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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

S.C. Supreme Court

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

PETITIONER,

APPELLATE CASE NO. 2012-213445

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Anthony Jackson, Appellant.

Appellate Case No. 2012-213445

Appeal From Horry County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2014-UP-348
Heard September 10, 2014 – Filed October 1, 2014

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor Jimmy A. Richardson, II, of
Conway, all for Respondent.

PER CURIAM: Anthony Jackson challenges his conviction for first-degree
burglary, arguing the trial court (1) violated his constitutional right under the Sixth

Amendment to proceed pro se at two pretrial hearings and during voir dire and jury selection, and (2) erred by refusing to suppress statements he made to police.

We first address Jackson's assertion that the trial court violated his right to proceed pro se when it did not conduct an inquiry pursuant to *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525 (1975), before it proceeded with the pretrial *Jackson v. Denno*¹ hearing. See *Faretta*, 422 U.S. at 819-21, 95 S. Ct. at 2533-34 (holding the Sixth Amendment guarantees a criminal defendant the right to waive appointed counsel and proceed pro se); *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (interpreting *Faretta* as requiring a trial court to "ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel"). We find Jackson did not unequivocally assert his right to proceed pro se at this time, and thus, no violation occurred when the court did not conduct a *Faretta* inquiry. See *State v. Winkler*, 388 S.C. 574, 586, 698 S.E.2d 596, 602 (2010) (stating "[t]he request to proceed pro se must be clearly asserted"); see also *Raulerson v. Wainwright*, 469 U.S. 966, 970-71, 105 S. Ct. 366, 369 (1984) (Marshall, J., dissenting from denial of cert.) ("If a request [for self-representation] is ambiguous, the trial judge need not respond, because there has been no clear indication of a desire to waive a right to counsel."); *United States v. Holmes*, 376 F. App'x 346, 348-49 (4th Cir. 2010) (concluding defendant "did not clearly and unequivocally invoke his right to self-representation" when he "voiced complaints concerning counsel's performance, but when asked . . . whether he wanted to represent himself, [he] only reiterated his request for new counsel"); *State v. Sims*, 304 S.C. 409, 414-15, 405 S.E.2d 377, 380-81 (1991) (holding the defendant "gave no indication of a desire to proceed pro se" when he asked the court to appoint another attorney).

Jackson next argues the trial court erred by deferring its ruling on his request to proceed pro se before the *Neil v. Biggers*² hearing because it deprived him of the right to represent himself during that hearing. While South Carolina courts have not ruled on this specific issue, we discovered no cases explicitly prohibiting a trial court from delaying its ruling on a *Faretta* motion. Instead, we found cases supporting a trial court's ability to exercise discretion in deciding when to rule on a *Faretta* motion; thus, we hold that, under the circumstances presented in this case, there exists no legal authority to support Jackson's position. See *Nelson v.*

¹ 378 U.S. 368, 84 S. Ct. 1774 (1964).

² 409 U.S. 188, 93 S. Ct. 375 (1972).

Alabama, 292 F.3d 1291, 1296 (11th Cir. 2002) ("The Supreme Court in *Faretta* did not set out any fixed time frame for the holding of the *Faretta* hearing . . ."); *United States v. Frazier-El*, 204 F.3d 553, 559 (4th Cir. 2000) (stating "the *Faretta* right to self-representation is not absolute, and 'the government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer'" (quoting *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 162, 120 S. Ct. 684, 691 (2000))); *Swan v. Commonwealth*, 384 S.W.3d 77, 94-95 (Ky. 2012) ("[I]nvocation [of the right to self-representation] does not set into motion rigid, mechanical procedures that must be followed to the letter to avoid an error. The invocation of the right and whether the proper procedures were followed must be evaluated in the context of a given case. Otherwise, any hint of an invocation of the right, even if immediately withdrawn, would require a *Faretta* hearing. But the law does not require such empty process."); 384 S.W.2d at 95 ("[W]hile the right is a structural right, it must still be applied in the real world, which sometimes requires a practical approach, not an absolute and unbending one."); *State v. Madsen*, 229 P.3d 714, 717 (Wash. 2010) ("Even if a request is unequivocal, timely, voluntary, knowing, and intelligent, a court may defer ruling if the court is reasonably unprepared to immediately respond to the request."); 229 P.3d at 718 ("The trial court was within the bounds of proper discretion to delay ruling on the matter until it could properly prepare to rule on the issue."); 229 P.3d at 722 (Fairhurst, J., concurring) ("[A] court's discretionary decision to defer ruling on a motion to proceed pro se should be upheld if the deferral was based on tenable grounds and tenable reasons.").

Jackson also asserts that even though the trial court later determined he validly waived his right to counsel under *Faretta*, the court erred by refusing to allow him to represent himself during voir dire and jury selection. First, we find the record does not support this assertion—that the trial court refused to allow Jackson to represent himself. After concluding Jackson "freely and voluntarily" waived his right to counsel, the court asked trial counsel to "stand by" and provide assistance to Jackson. When members of the jury panel entered, the court explained Jackson "desire[d] to represent himself," and stated, "I've permitted [trial counsel] to sit here and assist the defendant in the selection of the jury only." The court never prohibited Jackson from participating during these proceedings and did not otherwise limit his involvement. Second, to the extent Jackson argues the trial court erred in appointing trial counsel to the position of "standby counsel" to provide assistance to Jackson during voir dire and jury selection, we find the trial court acted within its discretion. See *Faretta*, 422 U.S. at 834 n.46, 95 S. Ct. at 2541 n.46 (recognizing a trial court "may—even over objection by the accused—appoint a 'standby counsel'" to assist a defendant in presenting his defense); *United*

States v. Lawrence, 161 F.3d 250, 253 (4th Cir. 1998) (stating a trial court has "broad discretion to guide what, if any, assistance standby . . . counsel may provide to a defendant conducting his own defense").

Finally, Jackson argues the trial court erred when it admitted in evidence statements he made to police because the officer who conducted his interview made threatening comments regarding the consequences of Jackson's refusal to cooperate. See *State v. Franklin*, 299 S.C. 133, 137, 382 S.E.2d 911, 913 (1989) ("The test of admissibility of a [defendant's] statement [to police] is voluntariness."); *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) (stating police may not extract a defendant's statement by using threats or exerting improper influence). We find there is evidence to support the trial court's ruling that Jackson's statements to police were freely and voluntarily given. See *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (stating an appellate court reviews a ruling concerning voluntariness under an "any evidence" standard); *Rochester*, 301 S.C. at 199-201, 391 S.E.2d at 246-47 (finding a polygraph examiner's statement to defendant that "it would be in [his] best interest to tell the truth" was not improper); *State v. Simmons*, 384 S.C. 145, 164, 682 S.E.2d 19, 29 (Ct. App. 2009) (finding an officer's statement to defendant "that if [he] cooperated, 'it would be considered at sentencing'" was permissible); *State v. Arrowood*, 375 S.C. 359, 368-69, 652 S.E.2d 438, 443 (Ct. App. 2007) (finding "officers' offer[s] to attest to [defendant's] cooperation" were not improper). Cf. *State v. Osborne*, 301 S.C. 363, 366-67, 392 S.E.2d 178, 179-80 (1990) (holding defendant's statement inadmissible where officers threatened to charge defendant with an additional crime if she remained silent); *State v. Hook*, 348 S.C. 401, 413-14, 559 S.E.2d 856, 862 (Ct. App. 2001) (holding defendant's statement to his probation officer was inadmissible because a probation agent threatened to revoke defendant's probation if he refused to cooperate); *State v. Corn*, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992) (holding defendant's statement inadmissible because it was "made in response to threats that his wife could be arrested and his children taken by D.S.S.>").

For the reasons stated above, Jackson's conviction is **AFFIRMED**.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

Opinion No. 2014-UP-348

PETITION FOR REHEARING

Appellant Anthony Jackson ("Jackson") petitions this Court for rehearing on both issues in his appeal. Respectfully, the Court misapprehended Jackson's arguments and erred its decision.

Issue 1 – Right to Self-Representation

The Court correctly understood that the right to self-representation is a fundamental right, but erred in concluding that the lack of controlling authority for this exact situation equated to discretion for the trial judge to postpone Jackson's exercise of his fundamental right. This does not constitute an adequate reason to deny appellant relief. The opinion does not contain any authority

for the proposition that a defendant's right of self-representation may be impaired because of a lack of precedent. This reasoning is similar to the good-faith exception to the exclusionary rule in Fourth Amendment cases, which exists to regulate the behavior of police officers. See Davis v. United States, 131 S.Ct. 2419 (2011). Such reasoning does not apply to judges or how they ensure the rights of litigants are protected.

The cases cited by the Court do not support the proposition that when the right to self-representation has been asserted, it can be postponed. In Nelson v. Alabama, 292 F.3d 1291 (11th Cir. 2002), the defendant sent the trial judge a letter informing the court that he wished to represent himself at a capital sentencing proceeding. Id. at 1294. The trial judge allowed the defendant to represent himself without conducting a Faretta hearing. Id. The issue on appeal was whether a Faretta hearing was required, not the postponement of the defendant's right to self-representation. Id. at 1295. At no point did the Court force a lawyer upon the defendant. Id.

United States v. Frazier-El, 204 F.3d 553 (4th Cir. 2000) does not concern postponement of the right to self-representation, but a complete denial. In Frazier-El, the trial judge denied the defendant's request to proceed *pro se* because of the defendant's vacillation and dilatory tactics. Id. at 560. The court found the defendant was more interested in "a manipulation of the system than an unequivocal desire to invoke his right of self-representation." Id. The defendant told the court he wanted a new attorney who would argue the court lacked jurisdiction over him because he was a member of the "Moorish Science Temple." Id. Jackson never made any such frivolous statements, his request to represent himself was unequivocal and ultimately granted, albeit too late.

Much of the language in Swan v. Commonwealth, 384 S.W.3d 77 (Ky. 2012) supports appellant's position. The court stated, "Perhaps more importantly, once a defendant invokes his

right to proceed *pro se*, in whole or part, the trial court is required to hold the Faretta hearing and allow the defendant to exercise the right, if at all possible.” Swan at 93. The defendant in Swan did not make an unequivocal assertion of his right to represent himself and he abandoned the claim. Id. at 94. At no point of the proceedings did the court force an attorney on the defendant after an unequivocal assertion of the right to self-representation. Id.

Even more supportive of Jackson’s case is State v. Madsen, 229 P.3d 714 (Wash. 2010). In Madsen, the trial court deferred the defendant’s first request to represent himself to give him the opportunity to consult with another attorney. Madsen at 716. The opinion does not reflect that any proceedings were held after this deferral and the next hearing, which was held for the express reason of determining the defendant’s right to proceed *pro se*. Id. In fact, the Madsen court’s holding was that the trial court erred in deferring ruling at this hearing after the defendant’s second request because the defendant’s request was unequivocal. Id. at 718-19. The court’s holding, which runs expressly counter to the language quoted in the opinion, was:

Although the trial court’s duties of maintainiung the courtroom and the orderly administration of justice are extremely important, the right to represent oneself is a fundamental right explicitly enshrined in the Washington Constitution and implicitly contained in the United States Constitution. The value of respecting this right outweighs any resulting difficulty in the administration of justice.

Id. at 719 (emphasis added).

In appellant’s case, the Court acknowledged, as it must, that Jackson made an unequivocal assertion of his right to represent himself. This right was denied by the trial judge during critical stages of the proceeding. The opinion failed to address appellant’s analogy that the portions of the trial during which a lawyer was forced upon Jackson were critical stages. A defendant has a guaranteed right to be present at a critical stage of a criminal proceeding when his presence bears on his opportunity to defend his case. Id. at 106. This right extends to voir

dire and jury selection. United States v. Tipton, 90 F.3d 861, 872 (4th Cir. 1996). It also extends to pretrial hearings where witnesses are questioned. United States v. Hamilton, 391 F.3d 1066, 1071 (9th Cir. 2004) (holding suppression hearing where government presented the testimony of a police officer was a critical stage); People v. Williams, 726 N.E.2d 641, 643-44 (Ill. Ct. App. 2000) ("A hearing at which evidence is presented against a defendant involves substantial rights and therefore entitles a defendant to be present"); McGinnis v. State, 430 S.E.2d 618, 621-22 (Ga. Ct. App. 1993) ("Therefore, we hold that it constitutes prejudicial error to conduct an evidentiary suppression hearing in the defendant's absence."). The right to be present extends to post-indictment lineups and therefore logically extends to a Biggers hearing. See United States v. Wade, 388 U.S. 218, 236-37 (1967) (holding constitutional right to be present extends to post-indictment lineups).

"[P]articipation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself." McKaskle v. Wiggins, 465 U.S. 168, 178 (1984). "The defendant's appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused's individual dignity and autonomy." Id. The trial judge told the jury that Jackson would represent himself and they could not make any adverse inference from that fact. R. 147 ll. 9 - 13. Despite his ruling that Jackson would represent himself and informing the jury of this ruling, the trial judge then had Fox participate in voir dire instead of Jackson. R. 148, l. 2 - 88, l. 20. Jackson did not speak during voir dire. R. 148, l. 2 - 155, l. 20. At no point did the trial judge ask Jackson whether he wanted to represent himself during voir dire. R. 148, l. 2 - 155, l. 20. Without obtaining Jackson's assent on the record, Judge Cottingham said, "All right, Mr. Fox, I've permitted you to sit here and assist the defendant in the selection of the jury only, but do you have any further

inquiry?" R. 154, l. 17 – 19. Fox then proposed an additional voir dire question. R. 154, ll. 20 – 23.

After voir dire, the trial judge told the jury, "And the defendant is representing himself, I've asked Mr. Fox to assist in the selection of the jury process and the defendant is agreeing to that; is that correct? R. 155, ll. 13 – 16. Fox (not Jackson) replied, "Yes, Your Honor." R. 155, l. 17. The trial judge did not obtain Jackson's consent to Fox selecting the jury on the record. Fox then exercised Jackson's strikes and selected the jury. R. 155, l. 18 – 165, l. 18. The trial then began and Jackson made his opening statement and examined the State's witnesses. R. 179, l. 11 – 180, l. 8. This sequence destroyed the appearance that Jackson was representing himself before the jury.

"To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment." Faretta v. California, 422 U.S. 806, 820 (1975). "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." Id. at 819-20. The trial judge's refusal to allow Jackson to represent himself during critical stages of this trial is a structural error. State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 549-50 (2014) citing McKaskle. The Court should grant rehearing on this issue and reverse Jackson's conviction.

Issue 2

Respectfully, the Court failed to analyze the implied threat in the detective's statement that "There's a difference, okay?" The detective's statement necessarily implies that there will be a difference in how Jackson would be treated if he spoke to police compared to if Jackson exercised his right to remain silent. Jackson began incriminating himself immediately after this threat. While police officers may inform suspects that news of their cooperation will be relayed to the solicitor, they may not threaten consequences for the refusal to cooperate. In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), the court held that the sheriff's admission that Osborne would be charged

with withholding information or giving the police officer a false statement if she was not forthcoming mandated suppression of her confession. Osborne was told "you don't have to say anything, but if you withhold evidence, you can be charged with a crime." State v. Osborne, 301 S.C. at 366, 392 S.E.2d at 179. See also State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

In Rochester, the Supreme Court held that a confession "may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence." Rochester at 200, 391 S.E.2d at 246-47 (internal quotations omitted). The Court found that a polygraph examiner telling the defendant it would be in his best interest to tell the truth was neither a threat nor a promise. This was nonetheless a factor to consider when determining whether appellant's statement was a knowing, intelligent, and voluntary tendered confession under the totality of the circumstances. See State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001); State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987).

In Hook, this Court held that the defendant's statement to his probation officer was inadmissible because his agent expressly threatened to revoke the defendant's probationary sentence unless he told the truth. This Court noted that statements given pursuant to threats or under inherently coercive circumstances are not admissible. See Mincey v. Arizona 437 U.S. 385, 398, 399 (1978); Minnesota v. Murphy 465 U.S. 420, 427 (1984).

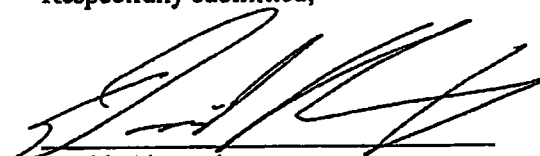
The officer's assertion that there would be a "difference" if Jackson failed to cooperate meant that he would be treated more harshly. Jackson clearly felt threatened by this statement. This "difference" in treatment is similar to the threats of consequences in Osborne and Hook. The fact that it was a threat can be seen from its consequences. Immediately after Detective Clothier made this threat, Jackson began making incriminating statements. Detective Clothier's threat was not

"slight" and its existence compels the suppression of Jackson's statement. This Court should grant rehearing and reverse.

CONCLUSION

For the foregoing reasons, and the reasons stated in the briefing before this Court and at oral argument, this Court should grant rehearing, reverse appellant's conviction, and order his statement suppressed.

Respectfully submitted,


David Alexander
Appellate Defender

This 14th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

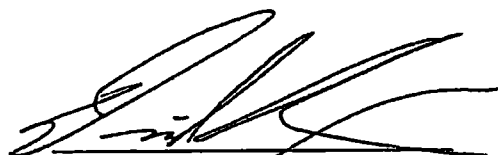
V.

ANTHONY JACKSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Anthony Jackson, #138454, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 14th of October 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 14th day
of October, 2014.

David M. Hinder (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

The South Carolina Court of Appeals

The State, Respondent,

v.

Anthony Jackson, Appellant.

Appellate Case No. 2012-213445

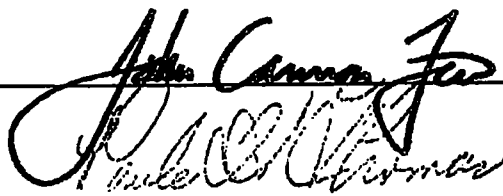
ORDER

After careful consideration of the Appellant's petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

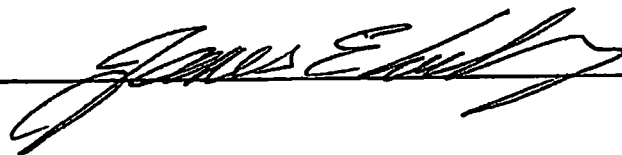
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DEC 12 2014

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 C.J.

 J.

 J.

Columbia, South Carolina

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The Honorable Edward B. Cottingham

FILED

December 12, 2014

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

RECORD ON APPEAL

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In The Court of General Sessions
2012-GS-22-00730

State of South Carolina,

vs.

Anthony Jerome Jackson,

Defendant .

TRANSCRIPT OF HEARING

April 5, 2012
Conway, South Carolina

Before:

The Honorable, Larry B. Hyman, Judge

Appearances:

By: Martin D. Spratlin, Esq.
Bradley C. Richardson, Esq.
Attorneys For State

By: Ronald W. Hazzard , Esq.
Attorney For Anthony Jerome Jackson

BRENDA R. BABB
Circuit Court Reporter

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3

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10

Certificate of Reporter

16

April 5, 2012

3

1 Mr. Richardson: Before the Court at this time
2 for the purposes of arraignment we got it down as 2012-GS-
3 26-731, State of South Carolina County of Horry v. Anthony
4 Jerome Jackson on FTC fraud value less than 500. 2012-GS-
5 26-730 true billed indictment against Anthony Jerome
6 Jackson for burglary in the first degree. Your Honor, the
7 defendant comes before the Court represented by his
8 attorney Mr. Ronald Hazzard, Brad Richardson on behalf of
9 the State in the place Mr. Martin Spratlin. This is an
10 arraignment and the service of Notice of Intent to Seek a
11 Sentence of Life Without Parole.

12 Your Honor, with regards to the arraignment we'll
13 go through that first. The defendant has been offered to be
14 allowed to plea to burglary second degree violent with the
15 range of seven to ten years. It's our understanding the
16 defendant has rejected that offer, wishes to proceed on to
17 trial, Your Honor. He is facing, as stated upon service of
18 this Notice, a sentence of life in prison without
19 possibility of parole, no early release, may not be
20 released.

21 The Court: All right, his initial charge is
22 burg first?

23 Mr. Richardson: His initial charge is burg
24 first, that's correct, Your Honor.

25 The Court: Is that the only charge he has?

April 5, 2012

4

1 Mr. Richardson: He has a financial transaction
2 card fraud.

3 The Court: But burg first is what we're talking
4 about?

5 Mr. Richardson: Yes, sir, we'll be dismissing
6 the FTC fraud if he pled on the burg ---

7 The Court: And you'd let him plead to second
8 non violent?

9 Mr. Richardson: Second violent, Your Honor.

10 The Court: Second violent seven to ten?

11 Mr. Richardson: Yes, sir, Your Honor.

12 The Court: All right, Mr. Jackson, you're
13 represented by Mr. Hazzard?

14 Defendant Jackson: Yes, sir.

15 The Court: Has Mr. Hazzard explained the nature
16 of this offense, this burglary first degree or what
17 constitutes burglary in the first degree?

18 Defendant Jackson: Yes, sir, he did.

19 The Court: But you know what burglary in the
20 first degree is, correct?

21 Defendant Jackson: Yes, sir.

22 The Court: All right, did you know that it
23 carries up to a life sentence?

24 Defendant Jackson: Yes, sir.

25 The Court: And did you understand that the

April 5, 2012

5

1 Solicitor is about to serve upon you a notice to seek life
2 without parole which sort of takes it out the hands of the
3 judge and means that if you get convicted of that burglary
4 you're going to the penitentiary for the absolute last day
5 that you breathe? You do not get any good time, any time
6 off, you never come before a parole board, you serve the
7 rest of your life; do you understand that?

8 Defendant Jackson: Yes, sir.

9 The Court: Okay, now that's the situation
10 you're in right now, but the Solicitor from what I gather
11 this morning is offering to allow you to plead guilty to
12 burglary in the second degree violent and receive a
13 sentence in the seven to ten year range and that would be a
14 parolable sentence; would it not, Mr. Hazzard?

15 Mr. Hazzard: Yes, sir, Your Honor.

16 The Court: I don't know if you'd make parole
17 but it's parole eligible, okay? Now, Mr. Jackson, did Mr.
18 Hazzard go over the evidence in the case with you?

19 Defendant Jackson: Yes, sir.

20 The Court: Okay, do you know how many years Mr.
21 Hazzard has been doing criminal law?

22 Defendant Jackson: No, sir.

23 The Court: A long time. Mr. Jackson, I don't
24 know if they got a good case against you or they got a bad
25 case against you. I would just about bet you that Mr.

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6

1 Hazzard does know, and I would suggest to you that you need
2 to follow his advice; I would if I were you. Whatever he's
3 telling you, Mr. Hazzard might be telling you this is a bad
4 deal, don't take it. I don't know if he's telling you that
5 or not, but whatever he's doing, telling you I guarantee
6 you he's in a better position and is more knowledgeable
7 than you are to know what is in your best interest and
8 that's the only thing that concerns him. He's not going to
9 have to serve a single day of your sentence; I can promise
10 you that. He is not in jeopardy of going to jail not one
11 bit. His only interest is getting you the best treatment
12 that you can get in this situation.

13 Now my job here is to make sure that you
14 understand that you have an opportunity for all your
15 troubles to go away by taking a sentence in the range of
16 seven to ten years as opposed to risking the remainder of
17 your life in prison; do you understand that?

18 Defendant Jackson: Yes, sir.

19 The Court: Now the Solicitor has reached that
20 point where he's not going to offer you a better deal.
21 He's going to have me sign these arraignment findings which
22 will say, have my name on it, that's the last word here,
23 that says that you're not going to get a better deal,
24 you're not even going to get this same deal after today.
25 After today they are withdrawing the offer; do you

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1 understand that? You understand that?

2 Defendant Jackson: Yes, sir.

3 The Court: Okay, so I've done my part then, I
4 have explained to you in a way that you can understand the
5 fact that this deal is being taken off the table and that
6 you will be tried in May, probably, for a crime for which
7 you would, if you are convicted, would receive life without
8 parole; do you understand that?

9 Defendant Jackson: Yes, sir.

10 The Court: Now you tell me you want to accept
11 or do you want to reject this offer?

12 Defendant Jackson: Well, Your Honor, I didn't
13 never really reject the seven years; I just was ---

14 The Court: Seven to ten.

15 Defendant Jackson: Seven to ten years, I just
16 was had write some letters cause I have a bad drug problem
17 and that's how these burglaries happened because I have a
18 very, very bad drug problem and I've been asking for
19 treatment and I've been in these classes and stuff and
20 these people have write to me so I could show you this
21 paper and stuff, if you don't mind if you could read it.

22 The Court: What's that got to do with it?

23 Defendant Jackson: Huh?

24 The Court: What does that have to do with
25 whether or not you want to accept or reject this offer?

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1 Defendant Jackson: Well I was, I was asking for
2 some help; I was asking for some treatment or some help.

3 The Court: Well the Solicitor ---

4 Defendant Jackson: I mean I can get, I can get,
5 I can, I can take the offer and, and go to prison and get
6 back out and do the same thing I've been doing.

7 The Court: Well you, you will probably given an
8 opportunity to have drug counseling in prison and go to
9 classes. The only issue here is whether or not you want to
10 take the seven to ten; that's the only offer that's going
11 to be made to you. It's the only one you're going to get.
12 They're not going to give you a better one. They're not
13 going to say go to drug treatment and we'll drop the case.
14 This is all you're going to get. The question is whether
15 or not you're going to take it?

16 Defendant Jackson: I told them I would take it
17 but I, I wanted to finish the classes that I'm in J.
18 Reuben. I want to try to get my GED and stuff. If I take
19 the charge I'll be shipped out to prison; I won't be able
20 to get ---

21 Mr. Richardson: Your Honor, he confessed to the
22 crime; he confessed ---

23 Defendant Jackson: Yeah, I told them I did it.

24 Mr. Richardson: --- to going in and confessed
25 to taking the card. There's a fingerprint found.

April 5, 2012

9

1 Mr. Hazzard: I would ask that the prosecutor
2 not interrupt him while he's elocuting [sic] to the Court.

3 The Court: All right, you're telling me that
4 the reason you won't take it is because you want to finish
5 your class at J. Reuben Long?

6 Defendant Jackson: And I'm trying to, I'm
7 trying to ---

8 The Court: How much longer is your class?

9 Defendant Jackson: It's like, we got like two
10 more weeks of it and then I'll be shipped out.

11 The Court: Well take this plea and I'll
12 sentence him in two weeks; won't I be back?

13 Mr. Richardson: I believe so, Your Honor.

14 Defendant Jackson: I would like for you to read
15 this, Your Honor, before you go, please?

16 The Court: All right.

17 Mr. Hazzard: The Court's indulgence.

18 Defendant Jackson: If I may approach? I'm just
19 asking for some help, that's all I'm asking for. I mean I
20 did the crime, I told them I did the crime before they
21 offered me the plea and the detective told me he would
22 write the Solicitor and ---

23 The Court: Okay, fine, you want to get clean on
24 drugs, I'm so glad to hear that, Mr. Jackson.

25 Defendant Jackson: I have a bad crack habit,

April 5, 2012

10

1 sir.

2 The Court: Well, fine, question is whether you
3 want to take this plea? Now I can do it this way, I can
4 take your plea and qualify it today and I can defer your
5 sentencing for two weeks if that's how much longer you want
6 to stay at J. Reuben Long and then I can sentence you and
7 you can go up the road and you can finish your classes, if
8 you say that it takes two more weeks to finish them.

9 Defendant Jackson: Yeah.

10 The Court: Well is that what you want to do?

11 Defendant Jackson: Yeah, I want to finish my
12 classes and my treatment classes that I'm taking the papers

13 ---

14 The Court: What you got, Russell?

15 Probation Officer Anderson: Judge, he's on
16 probation, too, got a ten-year sentence suspended to
17 eighteen months and three years probation.

18 The Court: Well I'm going to terminate that
19 anyway, if you bring that forward.

20 Probation Officer Anderson: Whenever he pleas.

21 The Court: Cause I'm going to get, cause he's a
22 seven to ten, there's no sense in being on probation if
23 he's going to do seven to ten. Mr. Hazzard, is your client
24 going to take the deal?

25 Mr. Hazzard: Well I've handed him a pen and a

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11

1 sentence sheet, Your Honor. We've reviewed the sentence
2 sheet in lock up before we were called out here and we will
3 see if he decides to sign it.

4 Defendant Jackson: You going to sentence me
5 now, is I going to be able to finish my classes?

6 The Court: If I take your plea, if you take
7 your plea, if I take your plea I'm not going to sentence
8 you for another two weeks.

9 Defendant Jackson: Okay.

10 Mr. Hazzard: What's the indictment number?

11 Mr. Spratlin: 2012-GS-22-0730.

12 The Court: Thank you, sir.

13 Mr. Spratlin: Your Honor, if may approach, I
14 have a sentencing sheet completed on indictment 2012-GS-26-
15 00730 Anthony, The State of South Carolina v. Anthony
16 Jerome Jackson where he's entering a guilty plea to burg
17 second degree violent with a recommendation of a range of
18 seven to ten years.

19 The Court: All right, Mr. Jackson, you have
20 told me you are represented by Mr. Hazzard; is that
21 correct?

22 Defendant Jackson: Yes, sir.

23 The Court: And has Mr. Hazzard had an
24 opportunity to go over the evidence in this case with you?

25 Defendant Jackson: Yes, sir.

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1 The Court: And has he explained to you what
2 burglary in the second degree violent constitutes, what
3 that is? You have to speak up, Mr. Jackson?

4 Defendant Jackson: Yes, sir.

5 The Court: Has he explained how that is
6 different from burglary in the first degree?

7 Defendant Jackson: Yes, sir.

8 The Court: Now did he tell you that for
9 burglary in the second degree you could receive up to
10 fifteen --

11 Mr. Hazzard: Burglary in the first degree or
12 second?

13 The Court: Violent.

14 Mr. Hazzard: Violent would be zero to fifteen,
15 Your Honor.

16 The Court: Fifteen, you could receive up to
17 fifteen years; is that correct?

18 Defendant Jackson: Yeah.

19 The Court: All right, now when you have these
20 conversations with Mr. Hazzard and he was telling you about
21 the elements or the nature of the offense and the potential
22 penalty, did he also go over with you in regard to the
23 charge the evidence of the case?

24 Defendant Jackson: Yes, sir.

25 The Court: I understand that you made a

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13

1 confession; is that correct? Did he talk to you about
2 that?

3 Defendant Jackson: Yes, sir, I told him.

4 The Court: And the other evidence that was
5 available in the case?

6 Defendant Jackson: Yes, sir.

7 The Court: All right, did he tell you that you
8 had an absolute right to a jury trial?

9 Defendant Jackson: Yes, sir.

10 The Court: Do you understand how a jury trial
11 works?

12 Defendant Jackson: No, sir.

13 The Court: Didn't Mr. Hazzard not tell you how
14 a jury trial works?

15 Defendant Jackson: He told me how it works but
16 I don't want no jury because I did it.

17 The Court: I understand you don't one, but did
18 Mr. Hazzard explain to you how it works?

19 Defendant Jackson: Yes, sir.

20 The Court: Okay. Do you understand that if you
21 enter this guilty plea that you are giving up your right to
22 a jury trial?

23 Defendant Jackson: Yes, sir.

24 The Court: Okay, whenever someone gives up
25 their right to a jury trial, Mr. Jackson, their general

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1 right to a jury trial they're giving up many other rights
2 as well. It just makes sense that if you give up your
3 right to a jury trial you're giving up all the rights that
4 are associated with a jury trial and I'll tell you, Mr.
5 Jackson, there are hundreds of them, more than we could
6 ever talk about here today or even this week. Some of
7 those that I at least think are more important, or the most
8 important ones, would be the right to require the State to
9 prove your guilt beyond a reasonable doubt; that's what
10 they'd have to do in a jury trial; do you understand that?
11 Speak up, Mr. Jackson?

12 Defendant Jackson: Yes, sir.

13 The Court: Do you also understand that you
14 would have the right to remain silent, nobody could make
15 you testify?

16 Defendant Jackson: Yes, sir.

17 The Court: Unless you wanted to in a jury
18 trial; do you understand that?

19 Defendant Jackson: Yes, sir.

20 The Court: If you said I don't want to testify
21 I'd even tell the jury they couldn't use that against you;
22 do you understand that?

23 Defendant Jackson: Yes, sir.

24 The Court: And, of course, in a jury trial
25 you'd have the right to have a lawyer with you there

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1 through every step of the way; do you understand that?

2 Defendant Jackson: Yes, sir.

3 The Court: These are just some of the rights
4 you have but do you understand that if you plead guilty
5 you're giving up that general right to a jury trial and all
6 these rights that go along with it; do you understand that?

7 Defendant Jackson: Yes, sir.

8 The Court: Okay, knowing that, Mr. Jackson, do
9 you wish to waive your right to a jury trial and enter this
10 plea?

11 Defendant Jackson: Yes, sir.

12 The Court: Now, are you satisfied with the
13 services that you've received from Mr. Hazzard?

14 Defendant Jackson: No, sir.

15 The Court: You are not?

16 Defendant Jackson: No.

17 The Court: Do you need more time with Mr.
18 Hazzard?

19 Defendant Jackson: Yeah.

20 The Court: You need more time to talk with him?

21 Defendant Jackson: Yeah.

22 The Court: All right, stand him aside.

23 End of requested transcript....

24

25

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the General Sessions Court for Horry County, South Carolina.

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

March 19, 2013
Brenda R. Babb

Brenda R. Babb
CVR-Master
OFFICIAL REPORTER

State of North Carolina

In The Court of General Sessions
2012-GS-22-00730

State of South Carolina,

vs.

Anthony Jerome Jackson,

Defendant.

TRANSCRIPT OF HEARING

September 12, 2012
Conway, South Carolina

Before:

The Honorable, J. Derham Cole, Judge

Appearances:

By: Martin D. Spratlin, Esq.
Attorney For State

By: Eric J. Fox, Esq.
Attorney For Anthony Jerome Jackson

BRENDA R. BABB
Circuit Court Reporter

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1 Mr. Spratlin: Your Honor, the next matter for
2 the Court is State of South Carolina County of Horry v.
3 Anthony Jackson both common spellings, charged in
4 indictment 2012-GS-26-00730, with one count of burglary in
5 the first degree. He also has two unindicted charges of
6 financial transaction card fraud and financial transaction
7 card theft, as well as another additional burglary first
8 degree financial transaction card fraud and financial
9 transaction card theft.

10 The State had extended an offer to Mr. Jackson to
11 plead guilty under indictment 2012-GS-26-730 to one count
12 of burglary second degree violent zero to fifteen year
13 felony offense with no recommendation from the State and
14 dismissal of all of the charges. He has declined that
15 recommendation and would like to go to trial. The State
16 has a order for arraignment findings, Your Honor, as well
17 as at the appropriate time the State would also like to put
18 on the record the service of Notice of the, service of the
19 Notice on behalf of the State that we intend to seek life
20 if he is convicted of this burglary first degree charge.

21 The Court: And what's the, what's the basis for
22 the life notice?

23 Mr. Spratlin: Your Honor, he has a prior
24 conviction from 1993 for burglary in the first degree, a
25 most serious offense, and obviously this charge of burglary

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1 in the first degree would be a second most serious offense.

2 The Court: Okay.

3 Mr. Spratlin: Could I approach with the
4 sentencing sheet, I mean the arraignment findings?

5 The Court: Yes, sir. All right, you are
6 Anthony Jerome Jackson?

7 Defendant Jackson: Yes, sir.

8 The Court: Mr. Fox is your lawyer?

9 Defendant Jackson: Yes, sir.

10 The Court: You understand why you're here right
11 now?

12 Defendant Jackson: Not really cause I didn't, I
13 don't know, no, I don't understand.

14 The Court: You don't understand? Well you're
15 charged with burglary in the first degree among other
16 things and they had you apparently on a plead docket to
17 enter a plea of guilty to that charge and perhaps some
18 others, and the Solicitor is telling me now that you don't
19 wish to plead guilty, that you want to have a trial on
20 those charges. He's also indicated that previously he has
21 made an offer to you through your lawyer that you could
22 plead guilty to a charge of burglary second under the
23 violent section which would carry up to fifteen years in
24 jail. It will be left to the discretion of the Court as to
25 what sentence would be imposed. He says that you through

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5

1 your lawyer have rejected that offer and that you want to
2 go to trial on the burglary first degree and he also, as
3 you've heard, says that if you are convicted of burglary in
4 the first degree that he's serving notice on you and your
5 lawyer today that he intends to ask this Court to impose a
6 life sentence if you are convicted of burglary in the first
7 degree because you've previously been convicted of a most
8 serious offense, that being a prior burglary in the first
9 degree. Where a person has been convicted of two most
10 serious offenses then the State can seek a life sentence
11 under those circumstances, life without parole. The
12 Solicitor says that you have rejected his offer; is that
13 true?

14 Defendant Jackson: Yeah.

15 The Court: Have you had plenty of time to talk
16 with Mr. Fox about the offer and your decision as to
17 whether or not you'll take it?

18 Defendant Jackson: No, I ain't had that much
19 time; it just came and just proposed it to me and that was
20 it.

21 The Court: Okay, well how long was the offer
22 open for, Solicitor?

23 Mr. Spratlin: Your Honor, the offer, the offer
24 expired on its face, the defendant was arrested on the
25 charge back on November 14, 2011.

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1 The Court: All right.

2 Mr. Spratlin: Originally he had an attorney,
3 Ron Hazzard who is with the public defender's office, who
4 has since gone to take a position in Georgetown County.
5 Mr. Fox was appointed in the case. I've had, I know for a
6 fact that Mr. Jackson has had numerous opportunities to
7 talk with Mr. Fox and Mr. Hazzard on this charge. Mr.
8 Jackson was actually brought into Court back in April of
9 this year for basically the same thing either plead or get
10 arraigned, and at that point he again did the, well I have
11 not had time to talk to my lawyer.

12 The Court: That was when, April?

13 Mr. Spratlin: That was April of this year.

14 The Court: Okay.

15 Mr. Spratlin: Again he did that, he did the
16 whole thing about not having time to talk to his lawyer and
17 got the arraignment continued. Your Honor, we've given him
18 sufficient time to make a decision on whether or not he
19 wishes to plead guilty to burglary second degree violent
20 with not a recommendation from the State or proceed to
21 trial on burglary first.

22 The Court: All right, well let me ask you this,
23 are you willing to hold that offer open if he accepts it at
24 some point today, if he pleads guilty this week?

25 Mr. Spratlin: If he accepts it today, if he

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1 accepts it today, Your Honor, the State would leave that
2 offer open, but --

3 The Court: All right, Mr. Jackson, I can't do
4 anything else for you. You understand what the situation
5 is now?

6 Defendant Jackson: I still don't understand
7 because I'd like to explain, can I say something, Your
8 Honor?

9 The Court: Well, sure if your lawyer thinks
10 it's a good idea.

11 Defendant Jackson: Your Honor, the burglary
12 that I came here on that I'm on now, okay, the first degree
13 burglary I'm out on bond on that burglary.

14 The Court: Okay.

15 Defendant Jackson: And then they arrested me
16 for another burglary but the officer sent me a note telling
17 me they, they, they closed it, the case, it wasn't me, I
18 didn't do it, so they sent me a notice.

19 The Court: All right, Mr. Jackson I don't need
20 to know all that because here's the facts. The Solicitor
21 has an indictment. You have been indicted by the Horry
22 County grand jury for a charge of burglary in the first
23 degree. Now I don't know which burglary that relates to,
24 what case it relates to, what person it relates to, and it
25 really doesn't make any difference to me. The Solicitor

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1 has an indictment that's been returned by the grand jury
2 with a true bill charging you with burglary in the first
3 degree. You might very well be not guilty of that and if
4 you're not you can have a jury trial. They can present
5 their evidence and if the jury finds you not guilty that
6 will be the end of it, but the situation you're in right
7 now as I have already stated and apparently has been stated
8 to you before back in April, is that they are offering to
9 let you plead guilty to burglary in the second degree under
10 the violent section that carries 0 to 15 years. If you
11 reject that offer they're going to go to trial on the
12 burglary in the first degree. If the jury finds you guilty
13 of burglary in the first degree then they're going to seek
14 a life sentence for you in that case, a life sentence
15 without parole, so that's simply, it's a difficult choice,
16 I understand, but you apparently have had plenty of time to
17 make it.

18 Defendant Jackson: They just offered it to me
19 last week.

20 The Court: No, sir, according to the Solicitor
21 you were here in April on the same thing. Well there's a
22 record of it, sir.

23 Defendant Jackson: Sir, they offered, they came
24 to the jail and offered me the zero to fifteen last, week
25 before last.

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1 The Court: Okay, you've got a record before ---

2 Defendant Jackson: I ain't talked to my mother.

3 The Court: Just a minute, Mr. Jackson.

4 Mr. Spratlin: Your Honor, back in April Mr.

5 Jackson ---

6 The Court: Was he before the Court in April?

7 Mr. Spratlin: He was before the Court, Your
8 Honor, represented at that time by Attorney Ronald Hazzard.

9 The Court: Okay.

10 Mr. Fox: He since has gotten re-arrested on
11 some new charges, the exact same charges that he, not the
12 exact same charges, but very similar charges to the one
13 that he was previously arrested for in November. At the
14 time that he was before this Court the State had made an
15 offer of him to plead guilty to burglary second degree
16 violent. Mr. Jackson had originally insinuated that he
17 wished to take that. We brought him up, he then decided he
18 didn't want to. We decided to try the arraignment. He
19 said he didn't have a lawyer, he didn't have enough time to
20 talk with his lawyer at that time. We continued the
21 arraignment at the request of the Judge at that point in
22 time and as Your Honor knows Mr. Fox became appointed on
23 the case a couple of months back.

24 Now since Mr. Fox has been appointed on the case
25 he did get re-arrested on those new charges, the new

September 12, 2012

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1 burglary first degree charge and financial transaction card
2 fraud. The State has not made him an -- the offer he's
3 talking about is the offer on those charges. The State
4 made him an offer to dismiss those charges if he pleads to
5 the burglary from November, which is the same offer that
6 the State made back in April, back in before April,
7 actually, Your Honor, the offer made was made back on
8 February 1st, 2012, and a copy was sent to his attorney
9 along with discovery.

10 The Court: Well my understanding he was before
11 the Court just as he is today on the same thing.

12 Mr. Spratlin: Yes, sir.

13 The Court: There's a record of it, Mr. Jackson.
14 I hope you're not going to require me to get that record
15 because if I do and I find out that you've misrepresented
16 something to me today I would consider that to be contempt
17 charge. It would be a contempt of court; you understand?

18 Defendant Jackson: Misrepresent what?

19 The Court: The fact that you said you hadn't
20 been before on an arraignment discussing the same plea?

21 Defendant Jackson: Oh, yeah, I've been here.
22 I've been here on arraignment but I'm saying ---

23 The Court: You said you didn't know anything
24 about it.

25 Defendant Jackson: No, I said the zero to

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1 fifteen the plea, that wasn't the plea they gave me on that
2 first arraignment.

3 The Court: Well that's what he says he did give
4 you.

5 Defendant Jackson: No, he gave me seven to ten;
6 it wasn't zero to fifteen.

7 Mr. Spratlin: There was some discussion ---

8 The Court: All right, let's make it a lot
9 easier, you understand what the deal is today? You're now
10 in front of me today, you understand what the deal is?

11 Defendant Jackson: No, I still don't
12 understand.

13 The Court: You don't? Well let explain one
14 more time, Mr. Jackson, then if not we'll just have a trial
15 on this case. They've offered you zero to fifteen on a
16 burglary second violent; do you understand that?

17 Defendant Jackson: I guess.

18 The Court: No, sir, you guess, you don't
19 understand what I'm saying, how far did you go in school?

20 Defendant Jackson: I didn't go far.

21 The Court: You didn't go to school?

22 Defendant Jackson: No, sir.

23 The Court: Well can you understand English?

24 Defendant Jackson: A little bit.

25 The Court: Okay, all right, you don't want to

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12

1 accept the offer; you want a trial; you want a jury trial?

2 Take him back and we'll give him a jury trial.

3 Mr. Spratlin: Your Honor, if we may, prior to
4 taking him back just serve the notice of life on him.

5 The Court: Okay, wait a minute, Mr. Jackson,
6 you need to get your notice served.

7 Defendant Jackson: He done gave me one of them
8 already.

9 Mr. Spratlin: Yes, sir, Your Honor.

10 The Court: You're getting another one.

11 Mr. Spratlin: Just to make sure that there's no
12 issues in regards to the service on Mr. Jackson.

13 Indictment 2012-GS-26-00730, the State is
14 currently serving on the defendant and his counsel a true
15 and accurate copy of Notice of Intention to Seek a Sentence
16 of Life Without Parole representing a, excuse me,
17 referencing a prior most serious conviction from 1993, in
18 fact 1993-GS-26-1529 where he was convicted of burglary
19 first degree, and a true and accurate copy of that
20 sentencing sheet purporting that conviction certified to be
21 true and accurate by the Court, by the Clerk of Court of
22 Horry County is attached.

23 The Court: All right, Mr, Jackson, you see that
24 piece of paper that's just been handed you?

25 Defendant Jackson: Yes, sir, I got one.

September 12, 2012

13

1 The Court: Okay, good luck to you.

2 Mr. Spratlin: Thank you, Your Honor.

3 End of requested transcript....

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September 12, 2012

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the General Sessions Court for Horry County, South Carolina.

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

March 19
Brenda R. Babb 2013

Brenda R. Babb

CVR-Master

OFFICIAL REPORTER

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry)

2012-GS-26-00730

THE STATE OF SOUTH
CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

October 11, 2012

ANTHONY JACKSON,)

Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Martin D. Spratlin, Esquire
Attorney for PlaintiffEric Fox, Esquire
Attorney for DefendantKay H. Richardson, CVR
Circuit Court Reporter

State v. Jackson - (October 11, 2012)
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State v. Jackson - (October 11, 2012)
MOTIONS

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1 (October 11, 2012)

2 MR. SPRATLIN: Your Honor, the next matter for the Court
3 is the State of South Carolina, County of Horry versus Anthony
4 Jerome Jackson, all common spellings. He's charged in
5 indictments 2012-GS-26-00730, with burglary in the first
6 degree. He's also represented -- he's also charged with
7 indictment 2012-GS-26-00731 with financial transaction card
8 fraud, value less than \$500 in a six-month period. He's
9 represented by attorney Eric Fox. He is on the trial roster,
10 Your Honor, for the week of November 12th before Your Honor
11 for a trial in this case. The State has previously served
12 notice of life on the Defendant based on a prior conviction
13 for burglary first degree.

14 We're here today, Your Honor to handle any pretrial
15 motions that we can including a Jackson v Denno hearing, which
16 we're prepared to go forward on and any motions the Defendant
17 may have regarding representation or otherwise be prepared for
18 trial.

19 THE COURT: All right. Give me the factual basis for the
20 allegations so that I can deal with the motions.

21 MR. SPRATLIN: Yes, sir, Your Honor. Regarding the
22 burglary charge, Your Honor, back on November 14th, 2011 at
23 the Best Western Inn Suites located at 1809 South Ocean
24 Boulevard in the Myrtle Beach section of town, the Defendant
25 entered the room of two individuals who were staying in the

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1 hotel room, Mr. William Thompson and Ronald Kinney. I think
2 one of the individuals had woken up during the night and
3 actually saw the Defendant standing in his room. He inquired
4 of him about why he was in the room. The Defendant at first
5 told the individual that he was a security guard working in
6 the hotel and that he should not have left his door open and
7 that he was investigating something regarding a smell of
8 marijuana.

9 THE COURT: Was the Defendant by himself?

10 MR. SPRATLIN: He was, Your Honor.

11 THE COURT: There -- this is the first floor of the hotel
12 room, so he basically just climbed over the balcony and made
13 entry through the sliding glass door. Once the -- once they
14 were talking, Your Honor, the -- the two individuals in the
15 room actually believed him to be security and allowed him to
16 use the phone to call the front desk. We're not sure if he
17 actually called the front desk, whether the Defendant did, but
18 at any rate, while in that room, he did grab a wallet -- a
19 pair of pants actually from one of the individuals that was
20 sitting by the door. He then left the room. You can clearly
21 see on security camera the Defendant leave the room carrying a
22 pair of pants going down the hallway. I guess when the
23 individuals noticed that he'd taken the pair of pants, they
24 then come out and go down the hallway after him, get him, walk
25 him back to the room, retrieve the pair of pants and called

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1 security -- the actual security for the hotel, when the
2 Defendant bolts out of the room. He has taken the wallet of
3 one of the individuals, I believe it was William Thompson
4 whose wallet he had taken. Law enforcement is called, law
5 enforcement responds, law enforcement processes the scene, law
6 enforcement gets statements from the individuals. One of the
7 individuals, Mr. William Thompson gets a call from Bank of
8 America -- he's reported all of his cards stolen and he gets a
9 call saying that his card was being used at Plantation Pancake
10 House which is right down the road.

11 THE COURT: I thought the Defendant, whoever it was, was
12 stopped ---

13 MR. SPRATLIN: He was stopped, Your Honor, on the way out
14 and brought back to the hotel room by the individual ---

15 THE COURT: How did somebody get his card?

16 MR. SPRATLIN: He had stolen the wallet in the meantime.
17 While he had the pants in his hand, he took the wallet out
18 and, I guess, put it in his own pants. But at any rate, he
19 left that room with the victim's wallet.

20 THE COURT: How did the wallet get to some other soul who
21 used it?

22 MR. SPRATLIN: It was him, Your Honor, he used it. He
23 basically left immediately from the hotel.

24 THE COURT: He was not apprehended ---

25 MR. SPRATLIN: He was not apprehended. He ran out of the

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1 room -- after taking the wallet, he ran out of the room.

2 THE COURT: I got you.

3 MR. SPRATLIN: The video camera shows him running down
4 the hallway; he gets away.

5 THE COURT: The video camera sufficient to identify him?

6 MR. SPRATLIN: It's not the greatest quality video, Your
7 Honor. I wouldn't rely solely on that for a trial case.
8 Luckily, we have a lot more evidence than just that. It
9 certainly -- the person on the video matches the Defendant's
10 description and also matches the clothing the Defendant was
11 wearing when we was apprehended.

12 THE COURT: Is there identification witnesses here?

13 MR. SPRATLIN: Your Honor, the identification witness is
14 not here today. They're under subpoena, they will be down for
15 trial from -- I believe one of them lives in Connecticut, the
16 other one lives in ---

17 THE COURT: Is there any video showing who used the card?

18 MR. SPRATLIN: No, Your Honor, there's no video that the
19 State has possession of that shows who used the card.
20 However, there is a waitress at the pancake house who
21 identified the Defendant as being the one who used the card.
22 She's -- that's the basis of the Neil v Biggers hearing. She
23 actually -- when law enforcement responded to the pancake
24 house regarding that card being used. She identified the
25 Defendant as being the one who used that card.

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1 THE COURT: Did she know the Defendant from a previous
2 time?

3 MR. SPRATLIN: I'm not certain, Your Honor. I don't
4 believe so. I believe was a -- he was in a group with two
5 other people. He bought basically a breakfast for himself and
6 then bought breakfast for two other people, made two charges
7 ---

8 THE COURT: With the stolen card?

9 MR. SPRATLIN: Yes, sir, made two charges and actually
10 signed the name of I believe of Thompson to the receipt.

11 Law enforcement actually arrested him or apprehended him
12 about ten yards or so down from the pancake house. He was
13 taken into custody ---

14 THE COURT: How soon was the pancake -- card used after
15 the alleged motel room?

16 MR. SPRATLIN: I believe it was within an hour and a
17 half, Your Honor, so -- maybe even less than that. I'm not
18 sure of the exact time. The Defendant was apprehended at the
19 pancake house, he was taken into custody. The next morning,
20 Detective Steven Clothier, who is present today, went down to
21 the Myrtle Beach jail, interviewed the Defendant after
22 advising him of his Miranda Rights, telling him what he --
23 talking to him about what he was there for. The Defendant
24 gave a statement. First off, he said that he went in the room
25 because they invited him in. When confronted with some

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1 inconsistencies about that, he then changed his story to say
2 that he made entry but he didn't come in until they told him
3 to. And eventually, Your Honor, he came -- the recording of
4 the interview, he admitted to law enforcement officers that he
5 entered the room without anyone's invitation.

6 THE COURT: Did he say how he got onto the balcony?

7 MR. SPRATLIN: He jumped over the balcony. It was a
8 first floor, Your Honor, so all he had to do was climb over.

9 THE COURT: Did he admit that?

10 MR. SPRATLIN: Yes, he did.

11 THE COURT: That's on the -- that's on the ---

12 MR. SPRATLIN: That's on the recording, Your Honor, which
13 is here in court today.

14 THE COURT: Is this a video or audio?

15 MR. SPRATLIN: It's an audio recording.

16 THE COURT: No video?

17 MR. SPRATLIN: There's no video of the statement. There
18 is -- the only video in this case involves the video from that
19 hotel.

20 THE COURT: How many were there when he was Mirandized?

21 MR. SPRATLIN: It was, I believe just Detective Steven
22 Clothier but it is all recorded.

23 THE COURT: All right. We'll deal with that in a moment.
24 This is scheduled before me November the what?

25 MR. SPRATLIN: 12th, Your Honor.

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1 THE COURT: Prior to doing that, what motions do we have,
2 Mr. ---

3 MR. FOX: Well, Your Honor, we had a motion as to the
4 voluntariness of the confession, the Jackson v. Denno hearing.

5 THE COURT: I'll do that now.

6 MR. FOX: Which we'll have shortly and I believe Mr.
7 Jackson would also like to address the Court about -- I'll let
8 him bring up any issues he has at this time.

9 THE COURT: Be glad to hear from you.

10 ANTHONY ANDREW JACKSON, HAVING BEEN
11 SWORN, TESTIFIED AS FOLLOWS:

12 THE COURT: You're gonna have to talk a little louder
13 now, Mr. Defendant, so my court reporter can take down what
14 you say.

15 MR. JACKSON: Yes, sir.

16 THE COURT: Now, be careful with what you say because
17 what you say could possibly be used against you. What you
18 want to tell me?

19 MR. JACKSON: Your Honor, I would like to be appointed
20 another lawyer because I'm going to trial on burglary and he
21 don't even know which burglary I'm going to trial on. And I
22 don't think he had enough time to look over my motion or
23 whatever to go to trial this soon on my case. Your Honor,
24 because I was talking to him out there in the conference room
25 and he don't even know which burglary that I'm going to trial

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1 on because I'm charged with two burglaries. One burglary ---

2 THE COURT: We can clear that up for you right now.

3 MR. JACKSON: --- the Myrtle Beach dropped -- one of
4 them, the detectives in Myrtle Beach dropped.

5 THE COURT: Which one are you going to trial on?

6 MR. SPRATLIN: We're going to trial, Your Honor, on the
7 one that occurred November 14th, 2011 at the Best Western Inn
8 Suites at 1809 South Ocean Boulevard in Myrtle Beach.

9 THE COURT: You're going to trial on the incident that
10 allegedly occurred at the Best Western.

11 MR. JACKSON: Oh, I know which one I'm going on but he
12 don't know. He never ---

13 THE COURT: How you ---

14 MR. JACKSON: No, no, I would like to have -- I'm not
15 satisfied with my counsel. I would like to have ---

16 THE COURT: Mr. Defendant, let me say this to you. This
17 comes up quite often. Of course, I know Mr. Fox; I've known
18 him for twenty-five years. And I know him as one of the
19 outstanding public defenders in the State of South Carolina.
20 Now, it's been my experience that and I suppose I'd feel the
21 same way, that Defendants sitting out there think that their
22 case is the only one that he's got to tend to and they want
23 his attention very day and every night. And that's not
24 practical. You're not gonna get it. I can tell you that
25 you've got a month to prepare for trial based on the

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1 allegations it should be relatively easy to prepare for trial.
2 And he will be ready.

3 Do you want to respond to what he said, Mr. Fox?

4 MR. FOX: Mr. Jackson was originally appointed Ron
5 Hazzard of the Public Defender's office. Mr. Hazzard
6 represented him for many months. I've had the file and have
7 been able to look through Mr. Hazzard's notes and I note that
8 he and Mr. Jackson had numerous discussions and they have
9 reviewed discovery. So, when I got the file, I was able to
10 look back at all of Mr. Hazzard's notes. He keeps very
11 detailed notes about things. I have met with Mr. Jackson
12 several times. It is true this morning, there are two very
13 similar incidents and what I was trying to do was make sure I
14 wasn't confusing one with another, the details of one with
15 another. I know exactly which one we talked about. I spoke
16 with Mr. Spratlin about it. I'm very clear. I understand Mr.
17 Jackson might be frustrated because I'm asking but this -- I
18 don't have any doubts in my mind, I know this case. I'd be
19 ready if I had to today but certainly in a month I will be
20 absolutely prepared to go forward.

21 THE COURT: Mr. Jackson, he will be ready. Now, I tell
22 you, it's not unusual for defendants as they approach trial
23 date to start having complaints against their lawyer hoping
24 that'll continue it.

25 Why was -- why isn't Mr. Hazzard with you now?

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1 MR. FOX: Because Mr. Hazzard is now in the Georgetown
2 office, Your Honor. We've basically switched places; he's in
3 Georgetown and I'm here.

4 THE COURT: I got you.

5 Mr. Jackson, let me say this to you, absent some real
6 conflict and there's none here, you've got three choices. You
7 can hire your own lawyer, if you want to; you can represent
8 yourself if you want to; or we can keep Mr. Fox as your
9 lawyer. Absent you hiring your own lawyer or desiring to
10 represent yourself, Mr. Fox is going to be your attorney. And
11 I suggest that you work with him in that regard.

12 MR. JACKSON: I don't want him on my case.

13 THE COURT: Well, I don't care what you want, the
14 decision is mine.

15 MR. JACKSON: Let the record be known that I don't want
16 him on my case.

17 THE COURT: Well, let the record be known too, that I've
18 offered you to represent yourself or hire your own lawyer.
19 Absent that, Mr. Fox is going to be your lawyer.

20 MR. JACKSON: I don't feel like he ready to represent me.

21 THE COURT: He will be in a month from now. We're not
22 going to trial this week. When are we going to trial?

23 MR. JACKSON: Can we get a ---

24 MR. SPRATLIN: The week of November 12th.

25 THE COURT: That's the week of November 12th. What's the

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1 date?

2 MR. SPRATLIN: Today is October 11th.

3 THE COURT: He's got thirty-one days. He can prepare your
4 case in thirty-one days. Now, Mr. Fox, does -- was there any
5 negotiation -- this is, as I understand it, if convicted, he's
6 facing absolutely life without parole; is that correct?

7 MR. FOX: That is correct, Your Honor. He's been served
8 notice actually two different times based on Mr. Jackson's two
9 prior convictions. One for a burglary and one for a
10 housebreaking, under the old law back in the 80s, but two
11 qualifying prior convictions. He had a plea offer that was
12 present when Mr. Hazzard was his attorney and remained open
13 until last month with myself that if he were to plead, he
14 could plead to second degree burglary violent, no
15 recommendation, so he would've been facing from -- anywhere
16 from no time up to fifteen years.

17 THE COURT: Does he understand that those two prior
18 convictions will be admitted as a basis for burglary first
19 degree against him?

20 MR. FOX: We have discussed that, Your Honor, that is
21 part of the State's case. They would present evidence of his
22 two prior convictions ---

23 THE COURT: There will be an appropriate charge that they
24 are not to be used as any guilt in this case. But they are to
25 be used as a basis for burglary first degree and the jury will

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1 have the benefit of that.

2 MR. FOX: Yes, sir.

3 THE COURT: In fairness to him, does he fully understand
4 that if convicted, the trial judge has no discretion that he
5 must sentence him to life in prison?

6 MR. FOX: I've instructed him on that and I know I -- I
7 don't recall who the arraigning judge was last month but I
8 know that judge also covered that fact with Mr. Jackson last
9 month at his arraignment.

10 THE COURT: I don't want him to ever be in a position to
11 say that his lawyer did not convey to him that he had the
12 opportunity of pleading to a lesser offense. Mr. Defendant,
13 in fairness to you now, I just want the record to reflect that
14 you had that opportunity and it's your decision not to take
15 it; is that correct?

16 MR. JACKSON: I don't even understand what he's still on
17 my case. I don't understand ---

18 THE COURT: I'm not asking you that now. You answer what
19 I'm telling you, don't answer -- do you know that you had and
20 even have today the opportunity to plead to something less
21 than burglary first?

22 MR. SPRATLIN: Your Honor, if I may, the only offer on
23 the table at this point would be burg first straight up.

24 THE COURT: Okay. That's fine. With the life
25 imprisonment attached to it?

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1 MR. SPRATLIN: Your Honor, it -- we would leave that up
2 to Your Honor but we -- if he wanted to plead today, Your
3 Honor, based on our previous discussions in chambers, we would
4 just allow him to plead straight up to burg first without the
5 imposition of -- without ---

6 THE COURT: Well, as long as the record will reflect
7 that, I just don't want him to, if he be convicted and get
8 life without parole to be able to say on post-conviction
9 relief that he didn't know that he could've gotten this deal.
10 The record is gonna reflect that I'm telling him how that.

11 MR. SPRATLIN: Yes, sir, we would pull back notice today
12 if he wanted to plead straight up to burg first today.

13 THE COURT: I fully explained -- I fully give him his
14 presumption of innocence, he is absolutely entitled to a trial
15 by jury. He's absolutely entitled to confront the witnesses
16 against him. If during that trial, he elects to remain
17 silent, I would give the appropriate instructions with that
18 regard.

19 Mr. Fox, the record will reflect now that he had that
20 opportunity and denied it.

21 Now, what other motions do we have other than Jackson v
22 Denno?

23 You may sit down, Mr. Defendant.

24 MR. FOX: That would be all today, Your Honor. My
25 understanding is we'll have to have the identifications issues

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 addressed when the lay witnesses could be here in November.

2 THE COURT: Okay. Have you previously seen a transcript
3 of this alleged confession?

4 MR. FOX: I have not, Your Honor.

5 THE COURT: This is your first opportunity?

6 MR. FOX: Yes, sir.

7 THE COURT: All right. Proceed on to Jackson v Denno.

8 MR. SPRATLIN: Yes, sir, Your Honor. The State would
9 call Detective Steven Clothier to the stand.

10 If you would please come up and just be sworn. Right
11 there to the Clerk; she's gonna swear you in.

12 DETECTIVE STEVEN CLOTHIER, HAVING BEEN
13 SWORN, TESTIFIED AS FOLLOWS:

14 CLERK: State your full name and spell your last name for
15 the Court.

16 DETECTIVE CLOTHIER: Steven Clothier, last name spelling C-
17 L-O-T-H-I-E-R.

18 DIRECT EXAMINATION OF DETECTIVE STEVEN CLOTHIER BY MR.

19 SPRATLIN:

20 Q: Sir, where are you currently employed?

21 A: Currently employed at the Myrtle Beach Police Department.

22 Q: How long have you been working at the Myrtle Beach Police
23 Department?

24 A: I've been there employed since 1999, so it'd be thirteen
25 years in September.

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 Q: All right. How long have you been in law enforcement in
2 total?

3 A: Thirteen years, all with Myrtle Beach.

4 Q: What's your current assignment?

5 A: My current assignment is property crimes and
6 investigations.

7 Q: And what's your title?

8 A: Detective.

9 Q: How long have you been a detective?

10 A: It'll be two years in January.

11 Q: What are some of the duties of a detective at the Myrtle
12 Beach Police Department?

13 A: I -- my particular duties are investigate property crimes,
14 credit card frauds, burglaries, identity thefts; that sort of
15 -- those sort of incidences.

16 Q: Yes, sir. Let me ask you, what if any involvement did you
17 have with this case State versus Anthony Jerome Jackson?

18 A: My only involvement was to interview the Defendant.

19 Q: How did you come to interview the Defendant?

20 A: When I came in that morning at seven o'clock, that's my --
21 start of my shift, the crime scene officer stated that there
22 was a suspect in jail for a prior -- for a burglary and was
23 requesting the on-duty detective that previous night and I had
24 stated to him that he was off and that I would go up and
25 interview him.

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 Q: All right. And let me just go ahead and ask you, do you
2 see the individual here in the courtroom that you interviewed
3 that day?

4 A: Yes, I do.

5 Q: If you would, please point him out and identify an article
6 of clothing he's wearing.

7 A: He's in the kaki jumpsuit.

8 MR. SPRATLIN: Please let the record reflect the witness
9 has identified the Defendant.

10 THE COURT: It will so do.

11 BY MR. SPRATLIN:

12 Q: Now, Detective Clothier, where did the questioning occur?

13 A: It occurred at the main police department in our interview
14 room in the jail.

15 Q: What kind of room is that? How many -- is there a table
16 there?

17 A: There's a table, there's usually two chairs. If there's
18 more than one detective, we'll bring in another chair. It's
19 probably, I'd say maybe like an eight-by-ten room.

20 Q: Okay. Was anyone else in the room with you?

21 A: It was just me and the Defendant.

22 Q: How long did the interview last?

23 A: It was approximately twenty/twenty-five minutes.

24 Q: Was all of it recorded?

25 A: Yes, on audio.

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 Q: All right. At any point during the interview did -- was
2 the Defendant offered any food or drink?

3 A: No.

4 Q: At any point in the interview, did the Defendant request
5 any food or drink?

6 A: No.

7 Q: Did the Defendant request to use the restroom?

8 A: No.

9 Q: At any point during the interview did the Defendant
10 request anything?

11 A: No, nothing.

12 Q: All right. Let me ask you a little bit about the
13 background of the Defendant. If you know, how old was the
14 Defendant at this point in time?

15 A: At the time of the interview, I believe he was forty-five
16 years old.

17 Q: And again, if you know, how much education did the
18 Defendant have?

19 A: During the questioning, he said that he completed the
20 eleventh grade.

21 Q: What about the English language, did it appear to you that
22 the Defendant was proficient in English?

23 A: Yes, he even stated that his primary language was English.

24 Q: Did the Defendant appear to understand the questions that
25 you were asking?

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

20

1 A: Yes.

2 Q: And did his answers appear to be related to those
3 questions?

4 A: Absolutely.

5 Q: Now, Detective Clothier, in your thirteen years experience
6 with law enforcement, have you had a chance to come in contact
7 with people who were under the influence of either alcohol or
8 drugs?

9 A: Yes.

10 Q: And what are some of the symptoms that people who are
11 under the influence exhibit?

12 A: Some of the symptoms are slurred speech, drowsiness,
13 continue to ask questions, not understand those sort of lines.

14 Q: What if any of those did the Defendant exhibit?

15 A: None.

16 Q: Did the Defendant demonstrate in any way to you that he
17 was under the influence?

18 A: No.

19 Q: Did he appear to slur his words?

20 A: No, he spoke very well.

21 Q: All right. Did he appear to have any following -- any
22 trouble following you when you were talking with him?

23 A: No.

24 Q: Detective Clothier, let me ask you -- what information, if
25 any, did you give the Defendant about his rights?

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 THE COURT: Let me inquire, How long had he been in jail
2 with you interviewed him that morning?

3 A: I believe he was picked up in the early morning, maybe two
4 o'clock, 2:00 A.M., and my interview, I believe, started
5 around 9:10 in the morning.

6 THE COURT: That's fine; thank you. Proceed.

7 MR. SPRATLIN: Yes, sir, Your Honor.

8 BY MR. SPRATLIN:

9 Q: Now, Detective Clothier, let me ask you, what if any
10 information did you give the Defendant about his rights?

11 A: I gave him his Miranda Warning.

12 Q: And how do you give a Miranda Warning?

13 A: It's our, our sheet that we follow; it's our approved
14 sheet that -- Miranda Rights form that we follow.

15 Q: So, you use a form?

16 A: Yes.

17 MR. SPRATLIN: Your Honor, permission to approach the
18 bench?

19 THE COURT: Sure.

20 MR. SPRATLIN: I just wanted to hand you up a copy if you
21 wanted to see it.

22 THE COURT: Thank you. Provide Mr. Fox a copy, too; do
23 you have a copy for him?

24 MR. SPRATLIN: Yes, sir, Your Honor. I just provided Mr.
25 Fox a copy.

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

22

1 Permission to approach the witness?

2 THE COURT: Please.

3 MR. SPRATLIN: Please let the record reflect I'm showing
4 the witness what has been marked for identification purposes
5 as State's Exhibit Number One.

6 STATE'S EXHIBIT NUMBER ONE

7 MARKED FOR IDENTIFICATION

8 BY MR. SPRATLIN:

9 Q: Detective Clothier, do you recognize that item?

10 A: Yes, I do.

11 Q: What is that?

12 A: That is the Miranda form that I provided for the
13 Defendant.

14 Q: All right. And how can you be certain that it's the one
15 that you provided for this Defendant?

16 A: I signed it and he signed it.

17 Q: Has there been any additions or deletions to that form
18 that you can tell?

19 A: No.

20 Q: From the date that you signed it?

21 A: No, none that I made, no.

22 MR. SPRATLIN: Your Honor, the State intends on
23 introducing that form into evidence here in its case in chief
24 for the jury. We'll probably not -- we'll not seek to
25 introduce it at this point in time.

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

23

1 BY MR. SPRATLIN:

2 Q: Now, Detective Clothier, how did you go over that form
3 with the Defendant?

4 THE COURT: Why don't you care to introduce it in this
5 Jackson v. Denno hearing?

6 MR. SPRATLIN: Your Honor, I can introduce it for the
7 purpose of this hearing as well, I just was gonna save it for
8 formal introduction before the jury.

9 THE COURT: I want it -- I want it introduced as part of
10 this hearing.

11 MR. SPRATLIN: Yes, sir, Your Honor. The State moves to
12 introduce what's been marked for identification purposes as
13 State's Number One into evidence.

14 THE COURT: Granted.

15 STATE'S EXHIBIT NUMBER ONE

16 ADMITTED INTO EVIDENCE

17 BY MR. SPRATLIN:

18 Q: Detective Clothier, how did you go over that form with the
19 Defendant?

20 A: What I did is I put it in front of him like kind of in-
21 between us, and then I'll go over each one at a time.

22 Q: Did, in your opinion, did the Defendant have any trouble
23 reading or going over that with you?

24 A: No, not at all.

25 Q: All right. Now, if you would, please state for the Court

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DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 and put on the record exactly what you read the Defendant?

2 A: Yes. What I'll do is I read it exactly the way it is and
3 I'll just read it exactly the way it is: You have the right
4 to remain silent and refuse to answer any questions. Anything
5 you say can and will be used against you in a court of law.
6 You have the right to talk to an attorney and have him present
7 while -- with you while you are being questioned. If you
8 cannot afford an attorney, one will be provided at government
9 expense before any questioning if you wish. If you desire to
10 make a statement or answer questions, you have the right to
11 stop at any time.

12 Q: Now what, if anything, did you get the Defendant to do in
13 regards to each of those rights to insinuate that he
14 understood them?

15 A: What it is, I asked him if he did understand them is to
16 initial under -- next to each one.

17 Q: And did the Defendant do that?

18 A: Yes.

19 Q: And are those his initials next to them?

20 A: Yes.

21 Q: And what if anything did you do to get the Defendant to
22 state that he understood all of his rights?

23 A: And then what I did is I read, The above rights have been
24 explained to me and I understand each of them. And I said, if
25 you understand them and -- I had him sign it.

State v. Jackson - (October 11, 2012)

25

DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 Q: And who, if anyone, signed as a witness?

2 A: I signed it as a witness to his -- that I provided all
3 that for him.

4 Q: Let me ask you, in the upper right-hand corner, there's
5 some writing, who put that writing there?

6 A: Upper left?

7 Q: Upper left corner, excuse me.

8 A: That would be me.

9 Q: And what was the purpose of that writing?

10 A: To show that he wasn't under the influence, that he
11 understood what I said and just making note of those.

12 Q: Okay. Thank you, Detective Clothier. Did the Defendant
13 at any time state to you that he wished -- that he did not
14 wish to speak to you?

15 A: No.

16 Q: At any time, did the Defendant request a lawyer?

17 A: No.

18 Q: At any time, did the Defendant state that he wished to
19 terminate the interview?

20 A: No.

21 Q: At any time during the interview or before the interview,
22 did the Defendant in any way assert anyone of his rights?

23 A: No.

24 Q: Now, let me ask you, Detective Clothier, regarding the --
25 any promises or threats made to the Defendant, did you make

State v. Jackson - (October 11, 2012)

26

DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 any promises to the Defendant regarding his cooperation?

2 A: No. The only thing that I said was that, you know, if he
3 cooperated, I would let the solicitor know and, you know, I
4 made it a point not to make any leniency promises.

5 Q: Did you tell the Defendant what to say at all?

6 A: No. I only ask them to tell the truth.

7 Q: And Detective Clothier, did you or anyone in your presence
8 threaten the Defendant with any sort of harm in exchange for
9 his statement?

10 A: No, not at all.

11 Q: Detective Clothier, let me show you what's been marked ---

12 THE COURT: Has the statement been transcribed yet?

13 MR. SPRATLIN: No, Your Honor, the statement has not been
14 transcribed but I do have an audio copy which I would hope to
15 play for the Court if the Court would be willing to hear it.

16 THE COURT: When are you going to provide the Defendant
17 with a copy?

18 MR. SPRATLIN: It's been provided, Your Honor.

19 THE COURT: That's what I asked you, a audio copy has
20 been provided?

21 MR. SPRATLIN: An audio copy has been provided. There is
22 no transcript. The State did not actually intend on doing
23 one. If the Court would like, between now and trial, we will
24 have one prepared.

25 THE COURT: Yes.

State v. Jackson - (October 11, 2012)

27

DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 MR. SPRATLIN: We will prepare a transcript for Your
2 Honor.

3 THE COURT: I have found from experience that when a
4 transcript is being played, it's helpful to have transcripts
5 in the hands of the jury while it's being played and, of
6 course, they are removed after it's over. It just helps them
7 to follow it. So, I would suggest you do it.

8 MR. SPRATLIN: Yes, sir, Your Honor. The State will have
9 one prepared.

10 Permission to approach the witness?

11 THE COURT: Yes. You want to play the video?

12 MR. SPRATLIN: I would like to play the audio, Your
13 Honor, if the Court would be willing to hear it.

14 THE COURT: How long is it?

15 DETECTIVE CLOTHIER: About twenty, twenty-two, twenty-
16 three minutes.

17 THE COURT: You want to hear it at this time?

18 MR. FOX: I would, Your Honor. I think we need to hear
19 the whole thing before you make a determination ---

20 THE COURT: That's fine.

21 MR. FOX: --- as to admissibility.

22 THE COURT: Can you play it under your microphone there
23 so I can hear it.

24 MR. SPRATLIN: Yes, sir, Your Honor. I can play it on
25 here and put the microphone right in front of it if that's

State v. Jackson - (October 11, 2012)
DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

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1 acceptable to the Court.

2 THE COURT: That's fine.

3 MR. SPRATLIN: Your Honor, this has been marked as
4 State's Exhibit Number Two. Would you like me to go through
5 any more formal introduction or I could move to introduce this
6 into evidence for the Court?

7 THE COURT: No, you've -- it's sufficient that -- for
8 this purpose.

9 MR. SPRATLIN: Yes, sir.

10 STATE'S EXHIBIT NUMBER TWO

11 ADMITTED INTO EVIDENCE

12 THE COURT: At the conclusion of the transcription, I
13 would ask him is this -- is this all that occurred on that
14 day. I'll let you do that at that time.

15 MR. SPRATLIN: Yes, sir, Your Honor, after playing the
16 video -- I mean, the audio, excuse me.

17 THE COURT: I'm just curious, Detective, y'all don't have
18 the video capability too at Myrtle Beach?

19 DETECTIVE CLOTHIER: We don't normally video tape our
20 interviews. At the -- our training -- at our training annex
21 where our offices are there's an interview room with video.
22 He was already in the jail and we're not gonna sign him out to
23 bring him down, so there's an interview room right in the
24 jail.

25 THE COURT: All right.

State v. Jackson - (October 11, 2012)

29

DETECTIVE STEVEN CLOTHIER - DIRECT BY MR. SPRATLIN

1 (REPORTER'S NOTE: State's Exhibit Number Two played for the
2 Court.)

3 THE COURT: All right, sir.

4 BY MR. SPRATLIN:

5 Q: Detective Clothier ---

6 THE COURT: Solicitor, let me ask you this, at --
7 wherever the cards were used, were any video taken there too?

8 MR. SPRATLIN: No, Your Honor. There was video
9 equipment, however, it was not functioning. The officers were
10 not able to retrieve video from the Pan American Pancake
11 House.

12 THE COURT: Okay.

13 BY MR. SPRATLIN:

14 Q: Detective Clothier, did -- was that the totality of your
15 interview with the Defendant?

16 A: Yes, in its entirety.

17 Q: Thank you. That's all the questions I have. Please
18 answer any questions Mr. Fox may have.

19 THE COURT: All right. Let me ask you this while we're
20 here though. Have you provided Mr. Fox with all discovery?

21 MR. SPRATLIN: Yes, sir, Your Honor. I've -- there's one
22 disc that contains several photographs as well as the recorded
23 statement and as well as I believe the video from the hotel
24 lobby. All of that has been provided to Mr. Fox.

25 THE COURT: How about the -- there was some allegations

State v. Jackson - (October 11, 2012)
DETECTIVE STEVEN CLOTHIER - CROSS BY MR. FOX

30

1 here for fingerprint identification; what about that?

2 MR. SPRATLIN: Your Honor, I provided Mr. Fox with a copy
3 of the AFIS report. It was -- the prints that were lifted
4 were not suitable for comparison. There were several points
5 that I believe, from just talking to the crime scene officer,
6 that matched up with the Defendant's print; however, they
7 could not conclusively say that the print that was lifted from
8 the balcony was in fact his.

9 THE COURT: That's fine. All right.

10 Mr. Fox, you may examine.

11 MR. FOX: Thank you, Your Honor.

12 CROSS EXAMINATION OF DETECTIVE STEVEN CLOTHIER BY MR. FOX:

13 Q: Detective, and I think the last question the Solicitor
14 asked you was, that audio tape that we just heard -- that was
15 the entire -- the entirety of your discussions with Mr.
16 Jackson.

17 A: Yes.

18 Q: There was no preliminary discussions before that or
19 anything afterwards?

20 A: I don't -- I don't believe so.

21 Q: Okay. Now, on the form, the Miranda form that you had
22 that you read to Mr. Jackson and that he signed, do you have a
23 copy of that in front of you?

24 A: I do, right here.

25 Q: Okay. So, those notations up in the upper left-hand

State v. Jackson - (October 11, 2012)
DETECTIVE STEVEN CLOTHIER - CROSS BY MR. FOX

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- 1 corner where you handwrote under the influence of drugs or
2 alcohol and you indicated, no, slept it off. Did you do any
3 further -- that was based on Mr. Jackson's statement to you,
4 was it not?
- 5 A: Yes.
- 6 Q: Okay. Did you do any further inquiry as to what he had
7 consumed?
- 8 A: No.
- 9 Q: Or how much he had consumed?
- 10 A: No.
- 11 Q: Or how long prior to the actual interview that he had
12 consumed that?
- 13 A: No.
- 14 Q: So, he just said I slept it off and that was the end of
15 that ---
- 16 A: That's correct.
- 17 Q: The disc that was played here this morning, is that the
18 original -- the actual disc that you provided to the
19 Solicitor's Office?
- 20 A: I'm not really sure. I sent it in the case file, so I'm
21 not sure if he made a copy of it or if that's a copy but
22 that's what I -- but that's the interview.
- 23 Q: And what you've heard here today, that would've been the
24 same as what you would've provided? In other words, the
25 interview itself, the audio that we actually heard ---

State v. Jackson - (October 11, 2012)
DETECTIVE STEVEN CLOTHIER - REDIRECT BY MR. SPRATLIN

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- 1 A: Correct.
- 2 Q: --- that included everything that would've been on the
3 disc?
- 4 A: Yes.
- 5 Q: No question that Mr. Jackson was in custody at the time of
6 your interview, correct?
- 7 A: Correct.
- 8 Q: Was he actually under arrest at that time?
- 9 A: I believe so. I'm not the one that arrested him. I just
10 came up for the interview, so I don't ---
- 11 Q: But you interviewed him at the Myrtle Beach Police
12 Department and the jail and he was clearly in custody at the
13 time of your interview?
- 14 A: Yes, yes.
- 15 Q: Okay. And it was just you; no other officer was present?
- 16 A: Just myself and the Defendant.
- 17 MR. FOX: Just one moment, Your Honor.
- 18 No further questions of this witness.
- 19 THE COURT: Is there anything else?
- 20 MR. SPRATLIN: Just real briefly.
- 21 REDIRECT EXAMINATION OF DETECTIVE STEVEN CLOTHIER BY MR.
22 SPRATLIN:
- 23 Q: Detective Clothier, did the Defendant in any way exhibit
24 signs of being under the influence to you?
- 25 A: No.

State v. Jackson - (October 11, 2012)
DETECTIVE STEVEN CLOTHIER - REDIRECT BY MR. SPRATLIN

33

1 MR. SPRATLIN: That's all the State has.

2 THE COURT: You may come down.

3 Do you have any other witnesses?

4 MR. SPRATLIN: No, Your Honor, the State would rest
5 relying simply on Detective Clothier's testimony to support
6 the ---

7 THE COURT: Mr. Fox, do you have any witnesses on this
8 issue?

9 MR. FOX: I am just discussing with Mr. Jackson his right
10 to offer testimony if he wishes to, if I may have just a
11 moment to inquire.

12 (REPORTER'S NOTE: Mr. Fox confers with Defendant.)

13 MR. FOX: No, Your Honor, there are no -- no witnesses
14 that I'll present, no testimony I'll present. I'll go ahead
15 and make the motions, Your Honor, to -- the motion, I guess,
16 is to suppress that statement. Your Honor, could make the
17 finding, you heard the testimony as to its voluntariness.
18 There's no question he was under -- in custody. If Your Honor
19 admits, as I expect you will, I would ask that there are
20 certain portions in that audio that you heard where he
21 discusses his drug addictions, crack use and things that are
22 not relevant to this and I would ask that those things be
23 redacted.

24 THE COURT: I will redact any issue as to his drug
25 addiction.

State v. Jackson - (October 11, 2012)
RULING OF THE COURT

34

1 MR. FOX: And I would also ask, Your Honor, although I
2 know that one element that the State will have to prove are
3 his prior convictions. They can do that through a sentencing
4 sheet or records of the Clerk of Court. He also discusses his
5 prior and pending conviction for burglary ---

6 THE COURT: We can redact -- we can redact that part.

7 MR. FOX: Thank you, Your Honor.

8 RULING OF THE COURT:

9 THE COURT: Okay. Let the record reflect that I've had
10 an evidentiary hearing in this matter and I'm convinced beyond
11 a reasonable doubt, first, that he was Mirandized and that he
12 knowingly understood the various elements of the Miranda and
13 that in each instance he initialed the fact that he did know.

14 I conclude further that this statement was freely,
15 intelligently, knowingly made without duress, hope or promise
16 and conclude that it is absolutely admissible under
17 appropriate instructions by the trial judge. I do think it's
18 appropriate that any reference to his drug addiction or prior
19 records be redacted from this statement understanding that the
20 State, as to burglary first, is relying on his prior
21 convictions which would be admissible as a part of the State's
22 case under the appropriate instructions from the trial judge
23 that they would consider that as an element of burglary first
24 but absolutely is no evidence for the charge for which he's
25 being currently tried.

State v. Jackson - (October 11, 2012)
RULING OF THE COURT

35

1 Anything further?

2 MR. SPRATLIN: I believe that concludes all matters on
3 behalf of the State, Your Honor.

4 THE COURT: Sir?

5 MR. SPRATLIN: I think that's it, Your Honor. No further
6 matters.

7 THE COURT: Thank you.

8 Mr. Fox, you got any other motions in regards to this?

9 MR. FOX: No, Your Honor.

10 THE COURT: Okay.

11 Mr. Jackson, let me say this to you, I understand your
12 concerns because you are facing serious charges. Upon
13 conviction, you are facing life without the possibility of
14 parole. You've got an excellent attorney to represent you.
15 He's got thirty days to prepare you for trial. Based on what
16 I hear, it's a easy case for trial by jury. The jury may --
17 will be charged and if they find you guilty, they must do so
18 beyond a reasonable doubt. But I urge you now to cooperate
19 with Mr. Fox in every way but you do need to understand this,
20 while he is your attorney, you are not entitled to have the
21 benefit of his advice every day between now and date of trial.
22 He's got other defendants who also want his attention. I can
23 assure you, based on my experience with Mr. Fox, that he will
24 be ready for trial when the case is called.

25 All right. Thank you, gentlemen.

State v. Jackson - (October 11, 2012)
RULING OF THE COURT

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1 MR. SPRATLIN: Thank you, Your Honor.

2 THE COURT: And we will -- as I understand it, there's an
3 identification issue, I will do that on the Monday prior to
4 the selection of the jury.

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

6 THE COURT: All right. Thank you.

7 Mr. Fox, is there anything else?

8 MR. FOX: No, Your Honor.

9 THE COURT: All right. Thank you.

10

11 (Adjourned.)

12

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ORIGINAL

State v. Jackson - (October 11, 2012)
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the plea held in the case of The State versus Anthony Jackson, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on October 11, 2012.

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



Kay H. Richardson, CVR

Official Reporter

April 26, 2013.

State of South Carolina
County of Horry

In The Court of General Sessions
2012-GS-22-00730

State of South Carolina,

vs.

Anthony Jerome Jackson,

Defendant.

TRANSCRIPT OF HEARING

November 13-15, 2012
Conway, South Carolina

Before:

The Honorable, Edward B. Cottingham, Judge

Appearances:

By: Martin D. Spratlin, Esq.
Joshua D. Holford, Esq.
Attorneys For State

BY: J. Eric Fox, Esq.
Attorney For

BRENDA R. BABB
Circuit Court Reporter

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Pretrial Motion

6

1 Mr. Spratlin: Yes, Your Honor, this is a matter
2 of State of South Carolina County of Horry v. Anthony
3 Jerome Jackson indictment 2012-GS-26-00730, charged with
4 burglary in the first degree. Your Honor, we did a Jackson
5 Deno trial or proceeding, a pretrial hearing, excuse me, I
6 believe last, in the October term before Your Honor where
7 the statement was allowed in. I do believe there's going
8 to be one identification hearing that needs to take place,
9 Your Honor. It's going to be brief, about maybe ten,
10 fifteen, twenty minutes, the State would guess, does
11 involve about four witnesses. We didn't know if Your Honor
12 wanted to do that prior to picking a jury or wait until the
13 jury was picked, send them out, let them pick a foreman,
14 and then do the pretrial hearing while they're ---

15 The Court: Let's go ahead and do it now, bring
16 the jury up, once we get started we roll. All right, Mr.
17 Fox, any other motions other than that motion?

18 Mr. Fox: Judge, very briefly, Your Honor, we'd
19 move to have the witnesses sequestered.

20 The Court: We're fine with that, yes, sir.

21 Mr. Spratlin: Your Honor, the State would just
22 ask that the victims on the burglary case be allowed to
23 remain in the courtroom as well as the primary
24 investigating officer on the case.

25 The Court: No question about that, they're

Pretrial Motion

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1 entitled to do that.

2 Mr. Spratlin: Yes, sir, just for the record the
3 primary investigating officer is going to be designated as
4 Steven Clothier.

5 The Court: And who are the victims?

6 Mr. Spratlin: The victim is Mr. Ronald Kinney,
7 k-i-n-n-e-y, and William Thompson.

8 The Court: All right, have your witnesses
9 sequestered other than those. Anything further?

10 Mr. Fox: Your Honor, the only other motions I
11 would have this is a first degree burglary based on prior
12 convictions --

13 The Court: Right.

14 Mr. Fox: Mr. Jackson has, I believe, four prior
15 burglary convictions and we would ask statute requires the
16 State only prove two prior convictions. We'd ask they be
17 limited to introducing evidence of two prior convictions
18 rather than all four which we feel would just be
19 prejudicial.

20 The Court: I'm fine with unless he testifies.

21 Mr. Fox: Yes, sir.

22 The Court: And then those other two burglaries
23 will be a crime of dishonesty would be admissible as to the
24 veracity of truthfulness.

25 Mr. Fox: Yes, sir.

Pretrial Motion

8

1 The Court: But you would limit yourself to two.

2 Mr. Spratlin: Yes, sir, Your Honor.

3 The Court: I'll have the appropriate charge to
4 the effect that that's an evidentiary matter, the burglary,
5 but there's absolutely no evidence of his guilt in this
6 charge.

7 Mr. Fox: Thank you, that would be all, Your
8 Honor.

9 The Court: All right, and, Solicitor, after I
10 bring the jury up state your case at hand.

11 Mr. Spratlin: Yes, sir, Your Honor, the State
12 will.

13 The Court: All right.

14 Mr. Fox: And, Your Honor, Mr. Jackson has a
15 matter that he would like to address to the Court.

16 The Court: What is it, Mr. Jackson?

17 Defendant Jackson: Yes, Your Honor.

18 Mr. Fox: Stand up.

19 Defendant Jackson: I got a letter from the
20 South Carolina Supreme Court about counsel saying that he's
21 on investigation and I don't want him representing me.
22 I'll represent myself.

23 The Court: Mr. Jackson ---

24 Defendant Jackson: And this letter has been
25 since October 19th, I didn't mean to cut you off.

Pretrial Motion

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1 The Court: What kind of letter is he talking
2 about?

3 Mr. Fox: Your Honor, he showed me, Mr. Jackson
4 has written, filed a complaint against me and he did show
5 me a letter here. The form letter from Columbia responding
6 to him and that was dated October 19th. I have seen that;
7 I have not had any communication from Columbia yet but
8 there does seem to be a ---

9 The Court: Our Supreme Court has said that,
10 Chief Justice has said that that would not disqualify you.
11 You know it happens all the time ---

12 Mr. Fox: Yes, sir.

13 The Court: --- with people at trial. Mr.
14 Defendant, has anybody got revocation for me? Mr. Jackson,
15 you are charged with burglary first; you understand that?

16 Defendant Jackson: Yes, sir.

17 The Court: And they have served upon you if
18 convicted life without the possibility of parole; do you
19 understand that?

20 Defendant Jackson: No, I don't understand that.

21 The Court: Well that's the law.

22 Defendant Jackson: But I don't understand it.

23 The Court: If, I can tell you, sir, if you are
24 convicted any judge including this one under the law must
25 sentence you to life without the possibility of parole for

Pretrial Motion

10

1 this reason, you have two prior burglaries and they have
2 served upon you that notice; can you agree with that, Mr.
3 Fox?

4 Mr. Fox: Yes, Your Honor.

5 The Court: The record will reflect that.

6 Mr. Fox: Yes.

7 The Court: I think it was done in my presence.

8 Mr. Fox: It was, sir.

9 The Court: Now you do not know the law. You
10 have standing with you, in my opinion, one of the best
11 defense lawyers in the state of South Carolina, no question
12 about it. He's been to court ---

13 Defendant Jackson: I'll represent myself, I
14 rather represent myself. If I'm going to get life I rather
15 get take, get life for myself, I don't need no help.

16 The Court: Well let me ---

17 Defendant Jackson: I know what happened that
18 night; he don't know what happened.

19 The Court: Don't argue with me now, I'm trying
20 to help you ---

21 Defendant Jackson: I ain't going to argue with
22 you.

23 The Court: --- but I need, how far did you go
24 in school?

25 Defendant Jackson: I didn't go very far.

Pretrial Motion

11

1 The Court: Can you tell me how far?

2 Defendant Jackson: About to the 9th grade.

3 The Court: Ninth grade, do you have any legal
4 training whatsoever?

5 Defendant Jackson: No, but, no, I don't have no
6 legal training. I been on drugs all my life; I been ask
7 for a drug program.

8 The Court: I understand that, why is it you're
9 represented by a fine lawyer, you're ready for trial, we
10 planned this several weeks ago; can you agree with that.
11 Mr. Fox?

12 Mr. Fox: I agree with that, Your Honor.

13 The Court: You received all discovery?

14 Mr. Fox: I have.

15 The Court: And you've shared it with him?

16 Mr. Fox: I have, Your Honor.

17 The Court: And we had a Jackson v Deno. It
18 would be in my opinion now, Mr. Jackson, extremely
19 dangerous in this most serious offense for you to represent
20 yourself. I urge you to let him represent you. He can
21 talk to you and get your advice about how you want to
22 proceed, but I would urge you to let this distinguished
23 attorney represent you particularly since you're facing
24 life imprisonment; do you understand that?

25 Defendant Jackson: Yes, sir, I understand that.

Pretrial Motion

12

1 Your Honor, I don't, I don't want him representing me for
2 the reason why, I've talked to him. He came to J. Reuben
3 Long last week and talked to me and he told me, he say, Mr.
4 Jackson, I should have asked the Judge for extension on
5 your case because I didn't know what charge we was going to
6 burglary, going to trial on. He told me that and he also
7 told me that the Solicitor done took it personal with me,
8 that's why he didn't want to give me no drug program, to
9 give me life in prison and put me away.

10 The Court: Mr. Jackson ---

11 Defendant Jackson: And I don't want him
12 because I don't trust him.

13 The Court: Well there's no way, in fairness to
14 him, there's no way with your prior ---

15 Defendant Jackson: That's not fairness to me
16 neither, Your Honor.

17 The Court: Wait a minute, you've got four
18 burglaries on your record.

19 Defendant Jackson: I understand that.

20 The Court: And no way anybody is going to put
21 you in drug court.

22 Defendant Jackson: I didn't want a drug court;
23 I didn't ask for a drug court.

24 The Court: What is you're trying to do?

25 Defendant Jackson: I ask for life recovery.

Pretrial Motion

13

1 The Court: About what?

2 Defendant Jackson: I ask for life recovery.

3 The Court: No, sir, there's no way you going to
4 get life recovery with your prior record of four
5 burglaries; there's no way they're going to do that.

6 Defendant Jackson: I know people in, I know a
7 guy got seven first degree burglaries over there.

8 The Court: It's not, I can tell you it's not
9 available to you, sir.

10 Defendant Jackson: Okay, I understand that, but
11 I don't want him representing me.

12 The Court: Well now let me say this to you,
13 while I urge you as strong as I can to let this
14 distinguished lawyer represent you.

15 Defendant Jackson: I don't want, I could get
16 life on my own.

17 The Court: Would you let me finish ---

18 Defendant Jackson: I didn't do nothing that bad
19 that night for me to get a life sentence.

20 The Court: Mr. Jackson, let me finish talking,
21 please. Our Supreme Court has said even though a person is
22 facing the death penalty if after appropriate warning he
23 wants to represent himself he can do so. Now I tell you
24 this, once you start representing yourself you cannot later
25 change your mind and say, wait a minute, Judge, I want him

Pretrial Motion

14

1 to help me. Our Court has also said that's not available
2 to you. Now, Mr. Fox, if he insists I'm going to ask that
3 you sit with him and advise him ---

4 Defendant Jackson: I don't even want him to
5 advise me. I don't trust him.

6 The Court: Well that ain't your call, but you
7 will not be able to participate.

8 Mr. Fox: I understand.

9 The Court: Do you have the Farretta decision?

10 Mr. Spratlin: Your Honor, I do not. The State
11 would ask for a brief moment to be able to review that case
12 and so the Court can make the appropriate findings and ask
13 the appropriate questions on the record.

14 The Court: I think I've done it but I want to
15 take a look at it before we go. I was told that ya'll
16 would have a copy for me cause this thing is coming up and
17 the case to follow.

18 Mr. Spratlin: Your Honor, that's in the other
19 case. We did not anticipate this happening in this case.

20 Defendant Jackson: See what I'm saying.

21 The Court: Well see if it's available in the
22 other case.

23 Mr. Spratlin: Yes, sir, Your Honor, we were not
24 prepared for this this morning on this case.

25 The Court: Okay, well let's go ahead, be

Pretrial Motion

15

1 finding it and let's go ahead with the other issue while
2 your staff is finding the case for me. All right, let's go
3 forward with the identification matter.

4 Mr. Spratlin: Yes, sir, Your Honor, there's one
5 more matter the State would do, I, just as a matter of
6 formality, a motion in limine to restrict the defense, be
7 it Mr. Eric Fox, if he winds up representing the defendant,
8 or the defendant himself if he represents himself pro se,
9 to prohibit them from mentioning to the jury that the
10 sentence in this case would be life without parole.
11 Sentencing is not appropriate issue for the jury.

12 The Court: I understand that, they can't do
13 that.

14 Mr. Spratlin: I just would like it made very
15 clear to the defendant.

16 The Court: Mr. Fox knows better than that.

17 Mr. Spratlin: Yes, sir, Your Honor, I
18 understand Mr. Fox understands that but the defendant --

19 The Court: I understand but, you know, there's
20 a problem there, I can urge him and say to him he must not
21 do that but ---

22 Mr. Spratlin: If he does, Your Honor, the State
23 would be asking for an additional charge just so this jury
24 is not the finder of sentencing in this case.

25 The Court: I'll handle it if it's appropriate.

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 16

1 Mr. Spratlin: Yes, sir, the State would be
2 prepared to go forward with the identification hearing at
3 this time if Your Honor is prepared.

4 The Court: Let's, let's go forward with the
5 identification matter.

6 Mr. Spratlin: Your Honor, the State would first
7 call up as a witness in this case Officer Jeffrey Thomas
8 with the Myrtle Beach Police Department.

9 The Court: All right, have him come around.

10 Mr. Spratlin: The victim's advocate is going to
11 retrieve him from the waiting right now, Your Honor.

12 The Court: All right. Mr. Fox, I'm going to
13 leave you in the case for this important matter.

14 Mr. Fox: Yes, sir.

15 The Court: And after this after I hear any
16 motions if he still wants to represent himself I'm going to
17 let him do it in his peril. I would urge him not to do it
18 but the law is clear if he insists he's got that right, but
19 I do want you to stay with him in this important part of
20 the proceedings to protect his interest.

21 Mr. Fox: Yes, Your Honor.

22 Officer Jeffrey Thomas
23 being first duly sworn, testified in camera as follows:

24 The Court: Mr. Jackson, I'll deal with whether
25 or not you want to represent yourself after this but ---

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 17

1 Defendant Jackson: I still do.

2 The Court: This is important legal matter that
3 you need your lawyer to look into.

4 Defendant Jackson: I'll represent myself, I
5 don't need him, I don't trust him.

6 The Court: Well I'll deal with that in a
7 minute.

8 Madam Clerk: State your full name and spell
9 your last name.

10 The Witness: My name is Jeffrey K. Thomas, last
11 name t-h-o-m-a-s.

12 Direct Examination

13 By Mr. Spratlin:

14 Q Mr. Thomas, may be an obvious question,
15 but where are you employed?

16 A Myrtle Beach Police Department.

17 Q How long have you been working there?

18 A About seven and a half years.

19 Q What's your current assignment at the
20 Myrtle Beach Police Department?

21 A I work for the patrol division night
22 shift.

23 Q How long have you been at that assignment?

24 A Ever since I've been hired about seven and
25 a half years.

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 18

1 Q Seven and a half years, what does being a
2 patrol supervisor at night entail?

3 A My patrol duties typically entail
4 patrolling my assigned area for the night, looking for
5 anything out of the ordinary and answering my assigned
6 calls.

7 Q Let me ask you, back a year ago on November
8 14th, 2011, were you on duty?

9 A Yes.

10 Q Did you have a chance to respond to the
11 Best Western Inn and Suites?

12 A Yes.

13 Q Where is that located at, if you know?

14 A I have to look at the report, I believe
15 it's, I know it's at 18 S. Ocean Boulevard, I believe it's
16 1809 S. Ocean Boulevard.

17 Q Okay, what was the reason that you went to
18 the Best Western?

19 A I had a call of a suspicious person,
20 someone had entered someone's hotel room through the
21 sliding glass door.

22 Q All right, and when you got there what did
23 you do?

24 A As soon as I got there I initially spoke
25 with the two victims who told me that while they were in

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 19

1 their room someone came in their room through the sliding
2 glass door and, well one of them happened to spot him in
3 the room and started talking to him and he stated that he
4 was hotel security ---

5 Mr. Fox: Your Honor, I object to any hearsay
6 from this witness.

7 The Court: I'm going to let it in at this time
8 provided that witness will be here. I'm going to accept it
9 not for the matter of the truth asserted but for his
10 further actions.

11 Mr. Fox: Yes, sir, Your Honor.

12 The Court: Not for the truth asserted but just
13 for your further actions, that is hearsay.

14 Mr. Spratlin: Yes, sir, Your Honor.

15 The Court: As a result of that conversation
16 what next occurred, go ahead.

17 Mr. Spratlin: (Continuing)

18 Q What did you do, after talking with the
19 victim who discussed the case with, do you know who the
20 victims were that you talked to, their names?

21 A I don't remember their names right off the
22 top of my head.

23 Q All right, is there something that would
24 refresh your recollection?

25 A Yeah, the police report would help out.

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 20

1 Q Do you have a copy of that report with you?

2 A I just have the narrative portion.

3 Q All right, let me get you --

4 (Whereupon, State's Exhibit Number 1 marked from
5 identification.)

6 Mr. Spratlin: (Continuing)

7 Q Officer, let me show you what's been marked
8 for identification purposes as State's Exhibit Number 1; do
9 you recognize that item?

10 A Yes, sir, it's the police report that I
11 completed that night.

12 Q All right, please take a second and look
13 over that and see if that refreshes your recollection about
14 who the victims were that you talked to, their names?

15 A Yes, it does.

16 Q And who were those victims that you
17 discussed?

18 A Got victim one in the police report as a
19 William Grant Thompson.

20 Q And what about the other victim that you
21 talked to?

22 A Looks like the other victim in this case,
23 give me one second, the other victim is a Ronald Kinney.

24 Q All right, if you would keep that in front
25 of you. Now based on your discussions with them were you

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 21

1 given a description of the individual that had gone in
2 their room that night?

3 A Yes, I was.

4 Q Can you remember what description they gave
5 you?

6 A If I refresh my memory based on the from
7 the narrative portion of this, description they gave me
8 was, was a black male described as being between five foot
9 seven and five foot ten in height, weighing one hundred
10 sixty-five to one hundred ninety-five pounds, between
11 twenty-five and thirty-five years of age, having short
12 black hair and wearing a gray sweatshirt with black pants.

13 Q All right, after discussing with them the
14 description of the person that was in their room, did you
15 do anything else to try to ascertain a description of who
16 else was in that room?

17 A I left their hotel room and went across the
18 street to the main office where I was able to view the
19 videotape of the incident.

20 Q There's security video?

21 A Yes, it was in the hallway, I believe it
22 was at the both entrance and the exit.

23 Q All right, and based on the description,
24 based on the video that you saw there that day were you
25 able to determine how accurate the description given by the

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 22

1 victims was?

2 A The video footage was a little, it was a
3 little grainy and the guy was running down the hallway most
4 of time but it seemed to me to be very close.

5 Q Okay, after getting a description of the
6 suspect for this case what did you do then?

7 A Once I got the description I went back over
8 to the victims hotel room and where I met up with crime
9 scene Officer Tony Humes and kind of filled him in on what
10 was going on, and at that point that's when I was notified
11 by one of the victims that one of their credit cards had
12 been used twice at a local restaurant.

13 Q All right, do you remember what local
14 restaurant that was?

15 A The Pan American Pancake House.

16 Q Do you know where the Pan American Pancake
17 House is?

18 A It is located exactly at 1305 S. Kings
19 Highway.

20 Q All right, how far away is that from the
21 hotel?

22 A It's about five blocks one way and two
23 blocks another.

24 Q Would it have been walking distance?

25 A Yes.

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 23

1 Q All right, when you found out the credit
2 card had been used at the Pan American House what did you
3 do?

4 A I went inside the Pan American Pancake
5 House and looked around to see if there was anybody inside
6 the restaurant fitting that description; I didn't seen
7 anybody. I spoke to a couple of waitresses and restaurant
8 staff to see if anyone there was able, that could, could
9 recall the incident and I did speak to one waitress. She
10 did recall the incident and she was able to give me the
11 actual credit card receipts from those transactions that
12 did have the victim, one of the victims names on the credit
13 card.

14 Q Did it have the, which, do you remember
15 which victim's name it had?

16 A I do not recall.

17 Q Okay, did she give you a description at
18 all?

19 A Yes.

20 Q And what was, what was her description, if
21 you recall?

22 A I don't recall the exact but I, I remember
23 that it pretty closely fit to what I was given.

24 Q All right, which was given previously by
25 the victims?

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 24

1 A Yes.

2 Q All right, now after talking with the
3 waitress and receiving those receipts what did you do then?

4 A As soon as I was able to take the receipts
5 into evidence I left the Pan American Pancake House and
6 walked outside to my patrol car and that's where I spotted,
7 spotted someone fitting the description a half block away
8 and went and detained that person.

9 Q All right, now do you see the person here
10 in the courtroom you detained that night?

11 A Yes.

12 Q If you would, please, point him out and
13 identify an article of clothing he's wearing?

14 A That's him wearing the light color shirt.

15 Defendant Jackson: You know he's going to point
16 me, I'm the only one here.

17 Mr. Spratlin: Please let the record reflect the
18 witness has identified the defendant as being the person
19 that he came in contact with that night.

20 Defendant Jackson: I'm the only one here.

21 Mr. Spratlin: (Continuing)

22 Q How did the defendant's appearance at that
23 night compare to the person that you saw on that video?

24 A It was a very very close match.

25 Q Was there anything different that you could

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 25

1 tell?

2 A I seem to recall that there was something
3 different about the pants but I don't remember what it was.
4 You could still see the black pants and the light colored
5 electro reflective stripes down the sides.

6 Q And was that similar to the pair of pants
7 you see in the video?

8 A Yes.

9 Q What, if anything, could you say the
10 defendant's description, how closely did the defendant that
11 you when you observed him that night, how close did he
12 match the description given to you by the witnesses and
13 victims in this case?

14 A Very very close.

15 Q What, if anything, did you do to confirm
16 that in fact the person you had detained was the person
17 that used the credit card at the Pan American House?

18 A Once I had him detained I called over the
19 radio and had another officer go back to the restaurant and
20 retrieve the same waitress that I had just spoken to and
21 she did come down to that, to that location and did
22 positively identify him.

23 Mr. Fox: Your Honor, I object.

24 Defendant Jackson: Can he ask did the victims
25 identify me?

Officer Thomas - Direct Exam. In Camera by Mr. Spratlin 26

1 The Court: No, sir, you let your lawyer do this
2 at this time, proceed.

3 Mr. Spratlin: (Continuing)

4 Q Yes, sir, again, officer, what, what did
5 the waitress from the pancake house, what did she say in
6 regards to the defendant being the person who used the
7 credit card at her establishment?

8 A She did positively identify him as being
9 the individual that had made those two purchases on that
10 victim's credit card.

11 Q What, if anything, did you do to try to
12 confirm that it was the same individual who had broken into
13 that hotel room earlier?

14 A I called down to the hotel and had another
15 officer bring the two victims up there to the scene to try
16 to identify him once I had him detained.

17 Q And, do you know were those victims able to
18 identify --

19 A They were not positively able to identify.

20 Q Let me ask you, the Best Western Inn Suites
21 is it do you know what county that's in?

22 A Horry County.

23 Q And the Pan American House what county is
24 that in?

25 A Horry County.

Officer Thomas - Cross Examination by Mr. Fox

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1 Q All in the Myrtle Beach area?

2 A Yes, sir.

3 Mr. Spratlin: All right, thank you, Officer,
4 that's all the questions I have at this point in time,
5 please answer any questions Mr. Fox may have.

6 The Court: Mr. Fox.

7 Mr. Fox: Thank you, Your Honor.

8 Cross Examination

9 By Mr. Fox:

10 Q Officer, when you detained Mr. Jackson was
11 he placed in handcuffs?

12 A Yes.

13 Q Okay, so when the waitress from the
14 restaurant observed him he would have been in your
15 presence?

16 A Yes.

17 Q You were in uniform that night?

18 A Yes.

19 Q Okay, he was handcuffed?

20 A Yes.

21 Q Hands in front of him?

22 A Behind.

23 Q Behind, so clearly in custody?

24 A I told him he was in investigative
25 detention, not under arrest at that time until, until

Officer Thomas - Cross Examination by Mr. Fox

28

1 further things had developed.

2 Q He was not free to leave?

3 A Yes.

4 Q And that would have been obvious to anyone
5 that observed him in handcuffs in your presence?

6 A Mostly likely, yes.

7 Q Including the waitress?

8 A Most likely, yes.

9 Q Okay, other, and she was the only person at
10 the restaurant that could identify Mr. Jackson?

11 A That was the only one that I had been aware
12 of that would have been able to identify.

13 Q But you spoke, you said you spoke to other
14 people at the restaurant, correct?

15 A Yes.

16 Q Okay, the victims at the hotel could not
17 identify Mr. Jackson; is that correct?

18 A That's correct.

19 Q Okay, and it was the same situation he was
20 still handcuffed in your presence when they were brought?

21 A Yes.

22 Q Okay, and that's what we would call kind of
23 a show up lineup?

24 A Yes, sir.

25 Q All right, how long between the time you

Officer Thomas - Cross Examination by Mr. Fox

29

1 had the call to respond to a suspicious person until the
2 waitress identified Mr. Jackson, how, what lapse in time?

3 A I'm not, I'm not certain of the exact
4 amount of time.

5 Q Well was it ten minutes?

6 A To be honest with you I'd have to look back
7 and see the exact amount, I want to say it was probably
8 about forty-five minutes, an hour, maybe longer, I'm not
9 certain.

10 Q So say forty-five minutes to an hour?

11 A From the, from the suspicious person call,
12 yes.

13 Q Yes, sir?

14 A Not the credit card use, yes.

15 Q Okay, now did the waitress not describe the
16 person that used the credit card as being bald headed; do
17 you recall that?

18 A I don't recall.

19 Q Okay, and the description, the original
20 description was fairly broad, was it not, five seven to
21 five ten, one hundred sixty, anywhere from one hundred
22 sixty-five to one hundred ninety-five pounds, anywhere from
23 twenty-five to thirty-five, from a fairly young man to a
24 middle age man. It's a fairly generic broad description,
25 wouldn't you say, fit an awful lot of people, black male,

Officer Thomas - Cross Examination by Mr. Fox

30

1 twenty-five to thirty-five?

2 A I want to say that combined with the
3 clothing description kind of narrowed it down a pretty good
4 bit.

5 Q And you also said, if I understood, that
6 from your viewing of the video at the hotel and then your
7 encounter with Mr. Jackson there was something different
8 about the pants that he had on compared to that video,
9 correct?

10 A I do believe I recall that, yes.

11 Q Okay, so it wasn't the same as what you saw
12 on the video?

13 A Very very close.

14 Q And the person in the video was kind of
15 that there was nothing distinctive about the sweatshirt.
16 It didn't have like a team logo or anything on it, did it?

17 A I don't believe so.

18 Q It was just a dark sweatshirt, one color?

19 A Yes, sir.

20 Q Okay, so nothing, again nothing distinctive
21 in terms of writing or art work or anything on the
22 sweatshirt?

23 A I don't believe so, no, sir.

24 Q Okay, at any time after you first
25 approached Mr. Jackson and detained him was a decision made

Officer Thomas - Redirect Examination by Mr. Spratlin 31

1 to let him go, let him proceed?

2 A No, sir.

3 Defendant Jackson: They couldn't identify me.

4 Mr. Fox: (Continuing)

5 Q After the victims were unable to identify
6 him was he ever allowed to go?

7 A No, sir, once he was detained and he was
8 positively identified by the waitress he was, he was then
9 placed under arrest.

10 Mr. Fox: He's answered the question. Thank
11 you, Your Honor. That's all the questions I have of this
12 witness.

13 The Court: Any other direct?

14 Mr. Spratlin: Just real briefly, Your Honor.

15 Redirect Examination

16 By Mr. Spratlin:

17 Q Now, Officer, you mentioned something about
18 the pants being different than what you saw on the video?

19 A Yes.

20 Q Is it possible that he could pulled
21 something up over those pants?

22 A I just recall something being complete,
23 something was different but I do recall still being able to
24 see he had black pants on with a light colored stripes down
25 going down the sides.

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 32

1 Q Which was similar to what was on the video?

2 A Yes.

3 Mr. Spratlin: All right, thank you. That's all
4 the questions I have redirect, Your Honor.

5 The Court: Come down, call your next witness.

6 Mr. Spratlin: Your Honor, the State would next
7 call Ms. Tara Maenner to the stand.

8 Tara Maenner

9 being first duly sworn, testified in camera as follows:

10 Madam Clerk: Please state your full name and
11 spell your last name.

12 The Witness: Tara Maenner, m-a-e-n-n-e-r.

13 Direct Examination

14 By Mr. Spratlin:

15 Q Ms. Maenner, how long have you lived in
16 Horry County Myrtle Beach area?

17 A I grew up in this area about thirty years.

18 Q Where are you currently employed?

19 A Pan American Pancake House and Tommy
20 Hilfiger.

21 Q Where were you employed back in November of
22 2011?

23 A The same, Tommy Hilfiger and Pan American
24 Pancake House.

25 Q Do you remember if were working at the Pan

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 33

1 American House back on November 14th, 2011?

2 A Yes.

3 Q And did you have a chance to come in
4 contact with the defendant on that night?

5 A I did.

6 Q How did you come in contact with him?

7 A He came in to place a to go order.

8 Q Prior to this night had you ever met or
9 seen the defendant before?

10 A He had been in before a time or two.

11 Q Can you estimate about how many times he's
12 been in before, roughly?

13 A I don't know, I only worked two nights at
14 the time.

15 Q This wasn't his first time?

16 A No, it wasn't his first time.

17 Q What did the defendant do when he came into
18 your restaurant?

19 A He came in and placed a to go order for
20 three burgers.

21 Q And do you remember how he paid for that to
22 go order?

23 A With a credit card.

24 Q And let me ask you, did he do anything else
25 or place any additional orders while in that restaurant?

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 34

1 A He did, a couple had come in and he placed
2 a to go order for two breakfasts.

3 Q And how did he pay for that?

4 A With the same credit card.

5 Q How long would you say the defendant was in
6 your establishment that night?

7 A Probably around thirty minutes.

8 Q Let me back up, where is the Pan American
9 Pancake House?

10 A Off of 14th Avenue S. and Business 17.

11 Q And what time of night was it that the, or
12 what time was it that the defendant came in?

13 A Sometime around after two a.m.

14 Q Was it a busy time for you?

15 A No.

16 Q Was there anything covering the defendant's
17 face when he came in?

18 A No.

19 Q Was there anything obscuring your ability
20 to observe the defendant?

21 A No.

22 Q And again how long did you say the
23 defendant was in your restaurant?

24 A About thirty minutes.

25 Q Were you pretty much around most of that

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 35

1 time?

2 A Uh-huh.

3 Q Now after the defendant paid what else, if
4 anything, did the defendant do while he was in the
5 restaurant?

6 A He sat up front waiting for his order.

7 Q After you brought him his food what did he
8 do?

9 A He left and the couple that had joined a
10 little bit later also left.

11 Q What, if anything, else out of the ordinary
12 happened that night?

13 A Shortly after he left a police officer came
14 by and asked for the receipts of this credit card
15 transactions.

16 Q Let me ask you, do you recall, could you
17 give an approximate time about how long it took from the
18 time that he left until the officer came back?

19 A It couldn't have been too long, forty-five
20 minutes, hour.

21 Q Forty-five minutes to an hour at most, all
22 right. When the officer came what did you do?

23 A I gave him the two transaction slips.

24 Q And what did you do after that?

25 A He came asked me to ride with him in the

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 36

1 car to identify the man that had used the cards.

2 Q Was this before or after the, did the
3 officer leave at any point?

4 A Yes.

5 Q When did he leave after you gave him the
6 receipts?

7 A Uh-huh.

8 Q And what happened after the officer left?
9 What happened after you gave him the receipts, what did the
10 officer do?

11 A He came back and asked me to come back and
12 identify him.

13 Q All right, now where exactly did you go to
14 identify him?

15 A Down off of 14th South.

16 Q How far would you say that was from the
17 pancake house?

18 A About a two minute walk.

19 Q Now when you came in contact with the
20 individual that night with the officer asked to identify
21 was he in handcuffs; if you remember?

22 A I don't remember seeing handcuffs.

23 Q All right, was, how was he dressed in
24 comparison to the person that came into your restaurant
25 earlier?

Ms. Maenner - Direct Exam. In Camera by Mr. Spratlin 37

1 A Identical.

2 Q Now when you saw the individual the officer
3 asked that you identify what did you say or what did you
4 do?

5 A That that was the man who had made the
6 purchase.

7 Q And was that the man who had used that
8 credit card?

9 A Yes.

10 Q How certain were you that that was the man?

11 A A hundred percent.

12 Q Any doubt in your mind?

13 A No.

14 Q And do you see the man that came to the
15 restaurant and that you identified here in court today?

16 A Yes.

17 Q If you would, please, point him out and
18 identify an article he's wearing?

19 A Green and white shirt.

20 Mr. Spratlin: Please let the record reflect the
21 witness has identified the defendant in this case. Ms.
22 Maenner, that's all the questions I have at this point,
23 please answer any questions Mr. Fox may have.

24 The Court: Mr. Fox.

25 Mr. Fox: Thank you, Your Honor.

Ms. Maenner - Cross Examination In Camera By Mr. Fox 38

1 Cross Examination

2 By Mr. Fox:

3 Q Ms. Maenner, what did the officer say to
4 you before he took you back to see Mr. Jackson; do you
5 recall if he said anything to you?

6 A Just asked me if I would be able to
7 identify him.

8 Q Okay.

9 A And if he was wearing the same clothing.

10 Q Okay, and when you went back where was Mr.
11 Jackson when you, you were taken to where he was, correct?

12 A Yes.

13 Q Okay, and where was he standing or where
14 was he?

15 A He was on the street.

16 Q Okay, was anybody with him?

17 A There was quite a few cops around.

18 Q Okay, but you didn't notice him in
19 handcuffs?

20 A I didn't notice any, no.

21 Q Okay, but you're a hundred percent certain
22 it's the same person you saw an hour before at the
23 restaurant?

24 A Yes.

25 Q So that you noticed but not his handcuffs?

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 39

1 A No.

2 Q Okay, did he appear to be free to leave,
3 the person that you were looking at?

4 A Yeah, I would assume.

5 Q Okay, but he was surrounded by police
6 officers?

7 A Yes.

8 Q Okay, had you ever seen, I'm sorry, you
9 answered that question.

10 Mr. Fox: Thank you, Your Honor, that's all the
11 questions I have, the last question I have for this
12 witness.

13 Mr. Spratlin: No redirect of this witness, Your
14 Honor.

15 The Court: Thank you so much.

16 Mr. Spratlin: Ms. Maenner, if you would just
17 have a seat back in the waiting room. We'll call you out
18 in front of the jury in a moment.

19 The Court: You may now remain in the courtroom.

20 Mr. Spratlin: I'm sorry, Your Honor, she's
21 going to testify later on in front of the jury.

22 The Court: All right, that's fine.

23 Mr. Spratlin: Your Honor, the State would next
24 call Mr. Willie Thompson to the stand.

25 William G. Thompson

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 40

1 being first duly sworn, testified in camera as follows:

2 Madam Clerk: If you'll state your full name and
3 spell your last name.

4 The Witness: These are not mine. Name is
5 William Thompson, William G. Thompson.

6 Direct Examination

7 By Mr. Spratlin:

8 Q Mr. Thompson, what's your current
9 occupation?

10 A Retired.

11 Q Where are you retired from?

12 A A bank in Connecticut.

13 Q What's your current age?

14 A Age, almost seventy.

15 Q Almost seventy years old. Where are you
16 originally from, you mentioned Connecticut earlier?

17 A Connecticut, New York, and a brief time in
18 Massachusetts, currently living in Pennsylvania.

19 Q You've been up in the northeast area of the
20 country for most of your life?

21 A Since I was born.

22 Q Now let me ask you prior to today have you
23 ever had a chance to come to the Myrtle Beach area?

24 A Going back to the 1970's a group of us come
25 to Myrtle Beach just about every year, a group anywhere

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 41

1 between four and eight of us.

2 Q Did you come to Myrtle Beach back in
3 November of last year?

4 A Yes, I did.

5 Q Who came with you at that time?

6 A Mr. Kinney.

7 Q And do you know his full name?

8 A Ronald G. Kinney.

9 Q All right, do you remember, where were
10 ya'll staying when ya'll came to visit Myrtle Beach last
11 year?

12 A Best Western on the Beach.

13 Q And this would have been about November of
14 2011, give or take?

15 A About a year ago today.

16 Q All right, now were ya'll staying in Myrtle
17 Beach back on November 14th this year exactly a year ago
18 today?

19 A And probably a week before that.

20 Q All right, let me ask you, back about in
21 the middle, in the morning hours of November 14th, 2011,
22 did anything out of the ordinary happen in your hotel room?

23 A Well something that ordinarily happens is
24 that I got up to go to the bathroom.

25 Q And what happened when you got up to go to

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 42

1 the bathroom?

2 A Well I went to the bathroom, got back in
3 bed, starting to go back to sleep when I heard the, on the
4 patio in front of our room was a metal fence to go onto the
5 beach, I heard that rattle. I thought that was the wind,
6 then I heard the slider door, which was open, slide more
7 open, rolled over in bed, looked at the slider door, and
8 saw a shape at the door. I said where you going, bro.

9 Q Let me ask you, were there any lights on in
10 your room at this time?

11 A No.

12 Q Were you able to clearly see who the person
13 was coming in your room?

14 A No.

15 Q All right, what happened after you saw the
16 individual coming into your room?

17 A He said not to worry, I'm with hotel
18 security. My name is Tom, and I have identification, here
19 it is and he shined the light to something that he held in
20 his hand, which I assume was identification.

21 Q Now let me ask you this, Mr. Thompson, do
22 you wear glasses?

23 A I do.

24 Q Were you wearing glasses at that point in
25 time?

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 43

1 A No.

2 Q Could you see what he was shining the light
3 on in his hands?

4 A A piece of plastic, I had no idea what it
5 was.

6 Q Could you even see what the light was
7 coming from in his hand?

8 A I think it was a cell phone.

9 Q Now after he identified himself as hotel
10 security what happened?

11 A He asked, well he first said you shouldn't
12 leave your door open cause this is a high crime area. He
13 wanted to call the front desk to say that everything was
14 okay and we'll lock the door. He came over, he shined his
15 cell phone, whatever light it was on the telephone, called
16 the front desk, said this is Tom, everything is all clear,
17 everything is fine here.

18 Q And what happened after he did that?

19 A He asked if he could go out the front door
20 after he watched me lock the slider door to the beach. He
21 walked out the front door and as he walked out the front
22 door he grabbed something.

23 Q Could you tell what he grabbed?

24 A No.

25 Q Again were you wearing glasses at this

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 44

1 point?

2 A No.

3 Q What happened after you noticed he grabbed
4 something?

5 A I followed him out the room, followed him
6 down the hall, all the way down the hall. He turned around
7 and said, he was really -- grabbed, it was Mr. Kinney's
8 pants he grabbed, and as he was going down the hall he was
9 going through the pockets and he stopped, turned around, he
10 said, he also heard, well someone complained that we were
11 smoking weed or reefers or something like that in the room.
12 you can't do that here, you get evicted from your room if
13 you do that. I don't want to come back to your room now
14 and check your room out for weed.

15 Q Then what happened then?

16 A We came back in the room, he searched
17 around the room. He said, fine, I didn't find anything, he
18 left.

19 Q All right, after he left did you notice
20 anything missing or anything draw your attention?

21 A Other than Ron, Mr. Kinney said, "Will,
22 where's your wallet?" I said, "It's right over there on
23 the," and then I said something else, my wallet was gone.

24 Q What did you do when you found out your
25 wallet was gone?

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 45

1 A First I thought there was nothing in my
2 wallet other than credit cards, whoops, credit cards,
3 drivers license, all those, no cash, I got on the phone. I
4 called my wife back in Pennsylvania, asked her to get out a
5 credit card list. She wasn't too helpful at one or two
6 o'clock in the morning. Then I remembered I had my
7 computer there and I had the credit card list in the
8 computer, got on the computer, started calling the, you
9 don't care about all the time the police were there and --

10 Q The police did arrive, though?

11 A Oh, yeah.

12 Q There was a policeman there, at some point
13 did you have a chance to go to try and make a
14 identification of the defendant?

15 A Yes.

16 Q All right, now do you remember, we'll get
17 to all the other stuff in front of the jury, but you
18 remember how far it was that you drove or went to make an
19 identification; was it close by?

20 A Yeah, it was pretty close, we're in the
21 back of a police car. It's not very comfortable in the
22 back of a police car.

23 Q Now when you saw the person the officer
24 asked you to identify, were you able to identify him?

25 A He looked about the same height, the same

Mr. Thompson - Direct Exam. In Camera by Mr. Spratlin 46

1 shape, the same everything, dressed the same way, except
2 that he had a pair of, I guess it was a bathing suit pulled
3 up over his pants.

4 Q Let me ask you, the person that went into
5 your hotel room what kind of pants were they wearing?

6 A The same dark like jogger shorts, jogger
7 pants.

8 Q All right, was there anything distinctive
9 about them, any kind of stripes or anything?

10 A Yeah, they had white stripes down the side.

11 Q All right, what kind of shirt was the
12 person who was in your room wearing?

13 A Sweatshirt, might have had a hood on it,
14 dark, darkly dressed.

15 Q Now what was the, what was the person that
16 you were asked to identify, what were they wearing?

17 A The sweatshirt was gone. I think the pants
18 were the same, but as I said he had a like a pair of
19 brightly colored flowered or something garish bathing
20 trunks over them.

21 Q It was kind of pulled up over the pants,
22 all right. Now were you able to be certain of the person
23 you were asked to identify was the same person who was in
24 your hotel room?

25 A Couldn't pick him out of a lineup. I say

Mr. Thompson - Cross Exam. In Camera by Mr. Fox

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1 the same shape and everything else but could not positively
2 identify him.

3 Q Similar but couldn't be a hundred percent
4 sure, all right?

5 Mr. Spratlin: Thank you, Mr. Thompson, that's
6 all the questions I have, please answer any questions Mr.
7 Fox may have.

8 The Court: Mr. Fox.

9 Cross Examination

10 By Mr. Fox:

11 Q So the person that came in the room at some
12 point left the room and came back, in other words he left,
13 was it you that followed him down the hall?

14 A Yes.

15 Q Okay, and then he, this person said
16 something about, well also we heard rumors about ya'll
17 smoking marijuana in your room, I better check that out?

18 A Uh-huh, correct.

19 Q And, and you permitted him to come back to
20 the room; is that right?

21 A I think we walked back to the room
22 together, he is security.

23 Q Okay, so at that point you still assumed
24 this person whoever you were dealing with was security?

25 A Hotel security.

Mr. Thompson - Cross Exam. In Camera by Mr. Fox

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1 Q Okay, how long was it then, how long was he
2 in the room that second time; would you say?

3 A Probably no more than a few minutes.

4 Q Okay, did you ever turn on the lights
5 during the time he was there?

6 A Yes, the second time.

7 Q The second time?

8 A By the time, yeah, lights were on the
9 second time.

10 Q Okay, and I'm sorry, you said he was there
11 how long the second time?

12 A A few minutes.

13 Q A few minutes, okay, but with the lights on
14 now so you can observe him?

15 A Uh-huh.

16 Q How long from that that he left?

17 A Yep.

18 Q How long then until you were taken, driven
19 in the police car to identify somebody?

20 A I don't really know, half hour maybe, I
21 have no idea.

22 Q Okay, and where was the person that you
23 were identifying, I mean in terms of, you know, sitting
24 down in the car, standing up, you know, sitting --

25 A When they took us to identify, yeah, we

Mr. Thompson - Cross Exam. In Camera by Mr. Fox

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1 were sitting in the back of a police car, he was, I don't
2 know, maybe as far as you are away. They had the spotlight
3 and the police car shining on him. I could see him and the
4 only thing I could say his face, it looked he was crying or
5 something like that but to positively identify him, no.

6 Q Was he, was he just on the street or in a
7 squad car?

8 A Standing on the street.

9 Q Okay, who was with him?

10 A The police.

11 Q Okay, was he handcuffed?

12 A I couldn't see, couldn't say.

13 Q Okay, and the person you saw on the street
14 you said the person in your room had a sweatshirt on,
15 correct?

16 A Correct.

17 Q The person you saw on the street no
18 sweatshirt?

19 A I think he took it off.

20 Q Okay ---

21 A I think there was a lighter colored
22 something like a tee shirt.

23 Q All right, so a tee shirt rather than the
24 sweatshirt you had seen in your room?

25 A Light clothing versus dark clothing.

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 50

1 Q Okay, and apparently different, was it the
2 same, was it still a sweatshirt or was it like a tee shirt?

3 A I think it was more like a tee shirt.

4 Q Okay, and still long pants but some kind of
5 a bathing suit pulled up over them?

6 A Shorts or a bathing suit.

7 Q Okay, and you were unable to say for sure
8 whether that was the fellow you had seen twice in your
9 room?

10 A Correct.

11 Mr. Fox: Okay, thank you. No more questions,
12 Your Honor.

13 Mr. Spratlin: No redirect.

14 The Court: You may come down, go ahead.

15 Mr. Spratlin: Our last witness -- no, no
16 redirect, no redirect, Your Honor.

17 The Court: Come down, thank you, next witness.

18 Mr. Spratlin: Next call Mr. Ronald Kinney to
19 the stand, Your Honor.

20 Ronald Kinney

21 being first duly sworn, testified in camera as follows:

22 Madam Clerk: Please state your full name and
23 spell your last name.

24 The Witness: Ronald G. Kinney, k-i-n-n-e-y.

25 Direct Examination

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 51

1 By Mr. Spratlin:

2 Q Mr. Kenney, where are you from originally?

3 A I was born in the state of Maine, lived
4 most of my life in Connecticut.

5 Q Lived pretty much northeast area most or
6 your life?

7 A Northeast area, absolutely, spent a few
8 years in California.

9 Q All right, let me ask you, before today you
10 ever had a chance to come to the Myrtle Beach area of Horry
11 County?

12 A Been to Myrtle Beach a lot, both with the
13 guys playing golf and my wife and I used to vacation here
14 some.

15 Q Let me ask you, were ya'll, were you
16 visiting back in November of 2011?

17 A Yes.

18 Q Who all was visiting down here with you?

19 A William Thompson.

20 Q Now were you in town back in November 14th,
21 2011?

22 A Yes.

23 Q Where were you staying?

24 A Best Western in Myrtle Beach.

25 Q Who all was staying in that, in that room

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin

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1 with you?

2 A William Thompson.

3 Q All right, was he the only person staying
4 in the room with you?

5 A Yes.

6 Q Now do you remember, did anything out of
7 the ordinary happen the morning of November 14th, 2011,
8 when ya'll were staying in the hotel room?

9 A Yes.

10 Q What happened?

11 A Well I was asleep and I heard Bill say to
12 someone what's going on, bro.

13 Q What did you do then?

14 A Well I looked up and someone was standing
15 in the door of our hotel room.

16 Q And let me ask you, was the light on at
17 this point?

18 A No.

19 Q Could you clearly see who it was that was
20 standing in the, in your hotel room?

21 A No, just a, just a, you know, a guy.

22 Q All right, what, if anything was he doing
23 while he was standing in your hotel room?

24 A He indicated that he was security and said
25 that he was coming in because our door was open.

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 53

1 Q Did you invite him in the room?

2 A No.

3 Q Did you hear Mr. Thompson invite him in the
4 room?

5 A No.

6 Q All right, what happened when he came in
7 the room?

8 A Well when he came in the room he said
9 something to the effect it was a dangerous area, we
10 shouldn't have left the door open, then he then had to call
11 the front desk and notify them that we were alright. I was
12 still in bed so he walked over to the telephone, which was
13 between the bed, and shined the light, which I could see
14 was a cell phone, had a conversation with, at least picked
15 the phone up and had a conversation with someone, either he
16 called himself, Tom, or he called the person on the other
17 end Tom, and indicated that he was in the room, that
18 everything was alright.

19 Q Again at this point was the light on?

20 A At that point I don't think it was, it came
21 on somewhere thereafter. Bill must have turned it on
22 because while he, I was still in bed, the phone was very
23 close to me, and I, I could see he didn't have a security
24 uniform on.

25 Q Do you wear, excuse me, you were glasses;

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 54

1 is that correct?

2 A I do wear glasses.

3 Q All right, were you wearing glasses in the
4 middle of the night?

5 A No.

6 Q All right, how were you dressed?

7 A I had my underwear on.

8 Q Okay, you were just in bed?

9 A I was just in bed.

10 Q All right, couldn't see, didn't see a
11 security uniform, what happened after he used the phone?

12 A Well there was a conversation going on, I
13 can't recall all of it, but it was to the effect that we
14 should be more careful what we're doing, that they were
15 concerned about us. I was still, I think at that point,
16 lying in bed. I may have gotten up, and he left the room.

17 Q Now when he left the room what happened
18 then?

19 A Bill followed him.

20 Q And what happened after Bill followed him?

21 A I heard Bill say "what do you have in your
22 hand, bro?" Bill left the room, and sometime, a minute or
23 two, Bill brought him back in the room.

24 Q All right, when Bill brought him back to
25 the room what happened then?

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 55

1 A He, at this point I still didn't even see
2 that pants were in anybody's hands, they were my jeans. He
3 went over to what I call a bureau, and started looking
4 through the bureau saying, and then said something to the
5 effect have you smoked weed in here, we hear someone is
6 smoking weed in here, and then he turned and walked out the
7 door. Bill followed him to the door and actually at that
8 point I think probably I was up. Bill followed him to the
9 door and the guy was gone.

10 Q What did, what was the gentleman that was
11 in your hotel room, what was he wearing, if you can recall?

12 A Yeah, I can recall, it was dark, dark
13 pants, a sweatshirt that, I believe, was a hoodie, that's
14 it.

15 Q Let me ask you, after he left that room did
16 you have a chance to respond to, did law enforcement
17 respond to the scene after ya'll called the police?

18 A Yes, after he left the room we kind of
19 spoke back and forth a little bit. I asked Bill where his
20 wallet was. Bill said, my God, well what he said I won't
21 repeat, but basically he said his wallet was gone.

22 Q All right.

23 A And I believe at that point we called the
24 front desk.

25 Q And then at some point did you have a

Mr. Kinney - Direct Exam. In Camera by Mr. Spratlin 56

1 chance to go an area which you were asked to identify the
2 individual?

3 A Yes, at some later point it could have been
4 up to an hour, I don't know, we had a call, Bill realized
5 that his, started calling to cancel his charge cards, and
6 at that point he realized, they told him one had been used
7 in the last few minutes. We called the police and relayed
8 that information to them and in a short period of time they
9 called back and said they were going to come pick us up to
10 identify someone.

11 Q All right, and did they come pick you up?

12 A They did.

13 Q And how far, if you remember, how far away
14 did they take you?

15 A To me four or five blocks, something like
16 that, just up the street from our hotel.

17 Q All right, and did they ask you to identify
18 someone?

19 A They did.

20 Q How was that person dressed compared to the
21 person that was in your hotel room?

22 A He did not have a sweatshirt on or had it
23 open because the top garment was lighter color, and he had
24 patterned, I'll call them beach pants pulled up over a pair
25 of black pants.

1 Q And the person that was in your hotel room
2 what color pants were they wearing?

3 A Black.

4 Q All right, let me ask you as far as the
5 physical description goes, how close were you with that to
6 the person, the person you identified how close did they
7 match physically to the person that was in your hotel room?

8 A I felt it matched pretty well, pretty well,
9 and that's actually what I told the police officer, fits
10 pretty well but the clothes are different.

11 Q All right, so based on the clothes being
12 different were you able to be a hundred percent sure that
13 person was the same person that was in your hotel room?

14 A Absolutely I was not one hundred percent
15 sure.

16 Q All right, well was it similar?

17 A It was similar.

18 Q All right, all right --

19 Mr. Spratlin: The Court's indulgence for one
20 second. Thank you, Mr. Kinney, that's all the questions I
21 have for you at this hearing. I will have additional
22 questions for you in front of the jury.

23 The Witness: Thank you.

24 The Court: Mr. Fox.

25 Mr. Fox: No questions of this witness, Your

1 Honor.

2 The Court: All right, you may step down, any
3 further witness on this issue?

4 Mr. Spratlin: Your Honor, the State would rest
5 in regards to this issue.

6 The Court: All right, sir, Mr. Fox, you want to
7 be heard?

8 Mr. Fox: Yes, Your Honor, just a moment,
9 please. Your Honor, we would move to suppress any
10 testimony at trial of the identification, specifically the
11 identification by the witness, Ms. Tanner, as well as the
12 two victims. Those were commonly called show ups rather
13 than photo lineups. The law those are suggestive and the
14 argument would be that they were unduly suggestive, the
15 nature of the show up, in police custody. The officer
16 testified he was in handcuffs; he was the only person
17 there. There was only one person to, to pick, and that
18 because it was unduly suggestive there's a very substantial
19 likelihood of mis-identification under the totality of all
20 the circumstances and we would ask that that be suppressed
21 for those reasons, Your Honor.

22 The Court: I would respectfully disagree in
23 this particular case because the witness at Pan American
24 had seen him on several occasions before. If she had seen
25 him just this one time, later identified him while under

1 arrest you may have a position, but this is different from
2 a lineup in that she knew him from previous occasions and,
3 too, the victims have identified his clothing sufficient to
4 make that issue one for the jury as finders of the facts.
5 Given the totality of her testimony and both witnesses it's
6 a matter for the jury to determine.

7 Mr. Fox: Yes, Your Honor.

8 The Court: All right, sir.

9 Mr. Spratlin: Your Honor, at this time we would
10 ask to take up a matter of the defendant proceeding pro se.
11 Mr. Josh Holford from the Solicitor's office will be
12 addressing that matter with the Court.

13 The Court: Yes, sir?

14 Mr. Holford: Your Honor, if I may, I've already
15 given the defense counsel a copy of State v. Bryant, that's
16 a Court of Appeals case from South Carolina 2009. It
17 addresses the Farretta v. California which is a 1975 case
18 in the U.S. Supreme Court.

19 The Court: I've got some questions in a Florida
20 case, too.

21 Mr. Holford: Well, Your Honor, I have a South
22 Carolina case and the California case. Farretta is the
23 seminal case from the Supreme Court which addresses --

24 The Court: It clearly says he has a right to do
25 it, though, doesn't it?

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1 Mr. Holford: Yes, Your Honor, if I may hand up
2 State v. Bryant, on page four of the decision there should
3 be page five and seven under that printout, it addresses
4 some of the concerns. Your Honor, it's the State's
5 position that our Supreme Court has ruled on a numerous
6 occasions that this defendant or any defendant has the
7 right to proceed pro se if they wish to, but the Court must
8 advise them of their right to counsel and adequately warn
9 them of the dangers of self representation. The defendant
10 must then make a knowing and intelligently waiver of his
11 right to counsel and must also show that he has an
12 understanding of the dangers.

13 In the State v. Bryant case that I handed up and
14 have given a copy to defense counsel, our Court of Appeals
15 went through a list of about ten things that the Court can
16 consider. It's not an absolute list; it's not a necessary
17 list.

18 The Court: I've got that.

19 Mr. Holford: But, Your Honor ---

20 The Court: Let me make that inquiry in
21 accordance with Bryant and Farretta and the rest of them.

22 Mr. Jackson, let me say this to you, my interest
23 in this case is to ensure that the State of South Carolina
24 receives a fair trial and that you as defendant receive a
25 fair trial.

1 Defendant Jackson: Well I'm not.

2 The Court: And to the best of my ability I'm
3 going to ensure that you get that fair trial. Now you are
4 charged with burglary first degree. Having had at least
5 two prior burglaries on your record the State has noticed
6 you that upon conviction they seek life without the
7 possibility of parole. This is a most serious matter,
8 can't get any more serious.

9 Now you've had an opportunity to observe Mr. Fox
10 in examination of these witnesses and obviously you
11 understand that he's a competent capable attorney, prepared
12 to represent you to the best of his ability.

13 Defendant Jackson: I feel like he ain't, Your
14 Honor.

15 The Court: Well now the law requires me to ask
16 of you several questions. If ultimately you decide
17 voluntarily, knowing the dangers to represent yourself then
18 the law requires me to let you do that, but once you start
19 you will not thereafter be able to say, no, I've decided I
20 want a lawyer; you understand that?

21 Defendant Jackson: I don't understand, well I'm
22 being forced to represent myself.

23 The Court: No, you're not being forced ---

24 Defendant Jackson: Yeah, I'm being forced.

25 The Court: --- he's standing, no, sir ---

1 Defendant Jackson: Well he's not going to
2 represent me.

3 The Court: Why?

4 Defendant Jackson: So I'm being forced.

5 The Court: Sir?

6 Defendant Jackson: Because he ain't filed no
7 motions or nothing for me. He never did what I asked him
8 to do.

9 The Court: Well you got to let him, he's the
10 lawyer.

11 Defendant Jackson: I didn't ask for no trial, I
12 ask for a plea. That's a conflict of interest, you know
13 what I'm saying?

14 The Court: No, sir.

15 Defendant Jackson: All right, then.

16 The Court: I remember we arraigned you at the
17 time, I remember that, and you rejected that, clearly the
18 record reflects that.

19 Defendant Jackson: No, I bonded out, I didn't,
20 I signed a plea, I bonded out. It's on record, I bonded
21 out at J. Reuben Long. My grandmama just turned 102 years
22 old, I went out there with her ---

23 The Court: Mr. Fox, you want to address -- wait
24 a minute.

25 Defendant Jackson: --- that's why they bond me

1 out.

2 The Court: Mr. Jackson, let me say this to you,
3 I'm going to be respectful to you, but you're going to be
4 respectful to this Court, and you're not going to interrupt
5 me.

6 Defendant Jackson: I apologize.

7 The Court: Okay, I'm trying to help you. You
8 want to respond to his thing that he wanted to plead
9 guilty?

10 Mr. Fox: Your Honor, going back Mr. Ronald
11 Hazzard was originally appointed to represent Mr. Jackson
12 and I've discussed this case with Mr. Hazzard both in terms
13 of procedurally and his understanding of the case, cause
14 he's an excellent lawyer with a lot of experience so I
15 wanted his advice on how to proceed. He advised me, and
16 his notes reflect, and Mr. Spratlin has confirmed this in
17 speaking with him, that at one point in time back in April
18 of this year the plea offer for Mr. Jackson was if he would
19 plead to a second degree burglary violent they would
20 recommend a sentence of between seven and ten years. My
21 understanding is Mr. Jackson actually, Mr. Jackson says he
22 bonded out, which is true at some point he did, my
23 understanding is that plea was commenced, but was not
24 finalized, the plea was not accepted, he was not sentenced.
25 He did bond out and was re-arrested on another charge that

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1 we're not here for today. When I got the case then the
2 discussions because of his new arrest and new charges
3 became pleas to first degree burglary and at that time his
4 offer, I believe when we arraigned Mr. Jackson in front of
5 Your Honor last month, he had the option to plead to a
6 first degree burglary and I believe Your Honor indicated if
7 he did that you would possibly give him the minimum
8 sentence which is still 15 years, but he had passed on the
9 chance to plead to a second degree burglary, got new
10 charges, the offer then became well we'll still let you
11 plea, and in fact I believe he had been served with notice
12 to seek life imprisonment at that time but Mr. Spratlin
13 indicated if he would plead we'll withdraw that and he can
14 still plead to the first degree burglary, Your Honor
15 indicating he would give, you would give him the fifteen-
16 year sentence. Mr. Jackson did not wish to do that at
17 which point he was served a second time with notice to seek
18 life imprisonment if he's convicted on this case and at
19 that point his option became, well I guess he could plead
20 and get life or go to trial and take his chances.

21 The Court: Mr. Jackson, you obviously, the
22 record reflects that you've had several opportunities to
23 plead guilty and you elected not to do so, which is your
24 right. you're entitled to a jury trial and that's what
25 we're going to have today. Mr. Jackson, let me ask of you

1 several questions. The United States Supreme Court and the
2 South Carolina Supreme Court has mandated that I ask you
3 these questions to make sure that you understand the
4 dangers of representing yourself; you understand that?

5 Defendant Jackson: No.

6 The Court: You don't understand the dangers of
7 representing yourself?

8 Defendant Jackson: No, sir.

9 The Court: Why don't you?

10 Defendant Jackson: Because I don't, I don't
11 understand it.

12 The Court: Well you're not a lawyer, are you?

13 Defendant Jackson: I don't understand nothing
14 what's going on; I believe I'm being set up.

15 The Court: Well let me ask you this, you've
16 been in and out of the courtrooms a lot of times; have you
17 ever represented yourself before?

18 Defendant Jackson: No, cause I ain't had to,
19 cause I got time served for mostly all the charges I've got
20 cause there wasn't ---

21 The Court: But you had a lawyer in each case,
22 didn't you?

23 Defendant Jackson: Yes, sir.

24 The Court: Okay.

25 Defendant Jackson: Your Honor, I got, I know I

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1 got prior burglaries on my record, I know that, you know,
2 but them burglaries were so petty till they had to drop
3 them all the way down to third degree burglaries and stuff
4 and I didn't even really do no time for them charges
5 because they wasn't really burglaries.

6 The Court: What's that got to do with the case
7 we're trying today?

8 Defendant Jackson: I don't understand what's
9 going on. I'm, I'm being set up, that's all.

10 The Court: Well I'm going to explain it to you
11 one more time. You have heard the testimony. You are
12 charged with invading that motel room by deceit with the
13 intention to commit a crime therein, and the allegations
14 are that you stole a pocketbook while in there. That's
15 what you're being charged with.

16 Now you're presumed innocent. The State has got
17 to prove you guilty beyond a reasonable doubt, but you've
18 heard the testimony and you are an intelligent individual
19 and you know what you're charged with. Let me ask you
20 this, how old are you, please?

21 Defendant Jackson: forty-six.

22 The Court: And have you ever had any mental
23 problems in your background?

24 Defendant Jackson: I got a lot of mental
25 problems.

1 The Court: Sir?

2 Defendant Jackson: Yes, sir.

3 The Court: Where, have you ever been treated
4 for any mental problem?

5 Defendant Jackson: Yeah, I done seen, I done
6 seen mental health before when I was in J. Reuben Long.

7 The Court: Have you ever been treated, have
8 you, how far did you go in school?

9 Defendant Jackson: I didn't get, I, Your Honor,
10 I just took a test with the teachers and I didn't score, I
11 didn't score no points on it.

12 The Court: Okay, now --

13 Defendant Jackson: And they wrote letters for
14 me to go see mental health.

15 The Court: During this trial now you have had a
16 no education in the law.

17 Defendant Jackson: No, I ain't.

18 The Court: You don't know the rules about
19 hearsay. You don't know the rules about evidence; isn't
20 this true? Isn't this true?

21 Defendant Jackson: Yes, sir.

22 The Court: I'm trying to emphasize to you that
23 it is extremely dangerous for you to represent yourself?

24 Defendant Jackson: No, I'm not going to let
25 nobody else give me life; I didn't mean to cut you off. I

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1 rather give myself life; I ain't going to put my life in
2 nobody else hands.

3 The Court: Well ---

4 Defendant Jackson: The crime ain't that serious
5 that I got to be facing life; they ain't nothing happen
6 that night. There wasn't no threats, there wasn't no,
7 nobody had no weapons, no nothing, nobody didn't threaten
8 nobody, no nothing didn't happen. I just, I'm saying I
9 just used a credit card and bought me something to eat.

10 The Court: Wait a minute, now don't, don't ---

11 Defendant Jackson: Cause I was on drugs, that's
12 all.

13 The Court: --- testify against yourself, see,
14 that's the danger, you talking too much. You talking
15 against your own interest when you start talking about a
16 credit card.

17 Defendant Jackson: Well they know, I told them
18 I ---

19 The Court: All right, now let me say this to
20 you, it is clear to me that you have before you a lawyer,
21 good lawyer, who's prepared to represent you.

22 Defendant Jackson: I don't feel like he good.

23 The Court: And it is extremely dangerous for
24 you to represent yourself. I can't emphasize that anymore.

25 Defendant Jackson: Well I want to, I don't

1 understand what's going on but I do it.

2 The Court: Well you understand enough, but now
3 I just want this record to reflect that I have warned you
4 several times in my opinion that you are not qualified to
5 represent yourself. I told you that you were facing life
6 without the possibility of parole and if we have a trial,
7 and we're going to have one, you'll represent yourself I
8 can't help you, a Judge. I can't get in and say, wait a
9 minute, Mr. Jackson, you need to do this, that or the
10 other. The law doesn't permit me to do these things; do
11 you understand that?

12 Defendant Jackson: I went by the law to get rid
13 of them.

14 The Court: Sir?

15 Defendant Jackson: I don't understand that
16 because I wrote the South Carolina Supreme Court and they
17 said he is under investigation, you still going to make him
18 represent me. I the one, I'll represent myself as long as
19 I got this paper right here in black and white.

20 The Court: Well

21 Mr. Jackson: He didn't do what I asked him to
22 do. It wasn't even supposed to go this far.

23 The Court: Well, Mr. Jackson, the record will
24 reflect, and the record will also reflect that you were
25 before me, and I remember very vividly you said to me I do

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1 not want that plea deal, and that was your right, I want a
2 trial; isn't that what you told me?

3 Defendant Jackson: No, sir, I did not.

4 The Court: Well wait a minute ---

5 Defendant Jackson: I told you that I wanted to
6 finish my classes.

7 The Court: No, sir.

8 Defendant Jackson: Yes, I did, it's on record.

9 The Court: No, sir.

10 Defendant Jackson: I swear to God it's on
11 record, Your Honor.

12 The Court: I didn't ask you that, I asked you
13 did you wish to take that plea deal and you said no.

14 Defendant Jackson: I said I wanted to finish my
15 classes in J. Reuben Long.

16 The Court: Okay.

17 Defendant Jackson: And you said how long is
18 your classes and we'll come back and do your plea and then
19 I bonded out.

20 The Court: Mr. Jackson ---

21 Defendant Jackson: Mr. Ronald Hazzard he'll
22 tell you that.

23 The Court: --- be quiet now and listen to me.
24 Mr. Fox, you know the record does not reflect --

25 Mr. Fox: Your Honor, I think he's thinking back

1 prior to Mr. Hazzard representing him. There was some
2 discussion about that which is why the plea didn't finish
3 to his ---

4 The Court: But there was no discussion about
5 that in my presence.

6 Mr. Fox: No, Your Honor, not at the arraignment
7 last month.

8 The Court: My recollection, I know that I told
9 him he was presumed innocent, he's entitled to a trial, but
10 he's also entitled to plea. He said I don't want to plea
11 and that was his absolute right. Now, Mr. Jackson, let me
12 go ---

13 Defendant Jackson: I never said that.

14 The Court: Do you understand, Mr. Jackson, that
15 in the jury process I'm going to, the State is going to
16 have five strikes and you'll have ten?

17 Defendant Jackson: I don't understand what's
18 going on in here today. I don't even understand why I'm in
19 here.

20 The Court: Well ---

21 Defendant Jackson: I feel like I'm being set
22 up. I don't even understand what's going on.

23 The Court: Mr. Jackson, you're an intelligent
24 man.

25 Defendant Jackson: Man, I don't understand

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1 what's going on, Your Honor, I really don't understand
2 what's going on.

3 The Court: You don't understand that you'll be
4 ---

5 Defendant Jackson: No, I don't understand
6 what's going on.

7 The Court: Wait a minute, you don't understand
8 that you're being charged with burglarizing a motel room,
9 stealing a pocketbook; you don't understand that?

10 Defendant Jackson: No, I don't understand none
11 of this. I don't even understand why I'm here when my
12 lawyer said he get me a plea.

13 The Court: You rejected that, Mr. Jackson.

14 Defendant Jackson: I bonded out, I didn't never
15 reject it. You get in touch with Ronald Hazzard he can
16 explain it to you.

17 The Court: Let me ask you this, Mr. Fox ---

18 Defendant Jackson: He was down here last week
19 talking to you.

20 The Court: --- is it his desire to plead at
21 this time?

22 Mr. Fox: Well you have to ask him, Your Honor,
23 I just quickly address cause he keeps mentioning Mr.
24 Hazzard. I did speak to Mr. Hazzard just last week about
25 this case and about the circumstances and he was very clear

1 to me that ---

2 The Court: Well nobody is denying his right to
3 plead, he's not going to plead on ---

4 Mr. Fox: Never have, have encouraged him to
5 plead, have all but begged him to plead, Your Honor.

6 The Court: He wants to plead on his conditions.

7 Mr. Holford: Your Honor?

8 The Court: Yes, sir?

9 Mr. Holford: If I may speak to that on behalf
10 of the State, Josh Holford, if wishes to plead today he
11 will be pleading to life without parole. Those previous
12 offers are off the table and he has rejected them on
13 numerous occasions.

14 Defendant Jackson: I didn't reject them.

15 The Court: Yes, sir, you did ---

16 Defendant Jackson: I bonded out.

17 The Court: No, sir, later you rejected in front
18 of me.

19 Defendant Jackson: I ain't rejected none.

20 The Court: All right, Mr. Jackson, having
21 exhaustively warned you of the dangers, understanding that
22 you have limited education, knowing nothing about the law,
23 having no training in evidentiary matters, you're insisting
24 that I discharge this distinguished lawyer and represent
25 yourself you are, it is your decision; is that correct?

1 Defendant Jackson: Yes, sir, I represent, I
2 don't understand what's going on but I, I'll talk for
3 myself.

4 The Court: You are freely and voluntarily, I
5 have concluded that his constitutional rights permits him
6 to do it. I concluded that I've exhaustively warned him of
7 the dangers. He's facing life imprisonment, has no
8 experience in the law, but if he insists, our Supreme Court
9 has said I must honor that request; can you agree with
10 that, Solicitor?

11 Mr. Spratlin: Your Honor, my only concern is
12 that in Graves v. State in 1992 our Supreme Court did say
13 that the defendant's understanding of the warnings is an
14 ultimate issue. Now I hear him saying he wants to
15 represent himself; what he's really saying is he does not
16 want Mr. Fox to represent him. I know your position, Your
17 Honor, that you have to respect his request to represent
18 himself pro se if he says he wants to, but with this record
19 replete with him saying he doesn't understand what's going
20 on I'm not sure that he's entitled to represent himself if
21 he says he doesn't understand.

22 The Court: He understands. We've had testimony
23 here about an invasion of a motel room and the stealing of
24 a pocketbook. He understands that ---

25 Defendant Jackson: No, I don't.

1 The Court: --- and we could go through this the
2 next time you brought to Court and he would say the same
3 thing, "I don't understand." I conclude that he is of an
4 intelligence sufficient to understand the charges against
5 him. I conclude that he knows that if he's convicted it's
6 life without parole. I conclude that he doesn't have the
7 capacity ---

8 Defendant Jackson: You want me to plead to
9 that, I don't understand. I'll plead to life without
10 parole, give me the paper. I'll plead to it right now.

11 The Court: No, sir.

12 Defendant Jackson: I'll plead to it, I swear to
13 God I'll plead to it, I'll sign it right now. I'll plead
14 to it than to go through a trial. I can't stand trial. I
15 can't see to stand somebody get up there and lie on me and
16 lie about me. That Solicitor don't know nothing about me,
17 he ain't going to do nothing but get up there and lie.

18 The Court: No, sir, we are going to trial. I'm
19 going to let you represent yourself. You know the dangers
20 of it and we'll be confronted with the same thing again. I
21 conclude ---

22 Defendant Jackson: Ain't nobody got hurt.

23 The Court: All right, bring the jury in, I'm
24 going to pick a jury. Now, Mr. Jackson, let me say this to
25 you, you're entitled to a fair trial before these twelve

1 people.

2 Defendant Jackson: Well I ain't getting one so
3 I'll go along with this.

4 The Court: It's to your interest not to
5 interrupt the Court and not to try to embarrass this jury.

6 Defendant Jackson: No, I'm the one embarrassed.

7 The Court: I warn you, bring the jury in.

8 Mr. Spratlin: Your Honor --

9 The Court: Yes, sir?

10 Mr. Spratlin: The State would also ask that he
11 be limited from mentioning life without parole at all.
12 That is clearly not to be said in front of the jury.

13 The Court: If he does I'll tell the jury that
14 that's not for their consideration.

15 Mr. Spratlin: Your Honor, we're still afraid
16 that he will ---

17 The Court: I can't stop him, what do you want
18 me to do? You know, you've observed him, I can caution him
19 not to do that.

20 Defendant Jackson: The victims right there, ask
21 them if would serve life without parole what I did, ask
22 them do I deserve that, if they say I deserve that then I
23 go along with it.

24 The Court: Mr. Jackson ---

25 Defendant Jackson: They the victims.

1 The Court: Please be seated and I urge you now
2 not to alienate the jury by your remarks.

3 Defendant Jackson: I don't know what's going
4 on, I don't understand nothing that's going on. I'm being
5 set up.

6 The Court: Bring the jury in.

7 Mr. Spratlin: Your Honor, while the jury is
8 coming in real briefly, the State would ask that we bring
9 the podium out front so the witnesses can be questioned
10 from the podium. I would just have an opposition to the
11 defendant being able to approach or get very close to the
12 witnesses for their safety and everyone else's safety.

13 The Court: I understand.

14 Mr. Fox: And, Your Honor, do you wish me to
15 stand by in any capacity?

16 The Court: I do, I do.

17 Mr. Fox: Yes, sir.

18 The Court: Now, Mr. Jackson, I got one other
19 thing to tell you. When the jury gets here we're going to
20 have decorum; we're going to have peace and quiet, not
21 going to permit you to disrupt this court.

22 Defendant Jackson: Man, I rather plead, I'm
23 asking for a plea. That's my right, right, you said that,
24 right, can I plea? Can I plead to life without parole?

25 The Court: If you want to, I can't tell you not

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1 to. I can't tell you not to. What you want to say, Mr.
2 Fox?

3 Mr. Fox: Not a thing, Your Honor, I mean I
4 don't know at this point --

5 The Court: No, sir, I'd rather let a jury make
6 the determination. Now, Mr. Jackson ---

7 Mr. Fox: Judge, I do think, I'm off, I do think
8 if he wishes to plead he should be given that opportunity.
9 I think in fairness and the Court can move on to other
10 cases and if he's indicating that then I would take him at
11 his word on that issue.

12 Defendant Jackson: They set me up anyway.

13 The Court: No, sir, but he says ---

14 Defendant Jackson: The victims right there, ask
15 him do I deserve life without parole for what happened that
16 night, that's all you got to do.

17 The Court: See, he says he don't understand,
18 but, Mr. Jackson, no, sir, if he's prepared to admit his
19 guilt and understands the penalty in waiving his rights to
20 trial on the jury, I'm not hearing him say that. I 'm
21 hearing him saying he don't understand what's going on.

22 Mr. Fox: Yes, sir.

23 The Court: Mr. Jackson, let me say this to you
24 now, Mr. Jackson, listen to me.

25 Mr. Fox: Stand up for the Judge.

1 The Court: Stand up.

2 Mr. Fox: Stand up when the Judge is talking to
3 you.

4 The Court: Now we're going to have a quiet and
5 courteous trial. If you continue to disrupt this courtroom
6 I've got two options. I can bind you and gag you or send
7 you out and try you in your absence. I am not going to let
8 you disrupt my courtroom. Now I want to see that you get a
9 fair trial but you're not going to be disruptive; if you
10 are I got two choices. I'll bind you and gag you or send
11 you out, but not going to let you stay in here and, and
12 disrupt my courtroom. I'm going to lean over backwards to
13 give you a fair trial but we're going to do it courteously;
14 you understand that?

15 Defendant Jackson: No, I don't.

16 The Court: Well you'll understand it when I run
17 you out of my courtroom. Bring the jury in, I'm going to
18 give him a trial.

19 (Whereupon, the jury panel enters the courtroom.)

20 The Court: First permit me to apologize for
21 keeping you waiting this morning but we've been involved in
22 other matters throughout the morning not involving the
23 services of a jury. I'm Judge Cottingham from Marlboro
24 County, being assigned this week as a trial judge for
25 General Sessions Court. This young man to my right is Trey

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1 Jones, a recent graduate of the law school and who was
2 sworn in on yesterday as an attorney in South Carolina. I
3 jokingly say that last week I referred to him as a law
4 clerk, since he was sworn he says I can refer to him as
5 legal counsel, so this is Trey. I want to thank all of you
6 for being here and it is my intention now to select from
7 your number twelve individuals and two alternates to try
8 the case that is being called at this moment.

9 The defendant in this case is defendant Jackson.
10 Mr. Jackson as his absolute right desires to represent
11 himself and he has that opportunity. I tell you now that
12 there is no adverse inference to be derived from the fact
13 that Mr. Jackson represents himself. This defendant and
14 all defendants come into our court under a presumption of
15 innocence and that presumption remains with the defendant
16 throughout the trial until twelve folks unanimously have
17 found him guilty, if they do, by evidence beyond a
18 reasonable doubt. The burden of proof is upon the State of
19 South Carolina. This defendant doesn't have to prove a
20 thing; the proof is upon the State.

21 Now we going to call the case in just a moment
22 and it is our desire to get from your number twelve folks
23 with no friends to reward, no enemies to punish, twelve
24 people who can say if I am selected as one of the jurors I
25 will base my verdict on the law and evidence in this

1 courtroom. Call your case.

2 Mr. Spratlin: Thank you, Your Honor, Martin
3 Spratlin on behalf of the Solicitor's office, also present
4 with me sitting at the counsel table is Mr. Josh Holford,
5 also with the Solicitor's office. The State would next
6 call State of South Carolina County of Horry v. Anthony
7 Jerome Jackson, charged in indictment 2012-GS-26-00730 with
8 one count, that count being burglary in the first degree.

9 The Court: All right, sir, the defendant is
10 ready for trial. First, are any of you related by blood or
11 connected by marriage with Anthony Jerome Jackson, if so,
12 please stand?

13 (No response.)

14 Any of you have any close connections with the
15 defendant Jackson?

16 (No response.)

17 Do any of you know Mr. Jackson in any capacity
18 whatsoever, please stand?

19 (No response.)

20 It is alleged, and alleged only, that this
21 defendant entered a room without consent and with intent to
22 commit a crime therein, that room being a motel, how is
23 that motel defined?

24 Mr. Spratlin: Your Honor, it's the Best Western
25 Inn and Suites off of Ocean Boulevard in Myrtle Beach South

1 Carolina.

2 The Court: Any of you stockholders in Best
3 Western Motel? Any of you work there, any of you have any
4 friends that work there; any of you know anything about
5 that?

6 (No response.)

7 The Court: Allegedly this occurred when,
8 Solicitor?

9 Mr. Spratlin: Your Honor, a year ago today,
10 November 14th, 2011.

11 The Court: It's not likely but would any of you
12 have heard anything about it, read anything about it, know
13 anything about it?

14 (No response.)

15 It is alleged, and he pleads not guilty to these
16 charge, that he entered the room at the Best Western
17 without consent and with intent to commit a crime therein
18 and as a result he's charged with burglary.

19 Now are any of you victims of a violent crime,
20 please stand?

21 Come forward, please, may I have your name?

22 Jury Panel Member: Marsha Sarvis.

23 The Court: And jury number?

24 Jury Panel Member: 332.

25 The Court: And what is your response, please?

1 Jury Panel Member: I was kidnapped and raped.

2 The Court: Would that event cause you to have
3 some problems serving as a juror on this case?

4 Jury Panel Member: Probably so.

5 The Court: I will excuse you, this juror is
6 excused. Anybody else?

7 Now are any of you, any members of your family
8 law enforcement officers of any kind?

9 Come forward, please.

10 Mr. Spratlin: Your Honor, may the State
11 approach as well?

12 The Court: Yes, sir. Mr. Fox, for this purpose
13 you may come forward. Yes, ma'am?

14 Jury Panel Member: My husband is a law
15 enforcement officer for Horry County and retired from the
16 North Carolina Highway Patrol.

17 The Court: I will excuse you from this case,
18 thank you, thank you so much.

19 Jury Panel Member: 266.

20 The Court: Mr. Fox, did you have any inquiry
21 that you would have me make?

22 The Court: Let me ask one further question ---

23 Mr. Fox: Just one, Your Honor.

24 The Court: Have any of you been victims or
25 immediate members of your family of a burglary, if so,

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1 please stand? Come forward anybody that's been victims of
2 a burglary?

3 Your name, please?

4 Jury Panel Member: Coleen Nies.

5 The Court: Jury number?

6 Jury Panel Member: 284.

7 The Court: And what is your response, Ms. Nies?

8 Jury Panel Member: Our house was broken into
9 about three years ago and we had a lot of heirloom jewelry
10 stolen.

11 The Court: Would that impact on your ability to
12 be a fair juror here?

13 Jury Panel Member: It might.

14 The Court: I'll excuse you, thank you. Next,
15 please? Yes, sir?

16 Jury Panel Member: Number 53, lawnmowers, I own
17 a landscape business and all my stuff was stolen from it.

18 The Court: Sir?

19 Jury Panel Member: I own a landscape business
20 and all my stuff was stolen from it and my equipment.

21 The Court: Would that, can you set that aside
22 and be a fair juror in this case?

23 Jury Panel Member: My wife had already had her
24 purse stolen, too.

25 The Court: Sir?

1 Jury Panel Member: My wife had her purse also
2 stolen, so probably would affect.

3 The Court: You think it would?

4 Jury Panel Member: Yeah.

5 The Court: Okay, I'll excuse you. Next? Your
6 name and jury number?

7 Jury Panel Member: Rick Reagan, 316.

8 The Court: Yes, sir?

9 Jury Panel Member: I got a house on the other
10 side of the state and I was redoing and the people went in
11 and took everything out the house and stripped the house.

12 The Court: Would that affect your ability to be
13 fair?

14 Jury Panel Member: It probably would.

15 The Court: Sir?

16 Jury Panel Member: It probably would.

17 The Court: I have to excuse you then, thank
18 you. All right, somebody had a question, come forward,
19 please. Your name, please?

20 Jury Panel Member: Carlene Carmen, 46.

21 The Court: Yes, ma'am?

22 Jury Panel Member: Was the previous question
23 about you had about law enforcement. I'm a retired
24 military, former military police, I don't know if that has
25 any bearing, but --

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1 The Court: I'll accept that as information.

2 Jury Panel Member: Okay.

3 The Court: Thank you, next, yes?

4 Jury Panel Member: House once, business twice.

5 The Court: Sir?

6 Jury Panel Member: Burglary.

7 The Court: How long ago?

8 Jury Panel Member: House ten years, business --

9 -

10 The Court: How many?

11 Jury Panel Member: House ten years, business

12 two.

13 The Court: How long ago?

14 Jury Panel Member: My business?

15 The Court: How long ago did the burglary occur?

16 Jury Panel Member: Two times, two years ago.

17 The Court: Would that affect your ability to be
18 a fair juror here?

19 Jury Panel Member: I'm not sure, I mean --

20 The Court: I'll leave it to you now, if there's
21 any question about it I can't take you.

22 Jury Panel Member: All right.

23 The Court: I'll excuse you.

24 Mr. Fox: Your number, please.

25 Jury Panel Member: 142.

1 The Court: One more, please.

2 Jury Panel Member: My name is Amy Eaglin, I'm
3 juror number 93, and I had a man that broke into our house
4 when we lived in Conway and I actually came home and saw
5 him leaving and we called the police and they caught him
6 down the street and we had to identify him.

7 The Court: Would that unfortunate experience
8 keep you from being a fair juror here? You hesitated, I'll
9 have to excuse you.

10 Jury Panel Member: Thank you so much.

11 The Court: Now let me say thank you so much,
12 lawyers here and the defendant just want from your number
13 twelve jurors who can say, Judge, I have no bias or
14 prejudice in this case. I will base my verdict on the law
15 and evidence in this courtroom and from no other place and
16 if somebody can't do that, please stand?

17 All right, Mr. Fox, I've permitted you to sit
18 here and assist the defendant in the selection of the jury
19 only, but do you have any other further inquiry?

20 Mr. Fox: The only other one I'd have, Your
21 Honor, is to inquire whether any member of the jury panel
22 is a member or contributes to a victim's advocate
23 organization like MADD, SADD, those sorts of things.

24 The Court: I will ask that question, anybody
25 contribute to those sort of organizations?

1 (No response.)

2 All right, identify yourself for the State, my
3 question is do you any of you have any relatives or close
4 connection with the Solicitor's office of the Fifteenth
5 Circuit?

6 Mr. Spratlin: Yes, sir, Your Honor, Martin
7 Spratlin on behalf of the Solicitor's office, work for Greg
8 Hembree your elected Solicitor.

9 Mr. Holford: And Joshua Holford on behalf of
10 the Solicitor's office, I'm also an assistant solicitor for
11 your elected solicitor.

12 (No response.)

13 The Court: And the defendant is representing
14 himself, I've asked Mr. Fox to assist in the selection of
15 the jury process and the defendant is agreeing to that; is
16 that correct?

17 Mr. Fox: Yes, Your Honor.

18 The Court: All right, the defendant while
19 representing himself, is permitting Mr. Fox to assist him
20 in juror selection, call the jury, please.

21 Madam Clerk: When I call your name if you will,
22 please, come to the front of the courtroom, come around and
23 face the back of the courtroom and bring any belongings you
24 have with you.

25 Juror number 206, Jacquetta Jones.

1 What say the State?
2 Mr. Spratlin: Please present this juror.
3 Madam Clerk: Defense?
4 Mr. Fox: Please seat this juror.
5 Madam Clerk: Please be seated in the jury box.
6 29, Paul Bowers.
7 What say the State?
8 Mr. Spratlin: Please excuse this juror.
9 Madam Clerk: You're excused from this
10 particular case.
11 346, Kristen Smith.
12 What say the State?
13 Mr. Spratlin: Please excuse this juror.
14 Madam Clerk: You're excused from this
15 particular case.
16 20, Doris Bessent.
17 What say the State?
18 Mr. Spratlin: Please present the juror.
19 Madam Clerk: Defense?
20 Mr. Fox: Please seat this juror.
21 Madam Clerk: Please be seated in the jury box.
22 371, Marta Thomas.
23 What say the State?
24 Mr. Spratlin: Please present this juror.
25 Madam Clerk: Defense?

1 Mr. Fox: Please seat this juror.
2 Madam Clerk: Please be seated in the jury box.
3 227, Christine Lavoie.
4 Mr. Fox: I'm sorry, Madam Clerk, what was that
5 number?
6 Madam Clerk: 227.
7 Mr. Fox: Thank you.
8 Madam Clerk: What say the State?
9 Mr. Spratlin: Please present this juror.
10 Madam Clerk: Defense?
11 Mr. Fox: Please excuse this juror.
12 Madam Clerk: You're excused from this
13 particular case.
14 69, Edward Cox.
15 What say the State?
16 Mr. Spratlin: Please present this juror.
17 Madam Clerk: Defense?
18 Mr. Fox: Please seat this juror.
19 Madam Clerk: Please be seated in the jury box.
20 250, John McCance.
21 What say the State?
22 Mr. Spratlin: Please present this juror.
23 Madam Clerk: Defense?
24 Mr. Fox: Please excuse this juror.
25 Madam Clerk: You're excused from this

1 particular case.

2 343, Susan Skipper.

3 What say the State?

4 Mr. Spratlin: Please present this juror.

5 Madam Clerk: Defense?

6 Mr. Fox: Please seat this juror.

7 Madam Clerk: Please be seated in the jury box.

8 46, Carlene Carmen.

9 What say the State?

10 Mr. Spratlin: Please present this juror.

11 Madam Clerk: Defense?

12 Mr. Fox: Please excuse this juror.

13 Madam Clerk: You're excused from this

14 particular case.

15 65, Courtney Conyers.

16 What say the State?

17 Mr. Spratlin: Please excuse this juror from the

18 trial of this case.

19 Madam Clerk: You're excused from this

20 particular case.

21 404, Angela Wiebel.

22 Mr. Spratlin: I'm sorry, what was that number

23 one more time?

24 Madam Clerk: 404.

25 Mr. Spratlin: Thank you.

1 Madam Clerk: What say the State?
2 Mr. Spratlin: Please present this juror.
3 Madam Clerk: Defense?
4 Mr. Fox: Please seat this juror.
5 Madam Clerk: Please be seated in the jury box.
6 193, John Jeffcoat.
7 What say the State?
8 Mr. Spratlin: Please present this juror.
9 Madam Clerk: Defense?
10 Mr. Fox: Please excuse this juror.
11 Madam Clerk: You're excused from this
12 particular case.
13 201, Russell Johnson.
14 What say the State?
15 Mr. Spratlin: Please present this juror.
16 Madam Clerk: Defense?
17 Mr. Fox: Please seat this juror.
18 Madam Clerk: Please be seated in the jury box.
19 234, Tonia Long.
20 What say the State?
21 Mr. Spratlin: Please present this juror.
22 Madam Clerk: Defense?
23 Mr. Fox: Please excuse this juror.
24 Madam Clerk: You're excused from this
25 particular case.

1 388, George Walker.
2 What say the State?
3 Mr. Spratlin: Please present this juror.
4 Madam Clerk: Defense?
5 Mr. Fox: Please excuse this juror.
6 Madam Clerk: You're excused from this
7 particular case.
8 83, James --
9 Jury Panel Member: Desjardins.
10 Madam Clerk: Thank you, what say the State?
11 Mr. Spratlin: Please present this juror.
12 Madam Clerk: Defense?
13 Mr. Fox: Please excuse this juror.
14 Madam Clerk: You're excused from this
15 particular case.
16 54, Melanie Chiplinski.
17 What say the State?
18 Mr. Spratlin: Please present this juror.
19 Madam Clerk: Defense?
20 Mr. Fox: Please excuse this juror.
21 Madam Clerk: You're excused from this
22 particular case.
23 132, Taylor Gibson.
24 What say the State?
25 Mr. Spratlin: I'm sorry, what was that number

1 one more time?

2 Madam Clerk: 132.

3 Mr. Spratlin: Thank you.

4 Madam Clerk: What say the State?

5 Mr. Spratlin: Please excuse this juror.

6 Madam Clerk: You're excused from this
7 particular case.

8 422, Carol Zegarowski.

9 What say the State?

10 Mr. Spratlin: Please present this juror.

11 Madam Clerk: Defense?

12 Mr. Fox: Please seat this juror.

13 Madam Clerk: Please be seated in the jury box.

14 226, John Landers.

15 What say the State?

16 Mr. Spratlin: Please present this juror.

17 Madam Clerk: Defense?

18 Mr. Fox: Please seat this juror.

19 Madam Clerk: Please be seated in the jury box.

20 399, Reynolds Watson.

21 What say the State?

22 Mr. Spratlin: Please present this juror.

23 Madam Clerk: Defense?

24 Mr. Fox: Please excuse this juror.

25 Madam Clerk: You're excused from this

1 particular case.

2 344, Casandra Smith.

3 What say the State?

4 Mr. Spratlin: Please present this juror.

5 Madam Clerk: Defense?

6 Mr. Fox: Please seat this juror.

7 Madam Clerk: Please be seated in the jury box.

8 99, Karen Elia.

9 What say the State?

10 Mr. Spratlin: Please present this juror.

11 Madam Clerk: Defense?

12 Mr. Fox: Please seat this juror.

13 Madam Clerk: Please be seated in the jury box.

14 13, Christi Beaty.

15 What say the State?

16 Mr. Spratlin: Please present this juror.

17 Madam Clerk: Defense?

18 Mr. Fox: Please seat this juror.

19 Madam Clerk: Please be seated in the jury box.

20 The Court: All right, that will be the twelve,

21 let's have two alternates, strikes one and two as to each

22 alternate, please.

23 Madam Clerk: 406, Ann Wilcocks.

24 Mr. Spratlin: What was that number one more

25 time?

1 Madam Clerk: 406, what say the State?
2 Mr. Spratlin: Please present this juror.
3 Madam Clerk: Defense?
4 Mr. Fox: Please excuse this juror.
5 Madam Clerk: You're excused from this
6 particular case.
7 127, Adam Gause.
8 What say the State?
9 Mr. Spratlin: Please excuse this juror.
10 Madam Clerk: You're excused from this
11 particular case.
12 98, David Edwards.
13 What say the State?
14 Mr. Spratlin: Please present this juror.
15 Madam Clerk: Defense?
16 Mr. Fox: Please excuse this juror.
17 Madam Clerk: You're excused from this
18 particular case.
19 359, Cora Streater.
20 What say the State?
21 Mr. Spratlin: Please present this juror.
22 Madam Clerk: Defense?
23 Mr. Fox: Please seat the juror.
24 Madam Clerk: Please be seated in the jury box.
25 378, Debra Towns.

1 What say the State?

2 Mr. Spratlin: Please present this juror.

3 Madam Clerk: Defense?

4 Mr. Fox: Please seat the juror.

5 Madam Clerk: Please be seated in the jury box.

6 The Court: That constitutes the twelve and the
7 two alternates. Ladies and gentlemen of the jury, take
8 them to the jury room for just a moment and I'll be calling
9 them back. Mr. Bailiff, I have designated Mr. Cox as
10 foreman, when you return have Mr. Cox take the foreman's
11 chair, go to the jury room.

12 (Whereupon, the jury retired to the jury room at
13 12:44 p.m.)

14 The Court: For the State any motions regarding
15 the composition of the jury?

16 Mr. Spratlin: No, Your Honor.

17 The Court: For the defense?

18 Mr. Fox: None, Your Honor.

19 The Court: That will constitute the jury, what
20 instructions have the jury, I'm going to probably need a
21 jury sometime tomorrow?

22 Madam Clerk: Okay, if just want to tell them to
23 call back tonight after six.

24 The Court: Now I'll know what I need to do,
25 please call back after 6:00 tonight for further

1 instructions and let me say to you again, I certainly
2 appreciate your presence here this morning and most
3 especially your patience. You are now excused to call in
4 after 6:00 tonight and thank you.

5 (Whereupon, jury venire were excused.)

6 The Court: Bring the jury in.

7 (Whereupon, the jury returns to the courtroom at
8 12:46 p.m.)

9 The Court: Mr. Cox, as the foreperson you will
10 occupy that chair throughout the proceedings and the two
11 alternates will occupy at all times those chairs. The rest
12 of you may sit as you choose. Now, Mr. Cox, I'll keep you
13 further advised of your duties; primarily you will be
14 presiding in the jury room during the deliberations and
15 then the jury's spokesman in the courtroom. I, of course,
16 during the course of the trial will keep you and the jury
17 fully advised.

18 Now there's several admonitions that we give and
19 which are necessary. During the break you must not discuss
20 this case with anyone. Permit no one to discuss it with
21 you, and you must not even discuss it among yourselves
22 until I have given you the case for your deliberations.
23 Sometimes when we take a break at lunch or at night two or
24 three jurors are talking about the case and that's improper
25 for the following reasons. Whatever your decision is

1 ultimately it must be a unanimous decision of all twelve
2 and if several of you are discussing some issue you are
3 depriving your fellow jurors of your thought process and
4 they're entitled to that.

5 There's additional admonition that we give in the
6 day of internet, you must not do any independent inquiry.
7 I will tell you what the law is with regard to this case.
8 Do not get on the internet and snoop around for any
9 questions that you might have, and let me tell you why. In
10 this courtroom two months ago we'd been trying the case all
11 week and the bailiff came to me and said, Judge Cottingham,
12 we've got a problem. I said, what is it, he said, a juror
13 came to me this morning and had a document she had gotten
14 off the internet wanted to show it to the rest of the
15 jurors. Fortunately he told her she couldn't do that. Of
16 course I immediately had to excuse her, but that's an
17 example of why you must not make any independent inquiry on
18 your own behalf because you're to base your verdict either
19 not guilty or guilty on the law and evidence from this
20 courtroom. It's a little after 12:30, please be back in
21 your jury room at 2:00 and we'll start promptly at that
22 time, you are excused. Everybody else remain seated.

23 (Whereupon, the jury was excused for lunch at
24 12:50 p.m.)

25 The Court: Mr. Fox, with Mr. Jackson's

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1 agreement I permitted you to help him with the jury
2 selection process and I permitted you to assist in the
3 other issues before us this morning. I am really concerned
4 about him representing himself and I hope that you can talk
5 to him over lunch, but as you well know the case law
6 clearly says that after warning an individual of the danger
7 that I have no alternative but to let him do it; you
8 understand that?

9 Mr. Fox: I do, Your Honor, I'll talk to him.

10 The Court: Mr. Jackson, do you understand my
11 concerns?

12 Mr. Fox: Stand up.

13 The Court: Sir? Is it still your intention to
14 represent yourself?

15 Defendant Jackson: Yes, sir.

16 The Court: You understand now he's done a good
17 job for you this morning?

18 Defendant Jackson: He ain't did no good job for
19 me cause if he would have did a good job for me this
20 wouldn't have came this far.

21 The Court: All right, sir, then I accept your
22 judgment. The record will reflect that I've warned you
23 about five times and you insist on representing yourself
24 and you've got that absolute right.

25 Defendant Jackson: Being forced to.

1 The Court: Mr. Holford, he has that right?

2 Mr. Holford: Yes, Your Honor, the Supreme Court
3 says he has the right to represent himself.

4 The Court: Yeah, but I have the right to make
5 sure that decorum will be present in my courtroom at all
6 times and, Mr. Fox, I want you to warn him that I will
7 permit no disruption in my courtroom.

8 Mr. Fox: Yes, sir.

9 The Court: And I'll either bind him or gag him
10 or send him out but he's not going to disrupt my court.

11 Defendant Jackson: I ain't going to disrupt
12 your courtroom.

13 The Court: All right, sir, well you just did.
14 I wasn't talking to you; I was talking to Mr. Fox. Mr.
15 Jackson, you need to know now I'm going to be courteous to
16 you and I'm going to be polite to you and I'm going to be
17 fair to you and to the best of my ability we're going to
18 give you a fair trial. I would urge you not to make such
19 statements that might make your jury mad. These twelve
20 have your fate in their hands so don't disrupt the Court
21 and make them mad; that's not to your interest. Your
22 interest is to be polite and nice and see can you convince
23 them of your innocence. See you back at 2:00, thank you.

24 Mr. Fox: Thank you, Your Honor.

25 Mr. Spratlin: Yes, sir, Your Honor.

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1 (Whereupon, court was recessed for lunch and the
2 following takes place on the record after the lunch
3 recess.)

4 (Whereupon, State's Exhibits Numbers 2, 3, 4, 5,
5 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and
6 21 marked for identification.)

7 Defendant Jackson: Do I get to talk to the
8 jury?

9 The Court: Mr. Fox, the defendant certainly has
10 that right and you may advise him of that. I would advise
11 him to be careful about incriminating himself as to what he
12 tells the jury because what he said this morning at one
13 time ---

14 Mr. Fox: Yes, sir.

15 The Court: --- was totally incriminating.

16 Mr. Fox: Yes, sir.

17 The Court: And I just don't want him to
18 incriminate himself.

19 Mr. Fox: Yes, sir.

20 The Court: But he has a right to talk to the
21 jury if he wants to.

22 Mr. Fox: I've explained that and, Your Honor,
23 he does have very brief made a motion, I think he'd just
24 like to make a part of the record. He's got a motion he'd
25 like to bring to the Court's attention.

1 The Court: Be glad to hear it.

2 Mr. Fox: And it's a, it's a motion to dismiss
3 for malicious prosecution. I don't know what's in it but I
4 would ask that Your Honor take it as a Court's Exhibit.
5 He's written it out and I told him you would at least look
6 it over and rule on it but he would request that you make
7 it a Court's Exhibit, Your Honor, or I guess it would
8 anyway part of the record.

9 The Court: Malicious prosecution on behalf of
10 the State?

11 Mr. Fox: Yes, sir, apparently.

12 The Court: Let me hear from you, Mr. Jackson,
13 what are you saying in your motion?

14 Defendant Jackson: It's on there, it's on the
15 paper and I would like for you to read it, it's on the
16 paper.

17 The Court: No, sir, I'm reading up here, I just
18 want to hear your explanation.

19 Mr. Fox: Just summarize it for him, give him
20 the --

21 The Court: Some jailhouse lawyer wrote it for
22 him.

23 Defendant Jackson: Prosecute --

24 The Court: I see he's raising the issue about
25 the identification since he was in handcuffs at the time;

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1 I've ruled on that. This motion is denied. The question
2 of identification, Mr. Jackson, will be for the jury to
3 determine based on their findings of facts.

4 Defendant Jackson: I just want it on the
5 record, that's all.

6 The Court: It's on the record and let this be a
7 part of the record which is denied.

8 (Whereupon, Court's Exhibit Number 1 marked for
9 identification.)

10 The Court: Bring the jury in.

11 (Whereupon, the jury returns to the courtroom at
12 2:10 p.m.)

13 The Court: Swear the jury, please.

14 (Whereupon, the jury was sworn.)

15 The Court: Let me make a few preliminary
16 remarks, if I may. Mr. Foreman, and ladies and gentlemen,
17 this case comes to trial upon a document that I have in my
18 hands known as an indictment. It is allegations only and
19 is not evidence. Evidence comes from this witness stand.
20 This indictment alleges that Mr. Jackson, the defendant,
21 committed a burglary at a motel room on the date indicated.
22 Mr. Jackson specifically denies his guilt of that event.

23 Now as I told you earlier Mr. Jackson as his
24 absolute constitutional right has elected to represent
25 himself. I have asked Senior Public Defender Eric Fox,

1 who's been a public defender here for probably more than
2 twenty years, to sit with Mr. Jackson and to advise him if
3 Mr. Jackson cares to accept his advice, but Mr. Jackson
4 elects to represent himself and there is absolutely no
5 adverse inference to be derived from that fact. It's
6 simply his constitutional right and he's exercised it and I
7 certainly accept it.

8 Now for many of you this may be the first
9 criminal case that you ever sat on. The State has the
10 burden of proving the defendant guilty, if they can,
11 unanimously by evidence beyond a reasonable doubt. This
12 defendant and all defendants who come into Court are
13 presumed innocence and that presumption of innocence
14 remains with this defendant throughout the trial until you
15 the jury, if at all, has found him guilty unanimously
16 beyond a reasonable doubt.

17 Procedurally the State of South Carolina having
18 the burden of proof will make a short statement as to what
19 they say their case is about. It's a guideline to help you
20 follow introduction of evidence. Mr. Jackson, if he cares
21 to, may make a similar opening statement and if he doesn't
22 care to, fine, again I say he doesn't have to say a thing.
23 He doesn't have to prove a thing.

24 Now in the case, in this case there's several
25 things that you must know. First you and you alone are the

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1 only and sole finders of the facts in this case. In
2 finding facts obviously you will judge the credibility, the
3 believability of every witness who testifies. You didn't
4 leave your common sense on the streets of Conway, South
5 Carolina, when you came into this courtroom and we all know
6 that in every day lives there's certain tools we use to
7 decide whether somebody is telling us the truth or not. In
8 judging credibility of the various witnesses I tell you
9 that you may believe all of what a witness says or none.
10 You may, if you choose, believe a small portion and
11 disregard the larger. Obviously you would not determine
12 the truth or false of the matter by counting up the number
13 of witnesses who may have testified on one side or the
14 other.

15 After the testimony we'll have final statements
16 of counsel for the State and the defense, if he cares to.
17 I continue to remind you, though, that he doesn't have to
18 say a thing. He doesn't have to prove a thing. The State
19 has the burden of proving beyond a reasonable doubt.

20 At the appropriate time after testimony I will
21 charge you the law with regards to the offense of burglary
22 in the first degree to which he has pled not guilty. You
23 will take the facts from the testimony and evidence
24 presented in this courtroom and apply those facts as you
25 find them to be to the law as I charge it to you and

1 thereafter reach your verdict of either not guilty or
2 guilty. Whatever your verdict is it must be the unanimous
3 verdict of all twelve.

4 You may have your opening statement.

5 Mr. Spratlin: Thank you, Your Honor, may it
6 please the Court?

7 The Court: Yes, sir.

8 Opening Statement

9 By Mr. Holford:

10 Good morning or good afternoon, ladies and
11 gentlemen of the jury, I know you've been thanked multiple
12 times for your service here today by multiple judges. My
13 name is Josh Holford on behalf of the State along with my
14 co-counsel Martin Spratlin. We'd also like to thank you
15 for your time. We know you have work and family, other
16 things you could be doing, but I'm telling you this is as
17 important, this case right here. Your service here today
18 is as important.

19 This justice system that we have when someone is
20 arrested and charged with a crime the police picks someone
21 up, the State has the burden to prove to you that we got
22 the right person. So what we do in our justice system is
23 take twelve people from the community with two alternates
24 and we present the case to you and leave in your hands for
25 you to decide did we get the right person in this case. In

1 this one I submit to you that we did.

2 Mr. Anthony Jackson, this defendant, did break
3 and enter without consent into a hotel room with the intent
4 to commit a crime. On November 14th, 2011, a year ago, to
5 the day, Mr. Thompson and Mr. Kinney were staying in a
6 hotel room, the Best Western down in Myrtle Beach on South
7 Ocean Boulevard. It was a little after one a.m. in the
8 morning. Mr. Thompson had woken up, had just got back into
9 bed, and he heard the noise, got out of bed to figure out
10 what the noise was. He thought it was a clanking outside;
11 he sees a figure in his hotel room. He did not invite the
12 person into his hotel room and he confronts this defendant,
13 Mr. Jackson.

14 He asked him, what are you doing in here. Mr.
15 Jackson says, oh, I'm security, I'm here to check some
16 things out just to see if you guys are okay, your door was
17 open, want to make sure everything is alright. Mr. Jackson
18 goes to the phone, picks up the phone, makes a fake phone
19 call to the security desk and says, oh, everything is fine,
20 checked it out, and then he asks Mr. Thompson can I leave
21 through the front door cause at this time he had come
22 through the back sliding glass door.

23 He walks out, and you'll be able to see on the
24 video surveillance tape, he walks out the front door with
25 something in his hand. What's he carrying, he's carrying

1 Mr. Kinney's pants. He walks down the hall, Mr. Thompson
2 realizes something is gone, the person in the room just
3 walked out with some pants, so he goes, follows him down
4 the hall, brings him back into the room. You'll see that
5 on the video also, and then you see the defendant running
6 back down the hall.

7 Mr. Kinney at this time asked Mr. Thompson, he
8 says, where's your wallet, oh, it's right there on the,
9 it's not there, it's gone, so at this point they call the
10 security desk. They see, do you have a security guard
11 named Tom, which is the name that he gave, no, do you have
12 someone who is supposed to be checking on things, and the
13 answer is no. At this time they contact the police. They
14 let them know that they believe that they've just been
15 robbed. He starts cancelling his credit cards.

16 A little bit later they realize that one of the
17 credit cards has been used seven blocks down the road, less
18 than half a mile at a Pan American Pancake House. The
19 officers respond to that Pan American Pancake House. They
20 talk to a witness, the waitress there; you'll hear from her
21 today. She positively identifies this defendant Mr.
22 Anthony Jackson as the one who used those credit cards that
23 were stolen from Mr. Thompson's wallet.

24 The police bring Mr. Thompson and Mr. Kinney down
25 to the scene and ask can you identify this man. It's about

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1 three in the morning. Now I like when people are honest
2 with me and I'm going to be honest with you. We have some
3 points that are not as strong as others. These two
4 witnesses right here, the victims, were not able to say I
5 know one hundred percent that that's the man that was in
6 our dark shadowy hotel room that took my wallet, and that's
7 okay, because that's not all we have. We have the
8 surveillance tape. We have the positive I.D. from the
9 waitress. We even have an admission, a statement given by
10 this defendant who admits he was the one in the hotel room.
11 He was the one who didn't have consent to be there and he
12 did take those credit cards and later use them to buy
13 breakfast that morning.

14 Now what we have to prove to you today for
15 burglary in the first degree is the entering. Mr. Jackson
16 entered that hotel room. You'll see that he came out of
17 the front door on the videotape. You'll hear from the
18 victims that he was in there. You'll even hear from the
19 statement from the defendant himself he was in that room.
20 We have to prove that it was without consent. Both of
21 these victims will tell you they didn't give anyone consent
22 to be in their room at little after one a.m. in the
23 morning. They were sleeping.

24 We also have to prove that he intended to commit
25 a crime when he was in that room. Not only did he intend

1 to commit a crime, ladies and gentlemen, he did commit a
2 crime. He took the pants first. He came back and he
3 grabbed the wallet, stole the credit cards, driver's
4 licenses, and then to further prove he intended to commit a
5 crime he used those credit cards.

6 Now burglary in the first degree in this
7 situation we're relying on two prior burglaries, in 2006 as
8 an element of the offense of burglary in the first degree,
9 in 2006 this defendant was convicted of burglary in the
10 third degree. In 2009 this defendant was convicted of
11 burglary in the second degree. Ladies and gentlemen,
12 because he continues to commit burglary he is now on trial
13 for burglary in the first degree.

14 At the end of this trial after you hear from all
15 the witnesses, after you see all of the evidence, after you
16 watch these videos, after you hear the statements, I'm
17 confident that you'll be firmly convinced beyond a
18 reasonable doubt, as I am, as the defendant himself is,
19 that he is guilty of the crime for which he is charged and
20 that you will find him guilty of burglary in the first
21 degree, thank you.

22 The Court: Mr. Foreman, ladies and gentlemen,
23 as the Solicitor said an evidentiary matter in the proof of
24 burglary first degree they are relying on two prior
25 burglaries. If you conclude that there were two prior

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1 burglaries in his record I tell you that those two prior
2 burglaries are for evidentiary purposes only as to this
3 charge, but they are in no sense any evidence of guilt as
4 to this indictment.

5 Mr. Fox, proceed, Mr. Jackson, care to make a
6 statement?

7 Defendant Jackson: Statement.

8 Mr. Fox: I believe he does, Your Honor.

9 The Court: He may do so.

10 Opening Statement

11 By Defendant Jackson:

12 Ladies and gentlemen of the jury, I'm here to
13 represent myself cause I feel like I'm innocent in this
14 crime and they just, they're trying to charge me with and I
15 feel like what happened on that, on that night, I know what
16 happened on that night. They don't know what happened.
17 They can get up here and paint all kind of pictures about
18 me, about I'm a bad person, I committed a crime, I did
19 this, and I did that, but that's not true, and they can,
20 the only thing I just want ya'll to do, to know that my
21 life is in ya'll hands and I want ya'll to know that they
22 can't prove no identification. The victims can't I.D. me.
23 Once the victims can't I.D. there shouldn't be no case.
24 They say I didn't do it, when they said I didn't do it the
25 police took the cuffs off me and let me go. They turned

1 right back around and arrested me. The lady identify me
2 for using the credit cards, okay, that's two different
3 charges. That's a credit card fraud. They let me go for
4 the burglary but they come back and arrested me on the
5 credit card charge and they put the burglary back on me so
6 I just want ya'll to just keep that in mind. They ain't
7 got no, no, they ain't got no witness. They said it wasn't
8 me; they let me go, so that's what I'm relying on.

9 The Court: Thank you, Mr. Jackson, call your
10 first witness.

11 Mr. Spratlin: Thank you, Your Honor, the State
12 would first all Mr. William Thompson to the stand.

13 William Thompson

14 being first duly sworn, testified as follows:

15 Madam Clerk: Please state your name and spell
16 your last name.

17 The Witness: My name is William G. Thompson, t-
18 h-o-m-p-s-o-n.

19 Direct Examination

20 By Mr. Spratlin:

21 Q Good afternoon, Mr. Thompson, how you doing
22 today?

23 A Fine.

24 Q Let me ask you real quick, how old are you?

25 A 69.9.

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1 Q How, where do you currently live?

2 A Currently live in Barnesville,
3 Pennsylvania.

4 Q All right, where are you originally from?

5 A New York, Connecticut, Massachusetts.

6 Q So pretty much the northeast?

7 A Correct.

8 Q Before today have you ever had a chance to
9 come down to Myrtle Beach before?

10 A Been coming to Myrtle Beach for the past
11 thirty odd years.

12 Q What do you do when you come here?

13 A Play golf, swim.

14 Q How often over the last thirty years would
15 you say you've come down here?

16 A Fifteen, twenty.

17 Q Who comes with you sometimes?

18 A Early on it was four of us, golfing
19 buddies, then it became eight golfing buddies, and then it
20 became one golfing buddy.

21 Q Who's your golfing buddy?

22 A Mr. Kinney.

23 Q What's Mr. Kinney's full name, if you know?

24 A Ronald G. Kinney.

25 Q All right, now, Mr. Thompson, did ya'll

1 have a chance to come down here to Myrtle Beach back in
2 November of last year 2011?

3 A Yes.

4 Q Were you here back on a year ago today,
5 November 14th, 2011, were ya'll in town?

6 A Yes.

7 Q Where were ya'll staying?

8 A The Best Western down on the beach, Myrtle
9 Beach.

10 Q Okay, now who all was staying in the room
11 with you?

12 A Mr. Kinney.

13 Q Was there anyone else staying in the room
14 with you that day?

15 A No.

16 Q All right, let me show you --

17 The Court: Solicitor, I think in discovery the
18 defendant has been provided copies of all?

19 Mr. Spratlin: Yes, sir, Your Honor, he would
20 have been provided discovery, would have been provided to
21 his attorney. I'm just in abundance of caution showing him
22 all photographs the State intends to introduce.

23 The Court: Proceed.

24 Mr. Spratlin: Thank you, Your Honor, please let
25 the record reflect I've shown the defendant, who is

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1 representing himself in this capacity, all photographs the
2 State's, what's been marked for identification purposes as
3 State's Exhibits Number 2 through 12.

4 The Court: All right.

5 Mr. Spratlin: Permission to approach the
6 witness, Your Honor?

7 The Court: You may.

8 Mr. Spratlin: (Continuing)

9 Q Mr. Kinney, let me show you what's been
10 marked ---

11 A Thompson.

12 Q Mr. Thompson, excuse me, sir, let me show
13 you what's been marked as State's Exhibits Number 1 through
14 12 for identification purposes at this time, if you would,
15 please, take a second to review those pictures?

16 Mr. Thompson, what are those items that I just
17 handed you, State's Exhibits 1 through, 2 through 12,
18 excuse me?

19 A These are some twelve pictures of the place
20 we stayed, the Best Western Grand Strand Hotel.

21 Q All right, does that fair and accurately
22 reflect the hotel as you recall it from that night?

23 A The hotel, the room, the hallway, the
24 everything.

25 Q Are all those photographs fair and accurate

1 representations of the hotel, the balcony outside your
2 room, and your room?

3 A Correct.

4 Q All right, and are the photographs of the
5 hallway fair and accurate representations of the hallway?

6 A Yes.

7 Mr. Spratlin: Your Honor, at this time I would
8 tender State's Exhibits Number 2 through 12 into evidence.

9 The Court: They are admitted. Mr. Foreman,
10 these matters that I introduce in evidence will be with you
11 in the jury room during your deliberations and, of course
12 you're entitled to publish it at the time of introduction
13 you want to.

14 (Whereupon, State's Exhibit number 2, 3, 4, 5, 6,
15 7, 8, 9, 10, 11, and 12 entered into evidence.)

16 Mr. Spratlin: Yes, sir, in a matter of fairness
17 I would just ask the witness be allowed to move from the
18 stand, stand in front of the jury box so that the pictures
19 could be held up for the jury to see at the same time as
20 the witness discussed it.

21 The Court: I will permit it.

22 Mr. Spratlin: (Continuing)

23 Q Mr. Thompson, if you would, please, come up
24 from the stand real briefly, let me show you what's been
25 marked and entered into evidence State's Exhibit Number 2;

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1 could you identify for the jury what this is a photograph
2 of?

3 A Outside of the motel.

4 Q All right, let me show you what's been
5 marked as State's Exhibit Number 3; could you tell the jury
6 what that is a photograph of?

7 A That's the outside of our room, the beach
8 is here; that's the gate to our room.

9 Q All right, let me show you a closer up view
10 of that same area, State's Exhibit Number 4; what is that a
11 photograph of?

12 A Two chairs where we sat on.

13 Q All right ---

14 A Outside our room on our patio.

15 Q So whose room is that right there; whose
16 room is that in the photograph?

17 A Our room.

18 Q Ya'll's room, all right, let me show you
19 what's marked and introduced as State's Exhibit Number 5;
20 what is that photograph of?

21 A The gate.

22 Q All right, is that a fair and accurate
23 representation of the balcony as it appeared?

24 A Yeah, with the gate for the beach.

25 Q All right ---

1 A That's the room.

2 Q Number 6 is, is the room, if you would, how
3 many beds are in this picture?

4 A Two.

5 Q Now which bed was your bed?

6 A Closest to the beach.

7 Q Closest to the beach, and whose was the
8 other bed?

9 A Kinney's.

10 Q All right, let me show you a slightly
11 different angle of the same pictures, State's Exhibit
12 Number 7; what is that a photograph of?

13 A The room itself and there's the door to the
14 hallway.

15 Q All right, let me show you what's been
16 introduced as State's Exhibit Number 8; what is this a
17 photograph of?

18 A Those are my golf balls, Ron's piece of the
19 T.V., and Ron's golf balls, and this is where my wallet
20 used to be.

21 Q The wallet used to be there, all right.
22 Now let me show you what's been introduced as State's
23 Exhibit Number 9; what is that a photograph of?

24 A Two beds, telephone.

25 Q All right, and Number 10?

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1 A Doorway, hallway doorway.

2 Mr. Spratlin: And ya'll are going to get to
3 look at all these photographs.

4 The Witness: (Continuing)

5 A Hallway, and the other side of the hallway.

6 Madam Court Reporter: I'm sorry, I didn't hear
7 you.

8 The Witness: (Continuing)

9 A The other side of the hallway.

10 Q All right, thank you, Mr. Thompson, you can
11 return to the witness stand. Mr. Thompson, all those,
12 those pictures are basically the hotel room and the hallway
13 area where you were staying at the time?

14 A Right.

15 Q So again who all were staying in those
16 rooms?

17 A Myself and Mr. Kinney.

18 Q And nobody else?

19 A Correct.

20 Q All right, now let me ask you about the
21 morning of November 14th, 2011, did anything out of the
22 ordinary happen early hours of that morning?

23 A Yeah, I had just come back from the
24 bathroom, it was sometimes after 12:30. I know it was
25 after 12:30 because I had looked at the watch clock when I

1 got up to go to the bathroom, got back in bed. A while
2 later I heard the, that gate that was outside the room
3 rattle and I thought it was maybe the wind. I ignored it
4 and then I heard the slider glass door, was open, but it
5 opened some more. I turned over in bed and looked at the
6 door and there was a shape, a shadow at the door, and I
7 said, what are you doing, where are you going, and the
8 person said, "It's okay, I'm hotel security, you shouldn't
9 leave your door open. My name is Tom, I have a security
10 badge. I have to come in, call the front desk, tell them
11 everything is fine, you're okay." He came in, he shined
12 the light, I think it was a cell phone he had, shined the
13 light into something in his hand. He said it was a
14 security badge; I believed him. I'm nearsighted or
15 farsighted, whichever one, I couldn't see what he had in
16 his hand. I couldn't really see what he had a flashlight
17 or a phone. He went to the phone, the room was dark. He
18 supposedly called the front desk, said this is Tom, I'm in
19 the room, everything is okay, all clear. He then left, he
20 actually told me to lock the door, close the slider glass
21 door, lock it, he wanted to see me lock it, and asked if he
22 could leave by the hallway door, I said, sure. As he was
23 leaving by the hallway door he grabbed Mr. Kinney's pants,
24 out he goes. I go after him, what are you doing with the
25 pants. He said I also heard you guys were smoking weed or

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1 reefer or, you're doing marijuana. I really have to come
2 back, I was checking the pants to see if it was there, I
3 have to really come back to the room to see if you have any
4 of that in the room, if you do you're getting evicted from
5 the hotel. Took him back to the room, he looked around, he
6 left again by the hallway door. Mr. Kinney said, "Bill,
7 where is your wallet?" I said, "It's right, oh, it's
8 gone."

9 Q All right, let me back you up a little bit,
10 Mr. Thompson. When you first saw the individual in the
11 doorway, you said where were you?

12 A I was in bed.

13 Q All right, and were there any lights on at
14 the time?

15 A No.

16 Q How well were you able to see the
17 individual at that point?

18 A I said I saw a shape, a shadow.

19 Q And you said that he had, and I'm sorry let
20 me back up, you said you were nearsighted or farsighted, do
21 you wear glasses?

22 A Only. I can see you clear as day, I can see
23 everybody clear as day, but I only know it's a Bible cause
24 it's a Bible.

25 Q Yes, sir.

1 A I can't read close up.

2 Q Now were you wearing glasses at this point
3 in time?

4 A No.

5 Q Now you said that the individual came into
6 your room; did you invite him in?

7 A No.

8 Q Did you hear Mr. Kinney, the other person
9 sharing that room with you, did he invite him in?

10 A He was sleeping.

11 Q Now when he came into the room you said he
12 showed you something in his hands, could you tell what that
13 was, were you able to see that?

14 A No, I'm nearsighted, I can't see anything
15 within two or three feet of me clearly.

16 Q All right, let me ask you how was ---

17 A It was a piece of plastic or something.

18 Q Yes, sir, how was the defendant dressed
19 when he came into that room?

20 A He had dark, I guess you call them jogging
21 pants, and a dark sweatshirt.

22 Q Let me show you what's been marked as
23 State's Exhibit Number 18 for identification purposes, if I
24 can hold it up for you. Is it possible that this could
25 have been the sweatshirt that the individual was wearing

1 that day?

2 A Yes.

3 Q Possible, can't say for sure it is, though,
4 right?

5 A Right color, dark.

6 Q All right.

7 A I'm pretty sure it had a hood but --

8 Q Now see if you could tell this, this has a
9 hood, too?

10 A That's the way it was, yeah.

11 Q Mr. Thompson, let me show you what's been
12 marked State's Exhibit Number 17 for identification
13 purposes at this time; what are these?

14 A Those are running pants.

15 Q All right, is it possible that these could
16 have the pants the person in your room was wearing that
17 night?

18 A Yes.

19 Q What, if anything, kind of distinctive
20 about these pants?

21 A The stripes.

22 Q Did you pay any attention the what kind of
23 shoes the individual was wearing?

24 A No.

25 Q Now you said in his hands he had some sort

1 of light source, you're not sure exactly what that was,
2 what did you believe that was again?

3 A It was either a small flashlight or a cell
4 phone, I think probably it was a cell phone.

5 Q He flashed a, flashed some sort of plastic
6 on you, and now you said at some point he went to leave the
7 room and what happened when he was leaving the room that
8 caused you to be suspicious?

9 A He grabbed a pair of pants.

10 Q And what did he do, and what did he do
11 after he grabbed the pair of pants?

12 A Out in the hallway, he was going down the
13 hallway, I run after him.

14 Q All right, and when you went after him,
15 what did ya'll do after you caught up with him?

16 A When he took the pants and he said I'm
17 looking for weed, I heard you guys was smoking weed or
18 reefers or whatever he said and I was looking through the
19 pants for that and I really have to come back to the room
20 to check out the room for weed, reefers, marijuana.

21 Q Let me ask you, Mr. Thompson, just address
22 this issue, now to your knowledge were you or Mr. Kinney
23 smoking marijuana or had marijuana in that room?

24 A We did not, we have not, we do not.

25 Q Now when ya'll got back to the room what,

1 if anything, happened in the room?

2 A I think he looked at room and said looks
3 you guys haven't been smoking so I guess everything is
4 okay.

5 Q And then what happened?

6 A He left.

7 Q All right, and then at what point did you
8 become really suspicious of just had happened?

9 A When Ron said, "Where's your wallet?"

10 Q Let me show you, Mr. Thompson, what's been
11 marked for identification purposes as State's Exhibit
12 Number 14; Mr. Thompson, have you had a chance to identify
13 that item before Court today?

14 A I've seen it.

15 Q What is it?

16 A You going to show it to the jury?

17 Q Well what is it?

18 A It's a two, it's in the hallway, it's the
19 security cameras that are in the hallway, one is on the
20 south end and one is on the north end, and the first shot
21 is, well not in the video, but in the sequence the first
22 shot is the defendant coming down the hallway with a pair
23 of pants and me following down the hallway in my underwear.

24 Q All right, and let me ask you, so basically
25 it's surveillance video?

1 A Yeah.

2 Q All right, do you appear in that video?

3 A In all my glorious underwear.

4 Q Yes, sir, does the person that was in your
5 room do they appear in that video?

6 A Someone does, it had to be the guy in the
7 room cause I was right after him.

8 Q Now you were staying in that hotel, right?

9 A Yep.

10 Q You're familiar with the hallway?

11 A Yep.

12 Q And as far as any time stamp or date stamp
13 that appears on that video, does it appear to be somewhat
14 accurate or close to accurate as you can tell?

15 A I think it's like 1:00 in the morning.

16 Q Is that about right?

17 A It's the time stamp.

18 Q Does it fairly and accurately reflect the
19 events of that night as you recall them?

20 A Yes.

21 Mr. Spratlin: Your Honor, at this time I would
22 tender State's Exhibit Number --

23 Defendant Jackson: I object, Your Honor.

24 Mr. Spratlin: -- 14 into evidence.

25 The Court: What is the, what is that one, what

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1 is the exhibit?

2 Mr. Spratlin: It is a video, Your Honor, it's a
3 surveillance video from a hallway.

4 The Court: Has it been previously provided to
5 this defendant?

6 Mr. Spratlin: It was provided to the defense
7 attorney, Your Honor.

8 The Court: Objection overruled, it is admitted.

9 (Whereupon, State's Exhibit Number 14 entered
10 into Evidence.)

11 Mr. Spratlin: Your Honor, at this time I
12 would ask permission to publish to the jury.

13 The Court: You may do so.

14 Mr. Spratlin: I would ask the Court to offer
15 assistance in bringing down the screen.

16 The Court: All right, sir.

17 Mr. Holford: Is this blocking anyone's view?

18 (Whereupon, State's Exhibit Number 14 played in
19 open court.)

20 Mr. Spratlin: (Continuing)

21 Q Now, Mr. Thompson, who is the individual
22 who was in his tee shirt and underwear in that video?

23 A That was me.

24 Q All right, is that fair and accurate
25 representation of what you testified about you walking down

1 the hallway after the individual?

2 A Yeah, and I was making sure Ron didn't lock
3 me out.

4 Q Let me show you the next video in here,
5 does this appear to be a slightly different angle?

6 A This is from the parking lot side of the
7 motel and there's his pants.

8 Q Who is the individual coming down the
9 hallway right now?

10 A Do I have to answer that, that's me.

11 Q Yes, sir --

12 A Then we have both going back.

13 Q Is this kind of the same ya'll going back
14 just from a different angle?

15 A Different camera.

16 Q This a couple of minutes later, isn't it?

17 A Uh-huh, about two minutes later.

18 Q And what did we just see?

19 A Him running down the hall and there's Mr.
20 Kinney.

21 Q Is that the same thing just from a
22 different angle?

23 A Different camera.

24 Mr. Spratlin: Madam Clerk, if you could take
25 the screen back up.

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1 (Whereupon, State's Exhibit Number 22 marked for
2 identification.)

3 Mr. Spratlin: (Continuing)

4 Q Now, Mr. Thompson, after the defendant fled
5 as we just saw, the individual in your room fled, what, if
6 anything, did you and Mr. Kinney do?

7 A Ron asked me where my wallet was, I said it
8 was on the bureau right by the slider screen door, and it's
9 not there, it's gone.

10 Q What did you do after you realized your
11 wallet had been stolen?

12 A Got on the telephone to call the front
13 desk, asked the front desk if they had a security person by
14 the name of Tom, that was the name he gave, they said, no.
15 I said call the police, we've just been robbed.

16 Q And did the police respond?

17 A Yeah they were there real quick.

18 Q Now when law enforcement arrived what did
19 you do?

20 A I pretty much immediately got on the, had
21 my notebook there with me, I had gotten on it to start
22 cancelling credit cards. The police got there before I had
23 even called the first credit card, maybe I was talking to
24 the first credit card company. I hung up and they did an
25 unbelievable thorough job of dusting and photographs and

1 interview. They had me write a statement and said ---

2 Q I'm sorry, go ahead?

3 A That was about it, they did a good job.

4 Q The photographs that we introduced earlier
5 in evidence were those photographs taken by the police
6 department, to your knowledge?

7 A I suppose so.

8 Q All right, now let me ask you, what, if
9 any, description were you able to give law enforcement
10 about the individual that was in your room?

11 A You have my statement, I wrote it all down
12 in the statement.

13 Q Would that refresh your recollection?

14 A Yep.

15 Q Yes, sir?

16 A I think it was five, maybe a little shorter
17 than me, so five-seven, five-seven, five-eight, stockier
18 than me but all in the right places, maybe one hundred
19 seventy pounds, short black hair.

20 Q Mr. Thompson, let me show you what's been
21 marked as State's Exhibit Number 22 for identification
22 purposes; do you recognize that item?

23 A It's my statement, handwriting and
24 signature.

25 Q If you would take a second to just kind of

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1 look over that statement and see if it refreshes your
2 recollection exactly of what description you gave law
3 enforcement?

4 A He appeared to be five-foot-eight inches
5 tall, one hundred seventy pounds, black, short black hair,
6 black sweatshirt and pants, that's the description.

7 Q Thank you very much, I'll take that back.
8 Now law enforcement was there and after you gave them a
9 statement and told them all that happened, what, if
10 anything, were you doing in regard to your credit cards?

11 A They all pretty much I think had done there
12 thing, they dusted for fingerprints, they did all, I think
13 they were pretty much gone. One of the officers left me
14 with a card if anything else comes to mind give me a call.
15 I was on the phone doing the credit card cancellations and
16 one of the credit cards, I think it was maybe the, I don't
17 know which one it was, MasterCard, said as I was
18 cancelling it they said the card has just been used.

19 Q Did he tell you where?

20 A At the pancake house.

21 Q And did you tell the officers?

22 A I hung up the phone after the credit card
23 was cancelled, told them it wasn't my charge. I think they
24 also charged some, tried to charge something at a gas
25 station, there's a dollar charge showed up. I called the

1 officer and said, guess what, the guy is up at the some
2 pancake house, the Pan American, I forget the name of the
3 place, a pancake house right up the street.

4 Q Yes, and did you have a chance to go
5 somewhere near the pancake house later on that night? Did
6 officers come back to, back to you at some point?

7 A They sent a car back. They wanted Ron and
8 I, Mr. Kinney and I to go to a street corner, five, I don't
9 know, five or six blocks away, the identify someone they
10 had apprehended.

11 Q And when you got there who did you see,
12 anybody? Was there any ---

13 A We were in the back of the police car and
14 they had someone standing maybe forty-odd-feet away and
15 they hit the spotlight on the police car and there was a
16 person, dark pants, he didn't have the sweatshirt on
17 anymore, he appeared to be crying. He was about the same
18 size and shape as what I just described, and but he had on
19 instead of, well he still had the pants on but he had like
20 a pair of swimming shorts or something pulled up over them,
21 but we could not -- have you asked the question yet?

22 Q No, go ahead, sir, go ahead.

23 A They asked if we could positively identify
24 him and we couldn't, I could not.

25 Q So you couldn't be one hundred percent

1 sure?

2 A Correct, I couldn't pick him up out of a
3 lineup but he looked about the right size and --

4 Q So he looked similar to the person that was
5 in your room?

6 A Dressed a little different.

7 Q But couldn't be a hundred percent sure?

8 A Couldn't pick him out of a lineup.

9 Q Right. Let me show you, let me show you
10 another part of State's Exhibit Number 17 still just for
11 identification purposes at this point.

12 A No mistaking those.

13 Q Do you recognize these items; what are
14 they?

15 A They are a pants he was wearing pulled up
16 over the running pants and he either had the sweatshirt
17 open or he had it off because he had a like a yellow shirt
18 or a white shirt or something. He was just dressed
19 differently.

20 Q Let me ask you, sir, you said that these
21 pants, he was still wearing these pants?

22 A Yeah.

23 Q And he had these pulled up over them?

24 A To his waist, yeah.

25 Q All right, but you could still clearly see

Mr. Thompson - Cross Exam. by Defendant Jackson

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1 the black pants underneath?

2 A Yeah.

3 Q Now just to clarify, did you invite the
4 individual that went into your room in that hotel room that
5 night?

6 A No.

7 Q Did Mr. Kinney, to the best of your
8 knowledge, invite him into the hotel room that night?

9 A I said he was asleep, no.

10 Q Yes, sir, and you, if you know, do you know
11 what county the hotel you were staying in, what county is
12 that in?

13 A Horry.

14 Q All right, and all the events you described
15 today they occurred on or about November 14th, 2011, so a
16 year ago?

17 A Early morning.

18 Mr. Spratlin: Yes, sir, thank you, Mr.

19 Thompson, I have no further questions. Please answer any
20 questions the defendant may have.

21 The Court: Mr. Jackson, you may ask any
22 questions that are appropriate.

23 Cross Examination

24 By Defendant Jackson:

25 Q How you doing, Mr. Thompson?

Mr. Thompson - Cross Exam. by Defendant Jackson

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1 A Fine.

2 Q That's good, that night I want to ask you
3 questions, on that night when you said the defendant came
4 in your room did he threaten you in any kind of way?

5 A No.

6 Q He didn't show no harm of threat or, you
7 know, did he appear to be high like he was on beer, like he
8 was drunk or something or ---

9 A He appeared just like I thought a hotel
10 security person would appear.

11 Q So on that night when he, when, when, when,
12 when the person came in your room you said he came in your
13 room you said you didn't cut on no light?

14 A Didn't.

15 Q Right then you didn't cut on no light and
16 see who it was in your room. You just let a person come in
17 your room and you just talked to them but you didn't cut on
18 the light and see who it was?

19 A The person said he was security from the
20 hotel, his name was Tom, he said everything was okay, you
21 shouldn't leave your door open. He came over to the bed
22 cause I was still in bed, it was 1:00 in the morning. He
23 showed me what he said was identification and he asked if
24 he could use the telephone. He used the telephone or the
25 light to see the telephone. He called the front desk, said

Mr. Kinney - Direct Examination by Mr. Holford

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1 everything was clear and as I recall after he did the
2 telephone call is when I turned the light on.

3 Q So during all that time, all that time what
4 you just explained you still ain't cut on the light to see
5 who it was?

6 A Correct.

7 Defendant Jackson: No further questions, Your
8 Honor.

9 The Court: You may come down, thank you. Call
10 your next witness.

11 Mr. Spratlin: Your Honor, the State calls
12 Ronald Kinney to the stand.

13 Ronald G. Kinney

14 being first duly sworn, testified as follows:

15 Madam Clerk: Please state your full name and
16 spell your last name.

17 The Witness: Ronald G. Kinney, k-i-n-n-e-y.

18 Direct Examination

19 By Mr. Holford:

20 Q Mr. Kinney, how are you this afternoon?

21 A I'm fine.

22 Q I'm going to ask you a couple of
23 introductory questions. Will you just tell the jury your
24 age?

25 A I'm sixty-six.

Mr. Kinney - Direct Examination by Mr. Holford

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1 Q And what's your occupation right now?

2 A I am retired.

3 Q And where are you currently living?

4 A I'm living in Avon, Connecticut.

5 Q Now have you been coming down to Myrtle
6 Beach before?

7 A Yes, since the, I first came to Myrtle
8 Beach when I was in the military in Camp Lejuene. I came
9 down a couple of times then and I've been coming to Myrtle
10 Beach area to golf with both my wife and my golfing
11 buddies, at least twenty, thirty times.

12 Q Who is your golfing buddies?

13 A Some of the guys we used to work with, my
14 nephew has been here with me, mostly it's Bill now.

15 Q Come down here to vacation and golf?

16 A Yes.

17 Q Were you here in November 2011?

18 A Yes.

19 Q Were you here, what purpose were you here
20 for?

21 A To golf.

22 Q And where were you staying?

23 A The Best Western.

24 Mr. Holford: Your Honor, if I could approach to
25 retrieve the exhibits that have been entered into evidence?

Mr. Kinney - Direct Examination by Mr. Holford

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1 Q (Continuing) Mr. Kinney, I want to show you
2 what's been entered as State's Exhibit Number 2; can you
3 identify that picture?

4 A That's the hotel we stayed at.

5 Q It's the Best Western you stayed at?

6 A Yes.

7 Q Do you remember where that was in Myrtle
8 Beach?

9 A It's a bit towards the south, I don't
10 remember the exact address.

11 Q And do you know what county that's in?

12 A Horry.

13 Q Now did anything strange happen on that
14 night November 14th, 2011?

15 A Yes, a man entered our hotel room while I
16 was asleep, well I probably wasn't asleep by the time he
17 came in the door.

18 Q But you were asleep at some point?

19 A I was asleep and I heard Bill, Mr.
20 Thompson, say "What's going on, bro, what's going on, bro?"
21 That woke me up. When I woke up I looked and there was a
22 person standing in the doorway.

23 Q And what did you do at this point?

24 A Really at that point I didn't do anything.
25 The person proceeded in the room or said something to the

Mr. Kinney - Direct Examination by Mr. Holford

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1 affect that he was security and he was coming in the room
2 because they were concerned that our door was partially
3 open.

4 Q Did you invite this individual into your
5 room?

6 A No.

7 Q Did you hear Mr. Thompson invite this
8 individual into your room?

9 A No.

10 Q Did this individual have consent to be in
11 your room at all?

12 A No.

13 Q What happened after he came into the room?

14 A At that, well I'm still in bed, I believe
15 Mr. Thompson got up, he had a light and showed Mr. Thompson
16 his security badge, said that he had to make a call to the
17 front desk to tell them that everything was all right. As
18 I was still in bed I was watching him near the phone stand
19 was here, he came over and shined his light on the phone.
20 At that point I could see that it was not a flashlight, and
21 that he didn't have what I would call security clothes on.
22 He had a conversation with someone. I don't know if he
23 called himself Tom or he called the guy on the other end of
24 the line that he supposedly was talking to Tom, but
25 basically told him that, had the conversation that he was

Mr. Kinney - Direct Examination by Mr. Holford

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1 in the room, that everything was alright.

2 Q And what was this individual wearing?

3 A Dark clothes, a sweatshirt with a hood on
4 it and dark pants.

5 Mr. Holford: For the record this is State's 7,
6 it's a part of State's 7 item number 2, part of State's 17,
7 excuse me.

8 Q (Continuing) Can you identify these?

9 A No.

10 Q Can you see what I'm holding right now?

11 A You're holding sweat pants, running pants,
12 that type of thing.

13 Q And what color are they?

14 A They're black with a stripe down the side.

15 Q Can you say this is similar to the clothing
16 the person in your room was wearing?

17 A Yes, it is.

18 Q Now we watched a couple of videos ago, a
19 second ago, do I need to show you those again, or do you
20 remember them?

21 A No, I remember then.

22 Q And were you in those videos?

23 A The last one, yes.

24 Q What was happening when we see you in the
25 video?

Mr. Kinney - Direct Examination by Mr. Holford

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1 A At that point the person went back in the
2 room a second time and had taken something off this bureau
3 and left the room very quickly. I basically went and
4 looked out the door to see what was going on and he was
5 running down the hallway.

6 Q And what did you do at that point?

7 A I went back in the room and we had a
8 conversation for Bill to call, call the front desk and
9 report it. I actually put my pants on and walked back down
10 the hall and out the door to see if I could see anything.
11 You don't have video of that.

12 Q Now do you remember what the individual was
13 wearing, you mentioned some dark pants; do you remember
14 what he was wearing as far as a shirt or a jacket?

15 A A hoodie was zipped up, so I don't know
16 what was underneath it.

17 Mr. Holford: For the record this is State's
18 Exhibit 18.

19 Q (Continuing) Can you identify what I'm
20 holding up in my hands right now?

21 A That's a sweatshirt, a hoodie sweatshirt.

22 Q It has a hood on it?

23 A Yes.

24 Q Could this be what the individual was in
25 your room was wearing?

Mr. Kinney - Direct Examination by Mr. Holford

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1 A It could be.

2 Q It looks similar to it?

3 A Yes.

4 Q Now after the individual ran down the
5 hallway and you went back into the room what did you do at
6 that point?

7 A Bill had called the front desk. I believe
8 the night manager came over with a security guard,
9 obviously we were talking about what was going on. I did
10 ask Bill if he had his wallet and he determined he didn't.

11 Q And after you called the security desk did
12 anyone show up into your hotel room?

13 A I believe the night, the night manager did
14 and a security guard.

15 Q And did anyone from law enforcement show
16 up?

17 A Oh, yeah, and then not very long after that
18 the police showed up, I think it was two uniform policemen,
19 a detective and a fourth person, I don't know what they
20 did.

21 Q Now later that evening we heard from Mr.
22 Thompson, but did the officers take you somewhere else from
23 that hotel room?

24 A Yes, as Mr. Thompson said once they went
25 through taking all the information, a statement from Bill

Mr. Kinney - Direct Examination by Mr. Holford

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1 because he was the one who lost something and I didn't,
2 dusted for fingerprints and all of that, they left. Bill
3 started cancelling his charge cards. We found that one had
4 already been used. The police had left us a name and a
5 number to call. He called them, and not long after he
6 reported that they called back and said they were coming to
7 pick us up to take us to identify someone they had
8 apprehended.

9 Q And did they take you to identify someone?

10 A They did, they took us a little north of
11 the hotel, four or five blocks.

12 Q Now were you able to positively identify
13 this person?

14 A I was not, no, and neither was Bill.

15 Q You were not a hundred percent sure?

16 A No.

17 Q What time was it in the morning?

18 A I think it was around 3:00 then but I don't
19 know because, because actually I had taken my pants off and
20 went back to bed after the cops had left when Bill still
21 found, when Bill then found out it had been used, the card
22 had been used.

23 Q And you had been in bed when the individual
24 walked into the room?

25 A Yes, I was.

Mr. Kinney - Cross Exam. by Defendant Jackson

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1 Q And this was a couple of hours later at
2 three in the morning?

3 A Yes.

4 Mr. Holford: Thank you, Your Honor, I have no
5 further questions.

6 The Court: Mr. Jackson, do you have any
7 questions?

8 Defendant Jackson: Yes, sir.

9 The Court: You may proceed.

10 Cross Examination

11 By Defendant Jackson:

12 Q How you doing, Mr. Kinney?

13 A I'm okay.

14 Q Kinney is your name?

15 A Yes, it is.

16 Q You're from Connecticut, huh?

17 A I am.

18 Q You my home boy, I'm from Connecticut.

19 A Are you?

20 Q Yeah, I'm from Naple, Connecticut;
21 Ridgeport?

22 A Ridgeport.

23 Q Okay, so on that night, on that night when
24 you say somebody was in your room, did you, did you try to
25 even try to cut on the light to see who it was in your

Mr. Kinney - Cross Exam. by Defendant Jackson

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1 room?

2 A The light was on at some point, but it was
3 not one when the individual approached the phone table but
4 shortly after that it was on when I got out of bed.

5 Q Oh, I recall when he was testify he said
6 the light never came on, so I'm just trying to put this
7 together, so and when you all, when the police brought you
8 to identify that person what did you tell the police when
9 they asked you was that the person that been in your room;
10 what did you say?

11 A I personally told the police that I could
12 not identify that person as the person that was in my room
13 although the physicality of the person looked approximately
14 the same size, height, that, the clothes were different.

15 Q Now you got a person in your hotel room on
16 camera running in and out the room, going inside your room,
17 the light is on, you mean to tell me you still didn't get a
18 look at that person? This person is ---

19 A No, no, no, I certainly got, I certainly
20 got a look at that person.

21 Q This person ---

22 Mr. Spratlin: Your Honor, I would object, I'd
23 ask that let the witness finish his answer.

24 The Court: I'll handle this, Mr. Jackson, let
25 him answer the question.

Mr. Kinney - Cross Exam. by Defendant Jackson

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1 Defendant Jackson: Yes, sir, I apologize.

2 The Court: Answer the question, please.

3 The Witness: (Continuing)

4 A I certainly got a look at the person;
5 I actually talked to the person. I personally felt that I
6 didn't want to accuse someone of a crime unless I was
7 hundred percent certain.

8 Q Well this person went in your room was he,
9 was he threatened, did he threaten ya'll at any kind of
10 way?

11 A He did not threaten.

12 Q He prepared to be have a nice personality
13 or whatever, you know?

14 A I would describe him as being a very glib
15 talker.

16 Q All right, I understand, ladies and
17 gentlemen of the jury, I just want ya'll to know ---

18 Mr. Spratlin: Objection, Your Honor.

19 The Court: Mr. Jackson, you'll have a chance to
20 talk to the jury later.

21 Defendant Jackson: All right.

22 The Court: Mr. Jackson, I'll give you ---

23 Defendant Jackson: But I don't, I don't, I
24 didn't take up law, sir.

25 The Court: I understand.

Mr. Kinney - Cross Exam. by Defendant Jackson

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1 Defendant Jackson: I apologize.

2 The Court: No, that's fine, at the appropriate
3 time I'll give you the full opportunity, it's just not now.

4 Q I just, I just want to ask you this, but I
5 don't see how you didn't identify the person that came in
6 your room and you see a person running in and out of your
7 room and the light is on and you can't identify the person,
8 so that night when you didn't identify the person that did
9 it, police officer let that person go?

10 Mr. Spratlin: Objection, Your Honor, the lawyer
11 is testifying at this point.

12 The Court: No, sir, he's representing himself
13 now. I'm going to give him some latitude.

14 Mr. Spratlin: Yes, sir.

15 The Court: Go ahead.

16 Defendant Jackson: (Continuing)

17 Q So the police officer let that person go?

18 A I didn't know that.

19 Q So before ya'll had got back in the car,
20 when you identify, I want to ask you a question, when you
21 identified that person were you standing outside the police
22 car?

23 A No, I was in the back of the police car.

24 Q Was the person standing outside the police
25 car that you identify, that you couldn't identify?

Mr. Kinney - Redirect Examination by Mr. Holford

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1 A The person was standing in the middle of
2 the street.

3 Q So you couldn't see that person real good,
4 evidently if you could have seen him real good they shine
5 that light cause the police have a bright light ---

6 A And they shine the bright light on him.

7 Q And you still couldn't identify him?

8 A Not one hundred percent.

9 Defendant Jackson: No further questions, Your
10 Honor.

11 The Court: Thank you, you may step down.

12 Mr. Holford: Your Honor, just one question.

13 The Court: All right, sir.

14 Redirect Examination

15 By Mr. Holford:

16 Q Mr. Kinney, could this defendant be the
17 person that was in your room that night November 14th,
18 2011?

19 A He's of the same physical characteristics,
20 could he be the person, yes.

21 Mr. Holford: Thank you, Your Honor.

22 Defendant Jackson: Can I, Your Honor, can I ask
23 him a question?

24 The Court: Sure.

25 Recross Examination

Mr. Kinney - Recross Exam. by Defendant Jackson

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1 By Defendant Jackson:

2 Q Could I not be the person?

3 A Yes.

4 Defendant Jackson: Thank you, no further
5 questions.

6 The Court: You may come down, thank you.

7 Mr. Spratlin: Your Honor, the State would next
8 call Mr. Officer Jeffrey Thomas to the stand.

9 Officer Jeffrey K. Thomas
10 being first duly sworn, testified as follows:

11 Madam Clerk: Please state your full name and
12 spell your last name.

13 The Witness: My name is Jeffrey K. Thomas, last
14 name t-h-o-m-a-s.

15 Direct Examination

16 By Mr. Spratlin:

17 Q Mr. Thomas, it may be an obvious question,
18 but where do you work?

19 A Myrtle Beach Police Department.

20 Q How long you worked there?

21 A About seven and a half years.

22 Q What's your current assignment at the
23 Myrtle Beach Police Department?

24 A I work night shift patrol division.

25 Q How long you been in that position?

Officer Thomas - Direct Examination by Mr. Spratlin 151

1 A Ever since I got hired.

2 Q What sort of, what's involved with being a
3 night time patrol officer?

4 A Typically my duties entail patrolling my
5 assigned sector and taking the calls assigned to me.

6 Q If you recall were you on duty about a year
7 ago today back on November 14th, 2011?

8 A Yes, I was.

9 Q Did you have a chance to respond to a Best
10 Western Inn and Suites?

11 A Yes.

12 Q Where is that located exactly, if you know?

13 A The address, I believe, it's 1809 S. Ocean
14 Boulevard.

15 Q Now is that in the city limits of Myrtle
16 Beach?

17 A Yes, it is.

18 Q And why did you go to the Best Western?

19 A I received a call from dispatch about a
20 suspicious person, someone had entered someone's hotel room
21 through the sliding glass door.

22 Q All right, and when you got there what did
23 you do?

24 A As soon as I got there I responded to the,
25 to the scene, went in and spoke to the two victims in the

Officer Thomas - Direct Examination by Mr. Spratlin 152

1 case, and just took down their statement.

2 Q And from those victims in the case that you
3 talked to what, if any, description of the individual did
4 you get?

5 A I don't have the exact description, have
6 you got the, I could refresh my memory of the police
7 report.

8 Q Yes, sir, the police report would refresh
9 your recollection?

10 A Yes.

11 Mr. Spratlin: Please let the record reflect I'm
12 showing the witness what has been previously marked as
13 State's Exhibit Number 1 for identification purposes.

14 Q (Continuing) Is that your police report?

15 A Yes, it is.

16 Q All right, please take a second to review
17 that and see if that refreshes your recollection of exactly
18 what the description was that was given to you?

19 A Yes, the description that was given to me
20 was the suspect was a black male, described as between five
21 foot seven and five foot ten in height, weighing one
22 hundred sixty-five to one hundred ninety-five pounds,
23 between twenty-five to thirty-five years of age, short
24 black hair, wearing a gray sweatshirt and with black pants.

25 Q Now let me ask you, officer, does that

Officer Thomas - Direct Examination by Mr. Spratlin 153

1 description generally match the defendant in this case,
2 Anthony Jackson?

3 A Yes.

4 Q Now after, when you're at the Best Western
5 what all did you do in investigation of the crime?

6 A When I was there I took the witnesses
7 statements and while I was there I went across the street
8 to go watch the crime scene video cause the office is
9 located on the other side of ocean boulevard, and I was
10 able to see that the description provided fit very closely
11 to what was on the video.

12 Q All right, what did you do next in regards
13 to this case?

14 A Once I was able to watch the video and get
15 a good idea for what the guy looked like for myself rather
16 than just a physical description I went back across the
17 street to the hotel room and met up with the crime scene
18 officer Tony Humes, and spoke with him, filled him in on
19 what was going on.

20 Q And what, what happened next?

21 A While I was there at the hotel room one of
22 the victims, I think they were trying to cancel their
23 credit card, they had just been notified that their card
24 had been used twice at a Pan American Pancake House also in
25 the city limits of Myrtle Beach.

Officer Thomas - Direct Examination by Mr. Spratlin 154

1 Q Now do you know where that Pan American
2 Pancake House is?

3 A It's located at 1305 S. Kings Highway.

4 Q How far away is that from the Best Western
5 Hotel?

6 A It's about five blocks north and a couple
7 of blocks west.

8 Q Is it within walking distance?

9 A Yes.

10 Q About how long, if you could estimate,
11 would it take you to walk there?

12 A Fifteen minutes, twenty minutes, something
13 like it.

14 Q Now what did you do when you got the
15 information that the credit card had just been used at the
16 pancake house?

17 A I left the scene and left it in Tony Humes
18 care and I went to the Pan American Pancake House, went
19 inside the restaurant, and looked around to see if there
20 was anybody in there fitting that description. I didn't
21 see anyone and I spoke to a couple of waitresses to try to
22 find out if any of the waitresses were the ones that
23 actually had taken these purchases and I finally located
24 the waitress it was.

25 Q And do you remember if her name was Tara

Officer Thomas - Direct Examination by Mr. Spratlin 155

1 Meanner?

2 A I don't recall.

3 Q All right, the waitress that you spoke to
4 at the Pan American House, though, was she able to provide
5 you with anything?

6 A Yes, she gave me a physical description of
7 him, which very closely matched what I was already given,
8 and she was able to show me the credit card receipts for
9 where the credit card was actually used that had the
10 victim's name on it.

11 Q All right, let me show you what's been
12 previously marked as State's Exhibit Number 16 for
13 identification purposes at this time --

14 Mr. Spratlin: Please let the record reflect I'm
15 showing the defendant what's been marked as State's Exhibit
16 Number 16 for identification. Your Honor, permission to
17 approach the witness?

18 The Court: Yes, sir.

19 Mr. Spratlin: (Continuing)

20 Q Officer, let me show you what's been marked
21 as State's Exhibit Number 16; do you recognize these items?

22 A Yes.

23 Q What are they?

24 A They are credit card receipts from the Pan
25 American Pancake House.

Officer Thomas - Direct Examination by Mr. Spratlin 156

1 Q And who would have given you these, if you,
2 if you, have you ever had possession of these before,
3 excuse me, back up?

4 A Yes, I, I was given those that morning from
5 the, from the waitress; I took those directly.

6 Q Now after you received the receipts and
7 spoke with the waitress about the identity of the person
8 that was in the pancake house; what did you do then?

9 A Once I took the receipts from her I went
10 back outside to my patrol car and while I was outside I
11 located, spotted someone up the street that fit the, fit
12 very closely the description to what I was given, still
13 located in the area, so I immediately went over there and
14 detained that person.

15 Q Now is that person you detained are they
16 here in the courtroom today?

17 A Yes, they are.

18 Q Would you, please, point them out and
19 identify an article of clothing they're wearing?

20 A Yes, that's him in the white color shirt.

21 Mr. Spratlin: Please let the record reflect the
22 witness has identified the defendant as being the person he
23 detained that night.

24 Q (Continuing) At that time, officer, what
25 exactly matched the description that you had been given

Officer Thomas - Direct Examination by Mr. Spratlin 157

1 about, what about the defendant matched the description
2 that you had been given?

3 A It was basically the same height, same
4 weight, hair was very short, still had on pants that had
5 the long white light colored stripes down the side of the
6 legs.

7 Q Let me ask you, was there anything
8 different about his pants at that point?

9 A I do recall something being different but I
10 can't believe, I can't remember exactly what it was. I do
11 believe there might have been a pair of shorts that had
12 been pulled over the top.

13 Q But you were still able to see pants
14 underneath?

15 A Yes.

16 Q Now what about the top that he was wearing;
17 was it consistent with the description given by the, by the
18 victims and also the video that you observed?

19 A Yes, it fit.

20 Q How close did it fit?

21 A It fit very close, due to the quality of
22 the video I couldn't get, couldn't get any better than
23 that.

24 Q Now let me show you, as far as State's
25 Exhibit Number 18, what is this item?

Officer Thomas - Direct Examination by Mr. Spratlin 158

1 A Looks like a gray hoodie.

2 Q All right, could this be the sweatshirt
3 that the defendant was wearing that night?

4 A Yes.

5 Q Let me show you part of what's been marked
6 as identification State's Exhibit Number 17; what are
7 these?

8 A They look like long jogging pants.

9 Q All right, could these be the pants that
10 the defendant was wearing that night?

11 A Yes, they look very similar, yes.

12 Q Let me show you another part of what's been
13 marked State's Exhibit Number 17; what are these items?

14 A Looks like a pair of flowered shorts.

15 Q Is it possible that these could have been
16 over the defendant's pants that night?

17 A Yes.

18 Q Now after detaining the defendant based on
19 him matching the description given to you by the witnesses,
20 the pancake, I'm sorry, did he match the description given
21 to you by the pancake waitress?

22 A Yes.

23 Q All right, having detained him based on his
24 matching all descriptions given to you and him matching the
25 description in your video, what did you do then to confirm,

Officer Thomas - Direct Examination by Mr. Spratlin 159

1 what did you do, let me ask you first, what did you do to
2 confirm that he was the person who had used that card at
3 the pancake house?

4 A While I had him detained I called for
5 another officer who went back to the pancake house and they
6 retrieved the waitress that I had spoken to and she came to
7 the scene and was able to positively identify him as the
8 individual that had made the two purchases on the victim's
9 stolen credit card.

10 Q All right, now let me ask you in regards to
11 the two victims from the hotel room what, if anything, did
12 you do to try to confirm that he was in fact the individual
13 from the hotel room?

14 A I did the same thing. I called, I can't
15 remember which officer, but I called the officer to go down
16 to the hotel room, retrieve the two victims, bring them to
17 the scene. They were unable, however, to identify him.

18 Q All right, due to that they were unable to
19 identify him did you arrest and charge the defendant with
20 anything?

21 A Yes, I did.

22 Q And was that charge burglary?

23 A Yes.

24 Q Why did you charge him with burglary even
25 though the victims were unable to identify him?

Officer Thomas - Cross Exam. by Defendant Jackson 160

1 A Due to the close proximity, the fact that
2 he had been using the victim's stolen credit card, like I
3 said he was close to the area, was a fair amount of time
4 after the incident, I felt there was probable cause to
5 sustain the arrest.

6 Q Now, Officer Thomas, all the events you
7 described for us here today in Court, did they occur in
8 Horry County?

9 A Yes.

10 Q And did they occur on or about November
11 14th, 2011?

12 A Yes.

13 Q And what, if any more, involvement did you
14 have with this case after arresting the defendant?

15 A I think that was it, I think I just signed
16 the, signed the, signed the warrants for him and that was
17 it.

18 Mr. Spratlin: Yes, sir, thank you. Please
19 answer any questions the defendant may have.

20 The Witness: Yes, sir.

21 The Court: Mr. Jackson, if you have any
22 questions be glad to listen to you.

23 Defendant Jackson: Yes, sir.

24 The Court: Come around.

25 Cross Examination

Officer Thomas - Cross Exam. by Defendant Jackson

161

1 By Defendant Jackson:

2 Q Officer Thomas, how you doing?

3 A All right, sir.

4 Q I want to say on that night November, I
5 think it was 14th?

6 A Yes, sir.

7 Q When you pulled up to the defendant and
8 you, that night when you pulled up to the defendant what
9 did you, where did you find him at?

10 A About a half a block away from the Pan
11 American Pancake House.

12 Q But where at, though, what I'm saying if he
13 was at a ---

14 A He was located on 14th Avenue S.; it was
15 about maybe a hundred yards away from the Pan American.

16 Q So the defendant wasn't sitting on a bench
17 with a female when ya'll came and approached the defendant,
18 he wasn't sitting on a bench with a female?

19 A I don't recall.

20 Q Ya'll came and approached him?

21 A I don't recall. I don't know of any
22 benches right there in that area but I don't recall.

23 Q At the, at the Sea Mist Hotel?

24 A At the Sea Mist?

25 Q At the Sea Mist on the corner of the Sea

Officer Thomas - Cross Exam. by Defendant Jackson 162

1 Mist Hotel ya'll came, ya'll didn't approach the defendant
2 at the Sea Mist Hotel cause that's where the I.D., they
3 identified the defendant at right there on the corner at
4 the Sea Mist Hotel?

5 A I brought the waitress to you sitting right
6 there ---

7 Q No, I'm talking about the night they say I
8 committed the burglary, they say the defendant committed
9 the burglary?

10 A Yeah, you were detained on 14th Avenue S.
11 about maybe a hundred yards from the restaurant.

12 Q Before I got detained where did you
13 approach me at?

14 A Before you were detained?

15 Q Yeah?

16 A I don't recall meeting you before you were
17 detained.

18 Q You don't recall it?

19 The Court: Let him answer it.

20 The Witness: (Continuing)

21 A Okay, I don't recall meeting you before I
22 detained you.

23 Q When you went to detain me ---

24 A Right.

25 Q --- where did you detain me at, you didn't

Officer Thomas - Cross Exam. by Defendant Jackson

163

1 detain ---

2 A I detained you right ---

3 Q On the corner.

4 A I detained you right down the street from
5 the Pan American Pancake House on 14th Avenue S.

6 Q The location of at the hotel?

7 A The Sea Mist is on, is 12th Avenue S. on
8 Ocean Boulevard.

9 Q The defendant was on Sea Mist Hotel sitting
10 on a bench and you walked up to the defendant ---

11 Mr. Spratlin: Your Honor, I'm going to object.

12 The Court: No, you're pro se now, I'm going to
13 give him some latitude.

14 Defendant Jackson: (Continuing)

15 Q You walked up to the defendant, you said
16 can I talk to you for a minute and I stood up and the
17 female was sitting right there and I walked to the police
18 car --

19 The Court: Ask the question, Mr. Jackson, is
20 that true or not, is that your question?

21 Defendant Jackson: Huh?

22 The Court: What is your question?

23 Defendant Jackson: I just want him to, I just
24 want to see if he remember what he did that night because
25 when the defendant say ---

Officer Thomas - Cross Exam. by Defendant Jackson 164

1 The Court: Let him, he hears you, let him
2 answer.

3 The Witness: (Continuing)

4 A The first time I remember meeting you was
5 right outside the Pan American Pancake House where you were
6 detained right then. That's where the waitress came to
7 meet you to identify you at.

8 Q Okay, I got you now, okay, outside Pan
9 American Hotel, that's where you say you detained me at?

10 A Pancake House, yes, sir.

11 Q Okay, before that happened you had the
12 victims to come I.D. me before that happened, the Pan
13 American, the Pan American Pancake House came later down
14 the line, but before that happened you came, the victims
15 came to I.D. me and they said it wasn't me, so they took
16 the handcuffs off the defendant ---

17 The Court: Ask him did that happen.

18 Defendant Jackson: Yes, sir, that happened,
19 sir.

20 The Court: Can you respond, Officer?

21 Defendant Jackson: (Continuing)

22 Q Did that happen?

23 A The way I recall is you were detained by
24 the Pan American Pancake House, the waitress came up and
25 I.D.'d you from there and that's where everything took

Officer Thomas - Cross Exam. by Defendant Jackson

165

1 place. I don't recall any ---

2 Q I don't want you to commit perjury on the
3 stand, I just want you to tell the truth.

4 A I'm telling you, I'm telling you what I
5 know, that is what I recall, that is my chain of events in
6 my head.

7 Defendant Jackson: Your Honor, before I been
8 I.D.'d for the credit card, that's why I'm in here now,
9 before I been I.D.'d for the credit card I was I.D. first
10 from the victims, first and they said, no, it's not him,
11 took the handcuffs off me, let me go. It's on the
12 transcript what Detective Clothier talked to me about.

13 The Court: Did that occur or not in your
14 recollection?

15 The Witness: (Continuing)

16 A I don't recall, Your Honor.

17 Q Okay.

18 A I do not recall.

19 Q Okay, so when they I.D. me, when they I.D.
20 me you let me go. I walk down the street, that's when they
21 turn back around and re-arrested me and she I.D. me say I
22 used the credit card, which is a whole different charge;
23 it's credit card fraud, not a burglary, and nobody
24 identified me for no burglary. Nobody ever had to prove no
25 burglary, nothing been broken into --

Officer Thomas - Cross Exam. by Defendant Jackson 166

1 The Court: Wait a minute, now don't, you can
2 argue that to the jury.

3 Defendant Jackson: Okay, can I ask him another
4 question?

5 Q (Continuing) Have you been called on the
6 burglary charge before?

7 A What do you mean if I've been called on?

8 Q Have you been, have you respond to a
9 burglary charge before?

10 A Yes, sir, you talking about a burglary
11 call, yes, sir, many times.

12 Q So when you respond to a burglary call what
13 usually take place in a burglary, somebody kick a door in
14 or threaten somebody or try to break in?

15 The Court: No, sir, Mr. Jackson, I'll explain
16 to the jury what the law is for burglary. You don't have
17 to kick the door in and you don't have to break in.

18 Defendant Jackson: Yeah, I understand.

19 The Court: It's the entering without consent
20 the premises of another without, with intent to commit a
21 crime. Our Supreme Court has said a hotel room is the
22 premises of another. You don't have to break in. You
23 don't have to knock the door down. It's the entering
24 without consent either through guile, deception, or
25 whatever. You don't have to knock the door down.

Officer Thomas - Cross Exam. by Defendant Jackson 167

1 Defendant Jackson: (Continuing)

2 Q So you, you, have you, have you iden --
3 have you did the identification with me with the victims?

4 A Did I do the --

5 Q Yeah, was it you that, that had the victims
6 to come I.D. me?

7 A I believe I was standing right there with
8 you, yes.

9 Q You were standing right there with me?

10 A I believe so, yes.

11 Q So you the one comprehended the defendant
12 if you were standing right there because the defendant
13 never went nowhere, there was another police car that had
14 them in another police car, so all of a sudden you had to
15 arrest me and detain me, so you had to arrest me from the
16 Sea Mist when I was sitting on the bench with a female,
17 which she's not in Court today cause my lawyer wouldn't
18 subpoena her to Court so she could testify against my half,
19 so when you did, when you did that and they identify me
20 took the handcuffs off me and I walked down the street ---

21 The Court: Wait a minute now, can't let you
22 make a speech. I'm going to let you make a speech at the
23 end of the testimony, just ask the questions right now.
24 Mr. Jackson, let me say this to you, sir, at the end of all
25 the testimony I'll give you an opportunity to tell the jury

Office Thomas - Redirect Exam. by Mr. Spratlin

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1 whatever you wish to at that time. This is just not the
2 time to do it, okay.

3 Defendant Jackson: Well no further questions, I
4 just know he's sitting there, sitting up there lying.

5 The Court: You'll have that opportunity.

6 Mr. Spratlin: Your Honor, just real brief.

7 The Court: Don't need any comments from you
8 either.

9 Mr. Spratlin: Just real briefly in redirect.

10 The Court: Yes, sir.

11 Redirect Examination

12 By Mr. Spratlin:

13 Q Officer, just so we're all clear, where did
14 you first apprehend the defendant at?

15 A As I recollect he was detained right down
16 the street from the Pan American Pancake House.

17 Q About how far?

18 A Half a block.

19 Q How far is the Sea Mist from the Pan
20 American Pancake House?

21 A The Sea Mist is located at 1200 South Ocean
22 Boulevard.

23 Q Two blocks away?

24 A Two blocks south.

25 Q All right.

Office Thomas - Redirect Exam. by Mr. Spratlin

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1 A Two blocks south and two blocks east.

2 Q All right, and you're certain you detained
3 him close to the Pan American Pancake House?

4 A Yes.

5 Q All right, and is that where all
6 identifications occurred?

7 A Yes.

8 Q The identification that the waitress at the
9 pancake house made?

10 A Yes.

11 Q And the identification that both victims
12 made?

13 A Yes, the one where they couldn't identify,
14 yes.

15 Q Occurred there, and you didn't take him
16 anywhere, just kind of kept him there, right?

17 A No, no, once he, once he, the only place I
18 took him was to jail after he was identified.

19 Q Yes, sir, did you ever let the defendant go
20 once you had him detained?

21 A I don't recall doing anything of that sort.

22 Mr. Spratlin: Yes, sir, thank you. That's all
23 the questions I have.

24 The Court: All right, you can come down. Mr.
25 Foreman, let you take a, you've been very patient for about

Ms. Maenner - Direct Examination by Mr. Spratlin 170

1 an hour and a half. Please take a very short break and let
2 the bailiff know when you're ready to come out, please.
3 We're going to have a very short recess now.

4 (Whereupon, the jury retired to the jury room at
5 3:30 p.m.)

6 (Whereupon, a recess was taken and the following
7 takes place on the record after the recess.)

8 The Court: Call your witness.

9 Mr. Spratlin: Your Honor, my victim's advocate
10 went out to get her. I believe she ran to the restroom
11 real quick, may have been a little bit a line.

12 Tara Maenner

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please be seated and state your
15 full name and spell your last name.

16 The Witness: Tara Maenner, m-a-e-n-n-e-r.

17 Direct Examination

18 By Mr. Spratlin:

19 Q Ms. Maenner, how long have you lived in
20 Horry County?

21 A About thirty years.

22 Q Where are you currently working?

23 A Tommy Hilfiger and Pan American Pancake
24 House.

25 Q How long you worked at Pan American Pancake

Ms. Maenner - Direct Examination by Mr. Spratlin

171

1 House?

2 A Off and on since I was fifteen.

3 Q Who do you know who also works there?

4 A My mother.

5 Q Now where's the Pan American Pancake House
6 located?

7 A 14th Avenue S. in Myrtle Beach.

8 Q If you know, how close is that to the Best
9 Western Hotel, if you know?

10 A Within a couple of blocks.

11 Q Okay, do you remember if you were working
12 about a year ago today on November 14th, 2011?

13 A Yes.

14 Q Let me ask you, did you have a chance to
15 come in contact with the defendant sitting in here today
16 Mr. Anthony Jerome Jackson?

17 A Yes.

18 Q How did you come in contact with him?

19 A He came in and placed a to go order.

20 Q Was this the first time you had ever seen
21 the defendant?

22 A No.

23 Q How many times before that would you say
24 you had seen him?

25 A A few times.

Ms. Maenner - Direct Examination by Mr. Spratlin 172

1 Q And what were the circumstances under which
2 you'd see him?

3 A To come in and get to go orders.

4 Q So he would come in occasionally to the
5 pancake house?

6 A Yes.

7 Q All right, when he came in do you remember
8 what he ordered?

9 A The first time was three burgers.

10 Q All right, you said the first time, did he
11 place a second order?

12 A Yes.

13 Q What was the second order, if you remember?

14 A Two breakfasts.

15 Q And were all that for him?

16 A No, the two breakfasts was for a couple
17 that had came in shortly after he first came in.

18 Q All right, how did he pay for the food that
19 he ordered?

20 A Both times with a credit card.

21 Q Let me ask you, the pancake house is there
22 a, if someone pays with a credit card is there a record
23 kept?

24 A Yes.

25 Q What happens when someone pays with a

1 credit card?

2 A It's swiped through the machine and then a
3 transaction ticket is produced at that time.

4 Q A transaction ticket, how familiar are you
5 with these transaction, excuse me, how familiar are you
6 with these transaction tickets?

7 A Very.

8 Q What sort of information appears on a
9 transaction ticket?

10 A The last four digits show the cardholders
11 card first last name, usually, batch number, server number,
12 the restaurant's address and name.

13 Q All right, let me show you what's been
14 marked for identification purposes as State's Exhibit
15 Number 16; do you recognize those two items?

16 A Yes.

17 Q What are they?

18 A They are the transaction slips that were
19 produced when I ran that card.

20 Q How can you be certain you ran that card?

21 A Because I was the only one working that
22 night.

23 Q All right, now who gave you the card that
24 produced these transaction tickets?

25 A The defendant.

Ms. Maenner - Direct Examination by Mr. Spratlin

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1 Q And how can you be certain that these are
2 in fact transaction figures from the Pan American Pancake
3 House?

4 A Because it states right here on the top on
5 both of them.

6 Q And over, you said how long have you been
7 working at the pancake house again?

8 A Off and on since I was about fifteen.

9 Q All right, so several years?

10 A Yes.

11 Q How many of those would you say you have
12 come in contact with?

13 A Thousands.

14 Q Would it be something that ya'll keep in
15 the pancake house?

16 A Yes.

17 Q And can you say for certain that these are
18 in fact receipts from the pancake house?

19 A Yes.

20 Mr. Spratlin: Your Honor, at this time I would
21 tender State's Exhibit 16 into evidence.

22 The Court: And you have previously shown them
23 to the defendant?

24 Mr. Spratlin: Your Honor, copies were provided
25 in discovery. I can show the defendant ---

Ms. Maenner - Direct Examination by Mr. Spratlin 175

1 The Court: All right, they're admitted.

2 Mr. Spratlin: Thank you.

3 (Whereupon, State's Exhibit Number 16 entered
4 into evidence.)

5 Mr. Spratlin: (Continuing)

6 Q Now, Ms. Maenner, just again, who gave you
7 the card that generated these two receipts?

8 A The defendant.

9 Q If you can tell me what the last four
10 digits of that card were?

11 A 5192.

12 Q Is it the same on both?

13 A Yes.

14 Q It's the same card?

15 A Uh-huh.

16 Q And what name was on that credit card that
17 generated those receipts?

18 A W. G. Thompson.

19 Q Could stand for William Thompson?

20 A Yes.

21 Q Let me ask you what signature is on both of
22 those receipts?

23 A One says W. G. and looks like could say
24 Thompson, the other one says, you can barely read it,
25 William something.

Ms. Maenner - Direct Examination by Mr. Spratlin

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1 Q And who signed this?

2 A The defendant.

3 Mr. Spratlin: Your Honor, permission to publish
4 to the jury.

5 The Court: You may do so. You can glance at it
6 and pass it around, please.

7 Mr. Spratlin: Ma'am, if you're the last one who
8 gets it if you wouldn't mind just set it on the rail and
9 I'll pick it up, thank you.

10 Q (Continuing) Now, Ms. Maenner, that night
11 at the pancake house after the defendant came in, how long
12 was he in the, in the pancake house?

13 A About thirty minutes.

14 Q Now what was he doing for that thirty
15 minutes?

16 A Waiting for his food.

17 Q So it took about thirty minutes for the
18 food to be made?

19 A Yes.

20 Q All right, and was it a busy night?

21 A No.

22 Q There weren't many people in there?

23 A No.

24 Q So he kind of stood out a little bit to
25 you?

Ms. Maenner - Direct Examination by Mr. Spratlin

177

1 A Yes.

2 Q Let me ask you, at some point what did the,
3 at some point did the defendant leave the pancake house?

4 A After he received his food.

5 Q All right, he left, and what happened next
6 that kind of relates to this case?

7 A The police officer came in and requested
8 copies of those transaction slips.

9 Q And what did you do when the officer
10 requested this?

11 A I gave them to him.

12 Q And what, if anything, else did you do?

13 A He later asked me to ride with him to
14 identify the defendant.

15 Q All right, and how far away did ya'll go to
16 identify the defendant?

17 A Right down the street.

18 Q Close to the pancake house?

19 A Very close.

20 Q About a hundred yards, give or take?

21 A Maybe.

22 Q All right, now when you saw the defendant
23 and the identification how was he, was he dressed the same
24 as he was when he was in the pancake house?

25 A Yes.

Ms. Maenner - Direct Examination by Mr. Spratlin 178

1 Q Do you remember or can you recall exactly
2 how he was dressed at that point?

3 A I don't.

4 Q Would he, could he have been wearing black
5 jogging pants and a black sweatshirt?

6 Defendant Jackson: Objection, Your Honor.

7 Mr. Spratlin: Your Honor, I'm simply asking if
8 she, if he could have been wearing those items.

9 Defendant Jackson: Speculation.

10 The Court: Overruled, I'll let the jury make
11 the determination as to the validity of her answer, she may
12 do it.

13 Mr. Spratlin: Yes, sir.

14 The Court: It will be for the jury to consider,
15 Mr. Jackson.

16 Mr. Spratlin: (Continuing)

17 Q Could he have been wearing a dark
18 sweatshirt and black pants?

19 A Yes.

20 Q And perhaps swimming trunks?

21 A Yes.

22 Q All right, but he was dressed the same way
23 when you went to see him as he was when he left the pancake
24 house?

25 A Yes.

Ms. Maenner - Direct Examination by Mr. Spratlin

179

1 Q All right, now when you went with the
2 officer to make an identification what were you able to
3 tell the officer about the defendant and the person who had
4 used that credit card at the pancake house?

5 A That that was him.

6 Q How certain are you?

7 A A hundred percent.

8 Q And again is this the first you had ever
9 seen the defendant?

10 A No.

11 Q Saw him regularly, somewhat?

12 A A few times.

13 Q So you were familiar with him?

14 A Yes.

15 Q Now do you see the man that came into the
16 pancake house and used that credit card here in court
17 today?

18 A I do.

19 Q Would you, please, point him out and
20 identify an article of clothing he's wearing?

21 A He's wearing a white shirt.

22 Mr. Spratlin: All right, please let the record
23 reflect the witness has identified the defendant.

24 Q (Continuing) And is that the same man that
25 you picked out or identified that night with the officer?

Ms. Maenner - Cross Exam. by Defendant Jackson

180

1 A Yes.

2 Mr. Spratlin: All right, Ms. Maenner, thank
3 you. That's all the questions I have at this time, please
4 answer any questions the defendant may have.

5 The Witness: Okay.

6 The Court: Mr. Jackson, you may examine the
7 witness.

8 Cross Examination

9 By Defendant Jackson:

10 Q How you doing, Ms. Maenner?

11 A All right.

12 Q I know you know me, that night when they
13 I.D., they tell you to identify the defendant for the
14 credit card, wasn't it dark that night?

15 A It was but there were lights on the police
16 cars and the street lights available as well.

17 Q How far away was you from the pancake house
18 when they took you to identify the defendant?

19 A I was in the car, the police cruiser.

20 Q You were still in the police cruiser, how
21 far away were you from the police car they had the
22 defendant comprehend?

23 A A little ways, as far as Mr. Martin is over
24 there.

25 Q Okay, then I want to ask you another

Mr. Robertson - Direct Exam. by Mt. Spratlin

181

1 question, have you witnessed me doing a burglary?

2 A No.

3 Q Did you see me did a burglary?

4 A No.

5 Q You only witnessed me, what, using a credit
6 card?

7 A Yes.

8 Defendant Jackson: That's credit card fraud,
9 Your Honor, and I have no further questions.

10 The Court: You may come down, thank you.

11 Mr. Spratlin: Your Honor, may this witness be
12 excused from her subpoena?

13 The Court: Yes.

14 Mr. Spratlin: You're free to go, Ms. Maenner.

15 The Court: Call your next witness.

16 Mr. Holford: Your Honor, the State calls Jack
17 Robertson to the stand.

18 Jack Robertson

19 being first duly sworn, testified as follows:

20 Madam Clerk: Please state your full name and
21 spell your last name.

22 The Witness: My name is Jack Robertson, last
23 name spelled r-o-b-e-r-t-s-o-n.

24 Direct Examination

25 By Mr. Holford:

Mr. Robertson - Direct Exam. by Mt. Spratlin

182

1 Q Mr. Robertson, how are you doing this
2 afternoon?

3 A I'm fine.

4 Q I'm going to try to keep this brief for
5 you, where do you live now?

6 A My residence is.

7 Q City is fine.

8 A Myrtle Beach.

9 Q Myrtle Beach, and what do you do for a
10 living?

11 A I own the Best Western Plus Grand Strand
12 Inlet Suites.

13 Q Where is that located?

14 A In Myrtle Beach.

15 Q Where is the Best Western?

16 A It's rd.

17 Q In what county is that in?

18 A It's in Horry County.

19 Q Now seated at this table in the white shirt
20 defendant Mr. Anthony Jackson, has he ever been employed
21 with the Best Western?

22 A No, sir.

23 Q Has he ever been a security guard for the
24 Best Western?

25 A No, sir.

Ms. Lewis - Direct Exam. by Mr. Spratlin

183

1 Q Have you ever contracted work out for the
2 Best Western using this defendant?

3 A No, sir.

4 Q To your knowledge is there any reason why
5 Mr. Jackson should be in a hotel room at the Best Western
6 acting as a security guard?

7 A None whatsoever.

8 Mr. Holford: Your Honor, I have no further
9 questions.

10 The Court: Mr. Jackson, any questions?

11 Defendant Jackson: No, sir, Your Honor.

12 The Court: All right, come down, thank you.
13 You are excused from your subpoena.

14 Mr. Spratlin: Thank you, Mr. Robertson.

15 The Court: Next witness.

16 Mr. Spratlin: The State would next call Ms.
17 Heather Lewis to the stand, Your Honor, and we'd ask the
18 Court's assistance in swearing Ms. Lewis.

19 The Court: Pardon?

20 Mr. Spratlin: We'd just ask the Court with
21 assistance.

22 Heather Lewis

23 being first duly sworn, testified as follows:

24 Direct Examination

25 By Mr. Spratlin:

Ms. Lewis - Direct Exam. by Mr. Spratlin

184

1 Q Good afternoon, Ms. Lewis, would you,
2 please, state your name for the record?

3 A Heather Lewis, l-e-w-i-s.

4 Q All right, Ms. Lewis, where are you
5 currently employed?

6 A Horry County Clerk of Court's office.

7 Q How long have you been working at the
8 Clerk's office?

9 A I started in May of 2007.

10 Q What, in regards to criminal cases like
11 we're here on today what is the role of the Clerk's office?

12 A Coordinate the jury, we file verdicts,
13 sentencing sheets, indictments, warrants.

14 Q So pretty much everything?

15 A Pretty much everything, lots of filing.

16 Q All right, let me ask you, Ms. Lewis, is it
17 one of the roles of the Clerk's office to keep sentencings
18 or copies of convictions on individuals?

19 A It is.

20 Q All right, let me show you what's been
21 marked as State's Exhibits Number 20 and 21 for
22 identification purposes; do you recognize those items I've
23 just handed you?

24 Mr. Spratlin: They've been provided to the
25 defendant in discovery, Your Honor.

Ms. Lewis - Direct Exam. by Mr. Spratlin

185

1 The Witness: (Continuing)

2 A Yes, sir.

3 Q What are they?

4 A Sentencing sheets on Anthony Jackson.

5 Q All right, they're, how many are there?

6 A There's two different ones.

7 Q All right, which one is earlier, what's the
8 date on the earlier one, if you can?

9 A One is dated June of 2006 and one is dated
10 November of 2009.

11 Q Is there anything to designate those as
12 certified as true and accurate?

13 A Yes, sir, there is a stamp with the raised
14 seal on it that says certified copy with the Clerk of
15 Court's name Melanie Huggins Ward.

16 Q Is that ---

17 A Clerk of Court Horry County.

18 Q And is that your boss?

19 A Yes, sir.

20 Q And does that seal appear on both of those
21 documents?

22 A It does.

23 Q All right, and so does that tell you that
24 those are true and accurate copies of what is kept in the
25 Clerk's office?

Ms. Lewis - Direct Exam. by Mr. Spratlin

186

1 A Yes, sir.

2 Mr. Spratlin: Your Honor, these are self
3 authenticating documents under the rules certified public
4 documents; the State would at this time tender them into
5 evidence.

6 The Court: I'm going to admit them.

7 (Whereupon, State's Exhibits Numbers 20 and 21
8 entered into evidence.)

9 Mr. Spratlin: (Continuing)

10 Q Now, Ms. Lewis, let me ask you, if you can
11 tell on the older one, you said 2006 was the conviction
12 date on that one?

13 A Yes, sir, June 12th of 2006.

14 Q If you can tell from that sentencing sheet
15 what conviction was it, what was Anthony Jackson convicted
16 of?

17 A He was convicted of burglary third degree.

18 Q All right, and in regards to the second
19 one, I believe you said a 2009 conviction date, what was
20 the actual date again?

21 A The actual date is November 3rd, 2009.

22 Q And if you can tell on that what was
23 Anthony Jackson convicted of?

24 A Burglary second degree non violent.

25 Mr. Spratlin: Your Honor, permission to publish

1 to the jury.

2 The Court: Yes, sir, you may.

3 Mr. Spratlin: Ms. Lewis, I think that's all the
4 questions I have for you, please answer any questions the
5 defendant may have.

6 The Court: Mr. Jackson, do you have any
7 questions?

8 Defendant Jackson: No, sir.

9 The Court: All right, ladies and gentlemen of
10 the jury -- you may come down -- I touched on it briefly
11 now I want to make sure that you understand the law of
12 reference of the evidence concerning two prior convictions.
13 There is in evidence the fact that this defendant has a
14 prior record of two burglaries. The evidence of prior
15 offenses committed by this defendant was not offered for
16 proof the defendant was a bad character or to prove that he
17 was guilty in this particular case. That evidence was
18 offered only as proof of his prior convictions for the
19 reason that if a person has two prior records for burglary
20 and commits another one he is guilty of burglary in the
21 first degree. This prior record introduced will not be
22 considered by you in any way as to his guilt of this
23 offense. It is introduced solely as a matter of evidence
24 to prove burglary first degree if you conclude by the
25 greater, by the evidence that he is in fact guilty. All

Officer Humes - Direct Examination by Mr. Spratlin 188

1 right, you may call your next witness.

2 Mr. Spratlin: Your Honor, the State would next
3 call Tony Humes to the stand.

4 Officer Anthony T. Humes
5 being first duly sworn, testified as follows:

6 Madam Clerk: Please state your full name and
7 spell your last name.

8 The Witness: My full name is Anthony Thomas
9 Humes, h-u-m, as in Mary, e-s.

10 The Court: Let me further say to the jury with
11 reference to that last witness, you may if you conclude
12 that the defendant is guilty of this charge, then if you
13 find that he did in fact have two prior convictions of
14 burglary he is guilty of burglary in the first degree. I
15 charge you, however, and emphasize to you that that prior
16 record has absolutely no bearing on any guilt of the charge
17 for which he is being tried today. It was introduced
18 simply as an evidentiary matter concerning prior records.
19 You may proceed.

20 Mr. Spratlin: Thank you.

21 Direct Examination

22 By Mr. Spratlin:

23 Q Now, Mr. Humes, where are you currently
24 employed?

25 A I'm employed with the City of Myrtle Beach

Officer Humes - Direct Examination by Mr. Spratlin 189

1 Police Department.

2 Q How long you been working at Myrtle Beach
3 P.D.?

4 A Approximately four and a half years.

5 Q How long you been in law enforcement
6 altogether?

7 A Same, almost four and a half years.

8 Q Okay, so all the time at Myrtle Beach?

9 A Yes, sir.

10 Q What's your current assignment?

11 A I'm currently assigned to the department's
12 crime scene unit.

13 Q Crime scene, how long have you been working
14 in the crime scene department?

15 A A little bit over a year.

16 Q So you were working back in November 2011?

17 A Yes, sir.

18 Q Okay, let me ask you, what all is involved
19 in crime scene processing?

20 A Basically we respond to any scenes that the
21 supervisors ask us to respond to. We process evidence; we
22 look for any types of evidence whether it be fingerprints,
23 DNA, take photographs, obtain video surveillance, anything,
24 you know, a detective will ask that has evidentiary value,
25 we'll collect it; we'll store it.

Officer Humes - Direct Examination by Mr. Spratlin 190

1 Q What sort of specialized training do you
2 have to do this job?

3 A I've taken numerous classes that consist of
4 wound recognition, gunshot reconstruction and
5 documentation, crime scene 101 classes. I'm currently
6 enrolled in a fingerprint processing and identification
7 class at Horry County Tech.

8 Q Prior to the class you're currently
9 enrolled in have you had training in fingerprints?

10 A No, sir.

11 Q Okay, have you had training in how to
12 retrieve fingerprints?

13 A Yes.

14 Q All right, let me ask you how many, how
15 many crime scenes over your career would you say you've
16 processed?

17 A I would say approximately two hundred to
18 two hundred fifty. Prior to me transferring to the crime
19 scene unit I had taken a class with, within the department
20 as far as how to process scenes. I've recovered latent
21 fingerprints to obtain DNA evidence at other scenes so --

22 Q In crime processing it's a pretty
23 specialized area, isn't it?

24 A Yes, it is.

25 Q It requires a great deal of training and

Officer Humes - Direct Examination by Mr. Spratlin 191

1 technical know how?

2 A Yes.

3 Mr. Spratlin: All right, Your Honor, at this
4 time --

5 Q (Continuing) Do you feel that you possess
6 that training and technical know how?

7 A Yes.

8 Mr. Spratlin: Your Honor, at this time I would
9 move to qualify Mr. Humes as an expert in the area of crime
10 scene processing.

11 The Court: I so qualify him as an expert and
12 explain to the jury that an individual who by training and
13 education in a certain field may be qualified as an expert
14 in that field. Based on his training and education I
15 qualify him as an expert. I tell you, however, that you
16 may accept or reject in whole or in part any part of his
17 testimony that you think appropriate. You may proceed.

18 Mr. Spratlin: Thank you, Your Honor.

19 Q (Continuing) Now, Officer Humes, did you
20 have a chance to process the scene of a burglary that
21 occurred in the Best Western Hotel back on November 14th,
22 2011?

23 A Yes, that's correct.

24 Q All right, and what did you do to process
25 the scene?

Officer Humes - Direct Examination by Mr. Spratlin 192

1 A Upon my arrival I spoke to the officers
2 that were on scene briefly. I also spoke to the victims
3 very briefly. After that I took multiple photographs of
4 the exterior of the building which is a multi-story
5 oceanfront building.

6 Q Let me stop you right there, Mr. Humes.
7 Let me show you what's already been introduced ---

8 A Okay.

9 Q --- as State's Exhibits 2 through 12. If
10 you would take a second and look over those photographs?
11 You can just place them on the counter whenever you're
12 done?

13 A Okay.

14 Q Do those appear to be the photographs that
15 you took that night?

16 A Yes, sir, it does.

17 Q All right, in addition to taking
18 photographs what else did you do to process the scene?

19 A I went to the railing that's located on the
20 oceanfront side of the unit. The railing is at the balcony
21 for the unit located just outside the unit is a like a
22 courtyard type area with a deck and a grassy area. I
23 processed the railing for any possible fingerprints that
24 may be on the railing itself.

25 Q So why did you, why did you choose that

Officer Humes - Direct Examination by Mr. Spratlin 193

1 railing to process?

2 A The way the railing is designed it's a
3 spring loaded gate and the gate opened to the outside away
4 from the building itself so a normal person would have to
5 place their hand or potentially place their hand on the, on
6 the gate itself to open the gate to gain entry onto the
7 balcony area.

8 Mr. Spratlin: Please let the record reflect I'm
9 showing the defendant what's been marked State's Exhibit 13
10 would have been shown in discovery, for identification
11 purposes, excuse me.

12 Q (Continuing) Officer Humes, do you
13 recognize that item I just handed you?

14 A Yes, sir.

15 Q What is it?

16 A It's a picture of the interior of the hotel
17 room facing out to the deck area with the gate.

18 Mr. Spratlin: Okay, Your Honor, permission to
19 publish to the jury real quick?

20 The Court: You may do so.

21 Mr. Spratlin: Or move to introduce into
22 evidence.

23 The Court: Yes, sir.

24 Mr. Spratlin: And publish to the jury.

25 (Whereupon, State's Exhibit Number 13 entered

Officer Humes - Direct Examination by Mr. Spratlin

194

1 into evidence.)

2 Mr. Spratlin: (Continuing)

3 Q Now, Officer Humes, we see in this
4 photograph there's a yellow box, whose box is that?

5 A That would be my box.

6 Q And what is the purpose of that box?

7 A Inside that box is various fingerprint
8 collection, powders, brushes, DNA collections. There's
9 also, you know, different tapes and cards that we use to
10 lift fingerprints off of various surfaces.

11 Q Now let me ask you, Mr. Humes, Officer
12 Humes, there some, it appears there's some black powder on
13 that railing; what is that?

14 A That was the black silt powder that I use
15 to process the railing in order to observe any potential
16 fingerprints that would have been on the railing itself.

17 Q Officer Humes, how easy is it to get
18 fingerprints off of an item?

19 A It really depends on the item itself
20 whether it's coarse or the manners that it's touched, if
21 it's an item that's gripped different ways, but normally
22 you can get prints off it.

23 Q Now what sort, were you able to identify
24 any prints on that railing?

25 A Yes, I was able to lift off two areas of

Officer Humes - Direct Examination by Mr. Spratlin 195

1 ridge detail which would be the impressions that would be
2 left on the railing itself after somebody grabbed it or
3 touched it in any manner.

4 Q Now I know you're not an expert in
5 fingerprints yet, Investigator, but if you're able to lift
6 the print like that is it something that can always be
7 compared?

8 A Not always compared, no, basically what
9 will happen is once I lift the print off of the railing
10 itself once I return to the lab I will complete a
11 requisition or a form, if you will, to have another officer
12 within our unit to observe the print in greater detail and
13 then be able to determine if it can be compared to somebody
14 or ran through database.

15 Q Is it common for even a print that you lift
16 to not be a comparable?

17 A Yeah.

18 Q All right, let me show you what's been
19 marked as State's Exhibit Number 15 for identification
20 purposes at this time; do you recognize that item?

21 A Yes, sir, I do.

22 Q What is it?

23 A It's a latent fingerprint that I removed
24 from the, the top of the railing.

25 Q And how can you be certain that it's the

Officer Humes - Direct Examination by Mr. Spratlin 196

1 print that you removed?

2 A I can tell by the, the little water marks
3 that are on there.

4 Q All right ---

5 A And I also filled out the back of the card.

6 Mr. Spratlin: Your Honor, at this time I'd
7 tender into evidence State's Exhibit Number, Number 15,
8 Your Honor.

9 The Court: All right, sir, you've introduced it
10 into evidence, have you not?

11 Mr. Spratlin: I'm moving to introduce it now,
12 Your Honor.

13 The Court: All right, sir.

14 (Whereupon, State's Exhibit Number 15 entered
15 into evidence.)

16 Mr. Spratlin: (Continuing)

17 Q Mr. Humes, where did you lift that print
18 from again?

19 A I lifted it off the top part of the railing
20 or the gate that actually swung out; it would be above the
21 locking mechanism on the gate.

22 Q All right, and let me ask you, besides that
23 locking mechanism what, if any, other areas of the room did
24 you decide to fingerprint?

25 A Nothing else inside the room was

Officer Humes - Direct Examination by Mr. Spratlin 197

1 fingerprinted.

2 Q And why is that?

3 A After talking to the guests and the other
4 officers on scene I was under the understanding that the
5 only items that were touched within the room by the
6 defendant was a telephone and the door lever leaving out of
7 the hotel room.

8 Q Okay, now let me ask you, even though that
9 print was on that gate can you be certain that that print
10 was left by whoever had entered the gate to commit that
11 burglary?

12 A No.

13 Q And why is that?

14 A Well it's a common gate for the room so
15 anybody walking by there could have touched that gate,
16 previous guests could have touched that gate and left out;
17 housekeeping, maintenance, any other staff, any other
18 guests previous to that could have easily left that.

19 Q All right, and if someone touches something
20 are you always able to get a print from it?

21 A Well not necessarily.

22 Q So even though I just touched that you may
23 not be able to get a print from that?

24 A That's correct.

25 Q It doesn't mean I didn't touch, does it?

Officer Humes - Direct Examination by Mr. Spratlin

198

1 A No, sir.

2 Q All right, just means you may not be able
3 to find a print based on several factors?

4 A Exactly.

5 Q Now does the environment play a role in any
6 way?

7 A Environment does play a role, weather plays
8 a role, pressure plays another role as well.

9 Q And in fact the environment can it in fact
10 degrade a print?

11 A Yes, it can.

12 Q All right, now you mentioned that you
13 talked to the victims about the defendant using the phone
14 or the individual that was in the room using the phone and
15 the door?

16 A Right.

17 Q Why didn't you fingerprint the phone?

18 A Well the phone is, is similar to the door
19 handle. It's a small area that's going to come in contact
20 with your actual hands and what happens normally is when a
21 person touches a particular item it will leave their
22 fingerprint but if another person comes over and places the
23 same hand on top of that you're going to end up with a
24 waffling effect or what we call double tapping or overlays.

25 Q And if there is overlays is it possible to

Officer Humes - Direct Examination by Mr. Spratlin 199

1 get a print?

2 A You'll get a print but you'll get multiple
3 ridge details which you wouldn't be able to decipher
4 whether it was from one person to the other.

5 Q Is there any evidentiary value in that that
6 you know of?

7 A No, sir.

8 Q All right, and the same thing with the door
9 knob?

10 A Yes, it's actually a very thin lever.

11 Q And you had information that that phone had
12 been used by people after the defendant?

13 A Yes.

14 Q All right, now regards to after processing
15 the scene for prints and taking the photographs what, if
16 anything, else did you do in crime scene processing?

17 A After I left the room I was provided with a
18 consent to search form from Officer Thomas who was also on
19 scene. He had advised me that there was video surveillance
20 that was available from the hotel. I left the room and
21 went over to the lobby area and spoke with the clerk that
22 was duty at the time.

23 Q Now have you had a chance to view the video
24 surveillance before today?

25 A Yes, sir.

Officer Humes - Direct Examination by Mr. Spratlin

200

1 Q All right, and I don't think you were
2 actually in the courtroom earlier, but have you had a
3 chance to look at, were you present, have you had any
4 opportunity to observe what is introduced as State's
5 Exhibit Number 14 prior to today?

6 A Yes, cause I was the one that downloaded it
7 onto the ---

8 Q All right, and is it a fair and accurate
9 representation of what you downloaded?

10 A Yes.

11 Q Okay, in regards to that video what sort of
12 security system did the hotel have?

13 A They had, there was two cameras that were
14 located outside of the victim's room. One was on the north
15 end of the building where there was a doorway that exited
16 out and then there was another camera located on the south
17 end of the building where the door exited out as well.

18 Q Now were these high definition cameras?

19 A They did not appear to be, no, sir.

20 Q All right, from watching the video would
21 you believe they were high def cameras?

22 A No, sir.

23 Q Did they appear to of the greatest quality
24 of security cameras?

25 A Of the greatest quality?

Officer Humes - Direct Examination by Mr. Spratlin 201

1 Q Yes, sir?

2 A No, sir.

3 Q All right, how did the, how did these
4 cameras operate as to what they decide to film; were they
5 always running?

6 A No, sir, they, once I was over at the front
7 desk I went back to the computer system, the clerk showed
8 me where it was, and the cameras actually record on motion,
9 so while there's nothing going on in that particular
10 hallway the cameras don't record anything and normally the
11 reason that, the reason that is is because they're trying
12 to save on the hard drive storage for the systems entirety.

13 Q So when nobody is within the sensor range
14 of the camera basically it doesn't record?

15 A That's correct.

16 Q All right, and is that why you had to take
17 multiple different videos from the system?

18 A Yes, once I was inside the system itself I
19 was able to determine what had been recorded and select
20 those particular increments of time and it downloaded it
21 right to a DVD disk.

22 Q Yes, sir, what, if any, further involvement
23 did you have in the case after finishing processing the
24 scene?

25 A Before I was done processing the scene I

Officer Humes - Direct Examination by Mr. Spratlin 202

1 was notified that a suspect had been taken into custody and
2 was brought up to the City of Myrtle Beach jail.

3 Q And what did you do when you responded to
4 the jail or did you respond to the jail?

5 A Yes, I did respond to the jail.

6 Q And what did you do?

7 A I observed the defendant in the, in the
8 cell. I observed the clothing that he was wearing and I
9 obtained that clothing.

10 Q Was that clothing, did it significantly
11 match the person that you had observed in that video?

12 A Yes, it did.

13 Q All right, let me show you what's already
14 been marked as State's Exhibit Number 17 for identification
15 purposes at this time; if you would tell me whose
16 handwriting is on the outside of this bag?

17 A That would be my handwriting.

18 Q Let me show you, what is this item printed
19 on that?

20 A That would be the pants that the defendant
21 was wearing at the time.

22 Q All right, are you sure these are the same
23 pants?

24 A Well, yes, they, they have the same
25 character features as the video surveillance provided which

Officer Humes - Direct Examination by Mr. Spratlin

203

1 would be the two stripes that go down the sides of the
2 pants.

3 Q And these are the same pants that you took
4 off the defendant that night?

5 A That's correct.

6 Q Now the other part of State's Exhibit
7 Number 17, just want to make sure I don't mess up the
8 record, what is this item I'm currently holding up?

9 A That would be a white tee shirt which was
10 underneath a gray hooded sweatshirt.

11 Q All right, is this the same tee shirt you
12 took off the defendant that day?

13 A It appears to be so, yes.

14 Q And again whose handwriting is that on that
15 bag?

16 A That would be my handwriting.

17 Q The last part of State's Exhibit Number 17,
18 what is this item I'm holding up?

19 A A pair of multi-colored swimming trunks.

20 Q All right, do they appear to be the same
21 pair of shorts that were taken off the defendant that day?

22 A That's correct.

23 Q And whose handwriting is that on the front
24 of this bag?

25 A That's mine.

Officer Humes - Direct Examination by Mr. Spratlin 204

1 Mr. Spratlin: Your Honor, at this time I would
2 tender State's Exhibit Number 17 into evidence entirely.

3 The Court: All right, sir.

4 (Whereupon, State's Exhibit Number 17 entered
5 into evidence.)

6 Mr. Spratlin: (Continuing)

7 Q Let me show you what's been marked
8 previously as State's Exhibit Number 18; what is this item
9 I'm holding up?

10 A That would be the gray hoodie sweatshirt.

11 Q All right, and is this the same, let me ask
12 you again whose handwriting is this on this bag?

13 A That's mine.

14 Q All right, is this the same sweatshirt that
15 you took off the defendant that night?

16 A That's correct.

17 Q Now last part of State's Exhibit Number 18,
18 if you would, please, identify what two items I'm holding
19 up at this point?

20 A That would be the shoes that the defendant
21 was wearing that night.

22 Q All right, and are you certain these are
23 the same shoes the defendant was wearing?

24 A Yes.

25 Q Okay, let me ask you specifically ---

Officer Humes - Direct Examination by Mr. Spratlin 205

1 A Okay.

2 Q --- in regards to these shoes, is there
3 anything in particular about these shoes that stood out to
4 you from what you observed in that video?

5 A Yes, the, when I observed the video I
6 observed the individual in the video was wearing a pair of
7 shoes that had a solid white line on the bottom of them.
8 The white line also went around to the very portion of the
9 toe and then also was very small on the back of the heel,
10 the shoes themselves.

11 Q And so basically focusing in on the shoes
12 in the video you were able to determine that these very
13 closely matched the shoes that was seen in that video?

14 A That's correct.

15 Mr. Spratlin: All right, Your Honor, at this
16 time I would move to tender all State's Exhibit Number 18,
17 I think I may have misspoke earlier and said 16, but it's
18 State's Number 18 into evidence.

19 The Court: They are admitted and will be with
20 the jury during their deliberations.

21 (Whereupon, State's Exhibit Number 18 entered
22 into evidence.)

23 Mr. Spratlin: (Continuing)

24 Mr. Spratlin: Yes, sir, Your Honor, the State
25 would ask to be able to re-publish in addition to the new

Officer Humes - Direct Examination by Mr. Spratlin 206

1 testimony given to focus on the shoes, State's Exhibit 14,
2 the surveillance video.

3 The Court: All right, sir.

4 Mr. Spratlin: If I could ask Madam Clerk's
5 assistance to bring down the screen.

6 The Court: Is that the same video you played?

7 Mr. Spratlin: It's the same video from earlier,
8 Your Honor, we're just going to focus on the shoes.

9 The Court: All right, sir.

10 (Whereupon, State's Exhibit Number 14 played in
11 open court.)

12 Mr. Spratlin: (Continuing)

13 Q Investigator Humes, looking at this can you
14 --

15 Mr. Spratlin: Your Honor, I'd ask permission
16 for the witness to come off the stand.

17 The Court: He may do so, come around, please.

18 Mr. Spratlin: (Continuing)

19 Q And, sir, if you'd like to approach the
20 screen, if you could point out ---

21 The Court: Mr. Jackson, you may come around and
22 look, too, if you care to, sir. All right, sir.

23 Mr. Spratlin: Yes, sir, Your Honor. Sorry,
24 this video is kind of choppy a little bit.

25 Q (Continuing) Would you, please, point out

Officer Humes - Direct Examination by Mr. Spratlin 207

1 to the jury just the part of the shoe that may have
2 interested you?

3 A This area right here on the very bottom.

4 Q Okay, so focusing on that, does the color
5 pattern on the shoes, Officer Humes, seem to match what
6 we're seeing in the video; is that correct?

7 A That's correct, especially right now you
8 can see the front toe as well as the bottom area.

9 Q Let me, let me take that back video for a
10 second so you can point it out to the jury; you can
11 actually see the white there, Officer Humes?

12 A Yeah, it's a thin white line that you can
13 see right there. It's above the ankle you can see the pair
14 of socks and then the whiteness also goes around towards
15 the toe.

16 Q Okay, in this image you can also, what
17 color would you say the stripe on the pants seems to be;
18 it's not only a white stripe, is it?

19 A It's more of a silver gray stripe.

20 Q Now is that consistent with the pants that
21 we just introduced into evidence?

22 A That's correct.

23 Q All right, all right, thank you, Officer,
24 that's all the questions I have in regards to the video.

25 Mr. Spratlin: Madam Clerk, if we could move the

Officer Humes - Direct Examination by Mr. Spratlin 208

1 screen back up.

2 Q (Continuing) Now, Officer Humes, after
3 retrieving all the clothing that we've already introduced
4 into evidence and will be available for the jury's
5 inspection; what, if any, other involvement did you have in
6 this case?

7 A The only other involvement would have been
8 the following day I went to the Pan American to attempt to
9 obtain the video surveillance from the actual purchase of
10 the food.

11 Q And were you ever able to get any video
12 from the Pan American Pancake House?

13 A I was not. When I went to the Pan American
14 I spoke the the employee on duty. They didn't have any
15 knowledge of how the system worked or how to obtain any
16 type of video. I went into the office; they showed me
17 where the system possibly was; and the only thing I could
18 see in there was a monitor that would have been hooked into
19 possibly like an internet-type solution.

20 Q So it's possible it wasn't even recording?

21 A It's either that or it was going somewhere
22 else remotely.

23 Q Okay, in regards to the fingerprint you
24 discussed earlier what, if anything, did you do with that
25 when you got back to the police department?

Officer Humes - Cross Exam. by Defendant Jackson

209

1 A I completed a AFIS request sheet, which is
2 for analysis and I provided that sheet to crime scene
3 Officer Williamson to further evaluate the potential of the
4 latent print.

5 Mr. Spratlin: Yes, sir, Officer Humes, thank
6 you very much for answering my questions. Please answer
7 any questions the defendant may have.

8 The Court: Mr. Jackson, you may examine if you
9 care to.

10 Defendant Jackson: Yeah, I'd like to ask him
11 some questions.

12 Cross Examination

13 By Defendant Jackson:

14 Q I just want to know why you didn't
15 fingerprint the whole room like you --

16 A Inside the room?

17 Q The railing, yeah, inside the room?

18 A Well it's an evidentiary value. When I,
19 when I talked to the victims on scene it wouldn't make a
20 whole for time wise to fingerprint a refrigerator that they
21 physically didn't see you touch, so therefore, I didn't
22 fingerprint anything inside the room. The only items that
23 I could have fingerprinted would have been a telephone or
24 the lever of the door going out and as I discussed earlier
25 the potential of obtaining a print off the telephone after

Officer Williamson - Direct Examination by Mr. Holford 210

1 it had been used would have been very, very, very low so --

2 Q So wouldn't you try to, at least try to
3 print, depends on what crime this is, this is a high crime,
4 I mean a serious crime?

5 A I would print things whether it be a
6 misdemeanor crime or a felony crime but at the time of the
7 incident with circumstances, no.

8 Q So then the only shoes you seen with white
9 line, you say don't Adidas and don't Nike's they have, they
10 have the stripes, too, the white stripes?

11 A They may.

12 Q You never seen them like that before? You
13 ain't never seen ---

14 A Have I?

15 Q Yeah, have you ever seen Nike's and Adida's
16 with white stripes like that before?

17 A I'm sure, yeah.

18 Q And the surveillance camera when you say
19 you went back and you obtained clothes from the defendant?

20 A Yes.

21 Q I wonder where them shorts came from?

22 A They were either underneath your pants or
23 over top of your pants one; I obtained them from you.

24 Q Well I don't get that. If they were
25 underneath my pants then the victims couldn't say that I

Officer Williamson - Direct Examination by Mr. Holford 211

1 had shorts and then --

2 Defendant Jackson: No further questions, Your
3 Honor.

4 The Court: You may come down, thank you.

5 Mr. Spratlin: Your Honor, may this witness be
6 relieved from his subpoena?

7 The Court: He may be, thank you.

8 Mr. Holford: Your Honor, the State calls Scott
9 Williamson to the stand.

10 The Court: All right.

11 Officer Scott Williamson
12 being first duly sworn, testified as follows:

13 Madam Clerk: Please state your full name and
14 spell your last name.

15 The Witness: Scott Williamson, my last name is
16 w-i-l-l-i-a-m-s-o-n.

17 Direct Examination

18 By Mr. Holford:

19 Q Good afternoon, Mr. Williamson, how are you
20 doing today?

21 A I'm doing well, sir, thank you.

22 Q Can you tell me your occupation?

23 A I'm a police officer with Myrtle Beach.

24 Q And how long have you been with Myrtle
25 Beach P.D.?

Officer Williamson - Direct Examination by Mr. Holford 212

1 A Approximately seventeen years.

2 Q How long have you been in law enforcement
3 in total?

4 A Total about eighteen years, total.

5 Q And what's your current assignment with
6 Myrtle Beach?

7 A I'm a crime scene specialist.

8 Q And how long have you been doing that?

9 A A little bit more than three years.

10 Q So in November 2011 you were a crime scene
11 specialist?

12 A Yes, sir.

13 Q On your current assignment, how long have
14 you been involved in fingerprint work?

15 A Approximately three years with the crime
16 scene unit.

17 Q And do you have any specialized training in
18 this area?

19 A Yes, sir.

20 Q Do you know what trainings or who sponsors
21 them, any specific certifications?

22 A If you need specific dates and times I'd
23 have to refer to my notes.

24 Q Did you bring notes with you to Court
25 today?

Officer Williamson - Direct Examination by Mr. Holford 213

1 A Yes, sir.

2 Q Are these the notes I'm holding in my hand?

3 A Yes, sir.

4 Q Would it be helpful if you had your notes
5 to refresh your recollection about the specifics about
6 trainings Na dates?

7 A Yes, sir.

8 Mr. Holford: Your Honor, may I approach the
9 witness with these notes to refresh his recollection?

10 The Court: You may do so.

11 Mr. Holford: (Continuing)

12 Q Mr. Williamson, I'm handing you --

13 A Thank you.

14 Q Now as to specific certifications or
15 trainings as far as fingerprints can you tell me those,
16 those dates, those hours?

17 A Yes, sir, in August of 2009 I attended a
18 forty-hour class in basic crime procedures which involved
19 how to lift fingerprints, what fingerprints are, just very
20 general knowledge type class. In May of 2009 I attended
21 the South Carolina Criminal Justice Academy fingerprint
22 recognition and comparison class which taught how to
23 compare finger, two sets of fingerprint, that was a forty-
24 hour class. In April 2010 I attended the Academy of
25 Applie, I'm sorry, Academy of Applied Forensics in

Officer Williamson - Direct Examination by Mr. Holford 214

1 Charlotte, North Carolina, for a latent palm print
2 comparison class, which was the same as the fingerprint
3 class but you only had to do same things with palm prints;
4 and then I May of 2010 at SLED forensic services in
5 Columbia I took and passed a AFIS operators examination
6 which certified me to be allowed to use an AFIS terminal to
7 search fingerprints.

8 Q So the last three years you've spent over a
9 hundred hours in class?

10 A Yes, sir.

11 Q Training, how many fingerprints would you
12 say that you've come in contact with in the last three
13 years as crime scene investigator?

14 A I went back and looked at my statistics
15 that I keep over the past three years, each one is done by
16 request to me to analyze a fingerprint so I counted the
17 number of requests that I had and assuming one fingerprint
18 per request it came out to a little bit more than five
19 thousand prints.

20 Q And how many of those have you compared or
21 analyzed?

22 A Every, every one of them.

23 Mr. Holford: Your Honor, at this time the
24 State tenders Mr. Williamson as an expert in fingerprints
25 and the field of fingerprint examination and analysis.

Officer Williamson - Direct Examination by Mr. Holford 215

1 The Court: I qualify him in that regard and I
2 tell the jury that individuals who by training and
3 education may be qualified in a certain area and may give
4 their opinions on that. Their testimony is to be
5 considered by the jury in the same manner that they
6 consider other witnesses. They can accept it or reject it
7 in whole or in part. Proceed.

8 Mr. Holford: Thank you, Your Honor.

9 Q (Continuing) Mr. Williamson, what is a
10 fingerprint?

11 A A fingerprint is a reproduction of the
12 friction ridges and grooves that all people have on either
13 their fingertips or on their palms.

14 Q And how does a person leave their
15 fingerprints somewhere?

16 A On each friction ridge on the tip of your
17 finger you have sweat pores. When you sweat water, fatty
18 acids, salt, come out of those pores and tend to form along
19 those ridges and when you touch something it leaves a
20 reproduction or an image of that of those ridges on the
21 surface.

22 Q What kind of surfaces could a fingerprint
23 be left on?

24 A Anything that's not extremely porous that
25 would absorb the waters and fat and acids to where the

Officer Williamson - Direct Examination by Mr. Holford 216

1 image is not there anymore.

2 Q Are fingerprints always left on a surface
3 that someone touches?

4 A No, sir, there's several ways that
5 fingerprints aren't left.

6 Q And what if several people touch the same
7 object?

8 A You'd have what we call overlaid
9 fingerprints. It would essentially look like a crossed
10 grid of lines to where you wouldn't be able to tell what
11 line belongs to which fingerprint.

12 Q Would it be useful to you as a fingerprint
13 analyst if there was an overlay if there were multiple
14 fingerprints overlaid over each other?

15 A That would be something I would look at and
16 say I can't make any kind of identification off of this
17 because it doesn't have the correct information within the
18 print.

19 Q What other factors effect the ability to
20 get a print from a surface?

21 A There's environmental factors, does the
22 person leaving the print are they an excessively sweaty
23 person or do they have dry hands, and there are also rare
24 genetic diseases to where people actually don't have a
25 fingerprint when they're born.

Officer Williamson - Direct Examination by Mr. Holford. 217

1 Q And how would a crime scene specialist go
2 about obtaining a print off a surface?

3 A There's, there's many different ways of, it
4 really depends on the surface that you're using. Typically
5 on a flat hard non porous surface you use a fingerprint
6 powder which can be applied with a brush or a magnetic
7 wand. For fingerprinting paper or porous things we would
8 use a chemical process; there's various chemicals you can
9 use to enhance the print so you can view it.

10 Q Mr. Williamson, do you know if a
11 fingerprint was lifted in this case?

12 A Yes, sir.

13 Q And are you familiar with this fingerprint?

14 A Yes, I am.

15 Mr. Holford: Your Honor, may I approach the
16 witness what's been entered as State's Exhibit 15?

17 The Court: You may do so.

18 Q (Continuing) Let me show you State's
19 Exhibit 15; can you identify this?

20 A That's the latent card that I examined from
21 the crime scene at the Best Western Motel.

22 Q How did you get this?

23 A Crime Scene Specialist Humes filled out a
24 request form and gave me the fingerprint and the request
25 form asking me to analyze it.

Officer Williamson - Direct Examination by Mr. Holford 218

1 Q And what, if anything, did you do with
2 this?

3 A Typically examine the print under
4 magnification so you can see the details in the print under
5 a magnifying glass using a pointer and you look for
6 relative points, bifurcations, ridge endings, to say that
7 there's enough information in the print that I can either
8 compare the print to another print or I can search it
9 through the South Carolina Database.

10 Q And were you able to determine anything
11 with this print?

12 A I could determine that there was not enough
13 information, there's actually two fingerprints on the card,
14 two separate fingerprints, but there's not enough
15 information in either print to, for me to feel comfortable
16 to make an identification or use them.

17 Q Is that rare?

18 A That's actually very common.

19 Q Out of the five thousand or so fingerprints
20 you would say that you've analyzed how many have you been
21 able to match?

22 A To this point thirty-five positive
23 identifications on fingerprints that have been verified by
24 another certified latent examiner.

25 Q So it's not like we see in CSI where prints

Officer Williamson - Direct Examination by Mr. Holford 219

1 left everywhere and they're just automatically able to
2 match it to something?

3 A That's correct.

4 Q And in this case this, this specific
5 fingerprint that you have provided can you explain exactly
6 what you found?

7 A I don't understand the question.

8 Q You didn't, did you have enough to even
9 compare it to something else?

10 A I could not use the print for any purpose
11 either searching it through an online database or comparing
12 it to unknown fingerprint.

13 Mr. Holford: Thank you, Mr. Williamson, I
14 believe that's all the questions I have for you today.
15 Please answer any questions the defendant may have.

16 The Court: Mr. Jackson?

17 Defendant Jackson: No questions.

18 The Court: No questions?

19 Defendant Jackson: No questions.

20 The Court: All right, come down, thank you.

21 Mr. Holford: Your Honor, we'd ask that Mr.
22 Williamson be excused from his subpoena.

23 The Court: Mr. Williamson, I thank you for your
24 appearance.

25 The Witness: Thank you, sir.

Detective Clothier - Direct Exam. by Mr. Spratlin 220

1 Mr. Spratlin: Your Honor, the State would next
2 call Detective Steven Clothier to the stand.

3 Detective Steven Clothier
4 being first duly sworn, testified as follows:

5 Madam Clerk: Please state your full name and
6 spell your last name.

7 The Witness: Steven Paul Clothier II, c-l-o-t-
8 h-i-e-r.

9 Direct Examination

10 By Mr. Spratlin:

11 Q Detective Clothier, where are you currently
12 employed?

13 A Myrtle Beach Police Department.

14 Q How long you been working there?

15 A Was thirteen years in September.

16 Q What's your current assignment?

17 A My current assignment is in investigations
18 as a detective.

19 Q How long have you been a detective?

20 A It will be two years in January.

21 Q Okay, as a detective what's some of your,
22 what's some of the assignments or some of the duties of a
23 detective?

24 A I'm assigned to the property crime
25 division, so my supervisor will assign me property crimes

Detective Clothier - Direct Exam. by Mr. Spratlin 221

1 such as burglaries, burglary autos, financial crimes such
2 as FTC frauds, identity theft and that sort of, those sort
3 of crimes.

4 Q So basically in property crimes you get
5 assigned to certain crimes?

6 A Yeah, anything to do with property or, yes.

7 Q All right, what, if any, involvement did
8 you have with this case?

9 A Well initially I had no idea about this
10 case; I just happen to come in my normal work shift at 7
11 a.m. that, on the 14th that morning. While I was at my
12 desk Detective Humes came in and advised me that there was
13 a defendant in jail for a burglary. Crime Scene Humes was
14 inquiring as to if Detective Curry was working cause he's
15 the one that initially responded to the scene, and I said
16 no, he wasn't, and I said that I would go up to the jail
17 and interview the defendant.

18 Q All right, and did you have a chance to go
19 to the jail?

20 A I did, I didn't go up right away.

21 Q Now when you say jail do you mean the J.
22 Reuben Long Detention Center or where are you referring to?

23 A I mean the Myrtle Beach Police Department
24 that's located 1101 Oak Street.

25 Q Now who was the individual that you went to

Detective Clothier - Direct Exam. by Mr. Spratlin 222

1 interview that day?

2 A Anthony Jerome Jackson.

3 Q And do you see the man that you wound up
4 interviewing here in the courtroom here today?

5 A Yes, sir, he's in the white button down.

6 Mr. Spratlin: Please let the record reflect the
7 witness has identified the defendant.

8 Q (Continuing) Now where did the questioning
9 of Mr. Jackson occur?

10 A It occurred in the jail; there's two breath
11 alcohol rooms, and I chose one of them.

12 Q Is this common to use one of those rooms
13 for interviews?

14 A Absolutely.

15 Q All right, what kind of room is it, how
16 large is it, if you know?

17 A It's probably maybe a six by six room,
18 somewhere around there.

19 Q All right, and what all is in that room?

20 A There's a table, a couple of chairs, and
21 some breath alcohol components that have to do with DUI
22 stuff.

23 Q Who else besides yourself and Mr. Jackson
24 were present in the room?

25 A It was just myself and the defendant.

Detective Clothier - Direct Exam. by Mr. Spratlin

223

1 Q And was this interview recorded in some
2 way?

3 A Yes, I recorded it by audio.

4 Q And did you record the entirety of the
5 interview?

6 A Yes.

7 Q If you know how long did it take, let me,
8 what, if anything, did the defendant ask for during the
9 interview, anything?

10 A No.

11 Q Did he ask for any food?

12 A No.

13 Q Did he ask for any drink?

14 A No.

15 Q Did he ask to use the restroom?

16 A No.

17 Q Did the defendant ask to take a break
18 during the interview?

19 A No, and if he did I would have allowed him.

20 Q Okay, what, if anything, at all did the
21 defendant ask for that you didn't provide?

22 A Nothing.

23 Q Now let me ask you a little bit about the
24 defendant's background and demeanor; how old is he, if you
25 know?

Detective Clothier - Direct Exam. by Mr. Spratlin

224

1 A I believe he's forty-six, maybe forty-five
2 at the time.

3 Q And did you talk to him about his
4 education?

5 A I did.

6 Q How far did he say he went in school?

7 A I believe it was 11th grade but if you
8 provide me with the paperwork I could be more informative.

9 Q Would it be on the interview?

10 A Yes.

11 Q All right, from your conversation with the
12 defendant did he appear to understand the English language?

13 A Yes.

14 Q Did he appear to understand the questions
15 that you were asking him?

16 A Yes, cause he said, yes.

17 Q And were his responses appropriate to the
18 questions you were asking?

19 A Yes.

20 Q He didn't say, he didn't say bird when you
21 asked what color the sky was or anything like that, right?

22 A No.

23 Q Now, Detective Clothier, how long did you
24 say you've been in law enforcement, thirteen years?

25 A It will be, it was thirteen years in

Detective Clothier - Direct Exam. by Mr. Spratlin

225

1 September.

2 Q All right, how many, have you had a chance
3 while in law enforcement to come in contact with people who
4 are under the influence of either drugs or alcohol?

5 A All the time.

6 Q What are some of the symptoms that someone
7 under the influence of drugs or alcohol would exhibit?

8 A Sleepiness, nodding their head, continuing
9 to ask questions, those sort of things.

10 Q Would they also have slurred speech?

11 A Yes, slurred speech.

12 Q All right, did the defendant in any way
13 demonstrate to you that he was under the influence of
14 either drugs or alcohol at that time?

15 A No.

16 Q Did he appear to slur his words at all?

17 A No.

18 Q Did he appear to be dozing off during the
19 interview?

20 A Not at all.

21 Q Did he appear to have any trouble following
22 you?

23 A No.

24 Q Was there anything that gave you a reason
25 to believe the defendant was under the influence of alcohol

Detective Clothier - Direct Exam. by Mr. Spratlin 226

1 or drugs?

2 A No.

3 Q All right, let me ask you, Detective
4 Clothier, what, if anything, did you do in regards to the
5 defendant's rights that he had?

6 A I provided a form that's called the Miranda
7 Rights Form, I read it to him.

8 Q All right, let me, I'll have to mark one
9 more

10 (Whereupon, State's Exhibit Number 23 marked for
11 identification.)

12 Mr. Spratlin: Please let the record reflect I'm
13 showing the defendant what's been marked as State's Exhibit
14 23 for identification previously provided in discovery.

15 The Court: The record will reflect that you
16 have previously provided a copy to the defendant.

17 Mr. Spratlin: Yes, sir.

18 Q (Continuing) Detective Clothier, if I could
19 approach?

20 A Yes.

21 Q Do you recognize State's Exhibit Number 23?

22 A Yes, I do.

23 Q What is that?

24 A That is a City of Myrtle Beach Miranda
25 Rights Form.

Detective Clothier - Direct Exam. by Mr. Spratlin 227

1 Q All right, and now what did you do with
2 that form in regards to the defendant?

3 A I read it to him and he followed along.

4 Q All right, is that the original form that
5 you used?

6 A Yes, sir, it appears to be.

7 Q All right, and were there any additions or
8 deletions from the end of that interview to today as far as
9 you can tell?

10 A No, none.

11 Mr. Spratlin: Your Honor, at this time I'd
12 tender State's Exhibit Number 23 into evidence.

13 The Court: It's admitted.

14 (Whereupon, State's Exhibit Number 23 entered
15 into evidence.)

16 Mr. Spratlin: (Continuing)

17 Q Detective Clothier, what exactly did you
18 read the defendant?

19 A What I, before I read the Miranda what I
20 did is I asked him several questions, which we do.

21 Q Uh-huh, and what questions were those?

22 A I first asked him about his education, how
23 far he made it in school, and his reply was eleventh grade.

24 Q All right, and is that noted somewhere on
25 the form?

Detective Clothier - Direct Exam. by Mr. Spratlin

228

1 A It is right at the top.

2 Q And what other question did you ask him?

3 A I asked him if he was currently under the
4 influence of any drugs or alcohol and he, and he stated no,
5 that he slept it off.

6 Q And what, if any, other questions did you
7 ask him prior to reading the rights?

8 A I also asked him if English was his primary
9 language and his reply was yes.

10 Q All right, now what exactly did you read
11 him in regards to his rights, if you would, please, read
12 that form for the jury?

13 A Okay, I asked him, "you have the right to
14 remain silent and refuse to answer any questions," and I
15 asked him if understands that.

16 Q And is there any way that he, he
17 acknowledged that he did in fact understand that?

18 A Yes, his initials are right in front of
19 the, the question.

20 Q So you kind of initialed as you went along?

21 A Yes.

22 Q So, so in your opinion he understood that
23 he had the right to remain silent?

24 A Yes, because he initialed it.

25 Q All right, and what other right did you

Detective Clothier - Direct Exam. by Mr. Spratlin 229

1 read to him?

2 A Then I asked him, "anything you say can be
3 used against you in a court of law," and he said, yes, do
4 you understand that, he said, yes.

5 Q And again he, how did he acknowledge that
6 he understood that right?

7 A He initialed.

8 Q Okay, and what other rights did you read
9 him?

10 A "You have the right to talk to an attorney
11 and have him present with you while you're being
12 questioned."

13 Q And did he understand that right?

14 A Yes, because he initialed it.

15 Q All right, and what other rights?

16 A "If you cannot afford an attorney one will
17 be provided at government expense before any questioning,
18 if you wish."

19 Q And did he acknowledge that he understood
20 that right?

21 A Yes, by initialing.

22 Q Okay, and what, if any, other rights did
23 you read to him?

24 A "If you desire to make a statement or
25 answer questions you have the right to stop at any time."

Detective Clothier - Direct Exam. by Mr. Spratlin 230

1 Q And did he acknowledge that he understood
2 that right?

3 A Yes, by initialing.

4 Q All right, is there any that he or
5 acknowledged to you on that form that he understood all of
6 those above rights?

7 A Yes, there's one more, there's one more
8 line to sign that says "the above rights have been
9 explained to me and I understand each of them," and I
10 showed him if he understood to sign and he signed his name
11 Anthony Jackson.

12 Q Yes, sir, and that was done in your
13 presence, all that?

14 A Yes.

15 Q And did you or any other person sign as a
16 witness to this?

17 A At the, at the bottom I signed my name
18 Detective Steven Clothier as a witness to the defendant's
19 signature. I wrote in the date 11-14-2011, and then I
20 printed my name under my signature.

21 Q Now, Detective Clothier, you said that
22 conversation was recorded, correct?

23 A Yes, sir, it was.

24 Q All right, let me show you what has been
25 marked for identification purposes as State's Exhibit

Detective Clothier - Direct Exam. by Mr. Spratlin 231

1 Number 19?

2 Mr. Spratlin: It's previously been turned over
3 in discovery to the defendant.

4 Q (Continuing) What is that?

5 A That is a CDR of Anthony Jackson's
6 statement.

7 Q Have you had a chance to listen to that
8 statement?

9 A Yes, sir.

10 Q And does it seem to be a fair and accurate
11 representation of his statement as the defendant gave you
12 that day?

13 A Absolutely.

14 Mr. Spratlin: Your Honor, may I approach?

15 The Court: Sure.

16 (Whereupon, a bench conference was held off the
17 record in the presence of the jury, but out of the hearing
18 of the jury and the court reporter.)

19 The Court: Mr. Foreman and ladies and
20 gentlemen, we're going to be playing a video in just a
21 moment. To help you follow the video the statement typed
22 questions and answers out and this will help you follow the
23 video. If there be any difference between the video and
24 this typed document you accept the video. There should not
25 be but if there be the video is the controlling interest.

Detective Clothier - Direct Exam. by Mr. Spratlin 232

1 Go ahead.

2 Mr. Spratlin: Yes, sir, Your Honor, thank you.

3 The Court: Mr. Fox, you've seen it, too?

4 Mr. Fox: I have, Your Honor, I've seen it
5 previously.

6 (Whereupon, State's Exhibit Number 24 marked for
7 identification.)

8 Q (Continuing) Detective Clothier, real
9 quickly, I think the video that was mentioned is that a
10 video or is that, what is that?

11 A This is a audio recording, no video.

12 Q No video, all right, have you had a chance,
13 you said you had a chance to listen to that prior to today,
14 right?

15 A Yes.

16 Q Let me show you what's been marked for
17 identification purposes as State's Exhibit Number 24. Have
18 you had a chance to review that document before today as
19 well?

20 A I have.

21 Q All right, and what is that document?

22 A That is a transcript of my interview that I
23 conducted with the defendant.

24 Q Have you had a chance to go through that
25 transcript and listen to the statement at the same time?

Detective Clothier - Direct Exam. by Mr. Spratlin

233

1 A Yes.

2 Q And what, if anything, can you say about
3 the accuracy of the transcript to the statement?

4 A It's quite accurate.

5 Mr. Spratlin: Your Honor, at this time I'd ask
6 to be able to hand out the transcripts to the jury.

7 The Court: I will permit them and in the
8 conclusion of the video and audio if you would take them
9 back.

10 Mr. Spratlin: Yes, sir, Your Honor.

11 The Court: All right, sir, you may proceed.

12 Mr. Spratlin: Yes, sir, Your Honor.

13 Q (Continuing) Now, Detective Clothier, you
14 said that State's Exhibit Number, Number 19, excuse me, you
15 said that, you've had a chance to review that before court,
16 right?

17 A Yes.

18 Q And is it a fair and accurate
19 representation of the statement the defendant gave you that
20 day?

21 A Yes.

22 Mr. Spratlin: Your Honor, at this time I'd
23 tender that into evidence State's Exhibit Number 19.

24 The Court: The record will reflect that the
25 defendant has previously been provided a copy.

Detective Clothier - Direct Exam. by Mr. Spratlin 234

1 Mr. Spratlin: And, Your Honor, at this time I'd
2 ask to be able to publish this statement to the jury.

3 The Court: You may do so. Mr. Fox, you and the
4 defendant have a copy of the transcript?

5 Mr. Fox: We do, Your Honor.

6 (Whereupon, State's Exhibit Number 19 entered
7 into evidence and played in open court.)

8 Anthony Jerome Jackson Interview

9 This is Detective Clothier; it is November 14,
10 2011, and the time is 9:19 a.m., currently in the jail
11 interview room. This is in reference to case number 11-
12 019349. In the interview room with me is Anthony Jerome
13 Jackson; is that correct?

14 Defendant Jackson: Yeah.

15 Detective Clothier: You going to have to just
16 say yes or no so it can pick - yes or no. Yes?

17 Defendant Jackson: Yes.

18 Detective Clothier: Okay. Before I talk to
19 you, I'm going to ask you a couple of questions. Have you
20 ever been read your Miranda rights?

21 Defendant Jackson: Yeah.

22 Detective Clothier: Okay. That's what I'm
23 going to do right now because I am required to. But before
24 I ask you - before I read you your rights, what is your
25 education? Did you graduate?

Detective Clothier - Direct Exam. by Mr. Spratlin

235

1 Defendant Jackson: No.

2 Detective Clothier: What - what level did you
3 go to?

4 Defendant Jackson: Eleventh.

5 Detective Clothier: Eleventh?

6 Defendant Jackson: Yeah.

7 Detective Clothier: Okay, is English your
8 primary language?

9 Defendant Jackson: Yes.

10 Detective Clothier: Yes? Okay, are you
11 currently under the influence of any alcohol or drugs?

12 Defendant Jackson: I done slept it off now.

13 Detective Clothier: You slept it off? Okay.

14 Okay. I'm going to read these and you can sign and we'll
15 go from there. You have the right to remain silent or
16 refuse to answer any questions. You understand that?

17 Defendant Jackson: Yes.

18 Detective Clothier: Okay. You've just got to
19 speak up a little bit.

20 Defendant Jackson: Yes.

21 Detective Clothier: Okay. Anything you say
22 can be used against you in a court of law. Do you
23 understand that?

24 Defendant Jackson: Yes.

25 Detective Clothier: You have the right to talk

Detective Clothier - Direct Exam. by Mr. Spratlin 236

1 to an attorney and have him present with you while you're
2 being questioned. You understand that?

3 Defendant Jackson: Yes.

4 Detective Clothier: If you cannot afford an
5 attorney one will be provided at government expense before
6 any questioning if you wish. Do you understand that?

7 Defendant Jackson: Yes.

8 Detective Clothier: If you desire to make a
9 statement or answer any questions you have the right to
10 stop at any time. Do you understand that?

11 Defendant Jackson: Yes.

12 Detective Clothier: Okay. Seems how you
13 understand all this, all those, all I need you to do is
14 just initial where you responded. And all this says is the
15 above rights have been explained to you and I understand
16 each - each of those. You just go ahead and sign there.
17 All right, I appreciate it. Okay, now that - now that
18 you've signed that do you know why I'm in here talking to
19 you?

20 Defendant Jackson: Huh-uh.

21 Detective Clothier: You have no idea.

22 Defendant Jackson: No, sir. They ain't never
23 told me.

24 Detective Clothier: Okay. I am a very
25 flexible; I'm not out to get anybody. I'm not out to put

Detective Clothier - Direct Exam. by Mr. Spratlin 237

1 somebody in jail for life. I'm not here to put charges on
2 somebody that don't belong on somebody. I'm here to get
3 the side of the story. That's all I - that's all I want.
4 Okay. You seem like a good guy. I'm not passing judgment
5 on you for anything that you may or may not have done. All
6 I want is the truth; that's it. You're a man, right, and
7 you want to tell the truth? Okay. So why do you think
8 you're here?

9 Defendant Jackson: They ain't - I don't know. They
10 never told me the charge.

11 Detective Clothier: Okay.

12 Defendant Jackson: They arrest - they arrest -
13 they detained me, then somebody came and I.D.'d me, and
14 them they said that ain't the guy and they let me go. So
15 when they let me go I was walking down the street and I get
16 bout a block or two and they come flying down the street
17 telling me I left a lighter in the car. Oh, you left your
18 lighter in the car. I said, no, I got my lighter right
19 here. You dropped something in the car. I said I got it
20 right here. Well - turn around. Turn around. You know
21 and they put the handcuffs back on me and they say somebody
22 else want to I.D. me. So I say okay. So I say what's
23 going on and they never told me the charge. They ain't
24 never told me what I did or nothing.

25 Detective Clothier: Okay. Do you work at 1809

Detective Clothier - Direct Exam. by Mr. Spratlin 238

1 South Ocean Boulevard as a security guard?

2 Defendant Jackson: I used to.

3 Detective Clothier: You used to. But do you
4 currently now?

5 Defendant Jackson: No, sir.

6 Detective Clothier: Okay, so you have no
7 reason to be at [redacted] because you
8 don't work there?

9 Defendant Jackson: No.

10 Detective Clothier: Okay. So the first thing
11 I want to ask you is what were you doing at 1809 South
12 Ocean Boulevard tonight because these videos show you at
13 1809 South Ocean Boulevard?

14 Defendant Jackson: 1809?

15 Detective Clothier: Uh-huh. That's you. Now
16 mind you this is a printer so the video is perfect. This
17 is just printer lines. All I want is the truth.

18 Defendant Jackson: Oh, the guy - I asks him
19 for a cigarette. He say he had a cigar.

20 Detective Clothier: All right.

21 Defendant Jackson: Right there. He say he had
22 - I ask him for a cigarette.

23 Detective Clothier: Okay. Where did you meet
24 him if he - if you asked him for a cigarette? Where, where
25 on the floor did you meet him?

Detective Clothier - Direct Exam. by Mr. Spratlin 239

1 Defendant Jackson: On the floor? I met him outside.

2 Detective Clothier: You met him outside?

3 Defendant Jackson: Yeah.

4 Detective Clothier: So you think he went
5 outside in his underwear?

6 Defendant Jackson: No. I ain't met him in his
7 underwear. This was two guys in that room.

8 Detective Clothier: Okay.

9 Defendant Jackson: I don't, if that was the
10 one that was sitting out there when I went by him, but one
11 of them was outside and he came in and got me - he gave me
12 a cigar because he had packs of cigars in the drawer.

13 Detective Clothier: Did he give you his credit
14 card also?

15 Defendant Jackson: I don't have any credit
16 cards.

17 Detective Clothier: Okay. Well, what were you
18 doing with his credit card then? See, I don't like liars.
19 I'm, I'm trying to help you and - and when somebody is
20 honest with me in an interview I make a note of it when
21 this case gets transferred to the Solicitor's Office.
22 Okay? There's a point where I tell the Solicitor, yeah, he
23 cooperated. I wouldn't mind you helping him out for, for
24 whatever reason. I can't promise you that, but that's what
25 I put in there. Okay. Or I put in there - refused to

Detective Clothier - Direct Exam. by Mr. Spratlin 240

1 cooperate. There's a difference, okay? So let's stop with
2 the B.S. that you asked me for a cigarette and tell me what
3 happened. It's that easy. He's a man, fess up and just
4 tell me what happened. Okay? It goes a lot easier; it
5 goes quicker if, if you're honest and you tell me what
6 happened. So let's start all over again. Start from the
7 beginning and tell me what happened. If you want to take
8 your time to gather your thoughts, that's fine. It's -
9 just be a man. Fess up. It's okay. It's all right. It
10 shows that you're a man and you're willing to help. That's
11 all it is.

12 Defendant Jackson: You've got the charge of
13 burglary and I ain't did no burglary.

14 Detective Clothier: Okay. So you went in the
15 sliding glass door, is that correct?

16 Defendant Jackson: From the outside.

17 Detective Clothier: Because it was unlocked.
18 Because it was unlocked that why you went in?

19 Defendant Jackson: It was open.

20 Detective Clothier: Okay. That's fine. It
21 was open as you went in?

22 Defendant Jackson: Yeah. And I was talking to
23 the guy.

24 Detective Clothier: Okay. So you went in? It
25 was on like the first floor?

Detective Clothier - Direct Exam. by Mr. Spratlin 241

1 Defendant Jackson: Yeah.

2 Detective Clothier: And then you just went in,
3 and then you start - then you did start talking to him
4 because I know you started talking ---

5 Defendant Jackson: Yeah.

6 Detective Clothier: --- because I already
7 talked to the guys. Okay? What were you ---

8 Defendant Jackson: I went into the room - I
9 did like that. I just opened the curtain.

10 Detective Clothier: You just opened the
11 curtain?

12 Defendant Jackson: And he was laying in the
13 bed and I started talking to him.

14 Detective Clothier: Okay.

15 Defendant Jackson: You know what I'm saying?

16 Detective Clothier: Okay. So you were there
17 on his balcony. Is that why your fingerprint is on the
18 balcony? The balcony railing? That you - that's your
19 fingerprint. It matches this print right here. I'm not a
20 fingerprint ex - I'm not a fingerprint expert so I can't
21 tell you which points, but I talked to the crime scene
22 officer and there are several points that match this.
23 These are your prints. It's got your name on it. These
24 are your - these are all your fingerprints and this is the
25 print that was found on the railing. Okay. It's one of

Detective Clothier - Direct Exam. by Mr. Spratlin 242

1 these. I don't know. I'm not a crime scene expert. Okay.
2 So that's why your fingerprint would have been there -
3 because you were on the balcony?

4 Defendant Jackson: Yeah. I was.

5 Detective Clothier: Okay.

6 Defendant Jackson: I went over the railing.

7 Detective Clothier: Okay. So the victim
8 advised me that you told him that you were security and you
9 were investigating the open door, which you said it was
10 open. So it was open and that you were security and that
11 you were investigating a smell of weed. Is that correct?
12 Is that what you told him?

13 Defendant Jackson: No. I told him his door
14 was open. Why his door was open like that.

15 Detective Clothier: Okay.

16 Defendant Jackson: That's what I told him.

17 Detective Clothier: So at what point - because
18 the video shows you going out. It shows you coming out the
19 door, which would have been - which would have been this.

20 Defendant Jackson: Uh-huh.

21 Detective Clothier: So if you were coming out,
22 you must have been in the room?

23 Defendant Jackson: Yeah. I went in this room.

24 Detective Clothier: Okay. You went in this
25 room. Okay.

Detective Clothier - Direct Exam. by Mr. Spratlin 243

1 Defendant Jackson: He offered me to come in
2 the room. I went in the room.

3 Detective Clothier: Okay. So you did go in
4 the room. At what point did you grab his wallet? Because
5 he was missing his wallet, okay. And let me explain. You
6 had his credit card at the Pan American and used it twice.
7 I've seen the video. It's you and you were with somebody
8 else. Okay? Now at what point while you were inside there
9 did you grab his jeans and take his wallet out? Because
10 he's missing his wallet and his credit card.

11 Defendant Jackson: I ain't never took his
12 wallet out of -

13 Detective Clothier: Okay. Okay. What I'm -

14 Defendant Jackson: I'm getting nervous.

15 Detective Clothier: We're getting off - we're
16 getting off track. Okay. You're doing good. You're doing
17 good. Okay. Don't stop now. All right. But if you lie
18 it makes it worse.

19 Defendant Jackson: But I wasn't trying to get
20 no money.

21 Detective Clothier: You were trying - what
22 were you trying to get?

23 Defendant Jackson: I was just grab - I grabbed
24 one credit card.

25 Detective Clothier: Okay. And you - and you

Detective Clothier - Direct Exam. by Mr. Spratlin 244

1 bought some food at Pan American. Were you hungry?

2 Defendant Jackson: Yeah. And I ain't never
3 used it no more.

4 Detective Clothier: Okay.

5 Defendant Jackson: I just grabbed one.

6 Detective Clothier: That's - that's
7 understandable. You were hungry and you need, you need
8 some food. Who, who are the people that were with you at
9 the Pan American? And I'm not saying that they knew that
10 you used a stolen credit card? Who, what were they? A
11 friend of yours or -

12 Defendant Jackson: Yeah.

13 Detective Clothier: Who were they?

14 Defendant Jackson: I don't know their names.
15 Like street names.

16 Detective Clothier: Yeah, because you bought
17 yours and you bought theirs. Right?

18 Defendant Jackson: Because they was hungry
19 too.

20 Detective Clothier: Oh, they're homeless?

21 Defendant Jackson: Yeah.

22 Detective Clothier: Okay. Now I don't know
23 what it's like to be homeless, and I - I think it would
24 probably suck. Probably suck big time, huh? So he never
25 really asked you to come into the room, did he? No? Speak

Detective Clothier - Direct Exam. by Mr. Spratlin 245

1 up so I can hear you.

2 Defendant Jackson: No.

3 Detective Clothier: No. Okay. So what - what
4 did you do when you worked there?

5 Defendant Jackson: No. I ain't never.

6 Detective Clothier: Oh, so you never. So -

7 Defendant Jackson: I worked at -

8 Detective Clothier: A different one. So you
9 never worked at this hotel?

10 Defendant Jackson: I worked at 26th Holiday
11 South.

12 Detective Clothier: Okay. Which, which one is
13 this? This is 1809. Which hotel is this?

14 Defendant Jackson: This is -

15 Detective Clothier: Do you remember?

16 Defendant Jackson: Huh-uh.

17 Detective Clothier: Okay. It don't matter.

18 So - so what you're saying is - did you just - were you
19 walking by the hotel and you saw this sliding glass door
20 open. You just saw it open and then you just thought hey,
21 there's an opportunity.

22 Defendant Jackson: I just wanted -

23 Detective Clothier: I'm sorry?

24 Defendant Jackson: I opened the thing and he
25 said what you doing here? I told him, I said, hey, you got

Detective Clothier - Direct Exam. by Mr. Spratlin 246

1 your door open. You got to be careful. You know what I'm
2 saying. And I told him that and I went in his room and
3 stuff and he came in and he sat up and he talked to me for
4 a while in his room and then -

5 Detective Clothier: Okay. Yeah. He said he
6 talked to you. So at what point, how did you grab his -
7 where was his jeans? Where was his wallet?

8 Defendant Jackson: His wallet was on the - his
9 wallet was on the table.

10 Detective Clothier: It was on the table?

11 Defendant Jackson: Yeah.

12 Detective Clothier: And you just kind of -
13 what did you do? You just grabbed the whole wallet or just
14 -

15 Defendant Jackson: No. I just grabbed the
16 credit card out of it.

17 Detective Clothier: You just opened it and
18 grabbed the credit card out of it? Okay. How long after
19 you left the hotel did you go to Pan American? Did you go
20 right there or what did -

21 Defendant Jackson: Uh-huh.

22 Detective Clothier: You went right there?
23 Okay, is there anything else that you - you feel that you
24 want to talk to me about. Anything else that you want me
25 to know? And, and now's your time. It's on audio. Now is

Detective Clothier - Direct Exam. by Mr. Spratlin 247

1 your time to tell me.

2 Defendant Jackson: So I really want to know
3 the charge. So is this gonna be first degree?

4 Detective Clothier: I'll tell you. I'll tell
5 you in a second. Is there any - and I'll read it to you.
6 Is there anything else that you, you want to tell me?
7 Anything else that, you know, you want the courts to know.
8 Or, you know, I'll make sure that I put in there that you
9 do have a - a drug problem and want some sort of help which
10 I have no problem doing and I will do it. I said I'll do
11 it and I will do it. I'll make sure the Solicitor knows
12 that. Okay? Is there anything else you want to tell me?

13 Defendant Jackson: No.

14 Detective Clothier: Okay.

15 Defendant Jackson: Get some them guys out here
16 that's selling it.

17 Detective Clothier: All right. I'm going to
18 read you your three warrants. The first one is Burglary
19 First. These are going to be your copies. There's,
20 there's three pieces of warrants right here. I'm going to
21 read them to you. On 11/13 at approximately zero one
22 eleven hours affiant responded to HMI on South Ocean
23 Boulevard and stated a black male entered the room without
24 permission through the balcony sliding glass door. When
25 confronted by the victim, the Defendant said he was

Detective Clothier - Direct Exam. by Mr. Spratlin 248

1 security guard. Defendant then while left, the victim
2 discovered his wallet missing containing his credit cards.
3 A stock build male, gray hoody, white short underneath,
4 black pants, two stripes down each leg, and that's the
5 clothes that the jail - they took from you?

6 Defendant Jackson: Say what now?

7 Detective Clothier: The clothes that you were
8 wearing are the ones that they took from you and that's why
9 you're wearing the -

10 Defendant Jackson: Okay.

11 Detective Clothier: Two charges were made on
12 the victim's credit card at Pan American Steak House
13 located at 1305 South Kings Highway within thirty minutes
14 of the burglary. Witness from the restaurant positively
15 identified the defendant, which would be you, as a person
16 who had made the two purchases using the the stolen credit
17 card. Being the defendant was located in the area wearing
18 the clothing, and was seen on video as identified as making
19 the purchases on the stolen credit card taken during the
20 night from an occupied room there is probable cause. And
21 I'm not going to read you the financial transaction cards.
22 It just says that you used one for the purchase of \$19.48,
23 and the other one was used for \$9.41. Which one was the one
24 you were eating? Which one was yours?

25 Defendant Jackson: The a -

Detective Clothier - Direct Exam. by Mr. Spratlin 249

1 Detective Clothier: So the nine dollars?

2 Defendant Jackson: That American Burgers.

3 Detective Clothier: Yeah. The - the two

4 charges, which one was the food that you were buying? The
5 one for \$9.41?

6 Defendant Jackson: Yeah.

7 Detective Clothier: That was yours? And then
8 this one, you made a purchase for the other people?

9 Defendant Jackson: Yeah.

10 Detective Clothier: The \$19.48? Well, what
11 did ya'll order?

12 Defendant Jackson: I forgot what he ordered,
13 but I ordered a American Burger. I ordered three plates.

14 Detective Clothier: Do you remember what the
15 other person ordered?

16 Defendant Jackson: Ah - I forgot.

17 Detective Clothier: Okay. You understand
18 these warrants? Okay. Now I told you that I would put in
19 there that you were cooperative and that's exactly what I'm
20 going to do. Okay? Anything else that you want to say?
21 Anything else you want anybody to know?

22 Defendant Jackson: I need help bad.

23 Detective Clothier: You need help. Okay. I'll
24 make sure that I put that in there. Okay? You have any
25 further questions of me? No? Okay. That's going to

Detective Clothier - Direct Exam. by Mr. Spratlin 250

1 conclude our interview. It is now 9:39 a.m.

2 (Whereupon, the playing of State's Exhibit Number
3 19 was concluded.)

4 Mr. Spratlin: (Continuing)

5 Q Detective Clothier, let me ask you a couple
6 of questions in there. You mentioned that the fingerprint
7 when you were talking to the defendant that you actually
8 said in that statement that the fingerprint matched his
9 found; had you had a chance to get that print analyzed at
10 that point?

11 A No, that was the Crime Scene Humes come in
12 and said that he did take some fingerprints. He said, I'm
13 not exactly what he said, but, you know, sometimes it's a
14 tactic to use to go ahead and to elicit some information
15 from a defendant to see if he'll say, yeah, it was mine or
16 no, it was not mine.

17 Q It was kind of a tactic to sometimes
18 embellish the truth?

19 A Absolutely.

20 Q Or embellish the evidence a little bit, is
21 that a common tactic that's used?

22 A Yes.

23 Q Is there anything to your knowledge wrong
24 with doing that?

25 A No, none.

Detective Clothier - Direct Exam. by Mr. Spratlin 251

1 Q All right, let me just ask you going back
2 one more time, now obviously on the statement we didn't
3 hear any, but did you or anyone in your presence threaten
4 the defendant in any way?

5 A No, nobody.

6 Q All right, and did you or anyone in your
7 presence promise the defendant anything in exchange for his
8 statement?

9 A Nope.

10 Q All right, at any time during that
11 statement did the defendant state that he wished to not
12 speak with you?

13 A No, not once.

14 Q Did he state that he wished to remain
15 silent?

16 A No.

17 Q Did he ask for a lawyer?

18 A No.

19 Q Did he ask that questioning be terminated?

20 A No.

21 Q Did he invoke any of his rights during the
22 entire interview?

23 A None of them.

24 Q So in your opinion was that statement
25 freely and voluntarily given?

Detective Clothier - Cross Exam. by Defendant Jackson 252

1 A Absolutely.

2 Q No threat or coercion?

3 A Neither.

4 Q And do you see, again just to make sure
5 we're clear, do you see the individual who gave you that
6 statement here in the courtroom today?

7 A I do, sitting there in the white shirt.

8 Mr. Spratlin: All right, please let the record
9 reflect the witness has identified the defendant.

10 The Court: Mr. Jackson, do you have any
11 questions you would like to ask of this witness?

12 Defendant Jackson: Yes, sir.

13 The Court: Come ahead.

14 Mr. Spratlin: Beg the Court's indulgence to put
15 the exhibits back up real quick.

16 The Court: All right, sir, collect those
17 statements back, the transcripts back at this time and make
18 sure they're all back.

19 Mr. Spratlin: Yes, sir, Your Honor.

20 Cross Examination

21 By Defendant Jackson:

22 Q Detective Clothier, how you doing?

23 A Not too bad.

24 Q Right, when you interviewed me that day
25 didn't you coerce me to say the things that I said by

Detective Clothier - Cross Exam. by Defendant Jackson 253

1 promising, by telling me you was going to help me?

2 A I said that I would state in my notes that
3 you were cooperative; that's the only thing that I promised
4 and I did that.

5 Q Did you ever transfer to the Solicitor's
6 office that I've been cooperating with you?

7 A Yes, it's on audio and he heard it.

8 Q I said did you ever transfer it to him?

9 A I transferred the audio to him.

10 Q Not the tape, I'm talking about paper,
11 black and white, like you said, you said you was going to
12 transfer it on paperwork that I been cooperating with you?

13 A If I can be provided with my notes I'll be
14 able to refresh my memory.

15 Q So you lied about my fingerprints, right;
16 you said my fingerprints was on the thing to coerce me to
17 tell you that I been in that room because I was scared?

18 A But I didn't tell you you to, I didn't tell
19 you to tell me that they were yours.

20 Q You also told me that it was a video at the
21 restaurant that caught me on video using the credit card;
22 did you not or not say that?

23 A I did say that.

24 Q You lied, there's no video of my using the
25 credit card?

Detective Clothier - Cross Exam. by Defendant Jackson 254

1 A That's correct.

2 Q We heard in the part in the video where you
3 say you were not passing judgment on anybody, you not out
4 to get nobody, but I just want to know today is you out to
5 get me?

6 A Absolutely not.

7 Q Because I'm out fighting for my life right
8 now and you tell me you was going to help me, so, so what
9 I'm doing I'm just cooperating with you just so I can get
10 some help? I didn't know it was going to go this far where
11 I be fighting for my life? If I would have knowed this
12 here it would been something different, you know, so you
13 officers, and I ain't got nothing against the officers, I
14 love police, if it wasn't for police this world would be
15 messed up; you understand what I'm saying, but I ain't got
16 nothing against you or nothing like that but I just want to
17 know why would you tell somebody something and know you're
18 not going to do that thing because of the rank you have and
19 the badge you have and you have an opportunity to do that
20 and scare a person up, you know, and put a persons life on
21 the line; that's not right. I don't feel like that's
22 right, do you?

23 A Can I answer your question?

24 Q Yes.

25 A The only thing I promised you is I would

Detective Clothier - Cross Exam. by Defendant Jackson 255

1 tell the Solicitor that you were cooperative and that's
2 exactly what I did.

3 Q But is it right for you to do what you did?

4 A Absolutely.

5 Q To get me to say what I said?

6 A I didn't ask you to tell anything but the
7 truth.

8 Q Well how did you told me to tell the truth?
9 What you say, I'm going to do this, I'm going to do that,
10 I'm going to do this, I'm going to get you some help;
11 didn't you say that? It's on paper now you can't lie now?

12 A You're absolutely correct. What I said was
13 that I would put in my notes that you were cooperative.
14 It's not up to me to offer you help; it's not up, it's not
15 my job.

16 Q So you feel like I should be up here
17 fighting for my life right now after you done interview me
18 and cooperated with you?

19 A I can't answer how you feel.

20 Defendant Jackson: No further questions, Your
21 Honor.

22 The Court: All right, sir, you may come down.
23 Any further witnesses?

24 Mr. Spratlin: Your Honor, at this time the
25 State would rest.

1 The Court: Let's go to the jury room just a
2 moment, please, I'll be calling you back out very shortly.

3 (Whereupon, the jury retired to the jury room at
4 5:14 p.m.)

5 The Court: Mr. Fox, the State has now rested
6 and I want you to explain to the defendant at this time
7 that he has the absolute right to testify in his own
8 behalf. He has the right to call any witnesses that are
9 appropriate who have been subpoenaed. He also has the
10 absolute right not to testify. If he does not put up any
11 evidence, and it's his decision, he will have the last
12 argument to the jury. Have you had an opportunity to
13 explain that to him?

14 Mr. Fox: I have, Your Honor.

15 The Court: Does he understand that he has the
16 right to testify?

17 Mr. Fox: I believe he does, sir.

18 The Court: And does he understand that he has
19 the right not to testify?

20 Mr. Fox: Yes, sir.

21 The Court: Mr. Jackson, listen to me before
22 doing that the State having rested I on his behalf make the
23 motion for a dismissal upon the grounds of lack of evidence
24 which is denied. Do you have any other motions that you'd
25 like to make?

1 Defendant Jackson: Make a motion for a direct -
2 --

3 The Court: Wait a minute, go ahead.

4 Mr. Fox: I think, Your Honor, he was about to
5 say he would make a motion for a directed verdict which
6 Your Honor has just addressed.

7 The Court: And I would add, Mr. Jackson, it's a
8 question for the jury but there is sufficient evidence for
9 me to submit this case to the jury for their consideration.

10 Now we're at that stage where you may get on the
11 stand under oath and tell your version and you would be
12 cross examined by the State. If you elect not to testify I
13 would charge the jury that the fact that you did not
14 testify could not, must not be used against you in any way.
15 I would explain to the jury that that could not even enter
16 into their discussions during their deliberations.

17 Now it's a crucial issue for you and it's yours
18 alone. You cannot ever be heard to say that your lawyer or
19 somebody else told you to testify or not to testify. It
20 rests solely with you. Now do you have any, this is such a
21 critical proceeding, if you have any questions, please, ask
22 them of me, please? Do you have any questions? Do you
23 care to testify or not testify?

24 Defendant Jackson: No.

25 The Court: You do not desire to testify, then

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1 he will have the last argument. All right, do you have any
2 witnesses you want to put up?

3 Defendant Jackson: I ain't got no --

4 The Court: What did he say, Mr. Fox? Of course
5 he would have the last argument now if he doesn't put up
6 any witnesses and that's for him to decide.

7 Mr. Fox: Your Honor, I think he does have one
8 witness perhaps.

9 The Court: Is that witness available?

10 Mr. Fox: Yes, Your Honor.

11 The Court: That's fine, bring the jury out.
12 Oh, incidentally before they come let me say this to you, I
13 propose to go ahead and charge the jury prior to summation
14 with consent of counsel. The jurors have told me in the
15 past, Judge, I wish you would have told me what the law
16 was, I believe I could have followed your position. I will
17 be back with some concluding remarks after summation. Now
18 this is what I propose to do, we're going to take this
19 witness, I'm going to charge the jury. I'm going to send
20 them out. I'm going to ask them would they like to go
21 ahead and finish tonight or come back in the morning. I'm
22 going to leave it to the jury but I'm going to charge the
23 jury tonight and then I'll let them make that decision;
24 anybody got any questions about it?

25 Mr. Spratlin: Your Honor, the only question the

1 State would have I'm just wondering if it might not be more
2 efficient to charge, if they decide to come back in the
3 morning to hear closing arguments to wait and charge them
4 at that time.

5 The Court: No, sir, I'm going to charge
6 tonight, I'm going to charge the jury tonight. I will be
7 back with them with some closing remarks afterwards.

8 Mr. Spratlin: Yes, sir, Your Honor.

9 The Court: Now if the jury decides they want to
10 continue to work and finish this case I'm going to let them
11 do it; what you say, Mr. Fox?

12 Mr. Fox: If I could step to the restroom before
13 we bring the jury out.

14 Mr. Spratlin: Your Honor, one more matter.

15 The Court: Wait a minute, wait a minute, what
16 did you say, Fox?

17 Mr. Fox: I said if I could before we bring the
18 jury out if I could have a chance to run to the restroom.

19 The Court: Sure.

20 Mr. Spratlin: Your Honor, if we could just make
21 the record clear that it was the defendant's decision to
22 call a witness. I believe you questioned Mr. Fox.

23 The Court: Sir, no, sir, the defendant said he
24 wanted to call a witness; isn't that true, Mr. Jackson?

25 Defendant Jackson: Yes, sir.

Ms. Lewis - Direct Examination by Defendant Jackson 260

1 The Court: Yes, sir, I heard him say that; he's
2 entitled, go ahead, Mr. Fox.

3 Mr. Fox: Thank you, Your Honor.

4 (Whereupon, a recess was taken and the following
5 takes place on the record after the recess.)

6 The Court: So it is the defendant's right to
7 call a witness and he's exercised it?

8 Mr. Fox: That's my understanding, Your Honor.

9 The Court: You agree with that, Mr. Jackson?

10 Defendant Jackson: Yes, sir.

11 The Court: All right.

12 (Whereupon, the jury returns to the courtroom at
13 5:29 p.m.)

14 The Court: Mr. Foreman, at the time of recess
15 the State has rested meaning we have completed the call
16 involving witnesses. We now move to the defense. Mr.
17 Jackson, do you have a witness you wish to call?

18 Defendant Jackson: Yeah, I'd like to call Ms.
19 Luellen Lewis to the stand.

20 The Court: Have her come around, please.

21 Luellen Lewis

22 being first duly sworn, testified as follows:

23 Madam Clerk: State your full name and spell
24 your last name.

25 The Witness: My name is Luellen Lewis, l-e-w-i-

Ms. Lewis - Direct Examination by Defendant Jackson 261

1 s.

2 The Court: You may proceed, Mr. Jackson.

3 Direct Examination

4 By Defendant Jackson:

5 Q If anybody noticed, know me in this world
6 this woman right here know me. She brought me in this
7 world. What is your occupation?

8 A Pastor.

9 Q How long have you been a pastor?

10 A Twenty-four years.

11 Q How long you had been in the State of South
12 Carolina?

13 A Well I moved back from Bridgeport,
14 Connecticut in 1976.

15 Q Have you ever known me to be a bad person?

16 Mr. Spratlin: Objection, Your Honor.

17 The Court: Don't, I would not suggest that you
18 put your record into evidence now because if you do they're
19 going to have an opportunity to examine it. It's not for
20 your interest for her, for you to get into your personal
21 record, Mr. Jackson. It's not objectionable if he wants to
22 do it, but there's consequences.

23 Mr. Spratlin: Yes, sir, I just want to make
24 sure that as a pro se the defendant he understood that he
25 was opening a door that the State could bust through.

Ms. Lewis - Direct Examination by Defendant Jackson 262

1 The Court: Let me say this to you, Mr. Jackson,
2 if you ask a witness certain questions that means that the
3 other side has an opportunity to explore what you did. I
4 make no comment as to what your record is or is not, I
5 don't know, I'm just telling you if you start asking her
6 are you a bad person or a good person they're going to have
7 a right to come and ask her some questions, too.

8 Defendant Jackson: I didn't know, I didn't
9 know, sir.

10 The Court: I would not ask that.

11 Defendant Jackson: This the first time doing --

12 -

13 The Court: I would not ask that question.

14 Defendant Jackson: Okay, all right.

15 The Court: I understand you're pro se and I'm
16 trying to help you, go ahead.

17 Defendant Jackson: (Continuing)

18 Q So I've been, how can I say that, when you
19 moved down here how old I was?

20 A Well you're forty-six now so I guess you
21 could have been somewhere around about eight.

22 Q Okay ---

23 A Or nine or something like that.

24 Q On my growing up what I was into, what I
25 was like into all the time?

Ms. Lewis - Direct Examination by Defendant Jackson 263

1 Mr. Spratlin: Your Honor, I understand that
2 we're dealing with a pro se defendant here but I'm going to
3 have to object on relevancy.

4 The Court: I'm not going to let him, don't go
5 into your record now whatever because if you do they've got
6 a right to go into it, too. I don't know what it is but I
7 just caution you under our rules they've got a right if
8 you've got a bad record, and I don't suggest that you do or
9 don't, you would know that, but don't go into where you're
10 good or bad. If you do you're opening the door and that
11 may or may not be to your benefit.

12 Defendant Jackson: I'm just asking her what I
13 grew up doing.

14 The Court: No, sir, but you're getting ready to
15 go further, but I'm going to let, go ahead. I'll let her
16 answer the question what you grew up doing.

17 Defendant Jackson: (Continuing)

18 Q What I grew up doing?

19 A In what way, what you mean what you grow up
20 doing?

21 Q What I grow up doing as far as being in the
22 streets and being in church or whatever?

23 A Well you was in the church for a while but
24 when you got of age you was on your own.

25 Q Okay, so what, what I was doing in church?

Ms. Lewis - Direct Examination by Defendant Jackson 264

1 A Well when you was in the church you, you
2 served in the church when you was in there, when you was
3 there you served and when you left you was on your own,
4 sung in the choir, you cooked, you cleaned, you cut the
5 grass, whatever was to do you. I mean you did it and while
6 you were there you played the drums, You was a drum
7 beater; you did that, and when you was there you did that.

8 Q And I just, I just want, that's all I
9 wanted to ask you.

10 The Court: That's fine, let her come down,
11 counsel.

12 Mr. Spratlin: No questions, Your Honor.

13 The Court: All right, you may come down, thank
14 you. Mr. Jackson, do you have any other witnesses?

15 Defendant Jackson: No, that's it.

16 The Court: Do you have any reply?

17 Mr. Spratlin: No, Your Honor.

18 The Court: All right, Mr. Foreman, let me tell
19 you what I propose to do. I'm going to send you out for
20 just a moment and bring you right back. Ordinarily we have
21 summation from counsel and then instructions in the law and
22 I give you the case for your deliberations. Jurors have
23 said, Judge, I wish you would have told me what the law was
24 ahead of time and I'm going to do that as soon as I bring
25 you back.

1 Once I instruct you in the law I'm going to send
2 you to the jury room and at that time tell you that we can
3 conclude this case by short summation of counsel tonight
4 which will end your services not only for the day but for
5 the week, or we can bring you back at 9:30 in the morning
6 to conclude the taking of summation from counsel. I'll let
7 you go to the jury room. I'm going to bring you right back
8 in just a minute, give you the law and then let you make
9 your decision whether you want to finish this case tonight
10 or in the morning. Now I'm going to bring you back in
11 three minutes. I just got a matter I have to discuss with
12 the counsel then I'll give you an opportunity on that other
13 issue.

14 (Whereupon, the jury retired to the jury room at
15 5:36 p.m.)

16 The Court: The State having no reply all of the
17 testimony is over, Mr. Fox, I'll permit you to make the
18 appropriate motions to protect his interest?

19 Mr. Fox: Again, Your Honor, we'd renew Mr.
20 Jackson's motion for a directed verdict.

21 The Court: Okay, by consent of counsel I'm
22 going to go ahead and instruct the jury but I will be back
23 with them with some closing remarks after summation, and as
24 I said I'm going to send, after instructions in the law I'm
25 going to let them decide whether they want to finish it

1 tonight or come back in the morning at 9:30; you
2 understand, Solicitor?

3 Mr. Spratlin: Yes, sir, Your Honor, I don't
4 believe the defense has technically rested on the record.
5 I believe you did ask if he had any more witnesses and he
6 said, no, I would just ask that he be made to rest on the
7 record at the appropriate time.

8 The Court: Well I took it as a rest when he
9 said he had no more witnesses; can we agree with that, Mr.
10 Fox?

11 Mr. Fox: I think so, Your Honor.

12 The Court: Sure he does, he said he had no more
13 further witnesses.

14 Mr. Spratlin: Your Honor, if we'd just ask the
15 defendant on the record real quick just to make clear.

16 The Court: You have rested your defense, have
17 you not?

18 Defendant Jackson: Yeah.

19 The Court: Okay.

20 Mr. Spratlin: Thank you, Your Honor.

21 The Court: Bring the jury back.

22 Mr. Spratlin: And, Your Honor, you've denied
23 the motion for a directed verdict, correct?

24 The Court: Certainly.

25 Mr. Spratlin: Okay.

1 The Court: I denied the motion.

2 Mr. Spratlin: Yes, sir, Your Honor.

3 The Court: And if the record would reflect that
4 I've denied it as a matter for the jury to consider.

5 (Whereupon, the jury returns to the courtroom at
6 5:38 p.m.)

7 The Court: Mr. Foreman and ladies and
8 gentlemen, you've been a very patient group throughout the
9 day and I deeply appreciate it on behalf of myself, our
10 judicial system, and the good people of Horry County.
11 We're working a little later than usually and I do that for
12 several reasons. I want to go ahead and conclude these
13 issues if at all possible, plus if time permits and it
14 suits you, we'll finish your duty in this case tonight and
15 you'll be excused for the rest of the week, but I'll let
16 you make that decision after I have concluded instructing
17 you at the law.

18 Mr. Foreman, it makes absolutely no difference to
19 me whether you'd like to go ahead and proceed tonight or
20 come back in the morning. After I give you these
21 instructions we'll have a short summation by Mr. Jackson
22 and a short summation by counsel for the State, and at that
23 time I'll give you the case for your deliberation and tell
24 them to bring you some crackers and if you get hungry it's
25 a little too late to order supper for you, but --

1 As you're well aware this defendant comes before
2 you charged in an indictment with burglary first degree and
3 to this charge Mr. Jackson, the defendant, specifically
4 pleads not guilty. He was charged in this indictment and
5 brought to trial. The allegations in the indictment are
6 absolutely no evidence; it's just the allegations that the
7 State must prove to your satisfaction beyond a reasonable
8 doubt.

9 Now a defendant has pled not guilty to this
10 indictment and that plea puts the burden on the State of
11 South Carolina to prove the defendant guilty, if they can,
12 by evidence to your satisfaction unanimously beyond a
13 reasonable doubt.

14 A person charged with committing a criminal
15 offense in South Carolina is never required to prove
16 himself innocent. The State must prove him guilty beyond a
17 reasonable doubt. I, therefore, charge you that it is
18 important rule of law that a defendant in a criminal trial
19 no matter how serious may be the charge must always be
20 presumed to be innocent of the crime for which the
21 indictment was issued unless and until you, the jury, find
22 him guilty by evidence beyond a reasonable doubt.

23 This presumption of innocence does not end when
24 you begin your deliberations but it accompanies the
25 defendant throughout the trial and until you, the jury,

1 have unanimously found him guilty beyond a reasonable
2 doubt.

3 Now this presumption of innocence, Mr. Foreman,
4 is like a robe of righteousness placed about the shoulders
5 of this defendant which remains with him until you, the
6 jury, if at ever, have found him guilty beyond a reasonable
7 doubt.

8 I charge you now that this presumption of
9 innocence is not merely legal theory. It is just not a
10 legal phrase. It is a substantial right to which every
11 defendant is entitled unless and until you the jury are
12 satisfied from the evidence of the defendant's guilt beyond
13 a reasonable doubt.

14 The State, as I've indicated, has the burden of
15 proving the defendant guilty beyond a reasonable doubt.
16 Some of you may have served as jurors in civil cases where
17 you were told that it is only necessary to prove that a
18 fact is more likely true than not such as by the greater
19 weight or the preponderance of the evidence. In criminal
20 cases the State's proof must be more powerful than that; it
21 must be beyond a reasonable doubt.

22 Mr. Foreman and ladies and gentlemen, proof
23 beyond a reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt. There are very few
25 things in this wide world that we know with absolute

1. certainty and in criminal cases the law does not require
2. proof that overcomes every possible doubt. If based on
3. your consideration of the evidence you are firmly convinced
4. that the defendant is guilty of the crime charged you must
5. find the defendant guilty. If, on the other hand, you
6. think there is a real possibility that the defendant is not
7. guilty you must give the defendant the benefit of that
8. doubt and find him not guilty.

9. Now I remind you that during this trial you and I
10. have certain duties to perform. As the trial judge I'm
11. responsible for presiding over the trial, admitting such
12. evidence as is appropriate, and charging you the
13. appropriate law with regards to the issues that are raised.
14. You are the finders of the fact and the credibility of the
15. witnesses. I charge you that there's nobody in this wide
16. world that can tell you twelve what the facts are in this
17. case. You and you alone are the sole and only judges of
18. the credibility and believability.

19. In that regard I am not entitled to a factual
20. opinion about any issue among these litigants and I charge
21. you, if any word, ruling, mannerism of mine might tend to
22. indicate to any of you how I feel about any factual
23. situation, please disregard that. I am not entitled to a
24. factual opinion and I absolutely have none.

25. Now as trial judge it is my duty to charge you

1 the law of this case. You or I might disagree with what
2 the law is as to the issues in this case or what the law
3 ought to be, please disregard that. Your oath, your oath
4 requires you to accept the law as I charge it to you
5 remembering that as finders of the facts you take the facts
6 as you find them to be and apply those facts to the law as
7 I now and hereafter shall charge it to you.

8 Now I want to chat with you about direct and
9 circumstantial evidence. Generally presented during a
10 trial is direct evidence and circumstantial evidence.
11 Direct evidence is the testimony of a person who claims to
12 have actual knowledge of a fact such as an eyewitness. It
13 is evidence which immediately establishes the main factor
14 to be proved, if believed.

15 Circumstantial evidence is proof of a chain of
16 facts and circumstances indicating the existence of a fact.
17 It is evidence which immediately establishes collateral
18 facts from which the main fact may be inferred.
19 Circumstantial evidence is based on inferences and not on
20 personal knowledge or observation.

21 I charge you now, Mr. Foreman and ladies and
22 gentlemen, the law makes absolutely no distinction between
23 the weight or value to be given to either direct or
24 circumstantial evidence nor is a greater degree of
25 certainty required of circumstantial evidence than of

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1 direct evidence. You should weigh all of the evidence in
2 this case. After weighing all of the evidence if you are
3 not convinced of the guilt of the defendant beyond a
4 reasonable doubt you must then find the defendant not
5 guilty.

6 Now I touched on this earlier with regards to
7 credibility of the witnesses. Necessarily you must
8 determine the credibility of the witnesses who have
9 testified in this case. Credibility simply means
10 believability. It becomes your duty as judges, as jurors
11 to analyze and to evaluate the evidence and testimony of
12 every witness who testified. Obviously you would not
13 determine the truth or falsity of a matter by counting up
14 the number of witnesses who may have testified one way or
15 the other. You know you didn't leave your common sense, as
16 I indicated, on the streets of Conway when you came into
17 this jury room, and we know in our every day lives when
18 folks tell us things we size them up. There's certain
19 tools we use. Sometimes we say how did this person come to
20 know what they're telling me. We would say is this
21 testimony consistent with other testimony that I have. You
22 would always consider whether or not a particular witness
23 was biased or prejudiced with regards to the testimony that
24 he or she gave you. In other words, did that witness have
25 some reason that want you to believe one thing or another.

1 As I indicated earlier, you can believe all of what a
2 witness says or none; you can believe a small portion and
3 disregard the larger. You as finders of the facts make
4 that determination and you probably have some other tools
5 that you use in every day lives in judging credibility and
6 believability. You bring your life experiences to bear in
7 deciding for yourselves, yourselves, the credibility, the
8 believability, of every witness who may have testified in
9 this case.

10 Now I qualified several witnesses as experts and
11 I told you then and I tell you now, individuals may be
12 qualified as experts who have certain training or
13 experience in that field and they are qualified to testify
14 with regards to that field. You may accept it or reject
15 their testimony in whole or in part in the same manner as
16 you would any other witness. I tell you that expert
17 testimony is to be given no greater weight than other
18 witnesses simply because I have qualified them as an
19 expert.

20 Now in this case this defendant, as his absolute
21 right, elects not to testify. Now I charge you in as
22 strong a language as I can there is absolutely no inference
23 against this defendant or any defendant who elects not to
24 testify. That is his constitutional right; it is yours,
25 and it is mine. This defendant doesn't have to prove a

1 thing; the State has the burden of proving him guilty, if
2 they can, beyond a reasonable doubt. Now, Mr. Foreman, I
3 charge you that you must not let it enter into your
4 discussions that this defendant elected not to testify. It
5 is just simply his absolute right and there's absolutely no
6 inference against him as a result of his not testifying.

7 Now there has been introduced into evidence a
8 video regarding an alleged statement by this defendant and
9 I have provided for you during the playing only, a
10 certified transcript of that testimony. I charge you with
11 regards to that as follows: a statement alleged to have
12 been made by the defendant has been admitted into evidence
13 in this case. While this Court has determined that the
14 statement is admissible for your consideration I instruct
15 you that you make the ultimate decision of whether or not
16 the defendant made this statement; that's your decision.
17 If you conclude that the defendant made the statement you
18 must determine whether the statement was made by the
19 defendant voluntarily and of his own free will. This means
20 that the statement was not caused by pressure, force, fear,
21 threats, coercion, or intimidation, or by hope or promise
22 of leniency or reward of any kind. In determining whether
23 the statement was voluntarily made you should consider both
24 the character, the characteristics of the defendant, and
25 the details of the questioning.

1 Some of the factors that you may consider are the
2 age of the defendant, the defendant's education or lack
3 thereof. You may consider the defendant's mental ability
4 or alertness, his capacity or intelligence. You're
5 entitled to consider the defendant's background and
6 environment, the place and length of the detention, the
7 nature of the questioning, the advice or lack thereof to
8 the defendant of his constitutional rights including but
9 not limited to the right to remain silent, that any
10 statement could be used against him in a court of law, the
11 right to have a lawyer present, that he could not, if he
12 could not afford a lawyer a lawyer would be appointed by
13 him at no cost to him, and that he could stop making that
14 statement at any time. You must carefully consider all of
15 the surrounding circumstances before you give any weight to
16 an alleged statement.

17 The State has the burden of proving beyond a
18 reasonable doubt that the alleged statement was voluntarily
19 made. If you determine it was, I must say advisedly, if
20 you determine it was, you may give that statement any
21 further consideration that you, the jury, deem proper and
22 appropriate. You must decide what weight, if any, you
23 should be given to the alleged statement. If you determine
24 the alleged statement was not the free and voluntarily
25 statement of the defendant you must not consider the

1 statement at all.

2 You're well aware the defendant is charged with
3 first degree burglary. The State must first prove beyond a
4 reasonable doubt that the defendant entered a dwelling
5 without consent and with intent to commit a crime therein.
6 A dwelling is any building or portion of a building in
7 which a person ordinarily sleeps. I charge you that a
8 motel room in our law is a dwelling. In order to prove
9 that the defendant entered the dwelling the State does not
10 have to show that the defendant's entire body entered the
11 dwelling, only the State must show at least his arm or some
12 portion did so. Actual force is not necessary. The
13 question is was there an entering without consent with
14 intent to commit a crime therein.

15 I charge you, too, that if a person enters a
16 dwelling using deception, artifice, trick, or
17 misrepresentation to get the consent to enter then the
18 enter, then the entering, that entering is without consent.

19 Next, the State must prove beyond a reasonable
20 doubt that this defendant intended to commit a crime,
21 either a felony or a misdemeanor at the time of entry. The
22 mere entry into a dwelling without consent is not burglary.
23 If the intent to commit a crime formed after the entry it
24 is not burglary. The entry must be without consent and
25 with intent to commit a crime therein, and that is for you

1 to decide as finders of the fact.

2 Intent may be shown by acts and conduct of the
3 defendant and other circumstances from which you may
4 naturally and reasonably infer intent, and as all other
5 matters the State must prove intent beyond a reasonable
6 doubt.

7 Now I charge you, ladies and gentlemen, the
8 defendant has a prior record, allegedly, of two or more
9 convictions for burglary. Evidence of prior offenses
10 committed by the defendant was not offered to prove the
11 defendant had a bad character or to prove that the
12 defendant committed the burglary on this occasion. As I
13 indicated before the prior convictions may be considered by
14 you only for the purpose of determining whether or not the
15 State of South Carolina has satisfied the requirement that
16 the defendant has been, has two prior convictions for
17 burglary and they must prove this to your satisfaction
18 beyond a reasonable doubt.

19 I charge you that before you can even consider
20 the evidence of the defendant's prior burglary you must
21 first find that this, that the State has proven beyond a
22 reasonable doubt that the defendant is guilty of the crime
23 for which he is on trial today, that must be your first
24 inquiry. Obviously if you conclude he's not guilty you
25 would not consider the prior two. If you find, and that's

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1 advisedly, if you find him guilty of this burglary then you
2 may consider the prior two burglaries. If you find beyond
3 a reasonable doubt that burglary was committed then you may
4 consider evidence of the prior convictions as evidence of
5 one of the circumstances which would make the burglary in
6 this case first degree.

7 Now, ladies and gentlemen, there are two possible
8 verdicts in this case. One is not guilty, the other is
9 guilty. Whatever your verdict is it must be the unanimous
10 verdict of all twelve of you. It cannot be a verdict of
11 the majority, obviously it would not be one of the
12 minority.

13 Mr. Foreman, I have a verdict form for you and it
14 clearly says, check one of the two. The first is we find
15 him not guilty or, two, we find him guilty. Make your
16 determination here and whatever your verdict is, I have
17 this indictment for you, which is not evidence, and under
18 the word verdict please sign you're not guilty or guilty
19 and write your name.

20 Now that concludes the law of this case and after
21 summation I'll be back with some following remarks. I'm
22 going to let you go to the jury room. This is a quandary
23 that you'll find yourself in, if you elect, it's your
24 decision, to come back in the morning for final summation,
25 it'll be about forty-five minutes, you'll have the case for

1 your deliberation. That's fine with me. This is the last
2 case that you will have for your consideration this week
3 and you, Mr. Foreman, you take a vote. If your jury wants
4 to come back for final summation and deliberations tonight
5 be glad to do that and let you go home after your verdict.
6 If you'd rather come back at 9:30 in the morning to
7 conclude these proceedings that's fine with me, too. I'm
8 going to let you go to the jury room and let me know what
9 your decision is, thank you.

10 (Whereupon, the jury retired to the jury room at
11 6:06 p.m.)

12 The Court: Any exceptions or addition to the
13 charge?

14 Mr. Spratlin: No exceptions, Your Honor.

15 The Court: For the defense?

16 Mr. Fox: None, Your Honor.

17 The Court: All right, sir, I'll wait the jury's
18 decision. Explain to him now that he will be the first to
19 speak to the jury and he must not discuss with the jury the
20 possible penalty. That's not for jurors consideration,
21 but, Mr. Jackson, incidentally you have conducted yourself
22 admirably during the trial of this case and I thank you for
23 that.

24 Mr. Spratlin: Your Honor, I understand that
25 you've just asked Mr. Fox if there were any objections on

1 his behalf, just again for the record since the defendant
2 is representing himself I just would like the defendant to
3 put on the record that he has no exceptions or objections
4 to your charge.

5 The Court: He knowledged that he had none but
6 I'll ask him officially again, do you have any objection to
7 the charge?

8 Defendant Jackson: No, sir.

9 The Court: All right, thank you.

10 Mr. Spratlin: Thank you.

11 (Whereupon, the jury returns to the courtroom at
12 6:15 p.m.)

13 The Court: The jury's decision is to return at
14 9:30 in the morning which I certainly can understand and
15 accept. It's been a long day but I do tell you that in the
16 morning the only thing remaining prior to your deliberation
17 is summation of Mr. Jackson and summation of counsel for
18 the State. Please remember my admonitions, don't discuss
19 the case with anyone and no one discuss it with you.
20 Please do not make any independent inquiry. Stay off the
21 internet and the iPod, whatever else you got, and the
22 reason is that whatever your verdict it's got to be based
23 on the law and evidence in this courtroom. You've been a
24 very patient jury and you worked a long time today and I
25 thank you for that. Please report in the morning

1 downstairs at about 9:25 so I can have you up here at 9:30
2 ready to go. Thank you so much, have a good evening.

3 (Whereupon, the jury was excused for the evening
4 at 6:17 p.m.).

5 The Court: Anything before we adjourn?

6 Mr. Spratlin: Not on this case, Your Honor.

7 The Court: Thank you, you've moved very
8 expeditiously and as I said, Mr. Jackson, I thank you.

9 Mr. Spratlin: Yes, sir, Your Honor, anything I
10 can do.

11 Mr. Fox: Thank you, Your Honor.

12 (Whereupon, court was adjourned for the evening
13 resumes on November 15, 2012 at 9:30 a.m.)

14 The Court: Bring the defendant in. Let the
15 record reflect that the jury has been charged on yesterday
16 by consent of the parties prior to summation with the
17 understanding that I'll be back with some concluding
18 remarks after summation. The defendant put up testimony
19 and, therefore, he will have the first start with the jury
20 followed by the State. Does the State waive the opening
21 argument, just want one argument?

22 Mr. Spratlin: The State waives opening and just
23 will close, Your Honor.

24 The Court: Good morning, Mr. Jackson.

25 Defendant Jackson: Good morning.

1 The Court: We are at that stage of the trial
2 where all the testimony was concluded. I have charged the
3 jury with regards to the law and we're now at that stage
4 where we have final summations, meaning final arguments.
5 When the jury comes out you will be permitted to go to the
6 jury and tell them whatever you think is appropriate; do
7 you understand that?

8 Defendant Jackson: Yes, sir.

9 The Court: Sir?

10 Defendant Jackson: Yes, sir.

11 The Court: Now you are not to mention to the
12 jury what the possible penalties are. That is not for the
13 jury's consideration; that's for the Judge only. Other
14 than that you tell them whatever you think is appropriate
15 and helpful to you. You've elected to represent yourself
16 and in fairness to you I've left Mr. Fox sitting at the
17 table. Mr. fox, if you care to discuss with him a few
18 minutes before summation I'll be glad to permit that.

19 Mr. Fox: Thank you, Your Honor.

20 The Court: The motions yesterday, we've
21 concluded all necessary motions?

22 Mr. Spratlin: Yes, sir, Your Honor, we did.

23 The Court: All right, bring the jury in,
24 please.

25 (Whereupon, the jury returns to the courtroom at

1 9:46 a.m.)

2 The Court: Mr. Foreman, ladies and gentlemen,
3 welcome back to the courthouse on this rainy day. I trust
4 that the biscuits provided by the Clerk's office was
5 satisfactory to everybody. That's a tradition I started
6 many years ago in Marlboro County. I had a jury who had
7 worked with me all week and one of them after the verdict
8 said, Judge, looks like you would have given us a little
9 biscuits in the morning and so that's the nicety that the
10 Clerk here does for the jury's in Horry County and I thank
11 you for that.

12 You will recall at the termination of our
13 proceedings on yesterday all the testimony had been
14 completed and I had given you the applicable instructions
15 in the law. I'm telling you at that time and now again
16 that as finders of the facts you take the law as you find
17 it to be and apply it to the facts as I have given it to
18 you. Under our proceedings now the defendant is entitled
19 to make a short statement to you followed by a statement of
20 the Solicitor's office. At the end of that, and it will be
21 short statements, I will give you the case for your
22 deliberation. Mr. Jackson, you are entitled to speak to
23 the jury and we welcome your presence, come around.

24 Closing Argument

25 By Defendant Jackson:

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1 Ladies and gentlemen of the jury, I thank you for
2 your time and your patience and, and everything, and about
3 yesterday we heard everybody testimony and everything and I
4 just want ya'll to know that I'm fighting for my life right
5 here right now. I didn't know I was going to be fighting
6 two people so I'm fighting extra hard for my life and I'm
7 depending on ya'll to make the right decision, and we
8 heard, I want ya'll to make the decision on facts, not
9 circumstantial evidence, the facts. The fact is nobody
10 said they seen me do a burglary. Nobody said I did a
11 burglary. Through all the testimonies nobody never
12 mentioned nothing about I did a burglary or nothing like
13 that and that's what I'm here on. I'm here on a first
14 degree burglary charge and I want ya'll to take that in
15 consideration and, and I ask that each and every one of
16 you, each and every one of you, each and eery one of you
17 make your decision and stick with your decision. Do not
18 allow anyone else to change your decision. All that I ask
19 is a fair process that the law requires. I feel like you
20 will make the right decision and I want to thank ya'll for
21 everything, for having patience, having a common.

22 I just want to say this before I go, I went back
23 to J. Reuben Long yesterday, it was kind of late, and I'm
24 in the honor pod. I'm not with the other guys; I'm in the
25 honor pod. We've got a open pod; we share bathrooms and

1 stuff like that, so I got off, I went in the bathroom, so a
2 guy came in there. He said, man, you crazy, he said, man,
3 you went to trial, you can't, you, you can't win no trial
4 here, man. I said, man, I'm not trying to win no trial.
5 I'm just trying to get justice; that's all I'm trying to
6 get. I'm just trying to get justice. You heard everybody
7 testimony; you heard a bunch of people up here. You heard
8 how I got coerced to tell the police what happened, how he
9 lied three times. Everybody did a bunch of lying around
10 here yesterday. I listened and I know ya'll listened but
11 nobody never said I did no burglary. Nobody never
12 identified me and I know the Solicitor going to get up here
13 and say all kind of things about me but he don't know me,
14 you know what I'm saying, but that's his job. He the
15 prosecutor; that's what he get paid to do and I'm not mad
16 at him, you know, and I just want ya'll to keep that in
17 mind and I appreciate ya'll.

18 The Court: Thank you, Mr. Jackson. Solicitor,
19 make a short summation.

20 Mr. Spratlin: Yes, sir, Your Honor.

21 Closing Argument

22 By Mr. Spratlin:

23 Don't worry I only have one exhibit today. Seems
24 like ya'll have been thanked a lot and that's because this
25 service that ya'll do is possibly the most important

1 service any citizen can do. You sit here, you give up your
2 time, you give up your job, you take time away from your
3 family, your friends, your life to come here and sit and
4 decide whether or not someone is going to be convicted of a
5 crime whether or not someone is going to go to prison.
6 Most important role you can do and I thank you for that,
7 too.

8 Now the Judge told you a minute ago, he may have
9 misspoke a little bit, but he said that ya'll are going to
10 be the finders of the facts, ya'll decide what the facts
11 are. He's the one who tells you what the law is and he's
12 the one, and ya'll apply the law from the facts, kind of
13 like back when you were in elementary school, I remember I
14 used to hate word problems, hated them. A math text book I
15 could do the equations all day but word problems just
16 didn't do it for me. Here it's kind of like that; you're
17 going to get the facts but he's going to give you the
18 equation that you're going to have to apply to the facts,
19 the law that you're going to apply to the facts.

20 I want to talk to you a little bit about a couple
21 of matters, the defendant is presumed innocent. The best
22 way I've ever been able to describe this to a jury is I'm
23 sure at a courthouse or some television show you've all
24 seen lady justice. She's the blind lady in a robe holding
25 a scale. When the defendant comes into this courtroom he's

1 presumed innocent; that means the not guilty scale it's all
2 the way to the bottom. The burden is on the State, myself,
3 Mr. Holford who assisted me in this case, law enforcement
4 officers, whatever witnesses we called, to present enough
5 evidence to convince you that the defendant is guilty.
6 Now we not only have to convince you he likely did it,
7 probably did it, we have to almost get it down to the
8 bottom of you're strongly and firmly convinced that he did
9 it.

10 I think it's important that you understand what
11 exactly you have to find that he, he did it, and that is
12 burglary in the first degree. Now the Judge went over this
13 a little bit with you yesterday. I just kind of want to
14 address a couple of issues with you and point out some
15 things that I think are important.

16 Burglary first degree is entering a dwelling, the
17 Judge told you a dwelling is anywhere somebody sleeps, be
18 it a house, apartment, hotel room, anywhere you lay your
19 head at night, anywhere someone normally lays their head at
20 night, that's a dwelling. Hotel room counts, motel rooms
21 counts.

22 You have to enter that dwelling without consent.
23 No one can invite you in or you can't trick them into
24 inviting you in, can't say in this case, ladies and
25 gentlemen, you've heard from both occupants of the hotel

1 room, they never invited him in. He entered without
2 consent. Now he claimed to be a security guard. Even if
3 he said I'm security, and I come in, oh, yeah, come on in,
4 that would still be burglary because as the Judge told you
5 entering without consent also includes entering under
6 deceit or fraud. Basically so someone can't come to your
7 door and say, hey, I'm a police officer, I got a search
8 warrant, and barge in, and you say, come on in the house
9 and then they steal you blind. That's why it's the same
10 thing; that's why entering with deceit is the same thing as
11 coming in without being invited.

12 They not only have to come in without consent,
13 which I think we've shown the defendant has done, you have
14 to come in with the intent to commit a crime in the
15 dwelling. How do you prove what someone was thinking? How
16 do you prove what someone intended? Well if you had asked
17 me when I was thirteen, I was really into science fiction,
18 I would have told you in 2012 we'd have a machine that
19 would scan someone's brain and be able to point to a little
20 dot on that scan and say, oh, yeah, that little spot right
21 there, that's the intent, that's criminal intent. That
22 shows he intended to commit a crime. Fortunately, ladies
23 and gentlemen, actual science hasn't kept up with my hopes
24 when I was thirteen; we can't do that. Rather what we have
25 to do and what you have to do as the fact finders in this case

1 is look at the circumstances surrounding the crime, look at
2 his action, look at what we know he did to determine
3 whether he went in that dwelling with the intent to commit
4 a crime. No legitimate reason to be in there.

5 You heard from the owner of the hotel, doesn't
6 work there, never worked there, wasn't staying there. No
7 reason to be there. No legitimate reason to be on those
8 people's balcony, and you also have to look at what he did
9 when he actually went in the room. He did commit a crime,
10 two crimes actually. The first time he stole a pair of
11 pants, probably thought there was something valuable in
12 those pants, I'm guessing, also stole a wallet, probably
13 thought there was something valuable in there, too. He
14 intended to commit a crime when he went in that dwelling
15 otherwise there was no reason for him to go in there.

16 If he wasn't going to get something out of there
17 why else would he go in? Why? Why would he shine a light
18 around the room? Why would he go looking on bureaus? Why
19 would he do all those things if he was not intending to
20 commit a crime when he went into the dwelling? A simple
21 answer to that is he wouldn't.

22 Now entering a dwelling without consent with the
23 intent to commit a crime, that's burglary. That is a
24 burglary. What makes this first degree burglary the person
25 committing the burglary has two more, two or more prior

1 convictions for burglary or housebreaking or a combination
2 of both.

3 Defendant Jackson: Your Honor, I could have
4 said more, I had more to say, I thought we had just a short
5 time. I could have said more.

6 The Court: He has not exceeded his time yet.

7 Defendant Jackson: But I didn't know, see.

8 The Court: If you want to come back and talk
9 another, I gave you the opportunity ---

10 Defendant Jackson: But I didn't know how time,
11 you said a short time.

12 The Court: Thirty minutes in my opinion.

13 Defendant Jackson: See, I didn't know that, I
14 had more to say.

15 The Court: No, sir, you had yours. Mr.
16 Jackson, I told you before the jury came in that you could
17 have such time as you need deemed appropriate, nobody
18 stopped you.

19 Defendant Jackson: Your Honor, you didn't say
20 thirty minutes, Your Honor.

21 The Court: Mr. Jackson, don't argue with me.
22 Solicitor, just conclude your remarks within the thirty
23 minutes time.

24 Mr. Spratlin: Yes, sir, I'll be as briefly as
25 possible.

1 As I said first committing the crime, first
2 committing the burglary, has two or more convictions.
3 2006, 2009, burg third, burg second, both that man.

4 Now one of the things, and again I said that
5 ya'll service as jurors is one of the most important things
6 you ever do as a citizen, and that's because you bring
7 something to the table that a lot of people in the court
8 system don't have or have but maybe don't use all the time,
9 common sense. You also are the ones who determine the
10 credibility of witnesses and you are uniquely, uniquely
11 qualified to do that because it's something you do every
12 single day in your ordinary life. You look and tell
13 whether someone is telling you the truth. The best example
14 I can use is you're in a store looking to buy a T.V. You
15 look at the T.V. on the wall, salesman comes by and says,
16 it's a good T.V., best T.V. we got, great quality, want me
17 to ring you up. You may be a little suspect about what
18 he's saying. Why is he going to lie to you? Could maybe
19 he works on commission, maybe he's just trying to be a good
20 salesman of the store, who knows, but he has a bias. He
21 has a reason to mislead you. Same situation, you're
22 looking at a T.V. at the Best Buy and a guy just happens to
23 walk up off the street and talking to you and says, hey, I
24 got a T.V. in my house, I've been very happy with it, it's
25 good. You might give him a little bit more credibility,

1 doesn't have any reason to lie, doesn't have any reason to
2 mislead you.

3 Looking at the witnesses presented here today Mr.
4 Thompson and Mr. Kinney, two men who aren't from this area,
5 they visit a lot but they're not from here, they don't,
6 never met the defendant before that night. Do they have
7 any reason to mislead you? Do they have any reason to lie
8 to you or did they have every reason to just sit up here
9 and tell you what happened that night?

10 Officer Thomas, did he have any reason to lie to
11 you? Did he have any reason to mislead you? All he did
12 was get information, respond to the scene, see somebody
13 that matched the description he was given, detain them, get
14 them to I.D. proving that he had used the credit card in
15 the store or the pancake house, and then got the witnesses
16 Mr. Kinney and Mr. Thompson who couldn't I.D. him, and they
17 couldn't I.D. him, ladies and gentlemen, and I would submit
18 to you that it's okay they couldn't I.D. him. It was the
19 middle of the night; both wear glasses. You heard
20 testimony that Mr. Thompson is nearsighted, wasn't wearing
21 glasses. As you can see and clearly see on the stand Mr.
22 Kinney wears glasses, said he wasn't wearing glasses that
23 night. They couldn't, they couldn't identify him. That's
24 them being truthful and honest, ladies and gentlemen. If
25 they wanted to lie to you, if they wanted to somehow train

1 this man or railroad him they would be saying, yep, that's
2 him, that's the man that was in my hotel room that night.
3 That's not what they're saying, though, they're telling you
4 the truth, as Ms. Tara Meanner, the waitress from the
5 pancake house, no reason to lie. He came in and used that
6 credit card. There should be no doubt in your mind that he
7 paid for this, he used that credit card at that pancake
8 house. He paid for these two meals with that credit card,
9 got the receipts right here, got her positively saying it's
10 him.

11 Ladies and gentlemen, if someone is trying to
12 railroad him I submit to you the officers that came up and
13 testified about the fingerprint, if someone was trying to
14 railroad him either they would have testified or they would
15 have said it was his prints. Nobody is trying to railroad
16 him. People are trying to tell you the truth. People are
17 not trying to play hide the ball. Everyone is, every
18 witness the State has called is coming into court and
19 trying to give you all the evidence they got. Fingerprint
20 doesn't match. You heard from I think Officer Williams
21 with the crime scene testified something about like five
22 thousand and some prints that he had analyzed over the
23 course of his career, got maybe thirty or forty comparable
24 prints. It's not CSI. If there's one thing I hope every
25 juror that sits on one of my trials gets is that the real

1 world is not like crime scene investigation, a CSI T.V.
2 show, I think, I don't even know if that's still on the air
3 anymore, the new one I think is NCIS. You see all this
4 evidence. You see them pull prints off of things you would
5 never pick up off the ground over there or we can blow up
6 this image and make it crystal clear in a heartbeat and we
7 can do all that stuff. That's not the real world. The
8 real world is you can't get a print off of everything. In
9 fact you can't usually get a usable print anywhere. Prints
10 are rare, not like T.V.

11 Also not like T.V. is that video; you saw the
12 video. It's not the greatest quality video. On television
13 they would have blown it up. They would have done some
14 special software program that would have enhanced it and
15 you would have seen a scar on the defendant's face that
16 matched to the scar or a scar on the face in the video
17 matched the scar on the defendant or something like that,
18 not in the real world. The real world is that video we're
19 not relying on to prove him. We're not relying on that
20 video to show that it's that man. We're relying on that
21 video to corroborate what happened, to give a description
22 of what that person was wearing cause you can't see the
23 face. You can't see the face well; it's not good quality.
24 I mean you can tell that it roughly matches the defendant's
25 description, was wearing clothes very similar to what the

1 defendant was wearing that night. You can see all that on
2 the video and that's why you have it to use it to
3 corroborate the testimony you already heard from the actual
4 eyes of the witnesses.

5 Now, ladies and gentlemen, I mean the fact that
6 those two individuals in the hotel room, the defendant is
7 asking you to put a whole of weight on the fact that they
8 couldn't identify him, in the middle of the night, sound
9 asleep, well just went up to the bathroom and fallen back
10 asleep. Someone comes in your room even for three or four
11 minutes you're not wearing your glasses, think they're
12 security, get a little suspicious but, you know, not,
13 they're not threatening you, they're not trying to harm
14 you, you're not overly concerned. Maybe you don't remember
15 what that person looks like exactly, maybe you just, and
16 they even say looks like him, could be him. There's not as
17 much weight to put on that, ladies and gentlemen, as I
18 submit to you that the defendant wants you to.

19 Now if all we had was the video, description
20 given by the defendant, by the victims, and the defendant
21 being close to the scene I submit to you we may not be here
22 today. That's not what we got. We got him using, either
23 taking it from the crime, about an hour and a half after
24 the crime at a location about thirty minutes walking
25 distance from the crime. He had that card on him, ladies

1 and gentlemen, matched the description perfectly, well,
2 yeah, matched the description perfectly. They couldn't
3 I.D. him but he matched the description perfectly, had an
4 article, had an item from the crime on him. That's getting
5 us a whole lot more to guilty, ladies and gentlemen, a
6 whole lot more, but again that's not all we have.

7 We have him telling you what happened; we have
8 his words. I met him outside; no, I ain't met him in his
9 underwear. There was two guys in that room, that's his
10 words. Guess what, you saw on video both of those men;
11 they were in their underwear. He's lying to the officer as
12 it is. I don't have any credit cards; now we know that's a
13 lie. Then finally we're confronted with the video, cause
14 here's the thing, you heard on the, you heard on the
15 statement, and ya'll are going to have all this evidence
16 back there in the jury room with you. If you want to hear
17 the statement again or see the video again you're going to
18 have to ask and we'll bring you and show it to you, but as
19 far as all this stuff you're going to have it back there.

20 Now when you listen, when you were listening to
21 that statement it seemed like the officer was showing some,
22 probably the video or something and saying, and I think the
23 officer said something along the lines of it's a printer,
24 now mind you the video itself is perfect, so he was
25 probably showing him a still from the video. The defendant

1 knew it was him cause that's when he started talking about,
2 before he was like I don't know nothing about nothing
3 basically, and then as soon as he sees that video it's like
4 oh, yeah, they were outside, I met them, once he knew he
5 was caught that's when he started opening up. Did the
6 officer embellish the evidence, yes, he did. He read him
7 all of his Miranda rights, right to remain silent, right to
8 an attorney, the right to stop questioning at any time,
9 read him all of his rights, but the defendant kept talking.
10 Now the officer did over embellish the evidence a little
11 bit. As you heard there's nothing wrong with that; that's
12 a tactic they use sometimes. Ladies and gentlemen, showing
13 somebody a fingerprint saying you got it an the balcony, if
14 they weren't on that balcony are they going to say that's
15 their print. You show me a fingerprint and say it's mine
16 on that balcony, that ain't my print, not, oh, yeah, I was
17 out there, I was getting some cigars from them. How did he
18 know they had cigars? Bureau where the wallet was, pack of
19 cigars. that's how he knew they had cigars.

20 Ladies and gentlemen, the officer didn't coerce
21 him into doing it. The officer didn't brow beat him. The
22 officer didn't physically beat him, didn't threaten him,
23 didn't do anything to make him talk. All he did was maybe
24 over embellish the evidence a little bit, again a tactic
25 used all the time because, well sometimes you got to to

1 make sure you got the right person. Yeah, I went in this
2 room, even when he starts admitting that stuff he won't
3 admit everything. I didn't take a wallet, took the wallet.
4 He had the credit card from the wallet; we know he took
5 that wallet, and then eventually, ladies and gentlemen, he
6 does start coming more and more clean and then he starts,
7 you know, he admits that he went in without anybody
8 inviting him, without consent.

9 The defendant is a smart man, you've seen that
10 for yourself here today. He conducted himself admirably
11 representing himself. He's done a great job of it. He
12 knows what's going on, he's intelligent. He knew what was
13 going on there in this interview and he realized with the
14 evidence that they had, now maybe he thought the evidence
15 was a little bit more than it was, but he knew that he was
16 caught. He knew that he would be one day be sitting here
17 in a trial and just like he's doing today, ladies and
18 gentlemen, he was trying to talk his way out of it.

19 He brought up on, when Detective Clothier comes
20 on the stand he, Detective Clothier had said something
21 about trying to get him some help. All Detective Clothier
22 ever promised that man is that he would let the Solicitor's
23 Office know he was cooperative. You heard from Detective
24 Clothier he provided us a statement, copy of that
25 statement, which showed that he was cooperative.

1 Ladies and gentlemen, some of you are going to
2 feel sorry for this man, I'd be lying if I said I didn't
3 feel a little sorry for him, but emotions is not, it's not
4 what should control your decision here today. You don't
5 need to control, you don't need to let your emotions get in
6 the way of you deciding and doing your oath as a juror to
7 decide what the facts of this case are. Ladies and
8 gentlemen, while you may feel sorry for him I also submit a
9 little bit that, that you shouldn't feel that sorry for him
10 because this is the bed that he made. He went in that room
11 that night. He stole that wallet; he did all of this while
12 having two convictions of burglary. He made his bed and
13 sometimes you got to lie in the bed you make.

14 Defendant Jackson: Not for life.

15 Mr. Spratlin: And that is what your job is.
16 You're not the sentencer in this case. You don't decide
17 what the appropriate sentence is. All you decide is
18 whether or not the State has presented enough evidence to
19 prove that he did that. That man right there, the Judge,
20 he's the sentencer. He decides what the appropriate
21 sentence is, not you. You don't even have to worry about
22 that; you're not worried about the sentencing. You're only
23 worried about did he do this and honestly can you say he
24 didn't? Upholding your oath as jurors, swearing to find
25 the facts as you find them using your own common sense,

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1 using all the skills, all the resources you bring into this
2 room, can you sit there and say, the State has not
3 presented enough evidence to convince me beyond a
4 reasonable doubt that he did all this. If you can find him
5 not guilty, ladies and gentlemen, I submit to you ---

6 The Court: You got five minutes remaining.

7 Mr. Spratlin: Yes, sir, Your Honor, but I
8 submit to you, ladies and gentlemen, the State has
9 presented more than enough evidence, more than enough
10 evidence to tip that scale pretty much all the way to the
11 bottom, if not at the bottom. He's guilty, ladies and
12 gentlemen, and your job, your oath at this point in time as
13 the finders of fact in this case and I submit to you you
14 can find no other facts of this case other than he went in
15 that hotel room on November 14th, 2011, without the consent
16 of either of the occupants of that room. He intended to
17 commit a crime in that room and he has two prior
18 convictions of burglaries. That is the only, only facts
19 that you can find out of this case, I submit, ladies and
20 gentlemen, and as hard as it may be I'm asking you to do
21 that. I'm asking you to go back there and find the
22 defendant guilty. I appreciate all of your time; you've
23 been a great jury, thank you.

24 The Court: Thank you, Solicitor, and I thank
25 you, Mr. Jackson.

1 Defendant Jackson: Your Honor, I did not ---

2 The Court: Wait a minute now, Mr. Jackson, I
3 urge you, please, if you need to say anything let me excuse
4 the jury and hear you. I don't want you to say anything
5 that might prejudice you in any way. I'm trying to protect
6 your interest as best I can.

7 Mr. Foreman, ladies and gentlemen, you've heard
8 the evidence in the case, you've heard the summation of
9 counsel and summation of the individual defendant. I have
10 given you the instructions in the law and it is now your
11 duty under the law as finders of the facts and judges of
12 the credibility of the witnesses to reach a verdict based
13 on the law and evidence in this courtroom and from no other
14 source. Whatever your verdict is either not guilty or
15 guilty it must be the unanimous verdict of all twelve of
16 you.

17 There is pencil and paper provided in the jury
18 room, Mr. Foreman, and if any member of your distinguished
19 jury has any question that I can appropriately address I'll
20 be glad to do so. I cannot answer for you any question of
21 fact. As an example, I was trying a young lady in
22 Darlington, South Carolina, some years ago it having been
23 alleged that she burned her motor home down. Juror sent me
24 a inquiry tell us whether she smoked or not. I knew she
25 smoked because she had asked my permission to go out and

1 have a smoke. That question was never asked nor answered
2 on the record and consequently though I knew what it was I
3 could not answer it for her, but in the instructions I gave
4 you if anybody needs some additional instructions I'll be
5 delighted to bring you out and do that.

6 I will call to your attention some of the matters
7 that we discussed not limited to the following but these
8 are some of the things that we discussed among others and
9 you take my instructions as a whole and apply the facts as
10 you find them to be. Some of the matters that we did
11 discuss was the absolute presumption of innocence that
12 remains with this defendant until you the jury have
13 evidence beyond a reasonable doubt establish his guilt. I
14 have indicated to you that the burden of proof, and I
15 emphasize again, is upon the State to prove every issue of
16 burglary in the first degree beyond a reasonable doubt.
17 You would understand that ya'll are the finders of the
18 facts. You're the credibility of the witnesses. I've
19 defined for you circumstantial evidence. I define for you
20 again burglary in the first degree which the State must
21 prove each element of beyond a reasonable doubt.

22 Burglary in the first degree is the entering of
23 the dwelling of another without consent and with the intent
24 to commit a crime by a perpetrator who has two prior
25 convictions for burglary. Each of those elements the State

1 must prove beyond a reasonable doubt. Now in that
2 connection I charge you, as I did before, if you find
3 beyond a reasonable doubt that a burglary was committed by
4 this defendant then you may consider the evidence of the
5 prior convictions as evidence of one of the circumstances
6 which would make the burglary first degree. If you do not
7 find beyond a reasonable doubt that the defendant committed
8 this alleged offense then you cannot render a verdict of
9 first degree burglary. Two prior convictions is an
10 essential element.

11 Now I emphasize again to you that whatever your
12 verdict is it must be the unanimous verdict of all twelve.
13 I tell you again that this defendant has the constitutional
14 right to represent himself as he chose to do. There is
15 absolutely no adverse inference to be derived as against
16 Mr. Jackson because he simply elected his constitutional
17 right to represent himself.

18 If you need the playing of the video again we'll
19 bring you out and do it. If you have any other requests,
20 Mr. Foreman, you let me know in writing and if I can
21 address them I'll be delighted to do so. I join counsel
22 and Mr. Jackson in thanking all of you for your services in
23 this case. Do not begin your deliberations until I send
24 the verdict form in, which is coming in along with the
25 evidence. You may now go to your jury room.

1 (Whereupon, the jury retired to the jury room at
2 10:21 a.m.)

3 The Court: Counsel for the State, any additions
4 or exceptions to the last charge of the jury?

5 Mr. Spratlin: No, sir, Your Honor.

6 The Court: Mr. Fox?

7 Mr. Fox: No, Your Honor.

8 The Court: All right, all right, have we agreed
9 on what's going into the jury?

10 Mr. Spratlin: We're doing that right now, Your
11 Honor.

12 The Court: All right.

13 Mr. Spratlin: Mr. Jackson, Your Honor, just for
14 the record I think we need to have the defendant agree to
15 or at least --

16 The Court: Let me run my own court, please.
17 I'm satisfied ---

18 Mr. Spratlin: I understand, Judge, I
19 understand, I just wanted to make sure.

20 The Court: Thank you, the court reporter will
21 state for me upon the record that all the items introduced
22 into evidence have been handed to you for submission to the
23 jury.

24 Madam Court Reporter: Yes, Your Honor

25 Mr. Spratlin: Yes, sir, Your Honor.

1 The Court: I find that that's better than
2 having pro se to get involved.

3 Mr. Spratlin: I just wanted to make sure for
4 the record.

5 The Court: I understand.

6 The Court: I'm satisfied for the record.

7 (Whereupon, the verdict form and exhibits were
8 delivered to the jury room and deliberations began at 10:24
9 a.m.)

10 The Court: All right, I have delivered these,
11 let the record reflect now that the evidence is in and the
12 alternates are outside the presence of the jury. I have
13 instructed the Clerk to tell the jury to begin the
14 deliberations having forwarded to the Clerk the indictment
15 and the jury verdict form. Anything further?

16 Mr. Spratlin: Nothing on behalf of the State,
17 Your Honor.

18 The Court: We are in recess.

19 Defendant Jackson: Your Honor, I could have
20 said more.

21 The Court: Well I think what you said was fine,
22 I'm comfortable with ---

23 Defendant Jackson: But I could have said more
24 if I know I had more time.

25 The Court: Well, see ---

1 Defendant Jackson: But I was trying to be
2 respectful to the courtroom, see.

3 The Court: I understand, well you should have
4 told us that.

5 Defendant Jackson: And you ain't let me, you
6 ain't let me know.

7 The Court: Okay, well I thought I did and
8 believe I did, the record will reflect what I said, thank
9 you, though, all right.

10 (Whereupon, the jury knocked with a question at
11 10:47 a.m.)

12 The Court: The record will reflect that the
13 jury has requested the transcript of the audio which you
14 will recall I permitted a transcript which would verify to
15 be true so the jury could follow the transcript upon the
16 video and I did that to aid the video in that, to aid the
17 jury in that some portions of the video were difficult to
18 understand, but I am not going to let the transcript go to
19 the jury room. I'm going to give it back to them and play
20 the transcript in open court.

21 Mr. Spratlin: Your Honor?

22 The Court: Yes, sir?

23 Mr. Spratlin: In regards to the copy of the
24 transcript being handed to the jury would it perhaps be
25 beneficial to go ahead and mark that as a Court Exhibit

1 just for the record so they can, they can have them?

2 The Court: Yes, I suppose that's a good idea.

3 Mr. Spratlin: Well not for this but just after
4 the jury has them.

5 The Court: The record will reflect that I'm
6 going to let the jury have the transcript to follow the
7 video. The transcripts will not go in the jury room. The
8 record will further reflect that there's a certification by
9 the State and defense counsel Mr. Fox that this is a true
10 and correct representation of the video. Bring the jury
11 in, alternates, too.

12 (Whereupon, Court's Exhibit Number 2 marked for
13 identification.)

14 (Whereupon, the jury returns to the courtroom at
15 10:54 a.m.)

16 The Court: Mr. Foreman, I have been informed by
17 your note that the jury would like to play the video again.
18 You have requested a transcript of that testimony. That
19 transcript is not in evidence. It has been certified to be
20 a true and correct copy of the recording video. I have
21 presented this transcript again to you in open court
22 thinking it will aid you in following the video. I will
23 play for you the video as many times as you the jury
24 desires but the transcript is not in evidence and,
25 therefore, I cannot send it back there to you. It is

1 presented to you only as an aid in helping you understand
2 some of the difficult parts of the video. If at any time
3 the jury or jurors who requested the video have heard what
4 they want to hear let the foreman know or raise your hand
5 and we'll stop if you've heard that part that you desire,
6 otherwise we'll play the entire video but if you or any
7 member of your jury, Mr. Foreman, gets to where they're
8 satisfied with what they've heard raise your hand and we'll
9 stop it if that suits the jury. I'm doing this to save
10 some time, otherwise we'll play it in its entirety.
11 Proceed.

12 Mr. Spratlin: Yes, sir, Your Honor.

13 (Whereupon, State's Exhibit 19 played in open
14 court.)

15 The Court: Mr. Foreman, two jurors have raised
16 their hands, have you heard what you wanted to hear?

17 Jury Panel Member: Yes, sir.

18 The Court: Does anybody else wish to hear
19 anymore of it? Mr. Foreman, are you satisfied that your
20 jury has heard that which you requested?

21 Mr. Foreman: Yes, sir.

22 The Court: Sir?

23 Mr. Foreman: Yes, sir.

24 The Court: You may now retire and continue.

25 Let me say this to you, I charged you the law with regards

1 to the statement and advise that the Court has found it
2 admissible for your consideration. You, of course, are
3 charged with responsibility to determine whether it was
4 freely, voluntarily made without hope, promise, duress, or
5 reward, and whether or not his constitutional rights were
6 charged to him. Those are decisions for you to make and
7 the State must prove it beyond a reasonable doubt. I've
8 ruled it admissible but you make these determinations for
9 yourself. You may continue your deliberations.

10 (Whereupon, at 11:07 a.m. the jury again retired
11 to the jury room and resumed their deliberations.)

12 The Court: Mr. Bailiff?

13 The Bailiff: Yes, sir?

14 The Court: Make sure the alternates do not go
15 in the jury room. All right, Madam Clerk, collect all the
16 transcripts, they will not go in the jury room.

17 (Whereupon, Court's Exhibit Number 3 marked for
18 identification.)

19 Mr. Spratlin: Your Honor, just for the record
20 we're going to mark it as Court's Exhibit, correct?

21 The Court: We already have.

22 Mr. Spratlin: Yes, sir.

23 The Court: Yes, sir, any exceptions or
24 additions to the last charge I gave the jury?

25 Mr. Spratlin: Not from the State, Your Honor.

1 The Court: From the defense?

2 Mr. Fox: No, Your Honor.

3 The Court: All right, we're in recess.

4 (Whereupon, a recess was taken at this time.)

5 (Whereupon, the jury knocked with a verdict at
6 11:25 a.m.)

7 The Court: Bring the defendant in, have Mr.
8 Fox, the lawyer, where is Fox?

9 Mr. Fox: Right here, Your Honor.

10 The Court: Have the defendant come in. Bring
11 the jury with the alternates, have the defendant brought
12 in.

13 Mr. Fox: They're getting him, Your Honor,
14 they're getting his cuffs.

15 (Whereupon, the jury entered the courtroom at
16 11:27 a.m. to deliver its verdict as to defendant Anthony
17 Jerome Jackson.)

18 The Court: Mr. Foreman, I'm advised that the
19 jury has reached a unanimous verdict. If this be the
20 unanimous verdict of all twelve of the jurors, please,
21 signify by raising your right hand.

22 The jury has so signified, accept the verdict
23 form for me, Madam Clerk. Publish the verdict, please.

24 Madam Clerk: Indictment Number 2012-GS-26-00730
25 State of South Carolina County of Horry v. Anthony Jerome

1 Jackson as to the charge of burglary first degree we, the
2 jury, unanimously find the defendant Anthony Jerome Jackson
3 guilty of burglary first degree, dated November 15th, 2012,
4 signed by foreperson Edward Cox. Ladies and gentlemen of
5 the jury, if this is your verdict so signify by raising
6 your right hand.

7 (Whereupon, the jury complies.)

8 Madam Clerk: Thank you.

9 The Court: Mr. Foreman, ladies and gentlemen, I
10 have no comment to make as to your verdict except to say
11 based on the evidence it was certainly justified. For the
12 jury's edification let them hear the prior record of this
13 defendant.

14 Mr. Spratlin: Yes, sir, Your Honor, do you wish
15 me to read the entire prior record?

16 The Court: I do, let me tell you why. The
17 prior record of a defendant cannot come into court unless
18 he testifies and the reason for that is if he's found
19 guilty it must be based on the law and evidence in this
20 courtroom and for no other purpose. Now this defendant has
21 a significant prior record and he was about to get it in
22 through his mother when he was trying to ask her was he a
23 good man and had I let that in the State would have had the
24 right to go into his prior record. A lot of times jurors
25 the next day even on the verdict of guilty or sometimes not

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1 guilty they say to me, Judge, why didn't you let us know
2 that horrible record, I'd have found him guilty. My answer
3 to it was there's enough evidence in the record for you to
4 find him guilty yesterday but you cannot find a man guilty
5 on what he has done. Now in a burglary first the law
6 permits evidence as to two prior burglaries because that is
7 elements of burglary first degree. Chances are his
8 significant record will be in the paper tomorrow so I want
9 you to read it and understand why I didn't let it in
10 because it would have been too prejudicial to this
11 defendant. My intention was to give him a fair trial and
12 he got a fair trial.

13 Defendant Jackson: No, I didn't either.

14 The Court: All right, I've told you now, I've
15 been very careful with you and polite as I know how to be
16 but it's about over.

17 Defendant Jackson: Prior record for life, man.

18 The Court: Prior record.

19 Mr. Spratlin: Yes, sir, Your Honor, beginning
20 in 1986 the defendant was convicted of distribution of
21 cocaine sentenced to six years. He received a probationary
22 sentence and in addition to that charge.

23 In 1991 he was convicted of simple possession of
24 marijuana.

25 Also convicted in 1991 of possession of an

1 illegal weapon in violation of a drug paraphernalia law.

2 Also in 1991 he was convicted of grand larceny,
3 sentenced to three years suspended to a probationary
4 sentence.

5 In 1991, Your Honor, he was also convicted of
6 common law robbery.

7 In 1993 he was convicted of burglary in the first
8 degree a most serious offense for which he was sentenced to
9 fifteen years in prison.

10 In 2004, Your Honor, shortly after he would have
11 been released from custody he committed malicious injury to
12 personal property for which he was convicted:

13 A financial transaction card in 2004 for which he
14 was convicted;

15 Another financial transaction card fraud in 2005
16 for which he was convicted, receiving stolen goods, also
17 convicted.

18 In 2006, Your Honor, as previously mentioned in
19 the State's case in chief, he was convicted of a burglary
20 third degree. He was sentenced to prison time on that.

21 In 2007 he was convicted of burglary, I believe
22 it may have been a time served prison sentence, though.

23 In 2007 he was arrested and eventually convicted
24 in 2009 of two counts of burglary in the second degree and,
25 Your Honor, he stood on trial today for burglary in the

1 first degree for which he's now been convicted.

2 The Court: Didn't he also commit another crime
3 while out on bond for this offense?

4 Mr. Spratlin: Yes, sir, Your Honor, he has
5 another pending charge which matches the modus operandi,
6 m.o. commonly called of this crime for which there was
7 actually a fight between the clerk or one of the guests and
8 the defendant or who we allege the defendant.

9 The Court: And that case is still pending.

10 Mr. Spratlin: That case is still pending at
11 this point in time, Your Honor.

12 The Court: Mr. Foreman and ladies and
13 gentlemen, you would understand why I kept that prior
14 record out. It would have been so prejudicial. I wanted
15 him to have a fair trial even though he represented himself
16 based on the evidence in this case and he received it and
17 you gave him a fair trial and I thank you for that. You
18 are now discharged for today and for the week and you have
19 the gratitude of this Court and the people of Horry County
20 for thanking you, you are discharged.

21 (Whereupon, the jury was excused for the week at
22 11:32 a.m.)

23 Mr. Spratlin: Your Honor, if I may approach
24 with a sentencing sheet.

25 The Court: Yes, sir.

1 Mr. Fox: Your Honor, prior to sentencing Mr.
2 Jackson would like for the record to renew all previous
3 objections and motions and move for a new trial.

4 The Court: I will accept those motions and
5 respectfully deny them. The jury was very careful in their
6 deliberations. They gave him a fair trial. The evidence,
7 Mr. Jackson, in this case, and while I did not comment on
8 it I can now, were simply overwhelming. First it was your
9 own admission that you were on the premises and you
10 admitted it.

11 Defendant Jackson: But my lawyer told me he
12 suppressed the tapes. I didn't know they was going to play
13 it.

14 The Court: Well they were entitled to play it
15 and ---

16 Defendant Jackson: But I didn't know, he didn't
17 tell me.

18 The Court: Well, no, you knew it, you heard it.
19 In addition to being on the premises the stolen property
20 was used by you twenty minutes later. The evidence was
21 just simply overwhelming. Come forward, have him come
22 forward. Read for the record your previous notice given to
23 him.

24 Mr. Spratlin: Yes, sir, Your Honor, twice
25 before today's court date, once on April 5th, 2012, when

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1 the defendant was represented by Attorney Ronald Hazzard,
2 and again on September 12th, 2012, when the defendant was
3 represented by Attorney Eric Fox, the State served notice
4 of, notice of intention to seek a sentence of life without
5 parole which is properly filed in the Clerk's office on the
6 20th of September after being served on him the second
7 time. It essentially stated, Your Honor, that based on the
8 prior conviction of burglary first degree, which I do have
9 a certified copy of that conviction in my hand, which I'd
10 ask to hand up and make a Court's Exhibit, that the State
11 intended to seek a life without parole sentence, a
12 mandatory life without parole sentence if the defendant was
13 convicted of the second most serious offense, both counts
14 of being burglary first, both being a most serious offense
15 under the South Carolina Recidivism Law.

16 The Court: Mr. Fox, at that time you were his
17 representative, can you assert to me that that was actually
18 filed with you and given to him?

19 Mr. Fox: It was, Your Honor, and I can also
20 state that in the file I inherited from Mr. Hazzard there
21 was the previous notice from April of this year, a copy was
22 in the file, and I showed that also to Mr. Jackson.

23 The Court: And later you were served and served
24 him?

25 Mr. Fox: Yes, sir, out of abundance of caution

1 because counsel had been changed and Mr. Spratlin served me
2 as well.

3 The Court: Mr. Jackson, at your arraignment
4 some weeks ago I advised you at that time that if you were
5 convicted having received this notice the law absolutely
6 requires the presiding judge to sentence you to a prison of
7 incarceration for the rest of your life without the
8 possibility of parole and that is the sentence of this
9 court, thank you, take him away.

10 Mr. Spratlin: Thank you, Your Honor, can I hand
11 up the certified copy of convictions to the Court Reporter
12 just to mark it as a Court's Exhibit?

13 The Court: Court's Exhibit.

14 (Whereupon, Court's Exhibit Number 4 marked for
15 identification.)

16 The Court: All right, sir.

17 Mr. Spratlin: Your Honor, if I may just real
18 briefly just for possible appellate purposes down the road
19 just put on the record the date of the previous
20 arraignments as well as the previous Jackson v. Deno
21 hearing?

22 The Court: And those hearings are specifically
23 made a part of this record.

24 Mr. Spratlin: Yes, sir, Your Honor, the
25 arraignment before Judge Larry Hyman was held on April 5th,

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1 2012, in the Horry County courthouse. An arraignment
2 before Judge Cole was held on September 12th, 2012, again
3 at the Horry County courthouse. Your Honor, Judge
4 Cottingham, conducted a Jackson v. Deno hearing, statement
5 hearing, in this matter back on October 11th, 2012, again
6 at the Horry County courthouse.

7 The Court: Yes, sir, I want all three of those
8 proceedings made a part of this record.

9 Mr. Fox: And, Your Honor, just for my own and
10 because Mr. Jackson brought it up about not telling him his
11 statement had been suppressed, he was present for the
12 Jackson v. Deno hearing in October. He was present when
13 Your Honor ruled that that statement would be admissible
14 and could be used in evidence against him and I advised him
15 of that as well.

16 The Court: Surely, and he was there and the
17 record, record clearly reflects it.

18 Mr. Fox: Yes, sir.

19 The Court: It was his choice and he made it,
20 all right.

21 Mr. Spratlin: Thank you, Your Honor.

22 End of requested transcript....
23
24
25

CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, Official Court Reporter for the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal in the General Sessions Court for Horry County, South Carolina.

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

February 15, 2013

Brenda R. Babb

Brenda R. Babb
CVR-Master
OFFICIAL REPORTER

WITNESSES

J Thomas Myrtle Beach Police Department

DOCKET NO. 2012-GS-26-00130

CERTIFIED **THE State of South Carolina**

2013 JAN 17 AM 10:32 County of Horry

Melaine Martin D. Spradlin

11H04892

CLERK OF COURT
Horry County COURT OF GENERAL SESSIONS

FEBRUARY, 2012 TERM

ARREST WARRANT NUMBER

M350295

CDR: 0079 16-11-0311

DOA: 11/14/2011

THE STATE

VS.

Anthony Jerome Jackson
B/ M
1300 Creel St 22D
Conway, SC 29526
DOB: 1988-05-10
SSN: 042666430

ATTORNEY: Hazzard, Ronald W.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: FEB 23 2012

VERDICT

Guilty

Indictment for

BURGLARY FIRST DEGREE

J. Gregory Hembree, Solicitor

ORIGINAL

Edward Gray
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

INDICTMENT

At a Court of General Sessions, convened on February 23, 2012, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Anthony Jerome Jackson did in Horry County, on or about November 14, 2011 enter the dwelling of William Thompson and Ronald Kinney, located at J in Myrtle Beach, without consent and with the intent to commit a crime therein, said Anthony Jerome Jackson having a prior record of two or more convictions for burglary or housebreaking, all in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

ORIGINAL

CERTIFIED COPY

2013 JAN 17 AM 10:23

CLERK OF COURT
Horry County

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Anthony Jerome Jackson

AKA:

Race:

Sex: M

Age:

46

DOB:

SSN:

Address:

City, State:

SC 29526

DL#:

SIDR:

*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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2600730

A/W#: M350295

Date of Offense: 11/14/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GP5(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:

SCB77061

Spratlin, Martin D.

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 Life without the possibility of parole ☐ 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.☐ 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:

Obtain GED ☐☐ Set to SCDC PPS

Attend Voc. Rehab. or Job Corp. _____

Recipient:

May serve W/E beginning _____

*Fine:

Substance Abuse Counseling ☐

§ 14-1-215 (Assessment)

Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge)

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

§ 14-1-211(A)(2) (DUI Surcharge)

\$ _____ paid to Public Defender Fund

§ 56-5-2995 (DUI Assessment)

Other: _____

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Publn Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

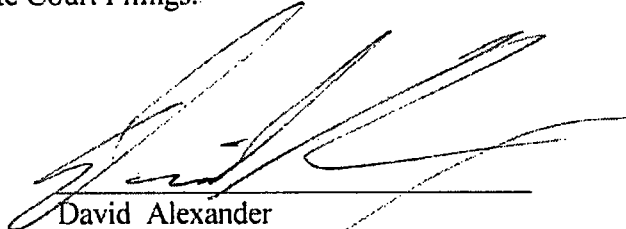
Judge Code:

Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 30th, 2014


David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

When a defendant alerts the court he wishes to represent himself, may the court postpone the exercise of his constitutional right until after critical stages of the trial?

2.

Whether the trial court erred in finding the defendant freely and voluntarily gave a statement to law enforcement after the police officer threatened the defendant that "there would be a difference" in his treatment if he failed to cooperate?

STATEMENT OF THE CASE

On February 23, 2012, an Horry County grand jury indicted Anthony Jerome Jackson ("Jackson") for first degree burglary. R. 387. On April 5, 2012, a hearing was held before the Honorable Larry B. Hyman. April 5, 2012 R. 1. At this hearing, Jackson was represented by Ronald W. Hazzard. April 5, 2012 R. 1. Martin D. Spratlin and Bradley C. Richardson represented the State. April 5, 2012 R. 1. On September 12, 2012, another hearing was held in the case before the Honorable J. Derham Cole. September 12, 2012 R. 17. At this hearing, Eric J. Fox represented Jackson. September 12, 2012 R. 17.

On October 11, 2012, another pretrial hearing was held before the Honorable Edward B. Cottingham. October 11, 2012 R. 31. Fox represented Jackson. At this hearing, Judge Cottingham ruled, *inter alia*, that a statement given by Jackson to law enforcement was admissible. October 11, 2012 R. 64, ll. 9 – 25.

On November 13-15, 2012, Jackson was tried before Judge Cottingham and a jury. R. 68. Martin D. Spratlin and Joshua D. Holford represented the State. R. 68. Eric Fox initially appeared on behalf of Jackson, but Jackson represented himself during the trial. R. 68. R. 146, l. 20 – 148, l. 1. The jury convicted Jackson of first degree burglary. R. 377, l. 24 – 378, l. 6. The State previously served a notice of intent to seek life without parole on Jackson and this was the sentence he received. R. 382, l. 18 – 384, l. 9. A notice of appeal was timely served and filed and this appeal follows.

STATEMENT OF FACTS

From the very beginning of this case, Anthony Jerome Jackson ("Jackson") told the court he was unhappy with his attorney. R. 15, ll. 12 – 22. At an April 5, 2012, hearing, Jackson attempted to plead guilty. R. 11, ll. 6 – 9. Jackson – not his attorney – begged the trial judge to accept a plea deal offered by the State that would result in a sentence of between seven and ten years, but asked to delay sentencing for two weeks so that he could finish his GED classes at the county jail. R. 8, ll. 7 – 9, l. 12. Judge Hyman agreed. R. 9, ll. 11 – 12. But during the plea colloquy when Jackson told Judge Hyman that he was dissatisfied with the services of his attorney, the plea hearing stopped. R. 15, ll. 12 – 23. Jackson ultimately went to trial. He was accused of stealing a credit card from a hotel room in Myrtle Beach. R. 175, l. 2 – 176, l. 15. He received a sentence of life imprisonment without the possibility of parole for taking a credit card and using it to buy \$28.89 worth of food from a pancake house for himself and other homeless people. R. 315, l. 11 – 316, l. 13. R. 311, ll. 6 – 21.

The September 12, 2012, Hearing Before Judge Cole

After the hearing before Judge Hyman, Jackson next appeared before Judge Cole with a different lawyer, Eric Fox ("Fox"). R. 20, ll. 8 – 9. Jackson told Judge Cole that he did not understand the reason he was before the court that day. R. 20, ll. 10 – 13. Judge Cole told Jackson about a plea offer extended by the State. R. 20 l. 14 – 21 l. 13. When asked if he had enough time to confer with Fox about whether to accept the State's offer, Jackson replied, "No, I ain't had that much time; it just came and just proposed it to me and that was it." R. 21, ll. 15 – 20.

Fox was a public defender appointed when Jackson's previous attorney took a position in another county. R. 22, ll. 2 – 11. By the time of this hearing, the State's offer had changed to a plea that would result in a sentence of zero to fifteen years' imprisonment. R. 23, l. 19 – 24, l. 17. Jackson was confused about the offers and his charges. R. 26, l. 10 – 27, l. 17. After answering the court that he understood English "[a] little bit," Judge Cole told him, "Okay, all right, you don't want to accept the offer; you want a trial; you want a jury trial? Take him back and we'll give him a jury trial." R., 19 23 – 12, l. 2. Before removing Jackson, the State served him with a notice of intent to seek life without parole. R. 28, ll. 5 – 22. Fox never said a word during the entire hearing.¹

The Denno Hearing Before Judge Cottingham

Fox represented Jackson at a pretrial hearing held before Judge Cottingham on October 11, 2012. R. 31. The original purpose of the hearing was to determine whether a statement given by Jackson was admissible pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Before the Denno hearing began, Fox told Judge Cottingham that Jackson wanted to address the court. R. 39, ll. 3 – 9. Jackson first told the court he wanted a different lawyer. R. 39, ll. 19 – 20. Jackson had two pending burglary charges. R. 39, l. 19 – 40, l. 1. Jackson stated, "I was talking to [Fox] out there in the conference room and he don't even know which burglary that I'm going to trial on...." R.39, l. 23 – 40, l. 1. Jackson said, "I'm not satisfied with my counsel." R. 40, ll. 14 – 15.

Judge Cottingham then attempted to convince Jackson that Fox was a very capable attorney and that he needed representation. R. 40, ll. 16 – 12, l. 41. Jackson replied, "I

¹ The transcript records Fox speaking on page 9, but this is a typographical error. It is clear from the text that the solicitor is speaking because he refers to "Mr. Fox" several times. R.25, l. 10 – 26, l. 9.

don't want him on my case." R. 42, l. 12. Judge Cottingham replied, "Well, I don't care what you want, **the decision is mine.**" R. 42, ll. 13 – 14 (emphasis added). Jackson replied, "Let the record be known that I don't want him on my case." R. 42, ll. 15 – 16. Judge Cottingham responded, "Well, let the record be known too, that I offered you to represent yourself or hire your own lawyer. Absent that, Mr. Fox is going to be your lawyer." R. 42, ll. 17 – 19.

The trial judge then conducted a colloquy with the attorneys and discussed a plea offer. R. 43, l. 21 – 44, l. 45. Judge Cottingham asked Jackson to confirm whether he had declined a previous plea offer. R. 44, ll. 10 – 15. Jackson replied, "I don't even understand what he's still on my case. I don't understand –" R. 44, l. 16 – 17. The trial judge told Jackson, "I'm not asking you now." R. 44, l. 18. Without inquiring further as to whether Jackson wanted to represent himself or conducting a colloquy pursuant to Faretta v. California, 422 U.S. 806 (1975), Judge Cottingham conducted the Denno hearing with Fox representing Jackson. R. 45, l. 21 – 46, l. 7.

Fox cross-examined the State's witness at the Denno hearing. R. 60, l. 12 – 62, l. 16. Fox made a limited argument supporting his motion to suppress the statement. R. 63, ll. 13 – 23. The trial court refused to suppress the statement. R. 64, ll. 8 – 25. The trial judge concluded the hearing by urging Jackson to cooperate with Fox, but telling him that he was "not entitled to have the benefit of his advice every day between now and date of trial." R. 65, ll. 11 – 24.

The Issue of Jackson's Self-Representation at Trial

After the solicitor called the case, Fox told Judge Cottingham that Jackson wanted to address the court. R. 75, ll. 14 – 15. Jackson told the trial judge that he did not want Fox representing him. R. 75, ll. 19 – 22. Jackson said, "I'll represent myself." R. 75, ll. 19 – 22.

The trial judge attempted to convince Jackson to keep Fox as his attorney. R. 76, l. 1 – 10, l. 12. Jackson replied:

I'll represent myself, I rather represent myself. If I'm going to get life I rather get take, get life for myself, I don't need no help.

R. 77, ll. 13 – 15 (emphasis added). The trial judge then asked Jackson several questions about his ability to represent himself and whether he was prepared for trial. R. 77, l. 19 – 81, l. 9. Judge Cottingham warned Jackson that it would be "extremely dangerous in this most serious offense for you to represent yourself." R. 78, ll. 18 – 20. He told Jackson he was facing life imprisonment. R. 78, l. 17 – 24.

The discussion regarding Jackson's self-representation ceased when the trial judge was unable to get a copy of the Faretta decision from the solicitor. R. 81, ll. 9 – 13. Judge Cottingham said, "Okay, well let's go ahead, be finding it and let's go ahead with the other issue while your staff is finding the case for me. All right let's go forward with the identification matter." R. 81, l. 25 – 82, l. 3. The trial judge said, "Mr. Fox, I'm going to leave you in the case for this important matter." R. 83, ll. 12 – 13.

The court then ruled:

And after this after I hear any motions if he still wants to represent himself I'm going to let him do it in his peril. I would urge him not to do it but the law is clear if he insists he's got that right, but I do want you [Fox] to stay with him **in this important part of the proceedings** to protect his interest.

R. 83, ll. 15 – 20 (emphasis added). The State's first witness was sworn for a Neil v. Biggers, 409 U.S. 188 (1972) hearing. Before the State questioned the witness, the following occurred:

THE COURT: Mr. Jackson, I'll deal with whether or not you want to represent yourself after this but –

DEFENDANT JACKSON: I still do.

THE COURT: This is [an] important legal matter that you need your lawyer to look into.

DEFENDANT JACKSON: **I'll represent myself, I don't need him, I don't trust him.**

THE COURT: **Well I'll deal with that in a minute.**

R. 83, l. 24 – 84, l. 7 (emphasis added). The court then conducted the Biggers hearing with Fox representing Jackson and questioning the witnesses. R. 84, l. 12 – 126, l. 6.

During the Biggers hearing, the State presented the testimony of a Myrtle Beach police officer and a waitress at the pancake house. R. 84, ll. 14 – 16. R. 99 ll. 15 – 20. The police officer, Jeffery Thomas ("Thomas") responded to a call of a suspicious person at a hotel. R. 85, l. 17 – 21. The officer spoke with the occupants of the room and obtained a description of the man who entered the room claiming to be a hotel security guard. R. 85, l. 22 – 21, l. 12. He also viewed the hotel security video. R. 88, ll. 13 – 89, l. 4. One of the room's occupants told the officer that his credit card had been used twice at the pancake house. R. 89, ll. 5 – 15. The officer went to the pancake house and spoke with the waitress, Tara Maenner ("Maenner"). R. 90, ll. 1 – 13. Maenner provided copies of credit card receipts showing charges to the victim's account and gave the officer a description of the man who used the credit card. R. 90, ll. 1 – 23.

Officer Thomas went outside and “spotted someone fitting the description a half block away.” R. 91, ll. 2 – 8. He detained Jackson. R. 91, ll. 2 – 8. Officer Thomas had another policeman bring Maenner to the scene and said she “did positively identify him.” R. 92, ll. 15 – 22. At this point, Fox objected. R. 92, l. 23. Jackson interjected, “Can he ask did the victims identify me?” R. 92, ll. 24 – 25. Judge Cottingham told Jackson, “No, sir, you let your lawyer do this at this time, proceed.” R. 93, ll. 1 – 2. Fox then cross-examined Officer Thomas. R. 94, l. 8 – 98, l. 2.

Maenner testified she recognized the defendant because he had been in the pancake house “a time or two.” R. 100, ll. 3 – 16. She gave an in-court identification of Jackson. R. 104, ll. 2 – 23. Fox then cross-examined Maenner. R. 104, l. 24 – 106, l. 12. The State also called the hotel room’s two occupants who could not positively identify Jackson as the man who entered their room. R. 107, l. 7 – 125, l. 1. Fox conducted the cross-examinations. R. 107, l. 7 – 125, l. 1. After hearing argument from Fox (not Jackson), the trial court refused to suppress Maenner’s in-court identification. R. 125, l. 22 – 126, l. 6.

By the end of the Biggers hearing, the court had obtained copies of several cases to use in questioning Jackson and in advising him regarding the dangers of self-representation. R. 126, l. 9 – 127, l. 21. The trial judge conducted an extended discussion with Jackson. R. 127, l. 20 – 140, l. 19. After the discussion, the court said that it had “exhaustively warned [Jackson] of the dangers” and asked if he still wanted to represent himself. R. 140, ll. 20 – 25. Jackson said, “Yes, sir, I represent, I don’t understand what’s going on but I, I’ll talk for myself.” R. 141, ll. 1 – 3. After further discussion, during which Jackson offered to plead guilty even if it meant life without parole, the trial judge ruled, “No, sir, we are going to trial. I’m going to let you represent yourself.” R. 141 l. 4 – 142, l. 21.

The jury entered the courtroom. R. 146, ll. 16 – 19. The trial judge told the jury that Jackson would represent himself and they could not make any adverse inference from that fact. R. 147 ll. 9 – 13. Despite his ruling that Jackson would represent himself and informing the jury of this ruling, the trial judge then had Fox participate in voir dire instead of Jackson. R. 148, l. 2 – 88, l. 20. Jackson did not speak during voir dire. R. 148, l. 2 – 155, l. 20. At no point did the trial judge ask Jackson whether he wanted to represent himself during voir dire. R. 148, l. 2 – 155, l. 20. Without obtaining Jackson's assent on the record, Judge Cottingham said, "All right, Mr. Fox, I've permitted you to sit here and assist the defendant in the selection of the jury only, but do you have any further inquiry?" R. 154, l. 17 – 19. Fox then proposed an additional voir dire question. R. 154, ll. 20 – 23.

After voir dire, the trial judge told the jury, "And the defendant is representing himself, I've asked Mr. Fox to assist in the selection of the jury process and the defendant is agreeing to that; is that correct? R. 155, ll. 13 – 16. Fox (not Jackson) replied, "Yes, Your Honor." R. 155, l. 17. The trial judge did not obtain Jackson's consent to Fox selecting the jury on the record. Fox then exercised Jackson's strikes and selected the jury. R. 155, l. 18 – 165, l. 18. The trial then began and Jackson made his opening statement and examined the State's witnesses. R. 179, l. 11 – 180, l. 8.

The Evidence at Trial

Two golfers from Pennsylvania and Connecticut were awakened in their Myrtle Beach hotel room by a man entering through the room's sliding glass door. R. 181, ll. 1 – 3. R. 181, ll. 17 – 24. R. 182, ll. 7 – 15. R. 187, l. 20 – 189, l. 8. The man told them he was with hotel security. R. 188 1, ll. 5 – 10. He shined a light and showed them a badge. R. 188, ll. 11 – 13. The man called the front desk and said everything was "all clear." R. 188,

l. 17 – 19. He had the golfer lock the sliding glass door and then exited the room. R. 188, ll. 19 – 22. The golfer noticed that the man picked up a pair of pants and left the room with them. R. 188, ll. 22 – 24.

The golfer gave chase. R. 188, ll. 24 – 25. The man told the golfer he had heard that marijuana was being consumed in the room and was checking the pants for drugs. R. 188, l. 24 – 189, l. 5. The golfer took the man back to the room. R. 189, ll. 1 – 8. The man looked around and then left. R. 189, ll. 5 – 6. Once the man left, one of the golfers noticed his wallet was missing. R. 189, ll. 6 – 8. Neither golfer could identify Jackson as the man they encountered in their room. R. 200, l. 22 – 201, l. 8. R. 216, ll. 7 – 8.

By the time the police arrived, the golfer was already on the telephone canceling his credit cards. R. 197, l. 18 – 198, l. 1. As he was canceling a card, the company informed him the card had just been used at a nearby pancake house. R. 199, ll. 7 – 20. The golfer informed the police. R. 199, l. 21 – 200, l. 3. As recounted in the Biggers hearing, Officer Thomas went to the pancake house, met with the waitress, and subsequently arrested Jackson. R. 221, l. 14 – 223, l. 14.

The morning following his arrest, Jackson was questioned by Detective Paul Clothier (“Clothier”). R. 289, ll. 2 – 11. Detective Clothier made an audio recording of Jackson’s interrogation. R. 290, ll. 1 – 6. During the interrogation, Jackson admitted taking the credit card from the hotel room. R. 313, ll. 12 – 16. The detective confronted Jackson with two charges made at the pancake house which totaled \$28.89. R. 315, ll. 11 – 24. Jackson admitted making the charges on credit cards when he bought food for himself and other homeless people. R. 316, ll. 1 – 16.

Jackson made his own closing argument. R. 350, l. 24 – 352, l. 17. He argued that no one had seen him commit the burglary. R. 351, ll. 9 – 10. Jackson also argued that his statement to law enforcement was coerced and the police lied to him about the evidence to get him to confess. R. 352, ll. 6 – 10. During deliberations, the jury requested to hear a portion of the audio recording of Jackson's interrogation. R. 373, ll. 12 – 20. While the trial record does not conclusively show at what point the jury had the recording stopped, the trial judge immediately re-charged them on the law concerning whether a statement is freely and voluntarily made. R. 375, l. 24 – 376, l. 9. After continuing deliberations, the jury returned a guilty verdict. R. 377, l. 24 – 378 11, l. 6.

ARGUMENT

1.

When a defendant alerts the court he wishes to represent himself, the court may not postpone the exercise of his constitutional right until after critical stages of the trial.

The trial court erred when it refused to let Jackson represent himself during the Denno hearing, the Biggers hearing, voir dire, and jury selection. “The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense.” Faretta v. California, 422 U.S. 806, 819 (1975). “The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.” Id. at 819-20. “To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment.” Id. at 820.

In Faretta, the defendant “weeks before trial” told the judge he wanted to represent himself. Id. at 835. The trial judge originally ruled that the defendant could represent himself, but later reversed his decision after the defendant was unable to satisfactorily answer technical questions concerning the law. Id. at 808-10. The United States Supreme Court reversed. The Court held, “We need make no assessment of how well or poorly Faretta had mastered the intricacies of the hearsay rule in the California code provisions that govern the challenges of potential jurors on voir dire. For his technical legal knowledge, as such, was not relevant to an assessment of his knowing exercise of the right to defend himself.” Id. at 836.

Just as in Faretta, Jackson told the trial court weeks before trial that he did not want Fox to represent him. R. 44, l. 16 – 17. When the trial court indicated that Fox would conduct the Denno hearing, Jackson said, “I don’t even understand what he’s still on my

case. I don't understand --."R. 44, l. 16 – 17. This was after the trial judge made an incorrect statement of law and told Jackson the decision of whether he would represent himself was the court's to make. R. 42, ll. 13 – 14. The trial judge therefore erred when it did not make any further inquiry into Jackson's desire to represent himself at the Denno hearing and forced Fox's unwanted representation among him.

Before any substantive portion of the trial began, Jackson made an unequivocal demand that he be allowed to represent himself. Jackson said, "I'll represent myself, I don't need [Fox], I don't trust him." R. 83, l. 24 – 84, l. 7. "To force a lawyer on a defendant can only lead him to believe that the law contrived against him." Id. at 834. The trial judge ultimately determined that Jackson would represent himself, but inexplicably refused to allow him to do so until after the Biggers hearing, voir dire, and jury selection. This also was error that requires reversal. State v. Barnes, Op. No. 27322, ___ S.C. ___, ___ S.E.2d ___, 2014 WL 210878, Shearouse Advance Sheet No. 2, January 15, 2014.

In Barnes, a capital defendant unequivocally told the trial court that he wanted to represent himself. Id. at *1. The trial court refused to allow the defendant to represent himself after his own psychiatrist testified that while he was competent to stand trial, he was not competent to waive his Sixth Amendment right to counsel. Id. at *3-4. The South Carolina Supreme Court ruled that no such higher standard of competency exists and reversed. Id. at 4-5. The Court held, "So long as the defendant makes his request prior to trial, the only proper inquiry is that mandated by Faretta." Id. at *4, citing State v. Winkler, 388 S.C. 574, 698 S.E.2d 596 (2010).

No prejudice inquiry or harmless error analysis may be conducted because the erroneous denial of a Faretta request is a structural error. Barnes at *4. See also

McKaskle v. Wiggins, 465 U.S. 168 (1984). The Barnes Court did not perform any harmless error analysis. Barnes at *4-5. Once it determined that a Faretta error occurred, it summarily reversed. Id. at *5. This Court must do the same because of the structural error caused by the trial court's refusal to allow Jackson to represent himself during critical portions of the trial.

Any argument that the Faretta error is not structural in this case must fail because it cannot be disputed that a Denno hearing, Biggers hearing, voir dire, and jury selection are critical portions of the trial. This analysis is similar to that used to determine whether a defendant has a right to be present at any particular stage of a criminal proceeding. Snyder v. Massachusetts, 291 U.S. 97 (1934). A defendant has a guaranteed right to be present at a critical stage of a criminal proceeding when his presence bears on his opportunity to defend his case. Id. at 106. This right extends to voir dire and jury selection. United States v. Tipton, 90 F.3d 861, 872 (4th Cir. 1996). It also extends to pretrial hearings where witnesses are questioned. United States v. Hamilton, 391 F.3d 1066, 1071 (9th Cir. 2004) (holding suppression hearing where government presented the testimony of a police officer was a critical stage); People v. Williams, 726 N.E.2d 641, 643-44 (Ill. Ct. App. 2000) ("A hearing at which evidence is presented against a defendant involves substantial rights and therefore entitles a defendant to be present"); McGinnis v. State, 430 S.E.2d 618, 621-22 (Ga. Ct. App. 1993) ("Therefore, we hold that it constitutes prejudicial error to conduct an evidentiary suppression hearing in the defendant's absence."). The right to be present extends to post-indictment lineups and therefore logically extends to a Biggers hearing. See United States v. Wade, 388 U.S.

218, 236-37 (1967) (holding constitutional right to be present extends to post-indictment lineups).

The trial court allowed Jackson to exercise his constitutional right to defend himself, but did so too late. Judge Cottingham warned Jackson of the dangers of self-representation and concluded that he understood them. R. 141, l. 4 – 142, l. 21. However, the record shows no reason excusing the trial court's refusal to allow Jackson to represent himself when he first informed the Court of his wish to do so. The trial court's decision to force representation upon an unwilling Jackson at critical stages of the trial constitutes a structural error that requires reversal.

2.

The trial court erred in finding the defendant freely and voluntarily gave a statement to law enforcement after the police officer threatened the defendant that "there would be a difference" in his treatment if he failed to cooperate.

Relevant Facts

Jackson was arrested at 2:00 AM. R. 51, ll. 1 – 5. At 9:10 AM, Officer Clothier began interrogating Jackson.² R. 51, ll. 1 – 5. When asked if he was under the influence of alcohol or drugs, Jackson told Officer Clothier that he "done slept it off." R. 302, ll. 10 – 12. Officer Clothier did not ask what type of intoxicants Jackson consumed or any other questions related to his intoxication and proceeded to explain to Jackson his rights. R. 302, l. 13 – 303, l. 19. Jackson told Detective Clothier that he did not understand his charges. R. 303, l. 12 – 304, l. 10.

² The interrogation was transcribed by the court reporter during the trial.

When Jackson told the detective he did not have any credit cards, the officer said the following:

Okay. Well, what were you doing with his credit card then? See, I don't like liars. I'm, I'm trying to help you and—and when somebody is honest with me in an interview I make a note of it when this case gets transferred to the Solicitor's Office. Okay? There's a point where I tell the Solicitor, yeah, he cooperated. **I wouldn't mind you helping him out for, for whatever reason.** I can't promise you that, but that's what I put in there. Okay. **Or I put in there—refused to cooperate. There's a difference, okay?** So let's stop with the B.S. that you asked me for a cigarette and tell me what happened. It's that easy. He's a man, fess up and just tell me what happened. Okay? **It goes a lot easier; it goes quicker if, if you're honest and you tell me what happened.** So let's start all over again. Start from the beginning and tell me what happened. If you want to take your time to gather your thoughts, that's fine. It's—just be a man. Fess up. It's okay. It's all right. It just shows that you're a man and you're willing to help.

R. 306, l. 17 – 307, l. 11 (emphasis added). Jackson then began talking about entering the hotel room. R. 307, l. 12 – 308, l. 15.

Detective Clothier then lied to Jackson and told him he had a fingerprint match from the hotel balcony. R. 308, l. 16 – 309, l. 3. R. 320, ll. 15 – 19. He also lied and told Jackson he had seen a video of him using the credit card at the pancake house. R. 310, ll. 3 – 10. Jackson told him, "I'm getting nervous." R. 310, l. 1. R. 320, l. 20 – 321, l. 1. Detective Clothier replied, "But if you lie it makes it worse." R. 310, ll. 17 – 18. The officer also told Jackson he would "put in there" that he had a drug problem and "want[ed] some sort of help." R. 314, ll. 4 – 12.

Following Detective Clothier's testimony and the playing of the audio recording, Fox moved to have the statement suppressed. R. 63, ll. 13 – 23. Fox told the court, "I'll go ahead and make the motions, Your Honor, to—the motion, I guess, is to suppress the

statement. Your Honor, could make the finding, you heard the testimony as to its voluntariness.” R. 63, ll. 13 – 23. Judge Cottingham ruled the statement was admissible and made “without duress, hope or promise.” R. 64, ll. 14 – 17.

Discussion

The detective’s statement that “There’s a difference, okay?” to Jackson was a threat. While police officers may inform suspects that news of their cooperation will be relayed to the solicitor, they may not threaten consequences for the refusal to cooperate. In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), the court held that the sheriff’s admission that Osborne would be charged with withholding information or giving the police officer a false statement if she was not forthcoming mandated suppression of her confession. Osborne was told “you don’t have to say anything, but if you withhold evidence, you can be charged with a crime.” State v. Osborne, 301 S.C. at 366, 392 S.E.2d at 179. See also State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

In Rochester, the Supreme Court held that a confession “may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence.” Rochester at 200, 391 S.E.2d at 246-47 (internal quotations omitted). The Court found that a polygraph examiner telling the defendant it would be in his best interest to tell the truth was neither a threat nor a promise. This was nonetheless a factor to consider when determining whether appellant’s statement was a knowing, intelligent, and voluntary tendered confession under the totality of the circumstances. See State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001); State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987).

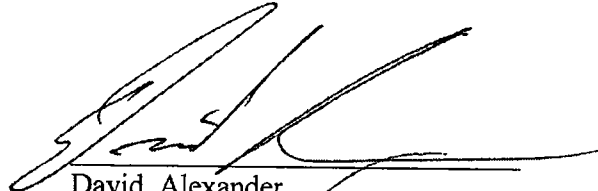
In Hook, this Court held that the defendant's statement to his probation officer was inadmissible because his agent expressly threatened to revoke the defendant's probationary sentence unless he told the truth. This Court noted that statements given pursuant to threats or under inherently coercive circumstances are not admissible. See Mincey v. Arizona 437 U.S. 385, 398, 399 (1978); Minnesota v. Murphy 465 U.S. 420, 427 (1984).

The officer's assertion that there would be a "difference" if Jackson failed to cooperate meant that he would be treated more harshly. Jackson clearly felt threatened by this statement. This "difference" in treatment is similar to the threats of consequences in Osborne and Hook. The fact that it was a threat can be seen from its consequences. Immediately after Detective Clothier made this threat, Jackson began making incriminating statements. Detective Clothier's threat was not "slight" and its existence compels the suppression of Jackson's statement.

CONCLUSION

For the reasons stated in Issue 1, appellant's conviction must be reversed and a new trial granted. For the reasons stated in Issue 2, at this new trial, his statement to law enforcement must be suppressed.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

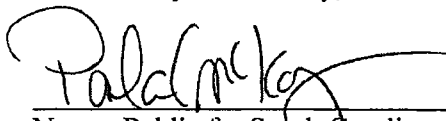
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2014.


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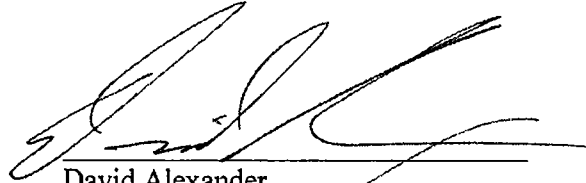
SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 19th 2014

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

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Appeal from Horry County
The Honorable Edward B. Cottingham, Circuit Court Judge

2012-213445-203569

THE STATE,

Respondent,

v.

ANTHONY JACKSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly inquired into Appellant's knowing and intelligent waiver of counsel and desire to appear pro se by following the guidelines set forth in Faretta v. California.

II.

The trial court correctly made an initial determination of admissibility of Appellant's statement based on the fact that he gave it freely and voluntarily and properly instructed the jury to make its own determination regarding whether the statement was made by the defendant voluntarily and of his own free will.

STATEMENT OF THE CASE

An Horry County Grand Jury indicted Appellant for first degree burglary.

(R.pp.387-388) On April 5, 2012, the Honorable Larry B. Hyman held a pretrial hearing for purposes of arraignment and service of Notice of Intent to Seek Life Without Parole.

(R. p.3.) The State offered a plea at that time, and Appellant asked for more time to speak to his attorney, which the court granted. (R. p.15.) On September 12, 2012, the Honorable J. Derham Cole held a hearing during which another plea was discussed and Appellant requested a jury trial. (R. p.28.) On October 11, 2012, the Honorable Edward B. Cottingham held pretrial motions, including a Jackson v. Denno hearing where Judge Cottingham ruled Appellant's statement to police was admissible. (R. pp.31-67.) On November 13-15, 2012, Appellant proceeded to trial before a jury. J. Eric Fox represented Appellant, and Martin D. Spratlin and Joshua D. Holford represented the State. The jury found Appellant guilty, and the Honorable Edward B. Cottingham sentenced him to life in prison without parole. (R. p.384.)

On November 19, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On November 14, 2011, William G. Thompson and Ronald Kinney traveled to Myrtle Beach, South Carolina, and stayed at a Best Western. (R. p.181, line 10-R. p.182, line 12.) At some point after 12:30 a.m., while Thompson was in bed, he heard the sliding glass door of the hotel room open and saw a shadowy figure enter his room. (R. p.187, line 20-R. p.188, line 6.) He asked the person what he was doing and the man told Thompson he was Tom, with hotel security. (R. p.188, lines 6-11.) The man appeared to make a call to the front desk to report the room was all clear and then left through the hallway door of the hotel room, grabbing Kinney's pants on the way out. (R. p.188, lines 17-24.) Thompson followed him into the hall and asked him why he had the pants, and the man explained he was looking for marijuana because he had received a report that the men in the hotel room were smoking it, and he needed to come back into the room to check there. (R. p.188, line 24-R. p.189, line 5.) Thompson took the man back into the hotel room, where the man looked around and then left. (R. p.189, lines 5-6.) Afterward, Thompson realized his wallet was missing. (R. p.189, lines 6-8.) Thompson called the front desk to inquire whether the hotel had a security person named Tom, and called the police when he found out it did not. (R. p.197, lines 10-15.)

Thompson called to cancel his credit cards and discovered one card had just been used at a nearby pancake house. (R. p.199, lines 15-23.) Officer Jeffrey Thomas went to the Pan American Pancake House, where the stolen credit card was used, and spoke to a waitress who was able to provide a description of the suspect. (R. p.220, line 21-R. p.222, line 10.) Officer Thomas detained Appellant nearby, and after the waitress identified Appellant as the man who used the credit card, Officer Thomas arrested him and charged him with burglary. (R. p.223, line 9-R. p.226, line 23.)

On April 5, 2012, the Honorable Larry B. Hyman held a pretrial hearing for purposes of arraignment and service of Notice of Intent to Seek Life Without Parole. (R. p.3.) The State offered a plea of between seven and ten years' imprisonment, and Appellant asked for more time to speak to his attorney, which the court granted. (R. p.11, 15.) On September 12, 2012, the Honorable J. Derham Cole held a hearing during which another plea was discussed, this time between zero and fifteen years' imprisonment. (R. p.27.) The solicitor told the court Appellant had declined the plea offer and expressed a desire to go to trial. (R. p.19.) Appellant agreed he rejected the offer. (R. p.21.) After Appellant told the court he did not understand the plea deal, Judge Cole attempted to explain it. The following exchange occurred:

The Court: Well[,] let [me] explain [it] one more time, Mr. Jackson, then if not we'll just have a trial on this case. They've offered you zero to fifteen on a burglary second violent; do you understand that?

[Appellant]: I guess.

The Court: No, sir, you guess, you don't understand what I'm saying, how far did you go in school?

[Appellant]: I didn't go far.

The Court: You didn't go to school?

[Appellant]: No, sir.

The Court: Well[,] can you understand English?

[Appellant]: A little bit.

The Court: Okay, all right, you don't want to accept the offer; you want a trial; you want a jury trial? Take him back and we'll give him a jury trial.

[The State]: Your Honor, if we may, prior to taking him back just serve the notice of life on him.

The Court: Okay, wait a minute, Mr. Jackson, you need to get your notice served.

[Appellant]: He done [sic] gave me one of them already.

(R.p.27-28.)

On October 11, 2012, the Honorable Edward B. Cottingham held pretrial motions. (R. pp.31-67.) Appellant asked the trial court to appoint him another lawyer. (R. p.39.) Judge Cottingham gave Appellant three choices: hire his own lawyer, represent himself, or keep his current lawyer. (R. p.42.) Appellant stated he did not want his current lawyer on his case, to which Judge Cottingham replied, "Well, I don't care what you want, the decision is mine." (R. p.42.) After that comment, Judge Cottingham again put Appellant's choices on the record, stating, "Well, let the record be known too, that I've offered you to represent yourself or hire your own lawyer. Absent that, Mr. Fox is going to be your lawyer." (R. p.42.) Appellant did not tell the trial judge he wished to represent himself. Judge Cottingham then stated Appellant had the opportunity to plead straight up to Burglary First that day but that Appellant rejected that opportunity. (R. p.45.)

At that point, the trial court held a Jackson v. Denno hearing where Judge Cottingham ruled Appellant's statement to police was admissible. (R. pp.46-64.) Detective Steven Clothier testified regarding his interview with Appellant. (R. p.46.) The State asked whether Detective Clothier made any promises or threats, and Clothier answered, "The only thing that I said was that, you know, if he cooperated, I would let the solicitor know and, you know, I made it a point not to make any leniency promises." (R. p.55, line 24-p. 56, line 4.) The audio recording of the interview was played for the trial court. (R. p. 59.) In its ruling, the trial court stated:

Let the record reflect that I've had an evidentiary hearing in this matter and I'm convinced beyond a reasonable doubt, first, that he was Mirandized and that he knowingly understood the various elements of the Miranda and that in each instance he initialed the fact that he did know.

I conclude further that this statement was freely, intelligently, knowingly made without duress, hope or promise and conclude that it is absolutely admissible under appropriate instructions by the trial judge.

(R. p.64, lines 9-17.)

On November 13-15, 2012, Appellant proceeded to trial before a jury and Judge Cottingham. Appellant informed the trial court he wished to represent himself. (R. p.75, line 2.) When the trial court asked him how far he went in school, he indicated he went through the ninth grade.¹ (R. p.77, line 23-R. p.78, line 3.) The trial judge emphasized to Appellant how extremely dangerous it was for him to represent himself in this most serious offense, particularly because he was facing life imprisonment. (R. p.78, lines 17-24.) The trial court further explained to Appellant, "Our Supreme Court has said even though a person is facing the death penalty if after appropriate warning he wants to represent himself he can do so. Now I tell you this, once you start representing yourself you cannot later change your mind" (R. p.80, lines 21-25.) While giving the State

¹ At different times throughout the pretrial hearings and the trial, Appellant gave conflicting answers to how far he had gone in school. At the September 12, 2012 hearing, he stated he did not go far in school and then answered, "No, sir" when the judge asked him, "You didn't go to school?" (R. p.27.) Here he told the trial court he went through the ninth grade, but on the audio recording of his police interview, he told Detective Clothier he went through the eleventh grade. (R. p.302.) Appellant also told the trial court at the September 12, 2012 hearing that he only understood English a little bit. (R. p.27.) However, he told Detective Clothier during his interview that English was his primary language. (R. p.302.) Additionally, it is apparent from the record that Appellant had a command of the English language when he was able to conduct cross-examination and make his opening and closing statements in English.

time to locate the Faretta² case so it could make appropriate findings on the record, the trial court proceeded with the Neil v. Biggers³ hearing with Mr. Fox acting as defense counsel, telling Appellant, "I'll deal with whether you want to represent yourself after this" (R. p.81, line 9-R. p.83, line 25.) Ultimately, the trial court denied Appellant's motion to suppress the identification. (R. p.125, line 22-R. p.126, line 6.)

After the Biggers hearing, the State moved to take up the matter of Appellant proceeding pro se. (R. p.126, lines 9-10.) The trial court inquired of Appellant based on State v. Bryant⁴ and Faretta v. California. Specifically, the trial court advised Appellant of his right to counsel and emphasized to Appellant the dangers of representing himself in such a serious matter. (R. p.128, lines 2-12; R.p.128, lines 15-23; R. p.132, lines 1-24; R. p.134, lines 15-23; R. p.135, lines 19-24; R. p.136, lines 2-11; R. p.140, lines 20-25; R. p.141, lines 4-9.) Particularly regarding his right to counsel, the trial court noted, "Now you've had an opportunity to observe Mr. Fox in examination of these witnesses and obviously you understand that he's a competent[,] capable attorney, prepared to represent you to the best of his ability." (R. p.128, lines 9-12.)

When addressing the jury venire, the trial court pointed out Appellant's absolute right to represent himself and told the potential jurors there is no adverse inference to be derived from the fact Appellant represents himself. (R. p.147, lines 9-13.) The trial court then proceeded with jury selection, allowing Mr. Fox to assist Appellant in the selection of the jury. (R. p.148; R. p.154, lines 17-19.) After the jury had been selected, the trial court stated:

² Faretta v. California, 422 U.S. 806 (1975).

³ 409 U.S. 188 (1972).

⁴ 383 S.C. 410, 680 S.E.2d 11 (2009).

Mr. Fox, with Mr. Jackson's agreement I permitted you to help him with the jury selection process and I permitted you to assist in the other issues before us this morning. I am really concerned about him representing himself and I hope that you can talk to him over lunch, but as you well know the case law clearly says that after warning an individual of the danger that I have no alternative but to let him do it; you understand that?

(R. p.166, line 25-R. p.167, line 8.) (emphasis added.) Appellant then informed the trial court it was still his intention to represent himself, and the trial court stated, "All right, sir, then I accept your judgment. The record will reflect that I've warned you about five times and you insist on representing yourself and you've got that absolute right." (R. p.167, lines 13-24.) Immediately prior to beginning the trial, the trial court again cautioned the jury that absolutely no adverse inference was to be derived from Appellant's representing himself. (R. p.172, lines 3-5.)

Thompson testified regarding what happened on November 11, 2011, when he awoke to find Appellant in his hotel room. (R. pp. 187-192.) He recounted finding out his credit card was missing and discovering it had been used at the Pan American Pancake House. (R. p.193, 199) He testified the police took him to identify Appellant after he was detained, but Thompson admitted that although the man looked similar to the man who entered his hotel room, he could not make a positive identification. (R. p.200, line 7-R. p.201, line 8.) Ronald Kinney also testified regarding what happened that night. (R. pp.208-211.) He identified clothing shown in court to be similar to what the perpetrator wore that night but admitted he could not positively identify him when the police took him to where Appellant was detained. (R. p.208, line 10-R. p.211, line 16.)

Officer Jeffrey K. Thomas testified he responded to a call on November 11, 2011, got a description of the suspect from the victims, and watched the hotel surveillance

video of the perpetrator, which matched the description he got from the victims. (R. p.218, line 6-p.220, line 11.) After he discovered Thompson's stolen credit card was used at the Pan American Pancake House, he went to that location and questioned the waitress who interacted with Appellant. (R. p.220, line 20-R. p.221, line 20.) The waitress provided a description of the man who used the credit card, which closely matched the description Officer Thomas already had. (R. p.222, lines 3-10.) After talking to the waitress, Officer Thomas spotted Appellant, who fit the description, walking nearby and detained him. (R. p.223, lines 6-23.)

Tara Maenner, the waitress, testified next. (R. p.238.) She recounted Appellant's coming into the pancake house that night and ordering several meals using the stolen credit card. (R. p.238, lines 11-19; R. p.239, line 7-R. p.242, line 25.) She recognized Appellant from other times he had been in the restaurant. (R. p.238, line 20-R. p.239, line 6.) Maenner testified Appellant waited about thirty minutes for the food and that the restaurant was not very busy at the time he was there. (R. p.243, line 11-R. p.244, line 1.) Police took Maenner to an area about one hundred yards from the pancake house to make an identification, and she was able to positively identify Appellant as the man who used the stolen credit card. (R. p.244, line 12-R. p.246, line 23.) She testified he had on the same clothing at the time of the identification that he did when he was at the pancake house. (R. p.244, line 22-p.245, line 25.)

Detective Steven Clothier testified regarding his interview with Appellant after his arrest. (R. p.287.) Clothier audio recorded the interview, and the State played it for the jury. (R. p.290, lines 1-6; R. p.301, line 6-p.317, line 3.) During the interview, Clothier told Appellant, "There's a point where I tell the Solicitor, yeah, he cooperated. I wouldn't mind you[r] helping him out for, for whatever reason. I can't promise you that,

but that's what I put in there. Okay. Or I put in there – refused to cooperate. There's a difference, okay?" (R. p.306, line 22-R. p.307, line 1.)

In its jury instructions, the trial court twice charged the jury that it was up to it to determine if Appellant's statement was voluntary. The trial court gave the following charges:

Now there has been introduced into evidence a[n audio recording] regarding an alleged statement by this defendant and I have provided for you during the playing only, a certified transcript of the testimony. I charge you with regards to that as follows: a statement alleged to have been made by the defendant has been admitted into evidence in this case. While this Court has determined that the statement is admissible for your consideration I instruct you that you make the ultimate decision of whether or not the defendant made this statement; that's your decision. If you conclude that the defendant made the statement you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or promise of leniency or reward of any kind. In determining whether the statement was voluntarily made you should consider both the character, the characteristics of the defendant, and the details of the questioning.

Some of the factors that you may consider are the age of the defendant, the defendant's decision or lack thereof. You may consider the defendant's mental ability or alertness, his capacity or intelligence. You're entitled to consider the defendant's background and environment, the place and length of the detention, the nature of the questioning, the advice or lack thereof to the defendant of his constitutional rights including but not limited to the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that he could not, if he could not afford a lawyer a lawyer would be appointed by [sic] him at no cost to him, and that he could stop making that statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntarily

made. If you determine it was, I must say advisedly, if you determine it was, you may give that statement any further consideration that you, the jury, deem proper and appropriate. You must decide what weight, if any, you should be given [sic] to the alleged statement. If you determine the alleged statement was not the free and voluntar[y] statement of the defendant you must not consider the statement at all.

(R. p.341, line 7-R. p.343, line 1.) Later, after the jury asked that the audio recording of the statement be played again, the trial court gave the following instruction:

Let me say this to you, I charged you the law with regards to the statement and advise that the Court has found it admissible for your consideration. You, of course, are charged with responsibility to determine whether it was freely, voluntarily made without hope, promise, duress, or reward, and whether or not his constitutional rights were charged to him. Those are decisions for you to make and the State must prove it beyond a reasonable doubt. I've ruled it admissible but you make these determinations for yourself.

(R. p.375, line 25-R. p.376, line 9.)

Ultimately, the jury found Appellant guilty, and Judge Cottingham sentenced him to life in prison without parole pursuant to section 17-25-45.⁵ (R. pp.378, 384.)

⁵ In 1993, Appellant was convicted of burglary in the first degree, a most serious offense. (R. p.19.)

ARGUMENTS

I.

The trial court correctly inquired into Appellant's knowing and intelligent waiver of counsel and desire to appear pro se by following the guidelines set forth in Faretta v. California.

Appellant argues the trial court erred when it refused to let Appellant represent himself during the Denno hearing, the Biggers hearing, voir dire, and jury selection. However, no requirement exists that a trial court must grant an appellant the ability to proceed pro se immediately. The trial court diligently advised Appellant of his right to counsel, warned him about the dangers of representing himself, and gave him numerous opportunities to observe his appointed attorney in action before accepting his decision to represent himself. The trial court was correct in following the Faretta guidelines and its decision should be affirmed.

South Carolina appellate courts have made clear one can waive one's right to counsel based on Faretta v. California, 422 U.S. 806 (1975). State v. Bryant, 383 S.C. 410, 414, 680 S.E.2d 11, 13 (Ct. App. 2009). "The right to proceed *pro se* must be clearly asserted by the defendant prior to trial." State v. Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (emphasis added). "It is the trial court's responsibility to determine whether there was a knowing and intelligent waiver by the accused." Bryant, 383 S.C. at 414, 680 S.E.2d at 13. "To effectuate a valid waiver, the accused must (1) be advised of the right to counsel and (2) be adequately warned of the dangers of self-representation." Id. Our Supreme Court has held a trial court did not err in accepting an appellant's waiver of his right to counsel where the trial judge held several hearings to determine whether the appellant understood what it meant to represent himself and

informed the appellant of the dangers of self-representation. Reed, 332 S.C. at 41-42, 503 S.E.2d at 750.

Here, the trial judge addressed Appellant's concern that he was not satisfied with his current attorney at the pretrial hearing held on October 11, 2012. (R. p. 39-40.) At that time, Appellant did not clearly assert a desire to represent himself. However, the trial judge made clear to him that he had three choices: hire his own lawyer, represent himself, or keep his current lawyer. (R. p.42.) By the end of the hearing, Appellant still had not clearly asserted a specific request that he be permitted to represent himself, and the trial court advised him to cooperate with his current attorney in the thirty-one days between the hearing and the trial date. (R.p.65.)

Appellant argues the trial court erred by not inquiring into his desire to represent himself, but the trial court was not required to make a Faretta inquiry when Appellant had not clearly asserted his desire to proceed pro se. See Reed, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) ("The right to proceed *pro se* must be clearly asserted by the defendant prior to trial." (emphasis added)). Appellant seems to confuse Appellant's assertion that he was dissatisfied with his attorney with a clear assertion of the right to proceed pro se. However, these are two very different contentions. Once Appellant had complained to the trial court about his attorney, and was given three choices, he did not inform the trial court he wished to represent himself. By failing to make this clear assertion, Appellant was left with the status quo of remaining with his appointed attorney in place.

At the beginning of the trial on November 13, 2012, Appellant told the trial court, for the first time, that he wished to represent himself. (R. p.75, line 2.) The trial judge emphasized to Appellant how extremely dangerous it was for him to represent himself in this most serious offense, particularly because he was facing life imprisonment. (R. p.78,

lines 17-24.) The trial court did not immediately make a decision to permit Appellant to proceed pro se because it gave the State time to locate the Faretta case so it could make appropriate findings on the record. During that time, the trial court proceeded with the Neil v. Biggers hearing with Mr. Fox acting as defense counsel, telling Appellant, "I'll deal with whether you want to represent yourself after this" (R. p.81, line 9-R. p.83, line 25.) Of course Appellant was with Mr. Fox during the entire proceeding and was able to participate fully.

Reed demonstrates appropriate inquiry under Faretta takes time and diligence on the part of the trial judge to make an informed determination regarding an appellant's decision to represent himself. Nothing in Reed or any other case law indicates a trial judge must accept an appellant's waiver quickly. On the contrary, Reed emphasizes the trial judge's important responsibility to ensure a defendant is informed of the dangers of self-representation and makes a knowing and intelligent waiver of his right to counsel. The fact that the trial judge here took time to obtain the Faretta case so that he could follow its guidelines demonstrates his adherence to proper procedure rather than showing any error on his part in delaying his decision.

Appellant cites many cases to support his proposition that the portions of the trial process the trial court allowed Appellant's attorney to conduct were critical stages. However, in all the cited cases, the issue was the absence of a defendant and/or his attorney. See U.S. v. Tipton, 90 F.3d 861, 871 (4th Cir. 1996) ("The principal challenge is to the district court's having conducted portions of the jury voir dire out of the immediate presence of the appellants."); U.S. v. Hamilton, 391 F.3d 1066, 1069 (9th Cir. 2004) ("Hamilton argues for the first time on appeal that the district court violated his rights under the Sixth Amendment by permitting the presentation of evidence against him

during the suppression hearing while neither Hamilton nor his counsel was present.”); People v. Williams, 726 N.E.2d 641, 643 (Ill. App. Ct. 2000) (“Defendant appeals, contending that the trial court abused its discretion by denying him the right to be present at the discharge hearing.”); McGinnis v. State, 430 S.E.2d 618, 622 (Ga. Ct. App. 1993) (“Therefore, we hold that it constitutes prejudicial error to conduct an evidentiary suppression hearing in the defendant’s absence.”); U.S. v. Wade, 388 U.S. 218, 223-24 (1967) (“In contrast, in this case it is urged that the assistance of counsel at the lineup was indispensable to protect Wade’s most basic right as a criminal defendant-his right to a fair trial at which the witnesses against him might be meaningfully cross-examined.”). Thus, these cases are not applicable to the situation at hand. Appellant was present for all the above portions of the trial process and was able to assist or be assisted by his attorney at all times. Thus, the type of prejudice contemplated in the trial in absentia cases cited by Appellant is simply not present in the current case.

Appellant cites State v. Barnes, Op. No. 27322 (S.C. Sup. Ct. filed Oct. 16, 2013) (Shearouse Adv. Sh. No. 44 at 16), to support his argument that “[n]o prejudice inquiry or harmless error analysis may be conducted because the erroneous denial of a Faretta request is a structural error.” (App. Br. p.16.) Appellant makes much of the fact the Court reversed summarily once it determined a Faretta error had occurred and advocates this Court has no choice but to do the same here. However, upon a close reading of Barnes, the issue there “is whether South Carolina will adopt the higher competency standard permitted by *Edwards* and thus alter the traditional *Faretta* threshold inquiry which permits any defendant competent to stand trial to waive his right to counsel.” Id. at 22. The reason the Court reversed was because it chose not to adopt the higher standard and consequently invalidated the trial judge’s denial of the appellant’s request to

proceed pro se because his decision was based on the Edwards standard. Id. The facts of this case are not at all related to standard of competency. Thus, Barnes has no bearing on the case at hand.

To the extent Barnes has any impact on the case before this Court, it is limited to Faretta being the proper standard in a case in which an appellant desires to represent himself. Here, the trial judge correctly inquired based on Faretta and, thus, did not err. Accordingly, this Court should affirm the trial court's decision to allow Appellant to represent himself and find no prejudice by its delay of the decision in light of a thorough Faretta inquiry.

II.

The trial court correctly made an initial determination of admissibility of Appellant's statement based on the fact that he gave it freely and voluntarily and properly instructed the jury to make its own determination regarding whether the statement was made by the defendant voluntarily and of his own free will.

Appellant argues the trial court erred in finding the defendant freely and voluntarily gave a statement to law enforcement after the police officer threatened the defendant that "there would be a difference" in his treatment if he failed to cooperate. On the contrary, the trial court appropriately considered the proper factors in its determination the statement was freely and voluntarily given, including any threats, promises, or leniency. Thus, the trial court's initial determination was proper and it correctly permitted the jury to make its own further determination regarding the statement.

"On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). "Once a voluntary waiver of the *Miranda* rights is made, that waiver continues until the individual being questioned indicates that he wants to revoke the waiver and remain silent or circumstances exist which establish that his 'will has been overborne and his capacity for self-determination critically impaired.'" Id. at 200, 391 S.E.2d at 246 (citation omitted). "Further, the confession may not be 'extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of improper influence.'" Id. (citation omitted). "A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a

consequence of the promise.” Id. at 200, 391 S.E.2d at 246-47 (citing State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987). “The trial judge’s determination of whether a statement was knowingly, intelligently, and voluntarily made, requires an examination of ‘the totality of the circumstances’ surrounding the waiver.” Id. at 200, 391 S.E.2d at 247 (citation omitted). “Our courts have recognized that the appropriate factors to consider in the totality of circumstances analysis include: background, experience, conduct of the accused, age, length of custody, police misrepresentations, isolation of a minor from his or her parent, threats of violence, and promises of leniency.” State v. Dye, 384 S.C. 42, 47, 681 S.E.2d 23, 26 (Ct. App. 2009). The trial court’s factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to constitute an abuse of discretion. State v. Franklin, 390 S.C. 535, 539, 702 S.E.2d 568, 570 (Ct. App. 2010). An appellate court is bound by the trial court’s factual findings unless they are clearly erroneous. Id. When reviewing a trial court’s ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court’s ruling is supported by any evidence. Id. at 539, 702 S.E.2d at 570-71.

In Rochester, the appellant argued the trial court erred in denying his motion to suppress his confession, arguing it was improperly induced by a promise by the polygraph examiner that it would be in his best interest to tell the truth. Id. at 199, 391 S.E.2d at 246. Our Supreme Court found the confession was freely and voluntarily made and, therefore, admissible. Id. at 200, 391 S.E.2d at 246. The Court determined the polygraph examiner’s statement was not an inducement or hope of lighter punishment. Id. at 200-01, 391 S.E.2d at 247. The Court distinguished it from Peake, in which the appellant was “told by the interrogating officers that the State would not seek the death

penalty if he gave a statement.” Id. at 200, 391 S.E.2d at 247. Because Peake’s inculpatory statement was the product of that promise of leniency, the Court reversed his conviction and sentence. Id. at 200, 391 S.E.2d at 247. In Rochester, the Court pointed out the investigating officers did not at any time promise the appellant anything in exchange for his giving a statement. Id. at 200, 391 S.E.2d at 247. The Court also considered the totality of the circumstances, including evidence the appellant was not worn down by interrogation tactics and his confession was not induced by force or threats. Id. at 201, 391 S.E.2d at 247.

Here, as in Rochester, Appellant’s statement was not given in exchange for a promise of leniency. Detective Clothier merely told Appellant he would make a note of his cooperation for the solicitor’s office. This was nothing like the promise in Peake that the State would not seek the death penalty if Peake gave a statement. There was no discussion of the penalty in this case at all. Furthermore, Detective Clothier made a point of stating to Appellant, “I can’t promise you that, but that’s what I put in there.” (R. p.306, lines 24-25.)

Appellant specifically argues Clothier’s statement that there is a difference between cooperating and refusing to cooperate was a threat. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992), is instructive in determining what constitutes a threat in the context of a confession. In Corns, this Court found the trial court erred in admitting the statement because officers coerced Corns’s confession by means of veiled threats against his family that his wife could be arrested and his children taken by the Department of Social Services. In the case at hand, no threats were made against Appellant or his family. Telling Appellant there is a difference between cooperating and refusing to cooperate certainly does not rise to the level of a threat.

Because Detective Clothier did not threaten Appellant when he said there was a difference between cooperating and refusing to cooperate, and because the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence, this Court should affirm the trial court's decision to initially admit the statement and allow the jury to make its own determination. See Franklin at 539, 702 S.E.2d at 570-71 (stating the standard of review for trial court's factual findings regarding voluntariness of statement).

CONCLUSION

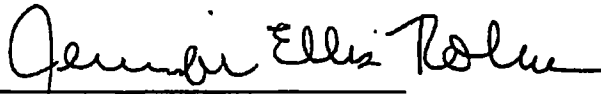
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 4, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable Edward B. Cottingham, Circuit Court Judge

Appellate Case No. 2012-213445

THE STATE,

Respondent,

v.

ANTHONY JACKSON,

Appellant.

CERTIFICATE OF COUNSEL

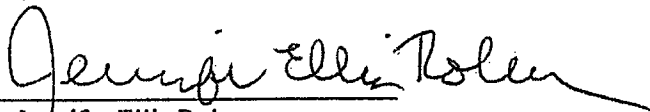
The undersigned certifies that the Final Brief of Respondent complies with Rule 211(b),
SCACR.

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 4th day of February, 2013.


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STATE OF SOUTH CAROLINA

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Edward B. Cottingham, Circuit Court Judge

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APPELLATE CASE NO. 2012-213445

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ATTORNEY FOR APPELLANT

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ARGUMENT

The State argues that because the trial judge did not know the law, he was entitled to postpone the exercise of appellant's constitutional right to represent himself. Brief of Respondent at 14-15. The State admits that appellant made an unequivocal assertion of his right to self-representation and that the trial court delayed the exercise of this right until after the Biggers hearing, voir dire, and jury selection. Brief of Respondent at 13-15. The excuse for the delay proffered by the State is that the trial judge needed to give "the State time to locate the Faretta case so it could make appropriate findings on the record." Brief of Respondent at 14.

The trial court's lack of awareness of Faretta v. California, 422 U.S. 806, a seminal United States Supreme Court decision from 1975, cannot excuse the denial of appellant's right to self-representation. The State cites no authority for the proposition that a trial court may delay a defendant's exercise of that right, much less for the reason that the trial court did not know the law. Instead, the State relies on State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998) for the proposition that a Faretta inquiry "takes time and diligence." Brief of Respondent at 14. Indeed it does. But nothing in Reed—a capital case where the court allowed the defendant to represent himself—indicates that a trial judge may postpone the exercise of a defendant's constitutional right to self-representation because of the "time and diligence" required of the court.

The State failed to seriously contend that a Denno hearing, a Biggers hearing, voir dire, and jury selection are critical stages of a trial. Brief of Respondent at 14-15. The State attempts to distinguish the cases cited by appellant showing these portions of a trial are critical by dismissing them as cases regarding the defendant's right to be present. Brief of Respondent at 15. While that is certainly true and was pointed out in appellant's brief, it does nothing to diminish the logical force that if a stage of a trial is sufficiently critical that the defendant has a right to be present, then it is

also sufficiently critical for the defendant's assertion of the right to self-representation to matter. Apart from distinguishing the cases cited by appellant on this irrelevant basis, the State failed to cite any authority for the proposition that these stages of a trial are not critical.

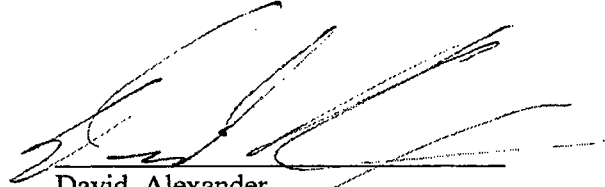
Finally, the State failed to refute that the denial of a right to self-representation is a structural error. State v. Barnes, Op. No. 27322, ___ S.C. ___, ___ S.E.2d ___, 2014 WL 210878, Shearouse Advance Sheet No. 2, January 15, 2014. The State attempted to distinguish Barnes by emphasizing its holding that the trial court used an incorrect competency standard. Brief of Respondent at 16. Appellant agrees this point was the most difficult issue addressed by the Court in Barnes. What was not difficult for the Court was the determination that the case had to be reversed once an error was found. Again, the State cites no authority to support the proposition that a harmless error analysis for a Faretta error may be conducted and does not seriously argue this point in its brief. Brief of Respondent at 16. No harmless error analysis is allowed.

The trial judge denied appellant his right to self-representation during critical stages of this trial. The State failed to seriously contend that the trial court erred. Therefore, finding error, this Court must reverse and remand for a new trial.

CONCLUSION

For the reasons stated in this reply and those stated in the Brief of Appellant, appellant's conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Edward B. Cottingham, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-213445

CERTIFICATE OF SERVICE

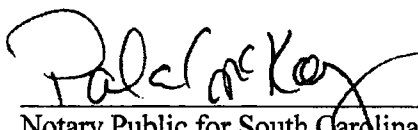
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

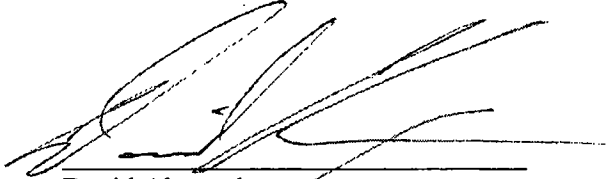
SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 19th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

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