Closing Argument. Right?

14 A. She does.

15 Q. She's saying his own mother is saying he's never going
16 to leave you alone?

17 A. That was her argument on the text messages when I - If
18 I recall correctly, I think we argued the text messages,
19 too.

20 Q. In your Closing Argument, you argued the text
21 messages?

22 A. I believe we tried to argue dispel the fear. I have
23 to look back at my text messages -- my Closing Argument,
24 but we tried to dispel the fear.

25 Q. Did you argue and inference --

1 A. I have to look at it before I say it.

2 Q. --- from the text messages in your Closing Argument?

3 A. Wait. Let me double-check before I tell you for sure.

4 Q. Okay.

5 A. . No, I think I referenced it in another one. Oh. No.
6 I said she texted his mother, he's here. What does Robert
7 Hooker's own mother say? Call the police, call all this
8 number, call the police and yet, ladies and gentlemen, she
9 doesn't call the police.

10 Q. Okay.

11 A. I mean, that was a - To me, that was the biggest
12 element in our case was dispelling the fear, and I - It was
13 a huge component for us on the emotional level, because
14 that's always gripping with stalking cases is the emotional
15 level that, you know, they were going, of course, going to
16 portray him as awful.

17 I mean, he tore through the wall on the second story
18 of her apartment and got in the house that way. He didn't
19 bust through the sliding glass door. That's how he got in
20 the house. That was a visceral image we had to deal with
21 and so by using the text messages, I mean, to me looking at
22 it from a gender perspective, if someone's mother says call
23 the police, he's crying out there. Don't let him cry. I
24 mean that's not the image that you have of some guy who's
25 in your house getting ready to kill you, stalking you, he's

1 outside your door crying, you know, that's - we - That was
2 the visceral image we also needed to counteract what the
3 State was putting up.

4 Q. Okay. And during deliberations, did the Jury come
5 back with a question --

6 A. What ---

7 Q. Page 328.

8 A. Thank you.

9 Q. Line 12. And they were asking to see the text
10 messages?

11 A. That's right.

12 Q. Okay.

13 A. I think they also asked for the definition of stalking
14 as well.

15 Q. And they recharged them.

16 A. Right.

17 Q. But the text messages, you introduced them in her
18 cross-examination. Right?

19 A. That's right.

20 Q. And then the prosecutor went into greater detail on
21 redirect. Right?

22 A. Right.

23 Q. The prosecutor argued and in her Closing Argument, his
24 own mother is saying he's never going to stop. And then
25 one of the two questions the Jury had was to see those text

1 messages?

2 A. Right, but the text messages also - It wasn't just
3 that. The text messages also described him as crying
4 outside the door, I mean, also just portrayed him in a
5 different light. And, again, in the context of and argued
6 by us his own mother saying, call the police. Do it now.
7 Don't wait. Because you got to remember the time line of
8 this case is she sees him at the house that morning.

9 She - Her initial complaint was he interacted with her
10 son. She didn't like that, and then she leaves and then
11 knowing his presumably still in the area, leaves, never
12 calls the police knowing there is a trespass order on him,
13 knowing he's interacting with her son, perturbed he's
14 interacting with her son, and then comes back. So the text
15 messages of his mom -- his own mom saying, call the police
16 right now. Right now. Don't wait. Don't give him time to
17 get worse, and knowing that there is no fear and she did
18 not. She waited and waited and waited and so that - that
19 was our argument and that's why we - we wanted that, the
20 Jury to see that other part of it that's this relationship
21 that they had.

22 Q. Okay.

23 A. Okay.

24 Q. And moving onto ---

25 A. Sure.

1 Q. --- page 212, line 3. And this is the direct
2 examination of Alice Broom provided the Solicitor.

3 A. Okay.

4 Q. And the Solicitor elicits testimony from Alice Broom
5 about what Shannon said to her during a phone call?

6 A. Yes, that's correct.

7 Q. That Shannon called crying and said that he had broken
8 into her house?

9 A. That's correct.

10 Q. She came in and went back out, because she was scared
11 of him?

12 A. That's correct.

13 Q. Is that hearsay testimony?

14 MR. JOHNSON: Your Honor, that would actually be
15 either presence in suppression or not to show the truth of
16 the matter asserted but any subsequent action the victim
17 would have taken after she called Ms. Broom.

18 THE COURT: Well, I'll let the witness answer.

19 Q. Did you object on grounds of hearsay?

20 A. I did not.

21 Q. Was that damaging?

22 A. I don't - I don't think so, because we had had so much
23 testimony prior to that and the - I mean we had the - By
24 the time she had testified, I'm sure she testified after -
25 yeah, after Shanna and all of that had already come out

1 through Shanna.

2 Q. So we may as well let them talk about it some more?

3 A. Well, I mean, I - I --

4 THE COURT: That's sort of an argumentative question.

5 MR. FREDERICK: It is, Judge.

6 Melissa, I apologize.

7 A. That's all right.

8 Q. I'm sorry.

9 A. That's all right.

10 Q. I'm going to move on, okay?

11 A. Sure.

12 Q. Page 199, page 12, right around 10. You're showing
13 Shanna some pictures. This is your cross-examination?

14 A. That's correct.

15 Q. Do you recall this?

16 A. Yes, these are the pictures.

17 Q. Of course we can't see the pictures in the transcript,
18 but what were they pictures of?

19 A. They were pictures of Shanna sitting on the bed.

20 These were the pictures that I think Ms. - Mr. Hooker's
21 mom, Ms. Starnes, had given me.

22 Q. Okay.

23 A. And these were the ones I was explaining earlier

24 didn't really have the best foundation for 'em. I thought

25 I would cross-examine her on it and sort of see how far I

1 got.

2 Q. Did they show Shanna and Robert?

3 A. No, just Shanna.

4 Q. Okay. Are you sure?

5 A. Well, let me double-check. Thank you.

6 Q. Okay.

7 A. I think the ones I showed her were just the ones of
8 the --

9 Q. Would there be any point in showing them to her if you
10 didn't show Robert?

11 A. I think I was trying to get to -- No. The pictures I
12 have were just her on the bed but he took them -- I think he
13 took them was what I was trying to get to.

14 Q. Was there not a selfie in there as well?

15 A. No. The pictures I have are one, two, three, four,
16 all of her sitting on the bed.

17 Q. That's the only pictures that you have in your file?

18 A. That's the only pictures that I have. The only
19 pictures -- yeah. All right. Let me check one more place
20 ---

21 Q. That's okay.

22 A. --- cause those were the pictures that I cross-
23 examined her on. There were other pictures -- Oh, I'm
24 sorry. Are you ready?

25 Q. You can go ahead.

1 A. There were other pictures it looks like on the print
2 that she gave me. They were of Shanna it look like and a
3 couple of Gabe, her son.

4 Q. Right.

5 A. I don't see that one was a selfie of him. I'm sorry,
6 a selfie portrait of him. I didn't notice if there was but
7 I printed off four of them. To be honest with you, Mr.
8 Frederick, I can't remember why but it may have been
9 because of the conversation with Ms. Starnes. Perhaps it
10 was because he was in the house or he took them or
11 something like that. But again, it was another situation
12 where I wasn't sure how far I could get in cross with them
13 but...

14 Q. Well, on cross-examination you asked her if these
15 pictures were taken around January and the prosecutor
16 objected because it was a leading question.

17 A. Okay.

18 Q. That's around page 199.

19 A. Right. And then Shanna says, "I don't know the date
20 of those pictures."

21 Q. Well, my point is, this was cross examination. Right?

22 A. That's correct.

23 Q. And the prosecutor objected because it was a leading
24 question. Right?

25 A. That's correct.

1 Q. The judge actually sustained it. Right?

2 A. Right.

3 Q. You didn't argue about that at all. You didn't say,
4 hey judge, this is cross-examination.

5 A. I didn't because Ms. Graham actually answered the
6 question so I moved on.

7 Q. Okay. And again further down at line 22, you asked
8 her if this was a picture taken in February and immediately
9 the prosecutor objects, that's a leading question. Right?

10 A. Right, and then Ms. Graham answers, "No".

11 Q. Well actually the Court sustains the objection to
12 leading questions. And --

13 THE COURT: Not to what you said.

14 MR. FREDERICK: Page 200.

15 THE COURT: Page 200. Of course she can answer if she
16 knows.

17 MR. FREDERICK: Okay.

18 THE COURT: It's not sustaining the objection in my
19 opinion.

20 Q. From that point forward regarding those photographs, I
21 mean did you abandon the use of cross-examination?

22 A. I did because she said she doesn't know the date of
23 any of the pictures and so again, I had no foundation for
24 them and she wasn't going to abide, so I did not pursue it
25 any further.

1 Q. We'll move on to page 249, at line 9 you made a motion
2 for a directed verdict.

3 A. That's correct.

4 Q. At any point did you specify what your motion for a
5 directed verdict was based on?

6 A. . No, other than renewing all previous motions and
7 objections.

8 Q. Okay. Did you argue for the directed verdict?

9 A. No. It looks like the only specific thing I argued
10 was on the malicious injury indictment. But other --

11 Q. Which the prosecutor had already agreed to that.
12 Right?

13 A. Yes.

14 Q. Okay. Going to page 252 around line 13. The court is
15 stating grounds for denial of the directed verdict. Are
16 you there?

17 A. Yes.

18 Q. Okay. The court says that the intent to commit a
19 trespass is sufficient intent to commit a crime to convict
20 a person of burglary. Is that what the court says?

21 A. He says trespass is a crime which would be sufficient
22 to establish a burglary.

23 Q. Is it your opinion that that's true, that you can be
24 convicted of burglary based on intent to commit a trespass?

25 A. I believe that it is the case. To be honest with you,

1 I always have to double check that but I believe that's the
2 case but I didn't object to it.

3 Q. You didn't argue this?

4 A. I didn't argue it, no.

5 Q. Okay. Page 254, line 5. And I understand you may
6 have to do some research to --

7 THE COURT: Going back to -- Are you saying she should
8 have objected to what the Court said?

9 MR. FREDERICK: Judge, --

10 THE COURT: Who's gonna rule on that?

11 MR. FREDERICK: Who's gonna rule it?

12 THE COURT: Yeah. You object to what the judge said,
13 something you object to, who's gonna rule on it?

14 MR. FREDERICK: Personally, Judge, I think that if the
15 Court were to say a trespass is sufficient intent to commit
16 a crime to sustain a burglary I would argue against it. I
17 wouldn't object to it.

18 THE COURT: You said object and that's why I was
19 trying to be specific.

20 MR. FREDERICK: Well, yes, sir.

21 THE COURT: Okay. Go ahead. I follow you.

22 MR. FREDERICK: Again, even prior to that, Judge, the
23 client, there was no specific grounds for a motion for a
24 directed verdict made.

25 THE COURT: I understand.

1 BY MR. FREDERICK:

2 Q. Looking at page 254, line 5, this is, again, the court
3 stating the grounds for a denial of the motion for a
4 directed verdict. The court states that malicious injury to
5 property as you break in is sufficient intent to commit a
6 crime to sustain a burglary.

7 A. He says that and then he says theft of power --

8 Q. Okay. I'm going to come to that in a second.

9 A. Right.

10 Q. My next question for you is, is it your opinion as a
11 defense lawyer that damaging property on the way in is
12 sufficient intent to commit a crime to sustain a burglary
13 conviction?

14 A. That I don't know. I think Judge Alford was probably
15 just thinking aloud at this point.

16 Q. And then as you were just saying as we move on to line
17 13, the court says that if he cooked food or washed his
18 clothes, then he's stealing energy and that would be
19 sufficient intent to commit a crime to sustain a burglary
20 conviction. Do you agree with that?

21 A. I would have to look at the theft of electric current
22 statute but I think it would go to whether he had
23 permission to be there, which is the State's allegation
24 which a directed verdict is the most favorable - most -
25 standard favorable in light most favorable to the State.

1 Q. And to be fair, it goes on to say that stalking ---

2 A. Right.

3 Q. --- intent to commit stalking is sufficient to sustain
4 a burglary conviction.

5 A. That's correct. But at this point, I do think Judge
6 Alford is just thinking aloud. I don't know but I think he
7 was thinking aloud.

8 Q. Maybe so.

9 A. Because I don't know that the State put forward in
10 there any of those reasons. I think he was just thinking
11 aloud.

12 Q. Okay. Did you have specific grounds for a directed
13 verdict?

14 A. I think if I - I don't think so. If I did, I would
15 have made them.

16 Q. Okay.

17 MR. FREDERICK: Judge, that's all the questions I
18 have.

19 THE COURT: Cross?

20 MR. JOHNSON: May I take just a two minute break, Your
21 Honor.

22 THE COURT: All right. We'll take a short break.

23 I'll tell you, it's almost 12:30.

24 How many more witnesses' do you have?

25 MR. FREDERICK: Five, Judge, but at least one of them

1 needs to be at work by two o'clock. And somebody has an
2 ultra sound at one o'clock.

3 THE COURT: Do you want to take - let him take
4 witnesses out of order and then take a lunch break and then
5 do the cross?

6 MR. JOHNSON: That's fine.

7 THE COURT: Yeah, let's do that. It's time to - It
8 looks like we'll go into the afternoon so would counsel,

9 Mr. Frederick, with your permission I will allow Ms.
10 Inzerillo to step down and be subject to cross-examination
11 after lunch. We'll take a quick restroom break and then
12 we'll take the witnesses' immediately afterwards.

13 MR. FREDERICK: Yes, sir. We appreciate that.

14 (COURT IN RECESS AT 12:30 P.M..)

15 (COURT BACK IN SESSION AT 12:33 P.M..)

16 THE COURT: Thank you. Take your seats.

17 Call the witness.

18 Get Mr. Hooker back out.

19 (APPLICANT ROBERT HOOKER, REENTERS COURTROOM.)

20 MR. FREDERICK: Wayne Wix.

21 MADAM CLERK: If I can have you step up here and be
22 sworn. Place your left hand on the Bible and raise your
23 right.

24 (WHEREUPON, WAYNE WIX, BEING
25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

1 MADAM CLERK: Have a seat in the witness chair. Just
2 watch your step up please.

3 DIRECT EXAMINATION

4 WAYNE WIX BY MR. FREDERICK:

5 Q. Wayne, would you state your name for the record?

6 A. My name is Wayne Wix.

7 Q. Okay. And can you spell your last name?

8 A. W-i-x.

9 Q. Okay. Can you tell me what if anything that you know
10 about Robert Hooker and Shanna?

11 A. I hung out with her and him at her house all the time
12 when I got home from Afghanistan in 2010.

13 Q. Okay.

14 A. And they seemed to be nice and having fun all the
15 time, but sometimes they would fight and he would come to
16 my house. But as soon as he would get to my house she
17 would call him back to back to back until he would answer
18 the phone and come back over. That was how it would happen
19 every time. That's how it happened the whole time I knew
20 him until this - that happened to him that night.

21 Q. Okay. So you are saying when he left she would call
22 him, ---

23 A. She would call him -

24 Q. --- back over to the house.

25 A. --- and she wouldn't quit calling him until he

1 answered.

2 Q. Okay.

3 A. If he wouldn't answer she'd call me.

4 Q. Do you know if there was anything in the house that
5 belonged to Robert?

6 A. His clothes were always there. Always there.

7 Q. From your own observations, did Robert live at that
8 house?

9 A. Yes he did.

10 Q. Now, and I'll just say because it's already been
11 testified anyway, but Robert was arrested in February of
12 2011.

13 A. Uh-huh.

14 Q. Do you know if Robert lived in the house either in
15 February or the months preceding that?

16 A. Yes, he lived there months preceding to that. He
17 lived there in January and he lived there in February.

18 Q. Okay. Tell us how you know that.

19 A. I visited them both there at that house.

20 Q. Okay. So you went to Shanna and Robert's house and
21 visited them?

22 A. Yes. Yes I did.

23 Q. Okay. Did the public defender, his attorney, ever
24 try to interview you about the case?

25 A. No, he did not. No, she didn't.

WAYNE WIX: DIRECT BY MR. FREDERICK
CROSS BY MR. JOHNSON

1 Q. Did you ever try to call her?

2 A. Yes. I called 'em three times and I got the lady in
3 the front, the receptionist or whatever. She said, "Okay.
4 She'll be getting in touch with you." I never got a call.

5 Q. Okay.

6 MR. FREDERICK: That's all the questions that I have.
7 Answer any questions the Attorney General.

8 MR. JOHNSON: Just briefly.

9 CROSS-EXAMINATION

10 WAYNE WIX BY MR. JOHNSON:

11 Q. Mr. Wix, do you have any phone records to prove that
12 you made those phone calls?

13 A. No, sir, I do not.

14 Q. Okay. Do you have any phone records to prove that
15 victim called you?

16 A. No, sir, I do not.

17 Q. And do you have any documents with you to show i.e.,
18 bills, or a drivers license that Mr. Hooker was living at
19 the victim's residence?

20 A. No, sir, I do not.

21 MR. JOHNSON: No further questions, Your Honor.

22 THE COURT: You can step down and be excused. We
23 appreciate your time, Mr. Wix.

24 MR. WIX: Thank you, Your Honor.

25 (WITNESS LEAVING WITNESS STAND.)

1 MR. FREDERICK: Your Honor, he's excused from his
2 subpoena.

3 THE COURT: He is. Okay.

4 MR. FREDERICK: His wife is having the ultrasound.

5 THE COURT: All right. He's excused.

6 MR. FREDERICK: I call Keith Williams.

7 MADAM CLERK: Mr. Williams, if I can have you step up
8 here and be sworn. Place your left hand on the Bible and
9 raise your right.

10 (WHEREUPON, KEITH WILLIAMS,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 MADAM CLERK: Thank you. Have a seat. Just watch
13 your step up.

14 DIRECT EXAMINATION

15 KEITH WILLIAMS BY MR. FREDERICK:

16 Q. And did you state your name for the record?

17 A. Patrick Keith Williams.

18 Q. Okay. And you go by Keith?

19 A. I go by Keith. Correct.

20 Q. Keith, same questions. Can you tell us what you know
21 about Robert Hooker? How you know him? And what you know
22 about Robert and Shanna?

23 A. Robert and I met through the military, and in
24 Lancaster. Shanna, I can't say I've ever even seen her.
25 If she was in the courtroom today I wouldn't know her I

1 don't think. There were several times when Hooker was in
2 town because he was working on a fishing boat, he'd call;
3 I'd pick him up. He'd say, "Pick me up at the house,"
4 that's where I'd pick him up at. Her house. He would say,
5 "Drop me back off at the house," I'd take him home to that
6 house. He'd say, "Man, I need to go buy and pick a check
7 up at my house."

8 Q. And when you say "that house" you mean ---

9 A. That house, it was her house.

10 Q. --- Shanna's house?

11 A. Right.

12 Q. . Okay.

13 A. But I have never spent any time around her, so I
14 really can't say one way or the other about her.

15 Q. Okay.

16 A. All I can do it vouch for Hooker. You know, when he
17 was in town.

18 Q. And specifically, the months of October through
19 February of 2011, October of 2010 through February of 2011,
20 do you recall dropping him off at that house?

21 A. Specific dates I can't guarantee.

22 Q. Okay.

23 A. It wouldn't be honest for me to say yeah to that
24 because I can't guarantee the dates.

25 Q. You're just not sure of all the dates?

1 A. Right.

2 Q. Okay. Did he ever stay at your house?

3 A. Several times.

4 Q. Okay. And when he stayed at your house, why was it?
5 Why would he come stay at your house?

6 MR. JOHNSON: Objection. Speculation.

7 THE COURT: I sustain the objection.

8 MR. FREDERICK: Okay. That is good enough. I don't
9 have any further questions, but answer any questions the
10 Attorney General has.

11 CROSS-EXAMINATION

12 KEITH WILLIAMS BY MR. JOHNSON:

13 Q. Mr. Williams, same questions as Mr. Wix. Do you have
14 any proof today that Mr. Hooker actually lived at the
15 victim's residence? Any driver's license that he --

16 A. I do not.

17 Q. Thank you, sir.

18 MR. JOHNSON: No further questions, Your Honor.

19 THE COURT: All right. You can step down and be
20 excused also.

21 MR. FREDERICK: Judge, yes, sir, please. He had to
22 be at work at two o'clock.

23 THE COURT: Okay. Thank you. I appreciate your time.

24 (WITNESS LEAVING WITNESS STAND.)

1 THE COURT: Why don't we break until two o'clock and
2 then we will go with the Cross on Ms. Inzerillo. It's
3 about a quarter to one, that gives us an hour and fifteen
4 minutes.

5 MR JOHNSON: May I approach, Your Honor?

6 (BENCH CONFERENCE OFF THE RECORD.)

7 THE COURT: We will just come back at 1:30. That
8 gives us forty-five minutes, so we'll have little wiggle
9 room there, that way we'll get moving quicker.

10 (COURT IN LUNCH RECESS AT 12:40 P.M.)

11 (COURT BACK IN SESSION AT 01:52 P.M.)

12 THE COURT: Thank you. You may take your seats.

13 MR. JOHNSON: Can we approach, Your Honor?

14 THE COURT: Yeah. If you'll just get him in here and
15 get Ms. Inzerillo back on the stand.)

16 (SIDE BAR OFF THE RECORD.)

17 (APPLICANT ROBERT HOOKER, REENTERS COURTROOM.)

18 MR. JOHNSON: Your Honor, just to reiterate what we
19 had at the bench, I had ask Counsel Frederick if we may
20 take his other witnesses testimony and then get into Ms.
21 Inzerillo's cross examination. He politely agreed to do
22 that. That way I wouldn't have to recall Ms. Inzerillo as
23 a witness.

24 THE COURT: All right. Go ahead and call your next
25 witness then.

CHASE HOOKER: DIRECT BY MR. FREDERICK

1 MR. FREDERICK: Thank you, Judge. Chase Hooker.

2 MADAM CLERK: Mr. Hooker, if I can have you step
3 forward, place your left hand on the Bible and raise your
4 right.

5 (WHEREUPON, CHASE HOOKER,
6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 MADAM CLERK: Thank you. Have a seat. Just watch
8 your step up.

9 DIRECT EXAMINATION

10 CHASE HOOKER BY MR. FREDERICK:

11 Q. Now, Chase, can you say your name for the record?

12 A. Brandon Chase Hooker.

13 Q. Okay. And can you tell us, how do you know Robert?

14 A. He's my brother.

15 Q. Okay. And can you tell us what you know about Robert
16 and Shanna and their relationship?

17 A. They was kind of off and on off and on. She would get
18 mad and ask him to leave, and then she would call him back
19 and he'd go back the same day or the next morning. It was
20 just back and forth.

21 Q. So, she would tell him to leave, he'd leave; she'd call
22 him and he'd come back?

23 A. Uh-huh.

24 Q. And that was a pattern with them?

25 A. Yes.

1 Q. Do you know if Robert was living with Shanna?

2 A. Yes.

3 Q. And how do you know that?

4 A. Well, me and my wife went over there - were invited
5 over there at a time and hung out with them for a while.

6 Q. So you and your wife went to Robert and Shanna's
7 house?

8 A. Yes.

9 Q. Do you remember specifically the months of October
10 2010 through February of 2011?

11 A. I'm not sure. I believe so, but I am not positive.

12 Q. Okay. Do you know if you went to their house during
13 that time period?

14 A. Yes.

15 Q. Yes, you did?

16 A. Yes, I did.

17 Q. And when you went to their house, was Robert living at
18 the house?

19 A. Yes. I believe I actually took him home from my
20 house.

21 Q. During that time period?

22 A. Yes, sir.

23 Q. Okay. Do you know - From your own personal knowledge
24 do you know if Robert had belongings in the house?

25 Anything that he owned?

1 A. Yes.

2 Q. And what were those?

3 A. He owned the washer and dryer, and I think he owned
4 the TV in there.

5 Q. Did you talk to his attorney about the case, his
6 defense lawyer?

7 A. . Yes. She called me.

8 Q. And what did you tell her?

9 A. I told her that he lived there and, you know, their
10 relationship is kind of off and on. I told her about - I
11 actually called her back and told her about the drug part
12 of it where she had marijuana or whatever, and he flushed
13 it.

14 Q. Can you repeat that? I'm sorry.

15 A. I called her back and told her about the marijuana and
16 stuff, where he found it and videoed him flushing it and
17 sending it to her.

18 Q. What day was that?

19 A. I can't recall.

20 Q. You're not sure of the date?

21 A. No.

22 Q. Okay. Is there anything else that you can tell the
23 court that was important about this case?

24 A. That's about it.

25 Q. Okay.

CHASE HOOKER: CROSS BY MR. JOHNSON

1 MR. FREDERICK: Thank you.

2 THE COURT: Cross?

3 MR. FREDERICK: Answer any questions the Attorney
4 General has please, sir.

5 MR. JOHNSON: Briefly.

6 CROSS-EXAMINATION

7 CHASE HOOKER BY MR. JOHNSON:.

8 Q. Mr. Hooker.

9 A. Yes?

10 Q. Do you have a copy of that video, I guess the cell
11 phone video that was sent to the victim in this case?

12 A. My mother does, yes.

13 Q. Okay. But do you have it with you?

14 A. No, I don't have it on me right now, no.

15 Q. Do you have any receipts to show ownership of the
16 washer and dryer or the TV?

17 A. No, sir.

18 Q. Do you have any bills and/or I guess rental or
19 payments to show that your brother's name would have been
20 on the rental agreement?

21 A. No, sir.

22 Q. And do you have any phone records to show that it was
23 actually in fact the victim calling your brother to ask him
24 back to the house?

25 A. No, sir.

ERIC HOWSARE: DIRECT BY MR. FREDERICK

1 Q. Okay.

2 MR. JOHNSON: Thank you very much.

3 MR. FREDERICK: No redirect.

4 THE COURT: You can step down and be excused. We
5 appreciate your time.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Call your next one.

8 MR. FREDERICK: Yes, sir. Eric Howsare.

9 MADAM CLERK: Mr. Howsare, if I can have you step
10 forward and be sworn. If I can have you place your left
11 hand on the Bible and raise your right.

12 (WHEREUPON, ERIC HOWSARE, BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you. Just have a seat and watch
15 your step.

16 DIRECT EXAMINATION

17 ERIC HOWSARE BY MR. FREDERICK:

18 Q. And can you state your name for the record?

19 A. My name is Eric Howsare.

20 Q. Can you spell your last name?

21 A. H-o-w-s-a-r-e.

22 Q. And do you know Robert?

23 A. Yeah.

24 Q. How do you know Robert?

25 A. I've known him since elementary school. I met him

1 when we were in elementary school.

2 Q. . Okay. And what information do you have, if any, about
3 Shanna and Robert? And specifically whether Robert was
4 living at the same house as Shanna?

5 A. Well, I have been over there and visited 'em at a time
6 off and on. I hooked up the washer and dryer in that house
7 for Robert at the house that they was living in.

8 Q. Whose washer and dryer was it?

9 A. Roberts.

10 Q. And you hooked it up?

11 A. Yeah.

12 Q. Okay. And did Robert live in the house?

13 A. Yes.

14 Q. And how do you know that he lived in that house?

15 A. I've been over there and visited 'em.

16 Q. So you have been in the house?

17 A. I been in the house. I've been in both houses. When
18 she lived at the other and that house, the apartment.

19 Q. Okay.

20 A. Yeah.

21 Q. At some point they moved?

22 A. Yeah.

23 Q. And specifically October through February of 2011, had
24 you been to their house and seen them?

25 A. I've been there I'm gonna say one time, but I'm not

ERIC HOWSARE: DIRECT BY MR. FREDERICK

1 sure about that.

2 Q. Okay. And did you - Did his defense lawyer - Did his
3 defense lawyer ever call you or contact you?

4 A. No.

5 Q. Did you ever try to contact her?

6 A. No.

7 Q. , Have you talked to anybody about our case before I
8 contacted you?

9 A. What do you mean?

10 Q. About his case? I'm sorry.

11 A. No. You're the first person I've talked to about his
12 case.

13 Q. Okay. And did Robert ever stay at your house?

14 A. He would come over and visit and I would go
15 over to visit with him. It was back and forth.

16 Q. Okay.

17 MR. FREDERICK: I have no further questions. Answer
18 any questions the Attorney General asks.

19 MR. JOHNSON: None from this witness, Your Honor.

20 THE COURT: You can step down and be excused. We
21 appreciate your time. Thank you.

22 (WITNESS LEAVING WITNESS STAND.)

23 MR. FREDERICK: No more witnesses, Judge.

24 THE COURT: All right. Ms. Inzerillo, if you'll come
25 back up ton the stand.

MELISSA INZERILLO: CROSS BY MR. JOHNSON

CROSS-EXAMINATION

MELISSA INZERILLO BY MR. JOHNSON:

Q. Good afternoon, Ms. Inzerillo.

A. Good afternoon.

Q. I just want to go through his allegations one by one.

The first allegation is that you failed to object to the amendment of the indictment I guess when the solicitor wanted to amend it back to the original dates in the indictment from October through February instead of just December.

A. Correct.

Q. Is there a reason you did not object to that?

A. Initially prior to the trial, Ms. Joyner and I had had some conversations. She had provided some discovery and so I felt like I had notice of the dates that she intended to change in the indictment. And so initially when she moved, I felt like because I was on notice, I did not object to it.

Then later, when I made a motion under or for Lyle evidence or prior bad acts, and I heard her explanation for that, I felt like because the indictment had been expanded she should be required to stay within the four corners of that indictment and it appeared that she was trying to get into other things outside really what I felt like the conversation had been as well as outside the notice. I

1 guess the notice reason I had been relying on to agree to
2 the indictment, and so in the context of that motion it
3 sort of circled back to the indictment issue we had - our
4 motion we had argued previously. And I think ultimately it
5 got - upon Judge Alford's questioning, she amended it back.

6 Q. And that amendment, that was just to the stalking?

7 A. That's correct.

8 Q. Okay. Did the amendment of the indictment change the
9 nature of the offenses?

10 A. No because it had actually went back to the original
11 indictment.

12 Q. And so because it went back to the original indictment
13 you had prepared your case based on the original
14 indictment. Correct?

15 A. Right. I'd actually also prepared based on the
16 discussions for the amendment so it went back to the
17 original indictment.

18 Q. And the solicitor amends this indictment back
19 originally to October because she needed to prove that -
20 she needs to prove her stalking indictment. Correct?

21 A. Yes.

22 Q. Okay. And she also shows that from December to
23 February there were multiple phone calls, multiple text
24 messages that ended up coming into this trial. Correct?

25 A. That's correct. She was showing a pattern between

1 the parties.

2 Q. And as a matter of fact, many of these phone calls
3 were threatening to the victim. Correct?

4 A. Yeah, they were.

5 Q. Yeah. They say I'll kill you. I'll follow you. I'm
6 always there.

7 A. Right.

8 Q. She goes through, specifically in her closing
9 argument. Correct?

10 A. That's correct. And then they were played, of course,
11 for the jury.

12 Q. Okay. And as to stalking, would you agree with me
13 that 16-3-1700(c) defines stalking as, a pattern of words,
14 whether verbal, written or electronic, or a pattern of
15 conduct that serves no legitimate purpose and is intended
16 to cause and does cause a targeted person and would cause a
17 reasonable person in the targeted person's position to
18 fear, and one of those things, bodily injury to the person
19 or damage to the property on the person. Would you agree
20 that that is the definition of stalking?

21 A. I would agree.

22 Q. And would agree that the solicitor brought the prior
23 acts of Mr. Hooker in to meet the elements of stalking?

24 A. Yes..

25 Q. She had to show a pattern of conduct.

1 A. Uh-huh.

2 Q. And the statute defines pattern as two or more acts
3 occurring over a period of time however short, evidencing
4 the continuity of purpose.

5 A. That's correct.

6 Q. Okay. And so they're not necessarily prior bad acts
7 as we know under Lyle evidence 404(b) are they? They could
8 be considered that.

9 A. They could be, right.

10 Q. But it also shows to - they also to prove a pattern of
11 conduct in order to meet the elements of her indictment of
12 stalking. Correct?

13 A. Correct. And like I stated earlier, I know it's hard
14 to tell from the context of the transcript, but all the
15 pre-trial discussion between Judge Alford and myself and
16 Ms. Joyner involved the context of the relationship, the
17 starting and the end point, and that - and what I took away
18 from that discussion and Judge Alford's ruling was - What I
19 took away from that at the time was she would be allowed to
20 get into that to show the evolution of the relationship and
21 how it had gotten to that point.

22 Q. And while counsel brought up the fact that solicitor
23 never used the term res gesti ---

24 A. Uh-huh.

25 Q. --- that's in fact what she's doing by giving the

entire picture of their relationship in?

A. That's correct.

Q. Okay. And would you also agree with me that this fight between Mr. Hooker and Mr. Bruton would give rise to a fear that Mr. Hooker may actually harm the victim in this case?

A. That's what the State argued. I think that would be the allegation of the State. What we tried to do to diffuse that was cross-examine her about the fact that she was in the car. She was not fearful of that. To diffuse that elevation of that event into something - a violent event, something that he was using to keep her in her place as it were, and I believe I cross-examined her about the fact that she was in a car to try to negate that she wasn't as fearful of that as the State tried to make it out to be.

As I indicated earlier, you know, our constant strategy in this case was to try to fight that fear because we knew that was the underlying current of the stalking, that we anticipated the State was going to ultimately say he threatened her, he threatened her, he threatened her, and then look here, now he's in her house and isn't that scary and so what we were trying to do was constantly fight that.

And one of the things we tried to do through my cross examination of her was to try to show that perhaps in the

1 courtroom she was testifying she was afraid of that, but
2 her actions at the time, she wasn't exhibiting that fear.

3 Q. And the State also brought out through the victim's
4 testimony that Mr. Hooker had broken in multiple times
5 without her permission. Correct?

6 A. Like twenty or thirty times.

7 Q. Okay.

8 A. Something really outrageous.

9 Q. And as a matter of fact, the victim testifies that he
10 does not have permission to be in the house the night that
11 he's in there. Correct?

12 A. That's what she said, yes.

13 Q. And on page 176, Solicitor Joyner ask the victim
14 Shanna Graham on line 7, did he ever live there; to which
15 she replies, no. Correct?

16 A. That's what she said, yeah.

17 Q. And later on redirect on page 204, Solicitor Joyner
18 asked Ms. Graham, did you invite him over that day; to
19 which she replies, no, ma'am. Have you invited him over
20 any day since you had broken up with him presumably in
21 December; to which she replies, no, ma'am. Is that the
22 victim's testimony?

23 A. That's correct.

24 Q. And there were a set of pictures of Ms. Graham's
25 house that were introduced at trial, were there not?

1 A. Yes.

2 Q. Do you have specifically the picture of the hole that
3 was bore into her second story bedroom?

4 A. I do.

5 Q. To which - Well, may I first of all see it?

6 A. Sure. If you'll give me one minute to get that.

7 Q. Sure.

8 A. I don't have marked copies and there were a couple of
9 copies of the hole that I can show you.

10 Q. Do you know which ones would have been introduced into
11 evidence?

12 A. I'm sorry I don't. I don't mark my own copies.

13 MR. JOHNSON: Your Honor, I would present that
14 whatever is in evidence would be in the Clerk's file. I'm
15 not sure exactly which pictures they are, but --

16 Q. But do you recognize those?

17 A. I do. They are - There are four pictures of the
18 victims or Ms. Graham's apartment. The allegation in this
19 case was that - or the facts presented were that Mr. Hooker
20 climbed to essentially like a second floor balcony or
21 covering area, broke through the wall from the second floor
22 and entered the house or the apartment that way and then -
23 I can't remember if there was some testimony but there
24 seemed to be information about he perhaps tried to cover up
25 the hole by sliding over like an older computer or

1 something like that. And so these pictures sort of show
2 the outside area of going in and then the hole from the
3 inside of the house.

4 Q. But would those be pictures you would have used in
5 preparation for this trial?

6 A. Yes.

7 MR. JOHNSON: And Your Honor, I will have to rely on
8 what was introduced at the trial and we can get copies of
9 those for the record here at the PCR.

10 Q. Did Mr. Hooker ever tell you that he lived at Ms.
11 Graham's house?

12 A. No. In fact, he said that he knew she didn't want him
13 there. That my understanding was that he worked as a
14 commercial fisherman. That he was gone a lot. That the
15 night before this incident for example he stayed at his
16 mom's house and then went over to Ms. Graham's house the
17 next day. Not that he resided there. So no. His
18 information to me was that he knew Ms. Graham did not want
19 him there.

20 Q. Did he ever provide you a driver's license that showed
21 he resided at Ms. Graham's house?

22 A. He did not, but Mr. Hooker was incarcerated the entire
23 time I represented him, so I'm not sure he would have had
24 one on his person.

25 Q. Did he ever present to you with any type of rental

1 agreement or home ownership papers that stated he had any
2 proprietary interest in that residence?

3 A. He did not and the only lease agreement I had, I can't
4 remember if I got it through discovery. The only lease
5 agreement I have in my file has Ms. Graham's name on it.

6 When I spoke to Mr. Hooker about the facts of this
7 case, he indicated to me that he broke into the apartment
8 on this day because it was wet outside. I believe he
9 indicated it was cold. He wanted to go inside to
10 essentially dry out and warm up. I believe he said that to
11 me twice. And I remember him specifically saying he broke
12 into the apartment to do that.

13 Q. As a matter of fact, when he's found by Ms. Graham and
14 then I think she called the step-father, Mr. Hooker's
15 inside the residence with nothing but his boxers on. His
16 clothes were presumably in the dryer and he's intoxicated.

17 Correct?

18 A. That's correct. And we argued that to the jury in
19 terms of nothing violent. That he was there doing his
20 clothes. He was trying to, you know, not looking around
21 her apartment. Not destroying anything. Just kind of
22 there clearing himself up. I think there may have been a
23 pot on the stove or something like that as well.

24 Q. Another big allegation is you failed to call
25 witnesses on his behalf at trial. Did you ever get any

1 information from Mr. Hooker about these witnesses?

2 A. The information that I have, it does appear that it
3 would be the list that Mr. Frederick questioned me about.
4 The - I believe - I can't remember if I got it from Mr.
5 Hooker or from his mother, and it was Mr. Worthy and Mr.
6 Howsare and Mr. Wix and brother. I did speak myself to Mr.
7 Hooker. The notes on the form indicate that - I have in my
8 handwriting that I could not get in touch with Mr. Worthy.
9 I have "not good" meaning the phone number was not good on
10 July 25th. And I apologize, I don't have the year written
11 down.

12 My former investigator who is no longer with the
13 office in trying to get in touch with Mr. Wix at the number
14 provided, wrote "number no good 14th July 2010" and with
15 his initials but no other notation other than that. And
16 there's no notation beside Mr. Howsare but I did not talk
17 to him and I don't have any indication that there were any
18 voice mails left or my investigator spoke to him.

19 The - I have a note in my file that - Well, let me
20 read it. It's just a - it's a quick note, so I apologize I
21 don't have any more information to give you, but it says,
22 "Talked to witnesses. Decided not to call because no one
23 would be helpful." But, unfortunately, I failed to explain
24 why or which witnesses they were.

25 Q. And in your general practice, would you call a

1 witness to testify on a client's behalf if you had not
2 spoken to them or been able to interview them?

3 A. . No and, certainly, if I felt like there was a witness
4 there that would have been helpful, I would have subpoenaed
5 them instead.

6 Q. And if they are going to be harmful to your case,
7 would you call them at trial?

8 A. No.

9 Q. Another allegation is that you were ineffective for
10 failing to object to a removal of a reference to drug use
11 on phone calls. Is there a reason why you wouldn't object
12 to drug use either by Mr. Hooker or by the victim in this
13 case?

14 A. My recollection, and I'm trying to find the phone
15 calls that are in reference, but my recollection was, I did
16 not believe at the time that that drug use could be tied to
17 the burglary in the case and I felt like we may have a
18 relevancy issue and so I did not. I elected not to - I
19 elected not to object.

20 Q. And in order to object, you must have a reasonable
21 basis to object. Correct, Counsel?

22 A. That's correct.

23 Q. And marijuana use would have no relevancy whatsoever
24 to a burglary or a stalking. Correct?

25 A. That's true. Even general usage.

1 Q. And on direct examination, you testified that you
2 tried to use your cross-examination of the victim in order
3 to shed a different light on Mr. Hooker to show that he's
4 not this monster that the State made him out to be.
5 Correct?

6 A. That's correct.

7 Q. And also to - I do believe your testimony was that you
8 had this fear element that you had to downplay in front of
9 the jury. Correct?

10 A. That's correct. The issue that we had in this case
11 was we had, obviously, phone calls with him using very
12 unsavory language, cursing out the victim threatening to
13 kill her. We had, you know, this sort of visceral image of
14 him being found in her house. We had testimony, you know,
15 that we knew essentially going in that she was going to
16 testify that he would never leave her alone, that he - that
17 he, to put it mildly, sort of bothered her all the time.

18 We felt like that testimony was going to come in based
19 on some of my conversations with the mother, the text
20 messages that I had seen, that seemed to be sort of a
21 established fact. Everybody that, you know, when we talked
22 to the mother that seemed to be the case, when I would try
23 to go over some of the phone calls and stuff with Mr.
24 Hooker, I mean, it, it didn't - he didn't really deny any
25 of that. That seemed to be common across the playing

1 board that we had these issues that we needed to deal with.

2 Moreover, you know, we had issue with Mr. Hooker
3 during the trial constantly staring down the victim,
4 looking very angrily at her and so my - I had someone
5 sitting with me, Amy Sikora, who was an attorney in our
6 office and so we had that sort of also visual element in
7 front of the jury.

8 And so what we were trying to do was kind of explain
9 to the jury what they had been explaining to us which was
10 this wasn't really a stalking thing. He may have had
11 alcohol issues and, of course, we didn't want to open that
12 door, or anger issues, we didn't want to open that door,
13 but sort of explain that this was a relationship that, you
14 know, she would - that they would, you know - she would,
15 you know, maybe not call the police every time.

16 She took the stand and wanted to play this victim. I
17 didn't want her to say she was scared and he was always out
18 her house all the time, twenty or thirty times, and she
19 hated that he was manipulating the child, but when it came
20 down to it, that wasn't really what the relationship was.
21 To diffuse some of that fear, because that was such an
22 element in the stalking that we didn't want the jury to
23 then say - to make the leap that oh no, he's threatened to
24 kill her and we've heard these awful phone calls, and then
25 now he's showed up at his house. When really in her house,

1 what he's doing is he's washing his clothes. He's probably
2 made a pot of spaghetti or something and he's drinking some
3 beer.

4 And so what we were trying to do is - is show that
5 this was a fractious relationship through the text messages
6 with his mom who I felt like the text messages kind of did
7 a good job of showing him in a different light. You know,
8 he's not breaking the glass at the door trying to get into
9 her. He's crying outside the door. That's a much
10 different version of Mr. Hooker than someone who's, you
11 know, hiding in the creek, you know, under trespass notice
12 when the police go looking for him.

13 It's a very different person than has just burrowed
14 through the second floor of her house trying to get in.
15 This is a person who they're in a - they're in a
16 relationship, and so it's not stalking, it is the back and
17 forth of a relationship. And so we were just trying to
18 show perhaps a different side to that coin, and so we were
19 trying constantly to diffuse that fear.

20 Q. And you just brought up a good point, Counsel. In
21 your experience as a criminal defense attorney, is it
22 typical for someone who lives at a residence to bore a huge
23 hole in a second floor utility - up through the utility
24 into somebody's bedroom?

25 A. No, that's not typical at all.

1 Q. Another claim is that at no time were the phone calls
2 authenticated using Mr. Hooker's voice or the victim
3 identifying the voice on the phone messages. Have you -
4 Are you familiar with the case of State v. Aragon? I have
5 a copy if you need to look over it.

6 MR. JOHNSON: May I approach, Your Honor?

7 THE COURT: Yes.

8 A. Thank you.

9 Q. And this is case number 354 SC 334.

10 Have you ever read that case before?

11 A. I believe that I have. I don't do up case names, so I
12 just ---

13 Q. Okay.

14 A. --- need to familiarize myself with the facts.

15 MR. JOHNSON And, Your Honor, I apologize. That's my
16 only copy, but I can certainly get one.

17 THE COURT: We --

18 A. Okay. Yes.

19 Q. Is that a Supreme Court, a South Carolina Supreme
20 Court case?

21 A. It is, from 2003.

22 Q. Okay. And --

23 A. Oh, no, Court of Appeals.

24 Q. That's Court of Appeals?

25 A. Yes.

1 Q. Can you please explain to the Court what that case
2 states? Is there anything in that that states that the
3 victim or the person must identify the voice?

4 A. No. In fact, it says if she's got a relationship with
5 him, if she listened to the tape, recognized the tape from
6 her initials on it, and then if it fairly and accurately
7 represented the phone conversation, that the tape had not
8 been edited or altered, then as long as chain of custody
9 was necessary, then it did not need to be authenticated.

10 Q. Isn't that what happened in this case?

11 A. That is.

12 Q. I guess it's page 164 of the transcript.

13 MR. JOHNSON: Your Honor, would you like?

14 THE COURT: Thank you.

15 (DOCUMENTS RECEIVED UP BY THE COURT.)

16 BY MR. JOHNSON:

17 Q. Turn to your Directed Verdict Motion, do you think
18 that the State produced sufficient evidence to over - for
19 the judge to overrule that motion?

20 A. . I do, because the Directed Verdict is for - in the
21 light most favorable to the State and the State had
22 produced evidence, at least some evidence for the jury to
23 consider that he - all the elements of burglary and of
24 stalking.

25 Q. And when you made the Directed Verdict Motion, was

1 it as to all three indictments?

2 A. It was to all in the case and I think I made a
3 specific motion as to the malicious injury.

4 MR. JOHNSON The Court's indulgence, Your Honor.

5 (PAUSE.)

6 Q. As to the solicitor's closing in this case, would you
7 agree with me that the solicitor is allowed a wide range to
8 argue inferences in a case?

9 A. Yes.

10 Q. As long as he or she does not go outside the facts of
11 the case?

12 A. I would agree with that.

13 Q. And we've already discussed that Defendant fighting
14 with Mr. Bruton and the different, as the victim would
15 testify, in breaking into the house without her permission,
16 those could be used for the stalking indictment. Correct?

17 A. Right.

18 Q. Okay. So when the solicitor argues, and you don't
19 object, did you have a reason not to object? Was the
20 solicitor right? Was the solicitor allowed to argue that
21 the breaking of the nose and the breaking in were part of
22 the stalking indictment, if that makes sense?

23 A. I - I guess so if the judge allowed - would allow it
24 in under the prior bad acts.

1 Q. Well, wouldn't that also be allowed under the - to
2 prove the elements of stalking ---

3 A. Oh.

4 Q. --- about the pattern of conduct?

5 A. Yes, if the judge allowed it, yes.

6 Q. And so ultimately my question, Counsel, is they have -
7 they have produced witnesses that say that Mr. Hooker lived
8 at the - at Ms. Graham's house?

9 A. Right.

10 Q. Clearly, she testifies that he did not and he did not
11 have permission?

12 A. Right.

13 Q. Ultimately, who is that an issue for?

14 A. The jury.

15 Q. Okay.

16 MR. JOHNSON I think that's all the questions I have
17 at this time, Your Honor.

18 A. Oh, may I address one thing?

19 Q. Yes, I - please.

20 A. I was questioned earlier about the video, as well, and
21 I failed to mention - I had mentioned that there was no
22 foundation for it when Mr. Frederick asked me questions
23 about that, and that is true. I didn't have - Ms. Starnes,
24 who's Mr. Hooker's mother, had essentially brought it in
25 and presented it to me, and so when I spoke with Mr. Hooker

1 about it, I didn't go into all that with Mr. Frederick.
2 But when I spoke with Mr. Hooker about it, my notes
3 indicate that he did say that --

4 Q. He being?

5 A. Mr. Hooker, I apologize, that Mr. Hooker indicated he
6 did take the video and he sent it, but he wasn't sure if
7 Ms. Graham had received it, because she - he wasn't sure
8 her phone could receive videos.

9 THE COURT: He took video in where?

10 A. He took the video.

11 THE COURT: I know but you --

12 A. Oh, the video in the house of flushing the drugs.

13 THE COURT: I got that but I - maybe I better ask the
14 court reporter. She said he said that he took the video
15 in, did she say December?

16 COURT REPORTER: I'm sorry, Judge?

17 A. No, that he - he recorded the video. I shouldn't have
18 said --

19 Q. But when?

20 A. Oh, I didn't say when.

21 THE COURT: Okay.

22 A. I'll start over. Ms. - I believe Ms. Starnes brought
23 me the video, and I didn't - she wasn't sure when it was
24 recorded, and so I spoke to Mr. Hooker about that and he
25 indicated that he had recorded the video, but he sent - and

1 he sent it to Ms. Graham but he wasn't sure she had
2 received it, because her phone was such he didn't think she
3 could get video. And so that was another reason why I had
4 concerns about going into that in trial, because I would
5 have had an even harder time cross-examining her on
6 something - I mean, even Mr. Hooker wasn't sure she had
7 seen it. He knew if he had done it but, certainly, that
8 further complicated the issue if he wasn't even sure Ms.
9 Graham had sent it. It was not something that, you know, I
10 couldn't even allow her to provide foundation for, because
11 even he had indicated he wasn't sure if she had seen it and
12 could provide a foundation for it.

13 Q. And just to be clear, Mr. Hooker told you that he knew
14 he wasn't supposed to be in the house and that he did not
15 live there?

16 A. Right. That he - yes.

17 Q. That he did not live there?

18 A. Yeah, that he was not supposed to be there. Right.

19 MR. JOHNSON Thank you, Your Honor. No further
20 questions at this time.

21 THE COURT: Redirect?

22 MR. FREDERICK: None, Your Honor.

23 THE COURT: All right. You can step down.

24 MS. INZERILLO: Thank you, Your Honor.

25 (WITNESS LEAVING WITNESS STAND.)

1 THE COURT: Are there any other witnesses on behalf of
2 the Applicant?

3 MR. FREDERICK: No, sir. I think we're done.

4 THE COURT: Okay. Anything on behalf of the State?

5 MR. FREDERICK: No, Your Honor.

6 THE COURT: All right. Well, I'm going to take this
7 under advisement. I'll be glad - we'll be wrapping up
8 tomorrow, I'll be glad to hear from you.

9 MR. FREDERICK: I do, Your Honor. If I could just
10 kind of outline the issues as I see them in the case.

11 THE COURT: All right.

12 MR. FREDERICK: And, Judge, I think most of what's in
13 the application and the supplemental application were
14 testified to today, and just for the record, I ask the
15 Court - what's the word, conform the petition to evidence
16 that we received today.

17 THE COURT: I guess making -- I'm losing my words now.
18 But I'll take it - I'll take into consideration all of the
19 issues that were presented through testimony and issues
20 that were raised by any application or subsequent
21 application ---

22 MR. FREDERICK: Yes, sir.

23 THE COURT: --- or not subsequent today - to today,
24 but any supplemental application.

25 MR. FREDERICK: And, Judge, I know we're short on

1 time, but if you - if you would allow me just to outline
2 the issues ---

3 THE COURT: Okay.

4 MR. FREDERICK: --- as we see them. First of all, was
5 the defense attorney not objecting to the Solicitor's
6 amendment of the indictment back to October - the date
7 range to October of 2010 through February.

8 Judge, the prosecutor said on the record that there
9 was not evidence of stalking from October to - through
10 December. Before it was amended back to October, Judge
11 Alford had ruled if it's not amended back to October, I'm
12 not allowing prior bad acts and then the prosecutor says,
13 "This isn't a stalking."

14 I don't know what else it would be, but inadmissible
15 character evidence and evidence of prior bad acts. That
16 was not objected to by Defense Counsel. And then
17 throughout the trial, we went through the numerous times
18 that the prior bad acts were entered into evidence. The
19 solicitor repeatedly hammered the fact that there was a
20 fight between Robert and David Bruton, that David Bruton's
21 nose was broken. She gambling over in the Closing Argument
22 there was testimony and, Judge, that was a prior bad act
23 and a criminal allegation separate from the stalking and if
24 that could have been alleged as an element of stalking, it
25 also should have been excluded under Rule 403, but none

1 of that was argued at trial.

2 In addition to that, the evidence of apparently twenty
3 to thirty prior burglaries was the allegation that came up
4 repeatedly during Shanna's testimony and, again, during the
5 prosecutor's closing argument. So the first issue would be

6 --

7 THE COURT: All right. So, basically, you're saying
8 evidence of an element of the offense if it happens to also
9 be a prior bad act, it should not come in?

10 MR. FREDERICK: If --

11 THE COURT: It can't be both ---

12 MR. FREDERICK: If --

13 THE COURT: --- or it can't be either or.

14 MR. FREDERICK: Judge, if prior burglaries, allegation
15 of burglaries and the allegation of him breaking David
16 Bruton's nose, if those were considered to be elements of
17 the stalking, then still a motion could have and should
18 have been made if they were more prejudicial than probative
19 under Rule 403.

20 THE COURT: All right.

21 MR. FREDERICK: So the first issue that we raise is
22 the failure to object to the amendment of the indictment
23 back to October considering that the solicitor stated on
24 the record it was not evidence of harassment. The second
25 issue is the numerous prior bad acts that were admitted

1 and testified to without objection.

2 The third issue is the failure to impeach Shanna with
3 her drug use, talk or even try to talk about the drug use
4 to the Defense Counsel consented to allowing the phone
5 messages to be redacted to take out the mention of the drug
6 use.

7 Judge, the witness's use of drugs is relevant to her
8 credibility. The use of drugs was relevant, because if she
9 called the police because Robert flushed her drugs down the
10 toilet, it would have been very relevant. I mean, all that
11 I've heard is a restatement of the State's narrative. I
12 still have yet to hear Robert's narrative. If the drug use
13 came in and if the evidence was told to the jury that
14 Robert flushed her drugs down the toilet and, therefore,
15 she was angry, therefore, she called the police, that could
16 very well then changed the picture. Furthermore, if
17 Robert's --

18 THE COURT: Well, wait. Do you have a case that says
19 that there is impeachment value in someone's drug use? I'm
20 just asking do you have a case?

21 MR. FREDERICK: Not in front of me, no, sir.

22 THE COURT: Well, now I mean - Well, you researched
23 this before you go here, so you - Have you found a case
24 yet?

25 MR. FREDERICK: Judge, I haven't looked - I haven't

1 looked for the case that specifically says --

2 THE COURT: Well, I'll give you time to research that,
3 I can give you some time to research that. We'll take a
4 look at it, too, but if you could find anything and provide
5 it within ten days. And I know that's not your whole
6 thrust, and I understand that this is the facets to this
7 argument, but that would be something I'd have to look at
8 also.

9 MR. FREDERICK: I understand. And, Judge, it's not
10 just for specifically impeachment of the witness, but this
11 is his case, that he had a right to present the evidence in
12 his case. If he flushed her drugs down the toilet and she
13 got mad and called the police, that changes the story that
14 the jury is hearing tremendously and would have made a
15 difference.

16 THE COURT: What - What evidence --

17 MR. FREDERICK: The Defense Counsel --

18 THE COURT: What evidence is there in the record that
19 at the time of the incident that it happened? He was
20 confronted in boxer shorts washing clothes and cooking and
21 the video is undated. So what evidence is there to tie the
22 flushing to the burglary charge?

23 MR. FREDERICK: Judge, in a letter from the
24 Defendant's mother, she referenced it in a letter to
25 Defense Counsel making her aware of it. Defense Counsel --

1 THE COURT: The mother didn't testify. The mother
2 hadn't testified today.

3 MR. FREDERICK: She has not, but Defense Counsel
4 testified to that, Judge.

5 THE COURT: Couldn't she testify - She testified that
6 the mother sent the video, but nobody said when the video
7 was taken.

8 MR. FREDERICK: She testified that the mother sent her
9 a letter which says she was mad because Robert had flushed
10 her drugs.

11 THE COURT: But she doesn't say when.

12 MR. FREDERICK: No, sir. it does not say when in the
13 letter.

14 THE COURT: Okay. Go ahead. I'm just trying to
15 clarify things. I'm not being argumentative. I'm just
16 trying to get my arms around this. You all have been
17 working on it a long time; I hadn't.

18 MR. FREDERICK: I understand.

19 THE COURT: Go ahead.

20 MR. FREDERICK: Furthermore, if Counsel had presented
21 evidence that or testimony that David Bruton was supplying
22 Shanna with her drugs, it could very well have explained
23 why there was a fight between Robert and David Bruton,
24 because Robert was very upset with David Bruton that he was
25 supplying drugs to the girl, which takes that outside of

1 the stalking if it would have been an element of stalking
2 in the first place, the fight with David Bruton and not a
3 fight with Shanna but a fight with David Brewton, because
4 David Brewton is giving her drugs.

5 But the allegation of ineffective assistance is the
6 failure to object to the redactions, the failure to offer
7 any of that evidence. The - And that would have been the
8 third issue that we raised, Judge.

9 The fourth issue was the failure to object to the
10 admission of the telephone messages. I understand the
11 Attorney General has passed up the case. I don't know what
12 the case says other than what they read earlier. But,
13 Judge, I don't believe that it's enough, unless there is
14 testimony, I recognized the voice on the messages, I know
15 Robert's voice, the voice's match, therefore, it's Robert
16 on the messages. So at a bare minimum something to
17 authenticate that Robert's voice was the one heard on the
18 messages. The messages were possibly the worst evidence
19 that came in against him; the most prejudicial and there
20 was no objection to the admission of the messages. There
21 was no argument about it.

22 The fifth issue, Judge, is the Defense Counsel
23 elicited herself testimony about hearsay statements made by
24 the Defendant's mother and then on redirect, the prosecutor
25 went even further into them. Those messages clearly were

1 prejudicial and hurt Robert. It's his own mother saying,
2 "Call the police. He's never ever going to stop." Then,
3 the prosecutor argued it in Closing Argument, his own
4 mother is saying this. And then when the jury was
5 deliberating, one of the two questions they came back with
6 was, "Can we see those text messages?"

7 The sixth issue, Judge, was the failure to object to
8 what was clearly prejudicial statements, hearsay statements
9 made by Alice Broom that had no purpose except to buttress
10 Shanna's testimony.

11 The seventh issue was Defense Counsel's abandonment of
12 cross-examination when she was showing photographs to
13 Shanna trying to establish the month that those pictures
14 were taken in.

15 The eighth issue, Judge, was failing to argue a
16 Directed Verdict Motion making a general motion,
17 non-specific Directed Verdict Motion for the record, and
18 then failing to state any specific grounds or argue that
19 motion which may or may not have been successful.

20 But, Judge, if there was further evidence at the trial
21 that he lived at her house, you know, then failing to argue
22 or say anything when the Court asserted the trespass,
23 damaging the wall on the way in or stealing energy by
24 cooking food and washing clothes were sufficient to
25 establish intent to commit a crime for the purposes of

1 burglary.

2 Judge, the ninth issue, the last issue, and I think
3 the real issue in the case, is there was attempt to
4 introduce any evidence that Robert did, in fact, live at
5 that house, that he had a right to be at the house or that
6 he believed he had a right to be at the house. Even the
7 officers testify that he lived - he told them that he lived
8 there and he had a right to be there.

9 The Court had told Defense Counsel if they bring it up
10 in their case, you can get into it, but there was no
11 cross-examination about it, there was no - it was not
12 repeated at any point during the case in cross-examination
13 or Closing Argument. Defense Counsel was aware of four
14 witnesses through to varying degrees of certainty would
15 have testified that Robert lived at Shanna's house, that
16 there was a pattern of Shanna kicking him out of the house,
17 and then calling him and telling him come back.

18 In preparation for trial, Defense Counsel stated that
19 she talked to Chase Hooker. She was aware of Eric Howsare.
20 She was in possession of an email from him with his email
21 address. She was aware of Wayne Wix and in her own notes
22 had written his name down with a star next to it. She was
23 aware of Keith Williams and was in possession of a letter
24 from him in her file that stated Robert lived at the house.

25 Apart from Chase Hooker, these witnesses were not

1 interviewed in preparation for trial. She could not have
2 made a strategic decision not to call these witnesses for
3 trial when she didn't interview them and speak to them.

4 Judge, Eric Howsare testified today that he visited
5 Robert and Shanna at Shanna's house. He was not one
6 hundred percent as far as specifically October to February,
7 but he said that he went over there and visited them one
8 time during that time-period..

9 Wayne Wix testified that Robert lived at the house. I
10 don't think there is any question that his testify was
11 certain. He didn't waiver. He didn't say I'm not sure.
12 He said Robert lived at that house. I specifically asked
13 him October through February and he said yes, there was no
14 question in his mind.

15 Keith Williams testified that he dropped Robert off at
16 the house numerous times. He cannot say for certain about
17 the dates between October to February. He can say - he can
18 testify that "I dropped Robert off at that house where he
19 lived with Shanna." He cannot specifically say it on these
20 dates. So we've got --

21 And, of course, Chase Hooker also testified that he
22 dropped Robert off at Shanna's house, that Robert lived at
23 the house, but he could not testify for certain as to the
24 dates. So we've got three witnesses who testify that, or
25 would have testified, that Robert lived at that house, but

1 they could not for certain state the dates, although one
2 said there was one time he dropped him off at the house
3 during those dates and he's sure about that.

4 And there is one witness who testified that he
5 absolutely lived in that house and there was no question
6 about it, specifically, in the month of February and
7 October through February. And, Judge, this - I think
8 there's many cases on point but, specifically, the most
9 recent case was *Walker versus State*, and that was decided
10 March 19th. I don't have the citation, but we just got it
11 in his answers.

12 THE COURT: We can find it. We can find it.

13 MR. FREDERICK: *Walker versus State*, March 19th. In
14 that case, the applicant - it was a PCR case. The
15 applicant had been convicted of CSC, 1st Degree, and
16 kidnapping and there was a potential alibi witness, just
17 one witness, one potential alibi witness.

18 And trial counsel did not contact or interview that
19 witness who was the Defendant's girlfriend at the time he
20 was arrested. Trial Counsel's notes referenced her, so she
21 was aware of the witness but she didn't interview the
22 witness. At the PCR hearing the witness testified that no
23 one had contacted her prior to the PCR proceedings. She
24 could not testify as to the exact dates in question, but
25 she spent every weekend with the applicant up until the

1 time he was arrested, although she could not testify with
2 certainty as to the exact dates. And the Court found that
3 had that witness testified at trial, there was a reasonable
4 probability that the outcome could have been different.

5 Judge, I think there's a lot of smaller errors.
6 There's some minor things that - that I've brought up and
7 raised, but when there are potential witnesses whose
8 testimony clearly could have made a difference, a
9 reasonable probability, not beyond a reasonable doubt, but
10 a reasonable probability that the testimony could have made
11 a difference, if Defense Counsel is aware of those
12 witnesses and does not interview the witnesses and does not
13 call them at trial, then PCR should be granted.

14 I'm withdrawing our request for PCR as to the stalking
15 charge and as to the malicious injury charge. I don't
16 think that that's appropriate. I think the testimony of
17 these witnesses doesn't really address that. What it does
18 address is an essential element of the burglary charge
19 which is consent. We had four witnesses, one of which
20 unlike the one in *Walker versus State*, one of which
21 testified with certainty that Robert lived at the house.
22 So what I'm asking the Court to do is grant PCR only as to
23 the burglary charge.

24 THE COURT: All right. What do you - Address just to
25 help me a little bit, the dilemma Trial Counsel finds them

1 -self in with a client, she didn't say he said. He never -
2 He never said he lived at the house to her, according to
3 his testimony it was uncontradicted, and who made an
4 affirmative statement that I was - knew I was not to -- "I
5 knew she did not want me there." What kind of dilemma is a
6 Trial Lawyer in when the client tells you I did not have a
7 right to be there, I was not supposed to be there, and then
8 you call a bunch of witnesses to testify to contradict your
9 own client - not your client's testimony, but what your
10 client has told you?

11 MR. FREDERICK: I think that as Defense Counsel you
12 have an obligation and a duty to call those witnesses,
13 Judge.

14 THE COURT: Even if they contradict what you know your
15 client has stated to be a true fact?

16 MR. FREDERICK: I think without any question, Judge.

17 THE COURT: All right. Let me hear from the State on
18 these issues.

19 MR. JOHNSON: Yes, Your Honor, and I'll take that
20 allegation first and then I'll go through the other
21 allegations.

22 First of all, as you just pointed out, Counsel who
23 investigated this case, testified that Mr. Hooker told her
24 that he didn't have a right to be there. That should be
25 much - weigh much more heavily than these four witnesses

1 who never lived at the house. One said he'd been there
2 once. They say yeah, he had some belongings there, yet
3 they produced no evidence. They produced - the - no
4 receipts for the dryer and washer that he said he
5 installed, any phone calls that would have been made saying
6 the victim told Mr. Hooker to come back.

7 Counsel and Mr. Hooker have provided no driver's
8 license showing that he lived there or - and/or any lease
9 or rental agreement. The only rental agreement or lease
10 agreement that Counsel testified to actually had the
11 victim's name on it. That - And that combined with the
12 testimony of the victim at trial that he certainly had no
13 right to be there, he was not invited over there that day
14 and he did not live there, that should be your deciding
15 factor.

16 As to his allegation that - Furthermore, Counsel
17 testified that applicant provided her these names of
18 witnesses. She attempted to contact him. Some of the
19 witnesses' numbers were no good, so she can only go off of
20 what information Mr. Hooker provides her. There is - There
21 is a quote in *Strickland v. Washington*. I believe it's at
22 691 that states - it is at 69 - it's 466 U.S. 668 and 691,
23 "Counsel's actions are usually based quite properly on
24 informed strategic choices made by the Defendant and on
25 the information supplied by the Defendant."

1 THE COURT: Not quite so fast.

2 MR. JOHNSON: Oh, sorry. "...information supplied by
3 the Defendant. In particular, when investigation decisions
4 are reasonable depends critically on such information."

5 Mr. Hooker only provided her certain names. She
6 attempted to locate those witnesses, was able - unable to
7 do so. She also testified that she did speak to Chase
8 Hooker who told her, I do believe, that - that Mr. Hooker
9 was not supposed to be there contrary to what he stated
10 here today.

11 Another allegation is what - is that there was a
12 failure to show that Defendant had the intent to commit a
13 crime. He - Counsel brings up that trespass is not
14 sufficient enough to invoke burglary, 1st degree, but he
15 don't even have to get that far, Your Honor. The breaking
16 and entering with the picture that was shown or that is in
17 the record at trial clearly shows that he did not live
18 there. If you live at a residence, you walk through the
19 door. You don't shimmy up a utility room and break in with
20 a screwdriver a hole the size of a human. That clearly
21 shows that he was not supposed to be in there and is
22 sufficient for burglary, 1st degree.

23 The first issue is that Counsel was ineffective for
24 failing to object to the amendment of the indictment.

25 First, she testified she had notice. The original

1 indictment states from October - October to February.

2 Under South Carolina statute 17-19-100, "An indictment
3 may be amended at trial only if the indictment does not
4 change the nature of the offense charged." I asked her
5 that question, whether or not that changed the offense, and
6 she told me no. She had notice of that. Clearly, the
7 Solicitor argues the period between February and December
8 as res gesti of the case to understand the complexity of
9 the relationship between Mr. Hooker and Ms. Graham.

10 It also goes to show the elements of stalking. And as
11 I asked Counsel about it in the statute - stalking statute,
12 it talks about a pattern of conduct that serves no
13 legitimate purpose and is intended to cause and does cause
14 a target person..., " Ms. Graham, "...and would cause a
15 reasonable person in the targeted person's position to fear
16 bodily injury and injury to the property."

17 Clearly, there was injury to property. And she would
18 have had fear through his actions with Mr. Bruton that she
19 made be the next target on the list.

20 Another thing about - The next point about impeaching
21 the victim with drug use is simply irrelevant, Your Honor.
22 Completely irrelevant. You asked Counsel about that. He
23 also says that this was - should have gotten Robert's
24 narrative out, Mr. Hooker's narrative out. He could have
25 testified here today. This is his burden of proof. He

1 elected not to testify at trial which is his constitutional
2 right, but he presented no evidence to show how that is
3 relevant to a burglary and a stalking charge.

4 He also states that Bruton - he got mad a Bruton and
5 punched him because Bruton was supplying Ms. Graham with
6 drugs. There's been no evidence of that today. He didn't
7 bring in Ms. Graham, he didn't bring in Bruton; therefore,
8 he has not met the burden of proof on that one.

9 Failure to object to the admission of the phone calls.
10 The case I introduced to the Court, that *State v. Aragon*,
11 case, clearly, the Court of Appeals agrees that that was a
12 file authentication of the phone calls and his voice being
13 - not being identified by the victim as long as under 901
14 it is what she testifies it to be.

15 Issue concerning the text messages. Counsel argued
16 that the reason that the text messages were brought in is
17 to show that this was not the monster that the State was
18 trying to make him out to be. The reason Counsel argued
19 and testified that she argued was that the victim didn't
20 call police. She had all of this opportunity, yet she did
21 not call the police. That is clearly trial strategy, Your
22 Honor.

23 Not objecting to the hearsay by Alice Broom about the
24 victim. I have objected to it, but you allowed Counsel to
25 testify. That goes - either goes to presence and

1 impression that the victim under the hearsay exceptions,
2 that the victim was feeling or the subsequent actions she
3 took upon receiving that phone call from Ms. Broom.

4 The next issue was the abandonment of
5 cross-examination when the victim said she couldn't
6 remember the date. I think that speaks for itself. She
7 was able to cross-examine her. You can't bring any
8 specific. She had no basis to ask her about the dates and
9 once the victim denies knowing the date of the picture, she
10 has no more, you know, nowhere else to go and you must have
11 a reasonable basis to object to that.

12 As far as the Directed Verdict Motion, Your Honor, the
13 State would submit there is ample evidence of the elements
14 of burglary, 1st degree, certainly stalking and malicious
15 injury to personal property. The State would also allege
16 that once you read the trial transcript, there is
17 overwhelming evidence of Mr. Hooker's guilt and as such, no
18 prejudice can be shown by Counsel's alleged
19 ineffectiveness. The State would ask you to deny his
20 application.

21 THE COURT: All right. Well, I'm going to take it
22 under advisement. And we've got one more hearing this
23 afternoon?

24 All right. We'll take a short break. Take a short
25 break.

(COURT IN RECESS AT 03:00 P.M..)

(END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 16th days of April, 2014.

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

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: August 1 / 1 / 2014

ARREST WARRANT

J-132020

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
ROCK HILL

THE STATE

against

HOOKER, ROBERT TERRANCE

Address MEADOWBEND DRIVE

YORK SC 29745

Phone: 803-900-0000

SSN: [REDACTED]

Sex: M Race: W Height: 509 Weight: 160

DL State: SC DL#: [REDACTED]

DOB: 07/16/1983 Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: A WELLS

Offense: DAMAGE TO REAL PROPERTY

(\$2001-\$9999) Offense Code: [REDACTED]

Code/Ordinance Sec: 16-11-520(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The Accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant Hooker, Roberton 3-1-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ISSUING JUDGE

120 E. BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

AFFIDAVIT

JAW

Personally appeared before me the affiant being duly sworn deposes and says that defendant HOOKER, ROBERT TERRANCEdid within this county and state on 02/28/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of

ROCK HILL

DESCRIPTION OF OFFENSE: DAMAGE TO REAL PROPERTY (\$2001 - \$9999) 16-11-520(2)

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:
 THE DEFENDANT DID WILLFULLY AND UNLAWFULLY VIOLATE S.C. CODE OF LAWS 16-11-520(2) MALICIOUS DAMAGE TO PROPERTY BY CAUSING DAMAGE TO THE VICTIM'S HOUSE IN AN ATTEMPT TO ENTER THE BUILDING. THIS INCIDENT OCCURRED ON 02/28/2011 AT 2328 BROOKVIEW CT WHICH IS LOCATED WITH IN THE CITY LIMITS OF ROCK HILL, SC

1102281367

"POLICE INVESTIGATION"

"RECOVERY OF EVIDENCE"

"THE AFFIANT IS SWEARING TO THIS BASED ON INFORMATION AND BELIEF PROVIDED BY THE ARRESTING OFFICER"

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above

on 02/28/2011

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of

ROCK HILL

) as set forth below:

DESCRIPTION OF OFFENSE:

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 3-1-11

Judge's Address: 120 E. BLACK STREET

ROCK HILL SC 29730

Signature of Issuing Judge Thurman (L.S.)

Judge's Telephone: 803-329-5695

Judge Code: 6105Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 618

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2013 MAY 13 PM 4:09

At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

MALICIOUS INJURY TO REAL PROPERTY

The Defendant, Robert Terrance Hooker, did in York County, South Carolina, on or about February 28, 2011, willfully, unlawfully and maliciously cut, mutilate, deface, otherwise injure or commit a trespass on the real property of another at _____ Brookview Court, Rock Hill, South Carolina, doing damage valued at more than Two Thousand Dollars (\$2000.00), all in violation of Section 16-11-520, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

RHPD / Dugan

DOCKET NO. 2011-GS-46-01437

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

J-132020

THE STATE

vs.

ACTION OF GRAND JURY

ROBERT TERRANCE HOOKER

Defendant

Witness:

C.C.C. PLS. AND G.S.

TRUE BILL

Foreperson of Grand Jury
Date: 6/16/11

VERDICT

GUILTY

Indictment for

MALICIOUS INJURY TO REAL PROPERTY

SC Code: 16-11-0520
CDR Code: 3429

Foreperson of Petit Jury
Date: 8/10/11

ARREST WARRANT

J-132024

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

 THE STATE
 against

HOOKER, ROBERT TERRANCE

Address: MEADOWBEND DRIVE

YORK SC 29745

Phone: 803-000-0000

SSN: [REDACTED]

Sex: M Race: W Height: 509 Weight: 160

DL State: SC DL#: [REDACTED]

DOB: 07/16/1983 Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: K G DUGAN

Offense: BURGLARY (1ST DEGREE) - 16-11-311

Offense Code: 16-11-311

Code/Ordinance Sec: 16-11-311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of:

 The Accused
 is to be arrested and brought before me to be
 dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant Robert Hooker

on 03-07-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ISSUING JUDGE

120 E. BLACK STREET

ROCK HILL, SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

AFFIDAVIT

 Personally appeared before me the affiant K G DUGAN
 being duly sworn, deposes and says that defendant HOOKER, ROBERT TERRANCE

did within this county and state on 02/28/2011

 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL

 in the following particulars:
 DESCRIPTION OF OFFENSE:

BURGLARY (1ST DEGREE) - 16-11-311

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:
 Defendant Hooker did willfully and unlawfully violate S.C. code of laws for Burglary 1st 16-11-311 on 02-28-11 after he forcefully entered Victim Sherina Graham's residence located at 14 Brookview Ct. Rock Hill SC. Defendant entered the residence by cutting and removing victims drywall ceiling. Upon entry into this residence, defendant damaged approx \$9000 worth of structured material (Drywall). Defendant waited on victim to arrive home, stalking and scaling her away.
 "Police Investigation" Recovered police evidence."
 Dugan K.G.
 1102281367

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

ROCK HILL

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 02/28/2011 defendant HOOKER, ROBERT TERRANCE

 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL

) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY (1ST DEGREE) - 16-11-311

 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 3-1-11

Judge's Address 120 E. BLACK STREET

ROCK HILL, SC 29730

Signature of Issuing Judge

(L.S.)

Judge's Telephone: 803-329-5695

Judge Code: 6 103

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 BCC4615

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2013 MAY 13 PM 4:09

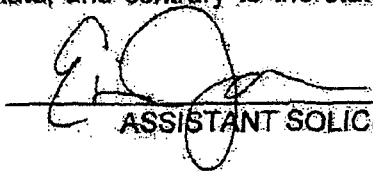
At a Court of General Sessions, convened on June 16, 2011, the Grand Jurors of York County present upon their oath

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

BURGLARY 1ST DEGREE

The Defendant, Robert Terrance Hooker, did in York County, South Carolina, on or about February 28, 2011, willfully and unlawfully enter the dwelling of Shanna Graham, located at Brookview Court, Rock Hill, South Carolina, in the nighttime without consent and with the intent to commit the crime of stalking and/or harassment and/or malicious damage to property and/or other crimes. All in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

RHPD / Dugan

DOCKET NO. 2011-GS-48-01838

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

June 16, Term 2011

COURT OF GENERAL SESSIONS

JWG

ARREST WARRANT NUMBER

J-132024

THE STATE

Defendant

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

ROBERT TERRANCE HOOKER

TRUE BILL

J. G. Cole
Foreperson of Grand Jury
Date: 6/16/11

VERDICT

Guilty

Indictment for

BURGLARY, 1ST DEGREE

SC Code: 16-11-311
CDR Code: 079

[Signature]
Foreperson of Petit Jury
Date: 8/10/11

ARREST WARRANT

J-132025

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

THE STATE

against

HOOKER ROBERT TERRANCE

Address: EADOWBEND DRIVE

YORK SC 29745

Phone: 803-000-0000 SSN: [REDACTED]

Sex: M Race: W Height: 509 Weight: 160

DL State: SC DL#: [REDACTED]

DOB: 07/16/1983 Agency ORI #: 460300

Prosecuting Agency: RHPD

Prosecuting Officer: K G DUGAN

Offense: STALKING - 16-3-1700 (C)

Offense Code: 16-3-1700

Code/Ordinance Sec: 16-3-1700 (C)

The 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 law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to defendant Robert Hooker

on

03-11-11

Signature of Constable/Enforcement Officer

RETURN WARRANT TO:

ISSUING JUDGE

120 E. BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant K G DUGAN

being duly sworn deposes and says that defendant HOOKER, ROBERT TERRANCEdid within this county and state on 02/26/2011
☐ County/ ☒ Municipality of
 ROCK HILL

violates the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE:

STALKING - 16-3-1700 (C)

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:

Defendant Hooker did willfully and unlawfully violate SC Code of Laws for Stalking 16-3-1700 (C) on 02-26-11 after the forcefully entered victim Shanna Graham's residence located at Brookview Ct Rock Hill SC. Defendant entered this residence by cutting and removing victims drywall ceiling. Defendant stayed in wall on victim to arrived home, stalking and scaring her to flee from this residence. Victim has filed two separate reports of harassment on defendant Hooker because she is scared for her life on 10-02-10 and on 12-15-10.

 Police Investigation Recovered police evidence**
 Dugan K.G. 3102261367

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

ROCK HILL

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 If appearing from the above affidavit that there are reasonable grounds to believe that defendant HOOKER ROBERT TERRANCE

 did violate the criminal laws of this State of South Carolina (or ordinance of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE:

STALKING - 16-3-1700 (C)

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 3-1-11
 Judge's Address
 120 E. BLACK STREET
 ROCK HILL SC 29730

Signature of Issuing Judge

(L.S.)

Judge's Telephone 803-329-5695

Judge Code: 6 705

Issuing Court:

☐ Magistrate

☒ Municipal

☐ Circuit

ORIGINAL

 Form Approved by
 S.C. Judicial Branch
 April 21, 2003
 SCJA 618

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2013 MAY 13 PM 4:09

At a Court of General Sessions convened on June 16, 2011, the Grand Jurors of York County present upon their oath

STALKING

The Defendant, Robert Terrance Hooker, did in York County, South Carolina, on or about ~~October 1, 2010~~ ^{December 2010} through February 28, 2011, engage in pattern of words or conduct, which served no legitimate purpose and which was intended to cause and did cause the targeted victim of this stalking, Shanna Graham, to fear death, assault, bodily injury, criminal sexual conduct, or kidnapping of herself or a family member or damage to her property or the property of a family member. All in violation of Section 16-3-1730 (A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

RHPD / Dugan

DOCKET NO. 2011-GS-48-01839

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

J-132025

ARREST WARRANT NUMBER

THE STATE

vs.

C.C.G. PLS. AND G.S.

Witness:

ACTION OF GRAND JURY

TRUE BILL

ROBERT TERRACE HOOKER

Foreperson of Grand Jury
Date: 6/16/11

VERDICT

GUILTY OF STALKING

Indictment for

STALKING

SC Code: 16-3-1730 (A)
CDR Code: 2406

Signature of Foreperson of Grand Jury
Date: 8/10/11

THE STATE OF SOUTH CAROLINA
SUPREME COURT

APPEAL FROM YORK COUNTY

John C. Hayes, Circuit Court Judge

Case No. 2014-001163

Robert Hooker #00347354, Petitioner,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Appendix to the following recipient by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2014, addressed to:

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