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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

BUDDY ARIZONA HARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001232

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 GSTATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-GS-23-02141,02140
4) State of South Carolina) TRANSCRIPT OF RECORD
5) vs)
6) Buddy Arizona Harris)
7 _____)

8 May 18, 2011
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE VICTOR PYLE, Judge

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

13 ELIZABETH MAJOR, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 RANDY CHAMBERS, Esquire
17 Attorney for the Defendant

18 Caroline Hiskell
19 Circuit Court Reporter
20
21
22
23
24
25

I N D E X

WITNESSES	DR	CR	RED	RECR
Jessica Martin	23	29	31	
Jamee Anders	32			
Renee Beauford	37			
Deputy Matt Smith	42	49		
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P R O C E E D I N G S

THE BAILIFF: All rise. The court will come to order, the Honorable Victor C. Pyle residing.

THE COURT: Thank you. Be seated.

MS. MAJOR: Your Honor, we're waiting on Mr. Chambers.

THE COURT: You got his cell phone?

THE CLERK: I do not.

(Whereupon, there was a brief break.)

MR. CHAMBERS: I'm sorry, Your Honor. I thought we were starting at 9:30.

THE COURT: Mr. Chambers, I start court promptly at 9:00. I accept your apology but the next time you're going to be fined. Do you understand that?

MR. CHAMBERS: Yes, sir, I do.

THE COURT: You got a list of witnesses?

MR. CHAMBERS: No, sir.

THE COURT: Bring the jury panel up.

MS. MAJOR: Your Honor, I have a few pretrial matters.

THE COURT: What are they?

MS. MAJOR: First, the State seeks to admit a 911 call and we'll have that come in through the county officer. The 911 dispatcher is unavailable.

THE COURT: Okay.

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1 MR. CHAMBERS: I'm not going to object to
2 that.

3 THE COURT: Thank you.

4 MS. MAJOR: When the defendant and the
5 co-defendant were pulled over, they both gave statements
6 indicated where they had been, that they'd been in
7 Publix's parking lot and I want to make sure that that
8 comes in and make sure we don't need a Jackson v. Denno
9 hearing. It was after they were pulled over on the
10 traffic stop.

11 MR. CHAMBERS: Is that the only statement?

12 MS. MAJOR: Yeah, that they admitted to being
13 in the Publix's parking lot.

14 THE COURT: This is before they were under
15 arrest?

16 MS. MAJOR: Yes, Your Honor.

17 MR. CHAMBERS: Your Honor, I think we may
18 need a Jackson v. Denno. My client does not recollect
19 having made that statement so for the sake of the record
20 we would want to go forth with a Jackson v. Denno. I
21 understand the purposes of the Jackson v. Denno is whether
22 the statement was voluntarily made but my client says he
23 never made the statement.

24 THE COURT: If he says he never made it.

25 MR. CHAMBERS: For the record that would be

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1 our position.

2 MS. MAJOR: One more, when the defendant and
3 co-defendant were pulled over, the co-defendant had an
4 active warrant and he was arrested. I don't want to get
5 into and ask that it not be brought up as to what the
6 active warrant was for, just that he had an active warrant
7 and not go into what the active warrant was for.

8 MR. CHAMBERS: I don't plan on do that.

9 THE COURT: This was an active warrant
10 against the co-defendant?

11 MR. MAJOR: Against the co-defendant.

12 MR. CHAMBERS: I don't plan on doing that,
13 Your Honor.

14 THE CLERK: Your Honor, do you want me to
15 bring the jury in or are you going to do the Jackson v.
16 Denno?

17 THE COURT: We're not going to do the Jackson
18 v. Denno.

19 THE CLERK: We're not going to do it.

20 (Whereupon, the jury panel entered the
21 courtroom.)

22 THE COURT: Ladies and gentlemen, if I could
23 have your attention. At this time, we will select a jury
24 in the case of the State versus Buddy Arizona Harris.

25 Mr. Harris, could you stand up and face the

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1 jury panel a moment, please, sir.

2 Thank you. You may be seated.

3 Mr. Harris is indicted for breaking into
4 motor vehicles and also for petty larceny. The first
5 indictment alleges that on or about February 4, 2010, that
6 he unlawfully broke or attempted to break into a vehicle
7 owned by Jessica Martin and that he stole personal
8 property consisting of change purses, credit cards valued
9 at less than \$1000.

10 In the other indictment it alleges on that
11 same date, he unlawfully broke into an automobile owned by
12 Michael Kroson stole a set of jumper cables with a value
13 of less than \$1000.

14 Potential witnesses in the case will be
15 Jessica Martin, Jamee Anders, Renee Beaufort, Deputy Matt
16 Smith, Deputy Jason Cordell, Joshua Humphrey, Investigator
17 Randy Morgan, Investigator Scott Phillips, Investigator
18 Joe Whitmire, Investigator Heather Hubert all with the
19 Greenville County Sheriff's Office.

20 Now, I will inquire at this time if any
21 member of the jury panel is related by blood or marriage
22 or connected by employment to the defendant or any
23 potential witness in the case?

24 (No response.)

25 Are you sensible or aware of any bias or any

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1 prejudice to the defendant, to the State, or to the
2 subject matter of the case or do you know any reason why
3 you could not give this defendant and the State a fair and
4 impartial trial based on the law in evidence to be
5 presented. If so, would you please stand and give us your
6 name.

7 (No response.)

8 Do I have any member of the panel who has any
9 connection, family, business, social or otherwise with
10 Walt Wilkins, the Solicitor, or any member of his staff
11 including the young lady who is prosecuting this case, or
12 with law enforcement whether that be federal, state,
13 county or municipal? If so, please stand and give me your
14 name.

15 What's your name, sir?

16 JUROR NO. 80: My name is Jonathan Hopkins.
17 My (inaudible) employed by the Solicitor's Officer.

18 THE COURT: Here in Greenville?

19 JUROR NO. 80: Yes, sir.

20 THE COURT: All right, your name again, sir?

21 JUROR NO. 80: Jonathan Hopkins.

22 THE COURT: Thank you, sir. I will not place
23 you on this case. Thank you for telling me that.

24 Randy Chambers represents the defendant. Do
25 I have any clients now or formally of Mr. Chambers? If

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1 so, please stand.

2 (No response.)

3 Do I have any member of the jury panel that
4 has been a victim of a crime, particularly auto breaking
5 and/or petty larceny? If so, please stand and give me
6 your name.

7 Yes, sir, your name?

8 JUROR NO. 186: My name is Jeff Steward.
9 Fifteen years ago I had my car broken into.

10 THE COURT: Would that fact in any way
11 interfere with your ability to be a fair and impartial
12 juror in this case?

13 JUROR NO. 186: No, sir.

14 THE COURT: Your name, please.

15 JUROR NO. 85: Michele Jackson. I had a car
16 stolen.

17 THE COURT: Would that in any way interfere
18 with your ability to be a fair juror in this case?

19 JUROR NO. 85: No, sir.

20 THE COURT: All right. The strikes are five
21 and five.

22 Ladies and gentlemen, when your name is
23 called, I'd ask you to come up to the podium up front,
24 turn around and face counsel, and await further
25 instruction. Thank you very much.

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1 THE CLERK: Also when you come up if you
2 would bring your personal belongings if you're seated in
3 the jury box.

4 Juror No. 140, Marvin Reem.

5 What says the State?

6 MS. MAJOR: Please seat Mr. Reem.

7 MR. CHAMBERS: Please excuse Mr. Reem from
8 the trial of this case.

9 THE CLERK: Thank you, Mr. Reem, please be
10 seated. You're excused from the trial of this case.

11 Juror No. 40, Ashley Cummings.

12 MS. MAJOR: Please present Ms. Cummings.

13 MR. CHAMBERS: Swear Ms. Cummings, please.

14 THE COURT: You may be seated in the jury
15 box.

16 (Whereupon, Juror No. 40, Ashley Cummings,
17 white female, was seated in the jury box.)

18 Juror No. 168, Travis Williams.

19 MS. MAJOR: Please excuse Mr. Williams.

20 THE CLERK: Thank you. Please be seated,
21 you're excused from the trial of this case.

22 Juror No. 15, Ogla Bowles.

23 MS. MAJOR: Please present Ms. Bowles.

24 MR. CHAMBERS: Swear Ms. Bowles, please.

25 THE CLERK: Thank you may be seated in the

State versus Harris

1 jury box.

2 (Whereupon, Juror No. 15, white female, Olga
3 Fields Bowles, was seated in the jury box.)

4 Juror No. 30, Regina Cephas.

5 MS. MAJOR: Please present Ms. Cephas.

6 MR. CHAMBERS: Swear Ms. Cephas, please.

7 THE COURT: Thank you. You may have a seat
8 in the jury box.

9 (Whereupon, Juror No. 30, Regina Cephas,
10 black female, was seated in the jury box.)

11 Juror No. 186, Jeffery Steward.

12 MS. MAJOR: Please present Mr. Steward.

13 MR. CHAMBERS: Please excuse Mr. Steward.

14 THE COURT: Thank you, please be seated.

15 You're excused from the trial of this case.

16 Juror No. 107, Woodrow McClain.

17 MS. MAJOR: Please present Mr. McClain.

18 MR. CHAMBERS: Swear Mr. McClain, please.

19 THE CLERK: Thank you. You may be seated in
20 the jury box.

21 Juror No. 111, David McKinney.

22 MS. MAJOR: Please present Mr. McKinney.

23 MR. CHAMBERS: Please excuse Mr. McKinney.

24 THE CLERK: Thank. Please be seated, you're
25 excused from the trial of this case.

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1 Juror No. 17, Peter Braren.
2 MS. MAJOR: Please present the juror.
3 MR. CHAMBERS: Swear Mr. Braren, please.
4 THE CLERK: Thank you, you may be seated.
5 (Whereupon, Juror No. 17, Peter Braren, white
6 male was seated in the jury box.)
7 Juror No. 150, Mark Steadman.
8 MS. MAJOR: Please present Mr. Steadman.
9 MR. CHAMBERS: Swear Mr. Steadman, please.
10 THE CLERK: Thank you, you may be seated in
11 the jury box.
12 (Whereupon, Juror No. 150, Mark Steadman,
13 white male, was seated in the jury box.)
14 Juror No. 164, Casey Weinel.
15 MS. MAJOR: Please excuse this juror.
16 THE CLERK: Thank you. You may be seated.
17 You're excused from the trial of this case.
18 Juror No. 60, Benjamin Garron.
19 MS. MAJOR: Please present this juror.
20 MR. CHAMBERS: Please excuse this juror.
21 THE CLERK: Thank you. You may be seated.
22 You're excused from the trial of this case.
23 Juror No. 189, Marsha Winston.
24 MS. MAJOR: Please present Ms. Winston.
25 MR. CHAMBERS: Swear Ms. Winston, please.

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1 THE CLERK: Thank you, you may be seated in
2 the jury box.

3 (Whereupon, Juror No. 189, Marsha Winston,
4 white female, was seated in the jury box.)

5 Juror No. 48, Ververly Donald.

6 MS. MAJOR: Please present Ms. Donald.

7 MR. CHAMBERS: Swear Ms. Donald, please.

8 THE CLERK: Thank you. You may be seated in
9 the jury box.

10 (Whereupon, Juror No. 48, Ververly Donald,
11 black female, was seated in the jury box.)

12 Juror No. 9, Clark Beam.

13 MS. MAJOR: Please excuse Mr. Beam.

14 THE CLERK: Thank you. You're excused from
15 the trial of this case.

16 Juror No. 83, Charles Jackson.

17 MS. MAJOR: Please excuse Mr. Jackson.

18 THE CLERK: Thank you. You may be seated,
19 you're excused from the trial of this case.

20 Juror No. 85, Michele Jackson.

21 MS. MAJOR: Please present, Ms. Jackson.

22 MR. CHAMBERS: Please swear Ms. Jackson.

23 THE CLERK: Thank you. Have a seat in the
24 jury box.

25 (Whereupon, Juror No. 85, Michele Jackson,

State versus Harris

1 black female, was seated in the jury box.)

2 Juror No. 70, David Hollis.

3 MS. MAJOR: Please present Mr. Hollis.

4 MR. CHAMBERS: Swear Mr. Hollis, please.

5 THE CLERK: Thank you. You may be seated in
6 the jury box.

7 (Whereupon, Juror No. 70, white male was
8 seated in the jury box.)

9 Juror No. 172, Gary Allen.

10 MS. MAJOR: Please present Mr. Allen.

11 MR. CHAMBERS: Swear Mr. Allen, please.

12 THE CLERK: You may have a seat in the jury
13 box.

14 (Whereupon, Juror No. 172, Gary Allen, white
15 male was seated in the jury box.)

16 Juror No. 25, Sharon Calvino.

17 MS. MAJOR: Please presesnt Ms. Calvino.

18 MR. CHAMBERS: Swear Ms. Calvino, please.

19 THE CLERK: Thank you. Please have a seat in
20 the jury box.

21 (Whereupon, Juror No. 25, Sharon Calvino,
22 white female was seated in the jury box.)

23 THE COURT: Ms. Jackson, come take this first
24 seat and serve as foreperson on this jury for me, please.

25 Alternate, one for the State and two for the

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1 defense.

2 THE CLERK: Juror No. 133, Brenda Pace.

3 MS. MAJOR: Please present Ms. Pace.

4 MR. CHAMBERS: Excuse Ms. Pace from this
5 case.

6 THE CLERK: Thank you, you can be seated.
7 You're excused from the trial of this case.

8 Juror No. 76, Linda Hendrix.

9 MS. MAJOR: Please present Ms. Hendrix.

10 MR. CHAMBERS: Thank you. You can have a
11 seat in the jury box.

12 (Whereupon, Juror No. 76, Linda Hendrix, was
13 seated in the jury box.)

14 THE COURT: Swear the jury.

15 THE CLERK: Would you please stand and raise
16 your right hand. The correct response to the oath is I
17 will. You shall well and truly try the case of 2010-GS-
18 23-2140 and 2141, State versus Buddy Arizona Harris,
19 indicted for breaking and entering a motor vehicle and
20 2010-GS-23-4203 and 4204 for petty larceny and true
21 verdict rendered according to the law and the evidence, so
22 help you God.

23 (Jury collective I will.)

24 Thank you.

25 THE COURT: Ladies and gentlemen, I'm going

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1 to give you a very short recess at this time. While on
2 recess, do not talk about this case. Please don't do that
3 until you've heard all the testimony, arguments by counsel
4 and my charge on the law. So if you'll be at ease, we'll
5 start the trial shortly. Thank you.

6 (Whereupon, the jury exits the court room.)

7 For the balance of the panel, I can give you
8 the rest of the day off but we're probably going to need
9 you back in the morning. But in any event, I'm going to
10 need you to call in after 6:00. Call the number given to
11 you on Monday after 6:00. Thank you.

12 (Whereupon, the remainder of the jury panel
13 exited the courtroom.)

14 Okay, any other matters we need to take up
15 before we start?

16 MS. MAJOR: Nothing from the State.

17 MR. CHAMBERS: None from the defense, Your
18 Honor.

19 THE COURT: Is there any agreements?

20 MS. MAJOR: No, sir.

21 MR. CHAMBERS: No, sir.

22 MS. MAJOR: The State is ready to proceed,
23 sir.

24 THE COURT: Bring the jury.

25 (Whereupon, the jury enters the courtroom.)

State versus Harris

1 Brief opening statements.

2 MS. MAJOR: Good morning, ladies and
3 gentlemen, my name is Elizabeth Major from the Greenville
4 County Solicitor's Office. We are here today for the case
5 of State versus Buddy Arizona Harris. He's been charged
6 with two counts of auto breaking and two counts of petty
7 larceny.

8 As I was thinking about this case and
9 preparing for trial, I realized that this case is kind of
10 like a puzzle and a lot of different pieces to this puzzle
11 and a lot of different evidence you will hear throughout
12 this trial and it's going to show that the defendant is
13 guilty of these crimes.

14 The first piece of the puzzle is testimony
15 from Jamee Anders and Jessica Martin. They are the
16 victim's in this case. They will testify that they were
17 working at Flatrock Grill. They get off at their lunch
18 shift and they come out and discover that their cars have
19 been broken into. Jessica Martin's purse had been stolen
20 and Jamee Anders jumper cables had been taken from inside
21 her car.

22 The next piece of the puzzle is the 911 tape
23 that you'll hear. You'll hear a man call 911 and say that
24 he sees two white males in the Publix's parking lot
25 looking into cars driving a Green Durango.

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1 You'll next hear from Officer Smith. Officer
2 Smith will tell you that he pulled that Green Durango over
3 and inside was the defendant driving and Joshua Humphrey,
4 the passenger.

5 You'll next hear from Joshua Humphrey himself
6 and he'll tell you what he did that day, how they broke
7 into the cars, tell where they threw items that they found
8 in the cars.

9 The next piece of the puzzle is Investigator
10 Randy Morgan. He'll testify that he and Joshua Humphrey
11 went around and recovered stolen items from where they'd
12 been thrown.

13 And finally you'll hear from Heather Hubert
14 that did the inventory of that Green Durango and what she
15 found in that car.

16 Now, it's my job to prove to you beyond a
17 reasonable doubt -- that's my burden beyond a reasonable
18 doubt -- that the defendant is guilty of these crimes. I
19 ask that you listen to all of the evidence clearly and I
20 want to tell you that you have the best tool with you when
21 you walked into this room and stepped into that box and
22 that's your common sense.

23 Now, at the end of this case, I will come
24 back and ask you to return a verdict of guilty. Thank
25 you.

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1 THE COURT: Mr. Chambers.

2 MR. CHAMBERS: If it please the Court, Your
3 Honor, solicitor.

4 Ladies and gentleman, this is Buddy Harris
5 who is seated over here. He's the one that you're going
6 to hear referred to as the defendant, and I always start
7 out a trial and these folks who have been in the courtroom
8 have heard this but I don't like the term defendant. It
9 just doesn't fit. It sort of implies that he has to
10 defend himself. The better term is the term that we used
11 when I started my career as a Navy lawyer and that is
12 accused.

13 The indictments that you heard earlier, those
14 are just formal accusations. The State and all these
15 people who are sitting over here, the solicitor, the
16 police officers, all these people that you see over here,
17 it's their case. They've made the accusation. They have
18 to now come in here and prove it to you beyond a
19 reasonable doubt.

20 Now, we're going back February 4th of 2010.
21 That's the day that these two ladies had their car broken
22 into. Now, let me say right up front, they're cars were
23 broken into, things were taken from their cars, that's a
24 terrible thing. Anyone who's ever had something stolen
25 from them knows what that feels like. And I am in no way

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1 here to defend that, but Buddy Harris didn't do it and the
2 evidence that they have is not going to prove to you
3 beyond a reasonable doubt that Buddy Harris did it.

4 They have the person that broke into those
5 cars and stole things. They have him beyond a shadow of a
6 doubt and his name is Josh Humphrey and he is going to
7 come in here and testify and you're going to hear from
8 him, and you'll get to judge what kind of person he is.

9 Buddy Harris knew Josh and was somewhat
10 friends with Josh and was helping Josh out that day by
11 giving him a ride. Josh went and broke into some cars and
12 you'll hear about all that. Other than Josh Humphrey's
13 testimony, there's not going to be anything that ties
14 Buddy Harris to this. There is no physical evidence.
15 You're not going to see any physical evidence at all
16 that's going to tie Buddy to this.

17 So I want to spend a little bit of time up
18 front talking about this whole concept of reasonable doubt
19 because it is very important. I have come to the
20 realization that most people believe that if the police
21 and the prosecutor say that you did something, a lot of
22 people think they probably did. Some of you might be
23 sitting there thinking he probably done what he's accused
24 of doing. But all of you took the oath a few minutes ago
25 that you're going to well and truly try this case.

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1 What that means is you're going to hold them
2 to this burden of reasonable doubt. And a lot of you are
3 sitting there thinking what does that mean and I hear
4 about this concept all the time just about every day and I
5 hear that somebody is innocent until proven guilty. We
6 hear that a lot. Well, guess what? You actually get to
7 put that to the test today.

8 The system was designed so that people like
9 you can come in here. You're the check against the
10 government power. You're the check that keeps us from
11 being like some of these totarian states where somebody is
12 just accused of something and thrown in jail. You do
13 that. Every witness that comes up here, you're going to
14 judge what they have to say, the circumstances around
15 which they said it, their demeanor of how they say it,
16 what they have to gain from saying what they say. You get
17 to do that. That's something that y'all do every single
18 day when you come into contact when somebody tries to
19 persuade you with something. So that's what you're going
20 to be here doing and that's why the system works.

21 Now, reasonable doubt, there are other courts
22 that are going on in his building right now. There's a
23 civil court going on and in there it's a preponderance of
24 the evidence. Those are important cases but those are
25 just people that are fighting over money, and so if you

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1 think about a scale that starts out perfectly even, the
2 plaintiff who comes in claiming damages only has to tilt
3 that scale just a little bit, the greater weight of the
4 evidence; in other words, the preponderance of the
5 evidence.

6 There are other tribunals, courts, where the
7 saying is by clear and convincing evidence, that's as
8 greater weight, that means the person has to be sure based
9 on that evidence.

10 When a person comes in accused of a crime and
11 there is a chance they are going to be deprived of their
12 liberty, that's the highest standard in law and that's
13 beyond a reasonable doubt, and that's where that scale has
14 to be tilted almost all the way.

15 Now, the Court will tell you later and it's
16 absolutely true that nothing can be proven beyond any
17 doubt at all. It just can't be done and that's not what's
18 at stake for the solicitor in this case, but she does have
19 the burden of beyond a reasonable doubt. And the way that
20 is normally explained by the Court is the evidence should
21 leave you firmly convinced, firmly convinced. I always
22 think that sounds fairly innocuous but if you actually
23 look at those words and what do they mean. Firmly means
24 definitely. That's the dictionary explanation definition
25 of firmly. Convinced means to be sure. So if you look at

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1 it and you look at the definitions of those words,
2 definitely sure, they have to present to you evidence that
3 would leave you definitely sure that Buddy Harris broke
4 into these two cars and stole items from these cars on
5 February 4th. Based on what we know of the evidence, we
6 don't believe they're going to be able to do that and
7 you're going to come back with a verdict of no guilty.

8 We appreciate you being here. I can tell you
9 this is an important day for Buddy Harris because he's
10 accusations pending against him and they will be resolved
11 today based on what the solicitor puts on the witness
12 stand.

13 You are the tryers of fact. Nobody is going
14 to decide the facts in the case and you do that based on
15 the evidence that's presented to you from this stand.
16 You're going to do that based on the law His Honor is
17 going to give you and you're going to apply the facts to
18 the law. And as the solicitor said, you're going to do
19 that by using your good common sense.

20 All of you come in here from different walks
21 of life, different experiences and that's what make this
22 system work.

23 Again, I appreciate you being here and I look
24 forward to talking to you again at the end of this case.
25 Thank you.

Jessica Martin - Direct Examination

1 THE COURT: All right, solicitor.

2 MS. MAJOR: The State calls Jessica Martin to
3 the stand.

4 THE CLERK: Could you please step up to the
5 Bible. Place your left hand on the Bible and raise your
6 right hand to be sworn in.

7 JESSICA MARTIN, having been duly sworn,
8 testified as follows:

9 Thank you. You may be seated. Please state
10 your name for the record.

11 THE WITNESS: Jessica Martin.

12 DIRECT EXAMINATION

13 BY MS. MAJOR:

14 Q. Good morning, Ms. Martin.

15 A. Good morning.

16 Q. Ms. Martin, where do you work?

17 A. I work at the Flatrock Grill in Cherry dale.

18 Q. What are your job duties, what's your job title?

19 A. I'm a server.

20 Q. And how long had you been working there?

21 A. A little over three-and-a-half years.

22 Q. Were you working on February 4, 2010?

23 A. Yes.

24 Q. What shift were you working?

25 A. I was working the night shift.

Jessica Martin - Direct Examination

1 Q. What time did you arrive to work?

2 A. It was either 10:00 or 11:30.

3 Q. Did you drive to work?

4 A. Yes.

5 Q. Where did you park the car?

6 A. I parked in the plain parking lot behind the
7 restaurant.

8 Q. What kind of car were you driving?

9 A. A Ford Taurus.

10 Q. What did you do after you parked your car and
11 arrived at work?

12 A. I parked my car. I went inside and I put my
13 things away and I started my job for that day.

14 Q. What happened once you got off your shift?

15 A. I was about to leave work and the guy that was
16 working in the kitchen he was also walking out the back
17 door and he came back in and told me that he noticed that
18 my passenger side window was busted.

19 Q. When you say busted, what do you mean busted?

20 A. The window was just shattered.

21 Q. Was there any part of the glass left on it?

22 A. Yes.

23 Q. How big was the opening?

24 A. About this big (indicating.)

25 Q. Did you notice anything missing from your car?

Jessica Martin - Direct Examination

1 A. My pocketbook was missing.

2 Q. Where was your pocketbook?

3 A. It was sitting in the passenger seat.

4 Q. Was it under anything or how was it in the
5 passenger seat?

6 A. It was just sitting in the seat against the back
7 rest.

8 Q. Did you have tinted windows in your car?

9 A. No.

10 Q. What did you do after you learned that your purse
11 had been stolen?

12 A. I called 911 and I also called the bank to cancel
13 my bank account and my credit cards.

14 Q. Did you call anybody else?

15 A. And I called my mom.

16 Q. What happened next?

17 A. Well, my mom came to pick me up and then the
18 police officer came and questioned me about everything
19 that had been missing from car.

20 Q. Was anything else missing besides your purse?

21 A. No.

22 Q. What happened after that?

23 A. I had to wait until the tried to get some
24 fingerprints off the car before I could move it and leave,
25 and after they did that test, I was able to drive my car

Jessica Martin - Direct Examination

1 home.

2 Q. I'm going to show you what's been marked as
3 State's Exhibit 1. Do you recognize that?

4 A. Yes.

5 Q. How do you recognize that?

6 A. That is the pocketbook that was stolen out of my
7 car.

8 MS. MAJOR: Your Honor, at this time, the
9 State would move to introduce this exhibit into evidence.

10 THE COURT: Any objection?

11 MR. CHAMBERS: No objection.

12 THE COURT: Without objection.

13 (Pocketbook previously marked as State's
14 Exhibit No. 1 for identification was admitted into
15 evidence.)

16 BY MS. MAJOR:

17 Q. How do you know that that's your purse?

18 A. It was given to me as a Christmas present the
19 year prior.

20 Q. Did you notice anything different on the purse
21 after it was returned to you?

22 A. It just had a little bit of dirt on it right
23 here.

24 Q. Can you point out where the dirt is?

25 A. Right here (indicating.)

Jessica Martin - Direct Examination

1 Q. Is that the purse that was left in your car?

2 A. Yes.

3 Q. Is that the purse that was returned to you that
4 day?

5 A. Yes.

6 Q. Did you look through the purse once they gave it
7 back to you?

8 A. Actually, I just got my wallet back that day and
9 they called be the next morning to pick up my purse and
10 then I went through it and saw that most of my things were
11 there except for the change purse.

12 Q. What time did the police come to you with your
13 purse in the parking lot?

14 A. It was only my wallet that day that it happened
15 and it was about 1:30, 2:00 then.

16 Q. So you're saying that they gave you your wallet
17 back that day?

18 A. They brought it to me to show it to me and I
19 think they had to take it back into evidence.

20 Q. Okay.

21 A. On that day.

22 Q. What did they do with your purse?

23 A. I didn't see it that day. They called me the
24 next morning and said to come and pick it up.

25 Q. Okay. When you looked through your purse the day

Jessica Martin - Cross-Examination

1 you went and picked it up, did you notice anything else
2 was missing from inside your purse?

3 A. Just the change purse.

4 Q. Okay. What else was in your purse if you recall?

5 A. I had a wallet, a hair brush, a few odds and
6 ends.

7 Q. Was there any cash in the purse?

8 A. No.

9 Q. Would you have remembered if there was a
10 significant amount of cash in your purse?

11 A. Yes.

12 Q. So no money was taken?

13 A. No cash.

14 Q. You said that the police came by. Let's go back
15 to that portion. You found that your car had been broken
16 into, you call the police, and then you said that -- what
17 other police came out? Was it another police officer?

18 A. It was another police officer. It was a woman
19 and she drove to the back area where we were and she
20 questioned me and wrote down everything that I said that
21 was in my purse that day.

22 Q. And then the second police office, he came that
23 day?

24 A. Yes.

25 Q. How much longer after that after you discovered

Jessica Martin - Cross-Examination

1 that the ---

2 A. It was probably 30 minutes to an hour later?

3 Q. Was anybody else in the car with him?

4 A. With the police officer?

5 Q. With the second police officer.

6 A. Yes.

7 Q. Did you see the person in the car?

8 A. No.

9 Q. Did you learn who the person was?

10 A. Not that day.

11 Q. Did you see anybody break into your car?

12 A. No.

13 Q. So you were inside working?

14 A. Right.

15 MS. MAJOR: No further questions.

16 THE COURT: Mr. Chambers.

17 CROSS-EXAMINATION

18 BY MR. CHAMBERS:

19 Q. You said you came to work about 10:30 or 11:00?

20 A. Yes, sir.

21 Q. And what time did you get off?

22 A. It was supposed to get off at 2:00 that day.

23 Q. Was that, in fact, the time you got off?

24 A. It was a little bit before that. It was maybe

25 around 1:30, 1:45.

Jessica Martin - Cross-Examination

1 Q. And so this break-in would have occurred in
2 somewhere a two hour period?

3 A. Right.

4 Q. Where did you say you parked? Behind Flatrock?

5 A. Yes, I was behind the restaurant.

6 Q. And this is the Flatrock behind the Cherry dale
7 Shopping Center?

8 A. Yes.

9 Q. And if you were standing in front of Flatrock,
10 the movie theatre would be to your left, right there?

11 A. It would be to the right.

12 Q. If you were facing ---

13 A. Right.

14 Q. And then the Atlanta Bread Company it's over here
15 just right beside y'all?

16 A. Yes.

17 Q. And then on the other side of the movie theatre
18 is Jack-in-the-Box, right?

19 A. It's further on around the shopping center.

20 Q. Right, but it's back behind where the movie
21 theatre is and the grocery is and all that?

22 A. Right.

23 Q. And you can actually walk around behind the
24 shopping center and movie theatre right there and come
25 right around the where Flatrock is, too?

Jamee Anders - Direct Examination

1 A. Yes.

2 Q. I mean it's really not that far and it would be
3 easy to walk; is that right?

4 A. Yes.

5 Q. Where you parked your car there at Flatrock, are
6 there external cameras?

7 A. No.

8 Q. So you don't have any kind of surveillance or
9 anything out there?

10 A. No.

11 MR. CHAMBERS: Thank you. Nothing further.

12 MS. MAJOR: I have just one more question.

13 REDIRECT EXAMINATION

14 BY MS. MAJOR:

15 Q. How much is your purse worth would you estimate?

16 A. \$250.

17 Q. And then the wallet and change purse inside
18 there?

19 A. The change purse that never got returned was
20 about \$30 and the wallet they returned to me that day was
21 \$45.

22 MS. MAJOR: No further questions.

23 (Witness leaves witness stand.)

24 The State calls Jamee Anders.

25 THE CLERK: Please place your left hand on

Jamee Anders - Direct Examination

1 the Bible and raise your right.

2 JAMEE ANDERS, having been duly sworn,
3 testified as follows:

4 Thank you. You may be seated. Would you
5 state your full name for the record.

6 THE WITNESS: Jamee Anders.

7 DIRECT EXAMINATION

8 BY MS. MAJOR:

9 Q. Good morning. Ms. Anders, do you work?

10 A. Flatrock Grill in Cherry dale.

11 Q. And how long have you worked there?

12 A. For about two-and-a-half years.

13 Q. What are your duties there? What's your title?

14 A. In the morning I'm a hostess and in the evening
15 waitress.

16 Q. Were you working on February 4, 2010?

17 A. I was.

18 Q. What shift?

19 A. Lunch.

20 Q. Did you drive to work that day?

21 A. I did.

22 Q. Where did you park?

23 A. I parked in the back of the restaurant about two
24 spaces from Jessica.

25 Q. Were you driving your car?

Jamee Anders - Direct Examination

- 1 A. It was my boyfriend's car.
- 2 Q. Did y'all share the car?
- 3 A. Uh-hum.
- 4 Q. What color was the car?
- 5 A. Black.
- 6 Q. Was it two-door or four-door?
- 7 A. Two-door.
- 8 Q. Were the windows tinted in that car?
- 9 A. They were not.
- 10 Q. What time did you get to work?
- 11 A. 11:00.
- 12 Q. What happened on February 4th after your shift?
- 13 A. I was still working on my shift. I usually don't
- 14 leave until a little bit after the first waitress leaves.
- 15 I was there when one of the cooks came in and said
- 16 Jessica's window was broken out and she found out her
- 17 stuff had been stolen. And then after she had called the
- 18 cops, I started thinking about it and how close our cars
- 19 were and I went to check my car and my jumper cables were
- 20 missing from the back seat.
- 21 Q. Were the windows broken out in your car?
- 22 A. No.
- 23 Q. How was the car entered?
- 24 A. The door wasn't locked.
- 25 Q. Do you not lock your car ---

Jamee Anders - Direct Examination

1 A. It couldn't lock?

2 Q. But it could close all the way?

3 A. Yes.

4 Q. To actually get in the car, what did you have to
5 do?

6 A. Open the door.

7 Q. What items were missing from your car?

8 A. Just the jumper cables.

9 Q. Did you think other items were missing at first?

10 A. At first I did. The way the car was, the back
11 seat you have a thing where you can pull down the back
12 seat and you can get into the trunk. The thing was down
13 and like some of the stuff that was in the trunk that was
14 junk really was pulled out a little bit.

15 Q. Was the seat up before?

16 A. It was.

17 Q. What did these jumper cables look like?

18 A. They're heavy duty jumper cables. They have a
19 yellow connector in the middle whereas you can disconnect
20 them and reconnect them when you're done.

21 Q. What would you estimate the value of those to be?

22 A. At least \$50.

23 Q. How do you know your jumper cables were in there?

24 A. The previous day we actually had to use them and
25 he went to go and put them in the car and I told him he

Jamee Anders - Direct Examination

1 needed to put them in the trunk. And he said he would and
2 I knew he never did because when I went to work they were
3 still there, and they were still there when I got in my
4 car and went inside.

5 Q. Where is your boyfriend now? Does he live in
6 South Carolina?

7 A. He's in the Army, in Virginia training.

8 Q. Was any money in the car?

9 A. No.

10 Q. Anything else?

11 A. We don't leave valuables in the car.

12 Q. Was anything else taken?

13 A. No.

14 Q. What happened after you went out to your car and
15 realized your jumper cables were missing?

16 A. I came back in and called 911 as well and they
17 said that they already had someone on the way for Jessica.

18 Q. Did you see anybody break into the car?

19 A. No.

20 Q. So you were inside the entire time and didn't see
21 anything?

22 A. No.

23 Q. Were you there when the first police officer came
24 to take the report?

25 A. I was.

Renee Beauford - Direct Examination

1 Q. Were you there when the second police officer
2 came?

3 A. I was.

4 Q. What did you observe?

5 A. At the time that the second one showed up, I
6 wasn't really paying attention because they had forensics
7 out there and they were taking my fingerprints and my
8 boyfriends fingerprints and they were fingerprinting the
9 car.

10 Q. Did you ever get your jumper cables back?

11 A. I did. They were brought to my home.

12 Q. Who brought them to your house?

13 A. The police officers.

14 MS. MAJOR: No further questions.

15 THE COURT: Mr. Chambers.

16 MR. CHAMBERS: Your Honor, I don't have any
17 questions for this witness.

18 THE COURT: Thank you. You can step down.

19 (Witness leaves witness stand.)

20 MS. MAJOR: The State calls Renee Beauford.

21 THE CLERK: Please place your left hand on
22 the Bible and raise your right.

23 RHONDA RENEE BEAUFORD, having been duly
24 sworn, testified as follows:

25 Thank you. You may be seated. State your

Renee Beauford - Direct Examination

1 name for the record, please.

2 THE WITNESS: Renee Beauford.

3 DIRECT EXAMINATION

4 BY MS. MAJOR:

5 Q. Ms. Beauford, where are you employed?

6 A. Greenville County Sheriff's Department.

7 Q. How long have you been employed there?

8 A. Fifteen years.

9 Q. What is your title?

10 A. I am a Communication Training Specialist.

11 Q. You worked in that position all 15 years?

12 A. No, I was a supervisor at one time in the 911
13 dispatch center but currently my title is Communication
14 Training Specialist but I work in the 911 Research
15 Department.

16 Q. What are your duties and responsibilities?

17 A. I process requests for 911 recordings. I do CAD
18 research which is our Computer Aided Dispatch for our
19 dispatchers to enter calls. I research information in
20 that I research information for recordings. I do training
21 for NCIC and any type of background information of
22 incoming calls. I do any type of research for our
23 investigators or officers.

24 Q. When someone dials 911 what happens?

25 A. The call is immediately starts to be recorded at

Renee Beauford - Direct Examination

1 the point of the 911 coming into our phone system Prior to
2 the dispatcher picking up, but then once -- we have a
3 staff of dispatcher and call takers on duty at all times
4 -- the first available dispatcher picks up the call,
5 obtains the information, sends it to the proper agency for
6 dissemination and if it's for our law enforcement, the
7 Sheriff's Officer, they obtain information and dispatch
8 the call out.

9 Q. Are all calls recorded?

10 A. Yes.

11 Q. When do the recordings begin exactly?

12 A. If it's a 911 call, it begins upon the person
13 dialing. If it's a non emergency call, non emergency
14 line, it begins upon the dispatcher picking up.

15 Q. Are all 911 calls recorded?

16 A. Yes, every line in the dispatcher center is
17 recorded, emergency or non emergency.

18 Q. This procedure that you described, was that in
19 place on February 4, 2010?

20 A. Yes.

21 Q. In the regular course of your duties, are you
22 routinely asked by our office and law enforcement to look
23 in your system and retrieve the recordings?

24 A. Yes, I am.

25 Q. How does this process work?

Renee Beauford - Direct Examination

1 A. Usually through a written request -- authorized
2 written request -- once that request is received and I go
3 obtain the information, usually I start with the CAD to
4 try to find the incident itself. Sometimes there's not an
5 incident. It might be a call that was transferred out to
6 another agency and then I research through our recording
7 system, which is a NICE(ph) recording system, which is the
8 name of the system. And that is recorded simultaneously
9 by date and time and digitally.

10 Q. Do you routinely use this procedure?

11 A. Yes.

12 Q. Were you asked by our office to pull the 911
13 recording for this case, Case No. 1-10-022162?

14 A. Yes, I was.

15 Q. Did you use the same procedure?

16 A. Yes, I did.

17 Q. I'd like to show you what's been marked as
18 State's Exhibit No. 2. Just hold on to that. What did
19 you do when you received our written request?

20 A. The first thing I did was go out to the CAD
21 system and research it by the incident number, the case
22 number of the call against our CAD system which is the
23 same case number. Our CAD number is the case number. I
24 researched it and I obtained the CAD report so that I
25 would have the dates and times precisely that it was

Renee Beauford - Direct Examination

1 documented in the CAD. Then I went to the NICE recording
2 system and I researched by date, time, CAD position and
3 then verified it against the dispatcher to verify that I
4 had the right call.

5 Q. Once you had the right call, what did you do?

6 A. I did burn it to a CD.

7 Q. Did you listen to the CD?

8 A. Yes, I did.

9 Q. Did you mark the CD in any way?

10 A. Yes, I did.

11 Q. How did you mark it?

12 A. By case number, defendant, co-defendant names,
13 and also I initialed it.

14 Q. Is that what that CD is right there?

15 A. Yes, it is.

16 Q. Just for clarification what information exactly
17 is that marked with again?

18 A. It has the case number, the incident, which is
19 the year; and then it has the defendant and co-defendant's
20 name on the CD and then my initials up top.

21 MS. MAJOR: Your Honor, at this time, the
22 State moves Exhibit 2 into evidence.

23 THE COURT: Any objection?

24 MR. CHAMBERS: No objection, Your Honor.

25 (911 CD previously marked as State's Exhibit

Renee Beauford - Direct Examination

1 No. 2 was admitted into evidence.)

2 MS. MAJOR: Your Honor, we ask permission to
3 publish it to the jury.

4 THE COURT: Okay.

5 (Whereupon, the 911 CD was played in open
6 court.)

7 MS. MAJOR: I have no further questions, Your
8 Honor.

9 THE COURT: Mr. Chambers.

10 MR. CHAMBERS: I have no questions for this
11 witness, Your Honor.

12 MS. MAJOR: Your Honor, may Ms. Beauford be
13 excused.

14 MR. CHAMBERS: No objection.

15 THE COURT: Witness excused.

16 (Witness leaves the witness stand.)

17 MS. MAJOR: Your Honor, the State calls
18 Matthew Smith to the stand.

19 THE CLERK: Place your left hand on the Bible
20 and raise your right hand to be sworn in.

21 MATTHEW SMITH, having been duly sworn,
22 testified as follows:

23 Thank you. You can have a seat. Please
24 state your name for the record.

25 THE WITNESS: Matthew Smith.

Matt Smith - Direct Examination

1 DIRECT EXAMINATION

2 BY MS. MAJOR:

3 Q. Officer Smith, where are you employed?

4 A. Greenville County Sheriff's Office.

5 Q. In what capacity?

6 A. I work in our Community Patrol Unit.

7 Q. What are the duties that you have as a Community
8 Patrol Officer?9 A. I'm in a marked unit wearing a uniform patrolling
10 the communities, getting out with community members to
11 find out if there are any specific problems they may be
12 having and how we can help resolve those.

13 Q. Were you working on February 4, 2010?

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

15 Q. Were you working as a Community Patrol Officer?

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

17 Q. Did you come into contact with the defendant?

18 A. I received a call over the radio about the green
19 Dodge Durango seen in the area of the Publix's parking lot
20 and two white males going looking into vehicles.

21 Q. Did you spot the Durango?

22 A. Yes, ma'am, I did.

23 Q. Let's back up, when you got the call where were
24 you?

25 A. I was up in Traveler's Rest and we was eating

Matt Smith - Direct Examination

1 that restaurant there on 276 in TR.

2 Q. How far away were you from the Publix's?

3 A. Just a few minutes. I was in that restaurant
4 next to Ford Coleman's Dealership there in Traveler's
5 Rest.

6 Q. Officer, I'm showing you what's marked as State's
7 Exhibit 2, do you recognize this?

8 A. I do.

9 Q. What is it?

10 A. It's a map of the incident location where this
11 took place.

12 Q. Does it fairly and accurately represent the area
13 as it was on February 4, 2010?

14 A. It does.

15 Q. Does it appear to be altered in any way?

16 A. No, ma'am.

17 MS. MAJOR: Your Honor, the State offers
18 Exhibit 2 into evidence.

19 THE COURT: Any objection?

20 MR. CHAMBERS: No objection.

21 (Blow-up map marked as State's Exhibit No. 3
22 for identification was admitted into evidence.)

23 BY MS. MAJOR:

24 Q. Officer, I'm going to have you step down here to
25 take a look at this map. Please point out to us where you

Matt Smith - Direct Examination

1 received the call in your patrol car.

2 A. I would have been further north of this where
3 Pointsett Highway and 276 up in Traveler's Rest?

4 Q. What did you do when you received the call?

5 A. Myself and Deputy Cordell had actually finished
6 eating lunch and we responded to the area where to see if
7 we could locate that vehicle.

8 Q. Where did you go?

9 A. Coming off of Pointsett Highway -- I came off
10 Pointsett Highway which is Old Buncombe Road here and once
11 I came to Old Buncombe Road, the last location we heard
12 the vehicle was seen was in the Publix's parking lot which
13 is this shopping center right in this intersection here.
14 So I started to scowler through Publix's parking lot and
15 then I started heading down Duncan Chapel Road as well.

16 Q. Did you see the vehicle?

17 A. I did.

18 Q. What did you do?

19 A. We saw the vehicle coming out of the apartment
20 complex here. It's called the Bynings(ph). I saw the
21 green Dodge Durango take a right on Duncan Chapel and head
22 up towards Old Buncombe Road and that's when myself and
23 Deputy Cordell converged on them and stopped them in the
24 parking lot of [REDACTED] which is Hickory
25 Point right here at the intersection of Duncan Chapel and

Matt Smith - Direct Examination

1 Old Buncombe Road.

2 Q. What is Hickory Point?

3 A. It's a gas station.

4 Q. You can have a seat. What did you do once you
5 conducted the traffic stop?

6 A. I noticed immediately that not only did the
7 vehicle description match but also the tag number that was
8 provided by the call was a perfect match as well. Myself
9 and Deputy Cordell -- Deputy Cordell approached the
10 passenger side while I went to the driver's side. I
11 started the interview of the driver to find out where he
12 was coming from and what he was doing. He was very
13 nervous. You could see the corroded artery on his neck
14 pulsating, hands shaking visibly, very shaken.

15 Q. What did you ask him?

16 A. I asked him to step out of the vehicle. At this
17 point he was on the side of the store and we had the
18 vehicle blocked in but I asked him to step out of the
19 vehicle and I patted him down for weapons. I asked him
20 where he was coming from and what he was doing. He said
21 he was just riding around and I asked him if he'd been in
22 the Publix's parking lot recently and he admitted that he
23 and his passenger had been there just a few minutes before
24 we stopped them.

25 Q. After you spoke to him about where are you going,

Matt Smith - Direct Examination

1 what were you doing, did you ask him anything else?

2 A. I did. I asked him for consent to search his
3 vehicle.

4 Q. And did he give you consent?

5 A. Yes, ma'am, he did.

6 Q. Did you search the car?

7 A. Deputy Cordell -- we asked both the occupants of
8 the vehicle to sit at the bumper of the vehicle. They
9 weren't cuffed at this time that they could stop us from
10 searching at any time they liked. Deputy Cordell started
11 searching the vehicle for any items that might have been
12 stolen.

13 Q. What were you doing at this point?

14 A. Officer security, I was just watching both the
15 suspects to make sure they didn't go anywhere. We located
16 a woman's change purse, a yellow and blue change purse,
17 and I asked them about that. They said they didn't know
18 anything about it. We also located some credit ---

19 MR. CHAMBERS: Objection, Your Honor.

20 THE COURT: What's your objection?

21 MR. CHAMBERS: Well, he's about to get into
22 some things that we believe to be inadmissible.

23 MS. MAJOR: We'll move on.

24 THE COURT: All right.

25 BY MS. MAJOR:

Matt Smith - Direct Examination

1 Q. What did you do after this search was done? Did
2 you got to your car to do anything?

3 A. At this point we checked the two occupants to see
4 if they had any warrants and I didn't realize that the
5 passenger that was sitting in the front seat was wanted.

6 Q. That's fine. Then what you did at that point?

7 A. We confirmed that they would come get them and we
8 placed that passenger under arrest and we searched that
9 passenger.

10 Q. When you say that passenger, who are you
11 referring to?

12 A. Joshua Humphrey.

13 Q. What did you find on Joshua Humphrey when you
14 searched him?

15 A. Some illegal drugs.

16 Q. What specifically, do you recall?

17 A. Can I see a copy of the report to refresh my
18 memory.

19 THE COURT: Is that important to this,
20 solicitor?

21 MS. MAJOR: No.

22 THE COURT: Let's move on.

23 BY MS. MAJOR:

24 Q. You don't recall which ---

25 A. Marijuana, specifically.

Matt Smith - Direct Examination

1 Q. So he was placed under arrest and what happened
2 after that?

3 A. At that point we realized these subjects might be
4 responsible for some autobreakings and we called Property
5 Crimes and Investigator Morgan and Investigator Burton
6 responded.

7 Q. How far away were the Property Crimes
8 investigators?

9 A. They were within eye view. I could see our
10 Northern Area Command office that they work out of just
11 200 or 300 yards or so down the road.

12 Q. Who did you transport back to the NAC, Northern
13 Area Command?

14 A. I took Joshua Humphrey.

15 Q. Did he agree to come with you -- why was he
16 coming with you?

17 A. The investigators spoke to him and asked him if
18 he would voluntarily come down and speak to them and he
19 agreed.

20 Q. Who did you transport?

21 A. Mr. Humphrey.

22 Q. What happened to the Durango after that?

23 A. It was secured and left at the location at that
24 point.

25 Q. When you say secured, what do you mean?

Matt Smith - Cross-Examination

1 A. The doors were locked and it was left where it
2 was stopped.

3 Q. Was it in a proper parking space?

4 A. Yes, ma'am.

5 Q. When you were at the NAC, did any calls come in?

6 A. Yes, ma'am.

7 Q. What call came in?

8 A. We received the two auto breaking calls from the
9 Flatrock Grill.

10 Q. Prior to receiving that, did you know that there
11 had been autobreakings at the Flatrock Grill?

12 A. No, ma'am.

13 Q. What county is the Flatrock Grill?

14 A. Greenville County.

15 Q. Where did you stop the defendants?

16 A. In Greenville County.

17 MS. MAJOR: Just to note for the record, I
18 believe I said State's 2 and this is actually State's
19 Exhibit 3.

20 THE COURT: Thank you.

21 MS. MAJOR: I have nothing further.

22 THE COURT: Mr. Chambers.

CROSS-EXAMINATION

24 BY MR. CHAMBERS:

25 Q. Now, this call that came from the Publix's, there

Matt Smith - Cross-Examination

1 were no cars broken into in the Publix's parking lot,
2 correct?

3 A. Not to my knowledge, no, sir.

4 Q. You didn't get any report of any cars broken
5 into?

6 A. No, sir.

7 Q. And so nothing was taken from the Publix's
8 parking lot?

9 A. No, sir.

10 Q. And you stopped this car that Mr. Harris was
11 driving and he gave you consent to search, right?

12 A. Yes, sir.

13 Q. And on Mr. Humphrey you found this marijuana.
14 Did you arrest him for that?

15 A. No, sir. He was already wanted by another agency
16 and we did the search incident arrest.

17 Q. So he was going to be going with you no matter
18 what, right?

19 A. He was going to the other agency.

20 Q. He wasn't free to leave. You were taking him
21 into custody.

22 A. Yes, sir.

23 Q. Mr. Harris on the other hand was not arrested for
24 anything, was he?

25 A. No, sir.

Matt Smith - Cross-Examination

1 Q. He voluntarily went to Northern Area Command so
2 that y'all could talk to him?

3 A. Yes, sir.

4 Q. So he cooperated with what you wanted him to do?

5 A. Yes, sir.

6 MR. CHAMBERS: Thank you. That's all the
7 questions I have.

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

9 (Witness leaves the witness stand.)

10 MS. MAJOR: The State calls Jason Cordell to
11 the stand.

12 THE CLERK: Officer, would you come forward
13 to be sworn in.

14 Place your left hand on the Bible and raise
15 your right hand.

16 JASON CORDELL, having been duly sworn,
17 testified as follows:

18 Thank you. You can be seated. Please state
19 your name for the record.

20 THE WITNESS: Jason Ray Cordell.

21 DIRECT EXAMINATION

22 BY MS. MAJOR:

23 Q. Officer Cordell, where do you work?

24 A. Greenville County Sheriff's Office.

25 Q. How long have you worked there?

Jason Cordell - Direct Examination

1 A. Since June of 2008.

2 Q. What is are your duties? What is your title at
3 the Greenville County Sheriff's Office?

4 A. I work in Community Patrol and Deputy Smith does
5 also.

6 Q. Were you employed on February 4th as a patrol
7 officer?

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

9 Q. Were you working with Officer Matt Smith?

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

11 Q. Were you there when the green Durango was
12 stopped?

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

14 Q. Please tell us what happened?

15 A. Basically exactly what Officer Smith said. We
16 were eating at a restaurant in Traveler's Rest by the
17 George Coleman Ford Dealership and the call came out over
18 the radio with reference to a suspicious green Durango
19 with the tag number that was given on the call in
20 reference to be driven by -- operated by two white males
21 suspiciously looking into vehicles.

22 As Officer Smith knows we get a lot of
23 reports that we take for autobreakings and theft so we
24 knew we were close to that car. We were less than a five-
25 minute drive time from our location to where the Durango

Jason Cordell - Direct Examination

1 was last seen at Publix. So we quickly responded to that
2 call to see if we could locate the vehicle, identify the
3 occupants of the vehicle because we want to try to prevent
4 crimes if we can.

5 Q. After the vehicle was stopped, who searched the
6 vehicle?

7 A. Myself and Officer Smith both searched the
8 vehicle during the process and we always try to make sure
9 that one officer doesn't miss something while the other
10 officer is searching.

11 Q. Do you recall any items of significant value in
12 the car?

13 A. Items that were located in the car that we found
14 significant or suspicious was a change purse that was
15 obviously a female's change purse.

16 Q. What did you do after that?

17 A. That wasn't the only item that was located. Do
18 you want me to continue?

19 Q. Yeah, we can move on from that. What did you do
20 searched the car?

21 A. Going back to when we initially stopped the car,
22 I approached the passenger side and it was pretty much
23 kind of officer safety. Officer Smith approached the
24 driver's side. Mr. Harris was identified as the driver of
25 the vehicle. We had both subjects exit the vehicle,

Jason Cordell - Direct Examination

1 patted them down to make sure they didn't have guns,
2 knives, weapons and just officer safety issues. We had
3 them step back and we both spoke with them and ascertained
4 their identifications so we could perform a driver's
5 license verification check to make sure Mr. Harris did
6 have a valid license, checking for warrants as Officer
7 Smith stated.

8 He checked those individuals for that and I
9 stood by with them at the front of our patrol vehicle. I
10 believe we had them sit down in front of our patrol
11 vehicle and put their legs out straight and cross their
12 legs just so we didn't have anybody run from us because in
13 15 years of law enforcement experience, that's happened
14 before.

15 At that time either of the two were under
16 arrest and Officer Smith asked for consent to search their
17 vehicle and he was given consent. He searched the vehicle
18 and those items were located.

19 Mr. Humphrey did have a warrant for his
20 arrest. He was under NCIC and that was verified and he
21 was placed into custody. The vehicle had been located and
22 we did call investigators to come and assist us with the
23 car?

24 Q. Did you ask the defendant, Buddy Harris, to come
25 down to the Northern Area Command Center?

Jason Cordell - Direct Examination

1 A. I believe that Officer Morgan had asked
2 Mr. Harris if he would be willing to transport to Northern
3 Area Command to speak to them and he did advise that he
4 would. And I transported him down there to the Northern
5 Area Command which he said was probably about 300 yards
6 from the location of the stop.

7 Q. So it was a short drive.

8 A. Yes.

9 Q. Was it just you and Mr. Harris in the car?

10 A. Yes, ma'am.

11 MS. MAJOR: No further questions.

12 MR. CHAMBERS: I don't have any questions for
13 this witness.

14 THE COURT: Thank you, sir, you can step
15 down.

16 (Witness exits witness stand.)

17 MS. MAJOR: The State calls Joshua Humphrey.

18 THE CLERK: Mr. Humphrey, if you could step
19 forward to be sworn.

20 Please place your left hand on the Bible and
21 raise your right hand.

22 JOSHUA THOMAS HUMPHREY, having been duly
23 sworn, testified as follows:

24 Thank you. You may be seated. State your
25 full name for the record.

Joshua Humphrey - Direct Examination

1 THE WITNESS: Joshua Thomas Humphrey.

2 DIRECT EXAMINATION

3 BY MS. MAJOR:

4 Q. Mr. Humphrey, where do you work?

5 A. I work for MCI Supplies, a hydraulic company in
6 Easley.

7 Q. Where do you live?

8 A. In Easley on [REDACTED].

9 Q. Have you ever lived in Greenville?

10 A. Not since I was a kid.

11 Q. How do you know Mr. Harris?

12 A. He's my neighbor.

13 Q. How close do y'all live to each other?

14 A. A hundred yards.

15 Q. Have y'all always lived close to each other?

16 A. For the past couple of years.

17 Q. Did y'all live close to each other on February 4,
18 2010?

19 A. Yes, ma'am.

20 Q. Is that the only way y'all knew each other
21 because y'all were neighbors?

22 A. Yeah. I didn't know him until I met him at the
23 trash dumpster one day.

24 Q. Okay. I want to go to February 4, 2010. Were
25 you with Mr. Harris?

Joshua Humphrey - Direct Examination

- 1 A. Yes, ma'am.
- 2 Q. What happened that morning?
- 3 A. We was going for a ride.
- 4 Q. Where did you start? Were you starting at your
- 5 house?
- 6 A. Yes, ma'am.
- 7 Q. What time?
- 8 A. It was early in the morning, 8:30, 9:00, 10:00.
- 9 It don't remember, it's been awhile.
- 10 Q. Where did you go?
- 11 A. We was heading up towards Greenville.
- 12 Q. Whose car were you driving?
- 13 A. I assume it was his.
- 14 Q. What kind of car was it?
- 15 A. Green Durango.
- 16 Q. How did you end up in Greenville?
- 17 A. We drove up there.
- 18 Q. What time did you arrive in Greenville if you
- 19 recall?
- 20 A. I don't recall.
- 21 Q. What happened that day from the beginning --
- 22 after you arrived in Greenville?
- 23 A. We pulled into Flatrock Grill going to get
- 24 something to eat.
- 25 Q. Where did you pull in?

Joshua Humphrey - Direct Examination

1 A. The side parking lot. It was packed by then and
2 we started to get out of the car and Buddy broke into the
3 car next to us.

4 Q. Okay, back up. Where were you parked in relation
5 to the cars?

6 A. We parked in between the two cars that were
7 broken into.

8 Q. Do you recall what kind of cars they were?

9 A. No, ma'am.

10 Q. So you pull into the parking lot, you get out,
11 and what happens then?

12 A. Exactly Buddy said, hang on a minute, and grabbed
13 a slingshot from underneath his seat and busted the window
14 out of the car next to him and grabbed a pocketbook, and
15 after that walked around and grabbed the jumper cables,
16 got back in and we left.

17 Q. Were there any other people around the parking
18 lot?

19 A. No, no people was walking around at that time.

20 Q. You said it was crowded, where did they park?

21 A. It was people parked everywhere but there was
22 nobody there in the parking lot at the time.

23 Q. Do you remember what time this was?

24 A. No, ma'am.

25 Q. I assume -- you said that it was crowded. Was it

Joshua Humphrey - Direct Examination

1 lunch time, dinner time?

2 A. Yeah, it was around lunch time.

3 Q. Okay. Did you watch him break into the car?

4 A. Yes, ma'am.

5 Q. What did you see him pull out?

6 A. The purse that's in that box on the table right
7 there.

8 Q. How do you know it's the purse?

9 A. I recognize it. I don't see too many purses like
10 that. It may be a bunch but --

11 Q. And how was the window shattered?

12 A. A slingshot with a piece of string and porcelain.

13 Q. And what happened when that was shot?

14 A. The window shattered and Buddy grabbed the pocket
15 book.

16 Q. Did the glass fall?

17 A. It just shattered out.

18 Q. What happened with the other car?

19 A. Opened the door, got the jumper cables, and got
20 back in the Durango and left.

21 Q. Do you know whose cars these were?

22 A. No, ma'am.

23 Q. Did you have permission to open the door of the
24 car?

25 A. No, ma'am.

Joshua Humphrey - Direct Examination

1 Q. Where did you go after you had the purse and the
2 jumper cables in the car?

3 A. I'm not real familiar with Greenville. We was
4 heading across the bridge and that's where the pocketbook
5 got dumped and after that we turned around in a house --
6 apartments and got pulled over directly after.

7 Q. You said that it got dumped, what do you mean?

8 A. Thrown out the window.

9 Q. Where was it thrown?

10 A. Going over a bridge and railroad tracks.

11 Q. Over the bridge and railroad tracks. While you
12 had the purse in the car, did you rummage through it?

13 A. Yes, ma'am.

14 Q. Did you find anything in there?

15 A. Just the change purse and a couple of credit
16 cards.

17 Q. Was there any cash in there?

18 A. No, ma'am.

19 Q. After you dumped the purse, what did you do?

20 A. We headed out of Greenville up towards TR, I
21 think. I'm not 100 percent sure because like I said I'm
22 not familiar with Greenville.

23 Q. Did anything fall out of the purse?

24 A. Several items fell out on the seat but they were
25 all placed back in the pocketbook.

Joshua Humphrey - Direct Examination

1 Q. Did a wallet fall out?

2 A. I don't remember exactly.

3 Q. Were you ever in the Publix's parking lot?

4 A. Yes, ma'am.

5 Q. What were y'all doing in the Publix's parking
6 lot?

7 A. Riding around.

8 Q. Was anything thrown out of the car at the
9 Publix's parking lot?

10 A. Yes, ma'am, I remember now. That's where the
11 wallet was placed. It was put inside a bush.

12 Q. Why wasn't the wallet thrown over the bridge?

13 A. It was left out of the pocketbook when we was
14 throwing it.

15 Q. Was anything found in the wallet, any cash?

16 A. No, ma'am.

17 Q. What happened -- did you first throw out the
18 purse?

19 A. Yes, ma'am.

20 Q. And then where did you go?

21 A. An then we went out towards Publix's.

22 Q. And where did you go after Publix's?

23 A. I'm not 100 percent sure.

24 Q. Did you throw anything else out of the car?

25 A. Just the wallet and the purse.

Joshua Humphrey - Direct Examination

1 Q. So y'all were just driving around?

2 A. Yes, ma'am.

3 Q. And what happened after that?

4 A. Then we got pulled over and taken to Northern
5 Command.

6 Q. When you got pulled over, were you placed under
7 arrest?

8 A. Yes, ma'am.

9 Q. How come?

10 A. I have a warrant in Anderson County.

11 Q. Were you searched incident to arrest?

12 A. Yes, ma'am.

13 Q. What was found on you?

14 A. I had some Loritabs and some marijuana.

15 Q. When you found out that the police were pulling
16 you over, what did you do? When you see the blue lights,
17 what did you do?

18 A. I tried to get rid of the drugs that I had.

19 Q. Which drugs?

20 A. The Loritabs.

21 Q. And how did you try to do that?

22 A. I ate them.

23 Q. Do you recall how many you ate?

24 A. No, ma'am.

25 Q. Why did you do that?

Joshua Humphrey - Direct Examination

1 A. I didn't want to be caught with them.

2 Q. Are you prescribed Loritab?

3 A. Not at present, not then either.

4 Q. Did those have an effect on you?

5 A. Yes, ma'am.

6 Q. Do you recall the incident? After the police
7 pulled you over, do you remember the incident?

8 A. Yes, ma'am.

9 Q. You were placed under arrest and you agreed to go
10 to the Northern Area Command Center?

11 A. Yes, ma'am.

12 Q. Who transported you there?

13 A. An officer.

14 Q. What happened when you got there?

15 A. I was taken in a back cubicle and asked a number
16 of questions.

17 Q. Where was Buddy at this time?

18 A. In the front lobby.

19 Q. What happened next?

20 A. I heard Buddy talking on the telephone saying he
21 had dropped me off and I went and break into some cars and
22 he was getting in trouble for it too. He was trying to
23 blame the whole thing on me and he was just along for the
24 ride.

25 Q. You said you were in a cubicle. How far away was

Joshua Humphrey - Direct Examination

1 he from the cubicle?

2 A. I'm not sure. It wasn't real far, probably from
3 here past that door.

4 Q. Could you hear him clearly?

5 A. Yes, ma'am.

6 Q. And who was he talking to?

7 A. I have no idea.

8 Q. An officer or --

9 A. I believe he was talking on the phone because I
10 never heard a response.

11 Q. Okay. What did you do once you overheard him say
12 that?

13 A. I got mad.

14 Q. And were you in the room with an investigator at
15 that time?

16 A. Yes, ma'am, I was in there with Investigator
17 Morgan I believe was his name.

18 Q. What did you do after that?

19 A. I told him exactly what happened.

20 Q. What did you tell him happened?

21 A. I told him about breaking into cars at Flatrock
22 Grill and where the pocketbook and wallet was located and
23 we went for a ride and got them.

24 Q. Did you leave with Investigator Morgan?

25 A. Yes, I believe so.

Joshua Humphrey - Direct Examination

1 Q. After you told him what happened and where did
2 you go?

3 A. We first went and found the purse, if I'm not
4 mistaken. It was thrown over the bridge and then went to
5 Publix's parking lot and retrieved the wallet.

6 Q. Are you familiar with -- how long did it take you
7 to find the purse?

8 A. It took a few minutes. I'm not real familiar
9 with Greenville and I was trying to describe to him the
10 things I had seen when I threw it out. The whole trip
11 probably took 25 or 30 minutes.

12 Q. So you didn't know exactly where the purse was?

13 A. Not exactly but I knew what the area looked like.

14 Q. From being there or from your experience being in
15 Greenville?

16 A. From being there that day.

17 Q. What were you charged with as a result of this
18 incident on February 4th?

19 A. Two counts of auto breaking, two counts of petty
20 larceny, and possession of narcotic medication that wasn't
21 prescribed to me and possession of marijuana.

22 Q. What happened as a result of these charges?
23 What's going on?

24 A. I got 18 months probation.

25 Q. Do you recall what you pled to?

Joshua Humphrey - Cross-Examination

1 A. To the two counts of auto breaking I believe is
2 what it was.

3 Q. And the sentence you received was what?

4 A. Eighteen months probation.

5 Q. Has anyone promised you anything today to get you
6 to testify?

7 A. No, ma'am.

8 Q. Where were the jumper cables -- did y'all throw
9 the jumper cables out of the car?

10 A. No, ma'am, they were still in the Durango.

11 Q. Were they left in the Durango after y'all went
12 down to the Northern Area Command Center?

13 A. Yes, ma'am.

14 MS. MAJOR: I have no further questions.

15 THE COURT: Mr. Chambers.

16 CROSS-EXAMINATION

17 BY MR. CHAMBERS:

18 Q. This day February 4th, this day started when you
19 came over the Buddy's, right?

20 A. Yes, sir.

21 Q. And you came over initially because you wanted
22 him to give you a ride so you can take and drop your pick-
23 up off at, I believe, it's your mom's house?

24 A. I don't recall that.

25 Q. You don't remember anything about the pick-up

Joshua Humphrey - Cross-Examination

1 truck?

2 A. My mom lives just up the street. He would not
3 have had to give me a ride to do that.

4 Q. But at any rate at some point he told he was
5 going to Greenville and he had some stuff to do and you
6 asked if you could go along for the ride; is that correct?

7 A. No, I believe he asked if I could come along with
8 him.

9 Q. But at any rate, y'all ended up going to
10 Greenville?

11 A. Yes, sir.

12 Q. And y'all ended up over there at the Cherry dale
13 Shopping Center. You said that the reason you stopped at
14 Flatrock is that you were going to get something to eat?

15 A. Yes, sir.

16 Q. You don't recall what time you got there.

17 A. It was around lunch.

18 Q. And what does lunch mean to you, what time?

19 A. Generally 12:00 but when you get hungry.

20 Q. When y'all got to the parking lot, you said that
21 you pulled directly behind Flatrock and parked back there
22 where these two employees were parked?

23 A. Yes, sir.

24 Q. You didn't park anywhere out in front of the
25 restaurant?

Joshua Humphrey - Cross-Examination

1 A. Like I said the parking lot was crowded that day.

2 Q. But that's a really large parking lot out there,
3 isn't it?

4 A. I just seen it that one time.

5 Q. There's a lot of parking place directly in front
6 and just a little bit closer. There's all kinds beyond
7 that and there's parking places along the side, any
8 parking places that would have been more accessible to the
9 front door than going around directly behind the
10 restaurant where the employees park; is that correct?

11 A. I suppose.

12 Q. And the reason you stopped was to go in to get
13 something to eat, you said?

14 A. Yes, sir.

15 Q. And just one the spur of the moment, you say,
16 Buddy Harris decided he was going to break into these
17 cars?

18 A. Yes, sir.

19 Q. Do you remember going to the Jack-in-the-Box over
20 there in Cherry dale?

21 A. Jack-in-the-Box?

22 Q. Yeah. It's right there at Cherry dale Shopping
23 Center right on Pointsett Highway, you remember going
24 there, don't you?

25 A. I don't recall going there that day.

Joshua Humphrey - Cross-Examination

1 Q. So you don't remember going in there and Buddy
2 said he was going to get something to eat and you told him
3 you were going to go and get some cigarettes and you went
4 and came back a little while later?

5 A. No, sir.

6 Q. You don't remember that?

7 A. No, sir.

8 Q. What you do remember is that after they took you
9 to Northern Area Command, you were placed under arrest and
10 pretty much told you you were going there and Buddy went
11 down there on his own volition because he wanted to
12 cooperate with these folks. You overheard him in a
13 telephone conversation saying that he had gone down to
14 Northern Area Command because you had broken into some
15 cars and they were trying to lay it on him, right?

16 A. He was trying to lay the whole thing on me is
17 what I heard.

18 Q. Well, what you heard -- what you said you heard
19 -- yeah, exactly right. He said that you had broken into
20 some cars?

21 A. Yes, sir, that's what I heard.

22 Q. And he indicated that he hadn't been involved?

23 A. Yes, sir, that's what I heard.

24 Q. And he indicated that he hadn't been involved and
25 he wasn't talking to the police, right?

Joshua Humphrey - Cross-Examination

1 A. He was talking on the cell phone at Northern
2 Command loud enough for me to hear him several cubicles
3 away.

4 Q. I understand, but that was before you had talked
5 to the police?

6 A. That was while I was talking to the police.

7 Q. Based on what you heard you then fully implicated
8 Buddy Harris in what you had done?

9 A. No, sir.

10 Q. Well, you're the one who know where all the stuff
11 was, right?

12 A. Yes, sir.

13 Q. You're the one who told the police where
14 everything was located?

15 A. Yes, sir.

16 Q. You're the one who implicated Buddy?

17 A. Yes, sir.

18 Q. When you went to Publix's -- the reason Buddy
19 went to Publix's is he went in to get a get well card for
20 somebody, right?

21 A. No, sir.

22 Q. And you were left out there by yourself?

23 A. No, sir.

24 Q. None of this went to the police until you
25 overheard what Buddy had to say and you got mad about it?

Joshua Humphrey - Cross-Examination

1 A. Yes, sir.

2 Q. And you were going to make sure that based on
3 what he said and the fact that made you mad, you were
4 going to take him down, right?

5 A. No, sir.

6 MR. CHAMBERS: That's all the questions I
7 have.

8 MS. MAJOR: Nothing further.

9 THE COURT: Okay, you can step down.

10 (Witness leaves the witness stand.)

11 MS. MAJOR: State calls Investigator Randy
12 Morgan to the stand.

13 THE CLERK: Please come up to the Bible to be
14 sworn. Place your left hand on the Bible and raise your
15 right.

16 RANDY MORGAN, having been duly sworn,
17 testified as follows:

18 Thank you. You may be seated.

19 MS. MAJOR: Your Honor, may Joshua Humphrey
20 be excused?

21 THE COURT: Any objection?

22 MR. CHAMBERS: No objection.

23 State your full name for the record.

24 THE WITNESS: Randy Morgan.

25 DIRECT EXAMINATION

Randy Morgan - Direct Examination

1 BY MS. MAJOR:

2 Q. Please state your name?

3 A. Investigator Randy Morgan.

4 Q. Where do you work?

5 A. Greenville County Sheriff's Office.

6 Q. In what capacity do you work?

7 A. Property Crimes Investigator.

8 Q. What are your duties as a Property Crimes
9 Investigator?

10 A. I investigate burglaries, autobreakings, larceny,
11 things of that nature.

12 Q. Were you working on February 4, 2010?

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

14 Q. Were you working with anybody else?

15 A. At the time I was training Investigator Brown
16 Burton.

17 Q. Where is Investigator Burton at today?

18 A. Since this incident has happened, Investigator
19 Burton has resigned from the Sheriff's Office. He had to
20 move back to West Virginia so he can take care of his sick
21 dad.

22 Q. How did you first become involved in this case?

23 A. Our secretary received a call from two of the
24 community officers, Deputy Smith and Cordell, advised that
25 they had a suspicious vehicle stopped and they wanted an

Randy Morgan - Direct Examination

1 investigator to come up there.

2 Q. How long did it take you to arrive at the scene?

3 A. A minute, if that.

4 Q. I'd like you to come down here and just point out
5 on the map?

6 A. The point where they were stopped you got the
7 Publix Shopping Center and we are right behind the Publix
8 Shopping Center.

9 Q. And where were the defendant's located?

10 A. Right here, [REDACTED]. My address
11 is [REDACTED].

12 Q. What type of establishment were they in?

13 A. A gas station.

14 Q. Have a seat. What happened once you arrived on
15 the scene?

16 A. Once we arrived, the passenger who turned out to
17 be Mr. Humphrey was custody. Deputy Smith and Cordell
18 advised that -- sort of gave us a rundown of the call.
19 They got a call of a suspicious vehicle, two white males
20 looking into vehicle at Publix's, and at that point both
21 the defendant and Mr. Humphrey was just, at that time,
22 sitting in front of the vehicle.

23 I looked in the Dodge Durango through the
24 window. I did see the jumper cables in the vehicle, but
25 what caught my eye was a very bright change purse.

Randy Morgan - Direct Examination

1 Q. Was the defendant, Mr. Harris, under arrest at
2 this point?

3 A. No, ma'am.

4 Q. Was Joshua Humphrey under arrest?

5 A. He was placed in custody for the outstanding
6 warrant.

7 Q. What did he decide to do after you got there?

8 A. I asked the defendant, Mr. Harris, I advised him
9 that he was not under arrest. I did ask him to come down
10 to my office so we can sit down and talk about this and
11 what was going on. I advised him he could refuse if he
12 wished and he could leave at any time, basically, it's
13 called a done-away. And Mr. Harris, the defendant, did
14 agree to come down to Northern Command, my office, and I
15 asked Deputy Smith and Deputy Cordell to transport both
16 Mr. Harris, the defendant, and Mr. Humphrey to our office.

17 Q. Did they follow you back to the office?

18 A. I don't know if they followed or --

19 Q. When they arrived, Officer Smith and Cordell,
20 with the defendant and Joshua Humphrey, what happened?

21 A. Myself and Investigator Berikman interviewed
22 Mr. Humphrey. My partner at the time Scott Phillips along
23 with, I believe, Investigator Joe Whitmire sat down and
24 spoke with the defendant.

25 Q. What did you do as a result of what Joshua

Randy Morgan - Direct Examination

1 Humphrey told you?

2 A. During the interview, he indicated that he knew
3 where the items were placed. During the interview we did
4 learn of the two autobreakins at the Flatrock Grill.

5 Q. Okay. Let's back up, when they agree to come
6 down to the Northern Area Command Center, did you know
7 about the Flatrock Grill car break-ins?

8 A. No, ma'am, we didn't have any indication of any
9 autobreakings at that time.

10 Q. You brought them down there because why?

11 A. I basically wanted to talk to them about what was
12 going on that day, their suspicious activity and we saw
13 that both of them were from Easley and just wanted to talk
14 to them to see why they were in Greenville.

15 Q. When did that Flatrock Grill autobreakings call
16 come in?

17 A. I don't know the exact time. It was during the
18 interview of both the defendant and Mr. Humphrey.

19 Q. Did you ask Joshua Humphrey about that Flatrock
20 auto break-in?

21 A. I confronted him about it and then that's when he
22 started indicating about the whereabouts of the purses and
23 that he and the defendant were responsible for the
24 autobreakins.

25 Q. And you heard him say that he had taken some

Randy Morgan - Direct Examination

1 pills when he got pulled over?

2 A. Yes.

3 Q. Did you notice if he was not competent? Was he
4 making sense?

5 A. The entire time he was with me, his faculties did
6 not seem impaired. His speech was not slurred. He was
7 not sweating, didn't get sleepy or anything of that
8 nature. I could not -- he didn't appear to be under the
9 influence to me.

10 Q. After he told you that he could lead you to the
11 purse, what did y'all do?

12 A. We first went to the Publix which is right beside
13 our building.

14 Q. Let's step down here and point this out on the
15 map. Why did you got to Publix?

16 A. He said that him and defendant had placed -- he
17 called it a checkbook or a purse -- not a purse but I
18 don't remember exactly how it was put but he did mention a
19 checkbook in the bushes.

20 Q. Of what parking lot?

21 A. Publix. Publix is right here. There's probably
22 15 or 20 entrances into the parking lot that have little
23 concrete islands with Juniper Bushes in them.

24 THE COURT: Solicitor, what is the relevance
25 of this?

Randy Morgan - Direct Examination

1 MS. MAJOR: I'll move on.

2 THE COURT: Please move on.

3 MS. MAJOR: Okay.

4 BY MS. MAJOR:

5 Q. What did you find at the Publix's parking lot?

6 A. We found one of the victim's checkbook and her
7 driver's license.

8 Q. Did Joshua Humphrey lead you there?

9 A. Yes.

10 Q. What did y'all do after that?

11 A. After that he described a new bridge over two
12 sets of railroad tracks where he had thrown the purse. We
13 originally drove up Pointsett Highway and he said it
14 wasn't it and that it didn't look familiar. We went down
15 Furhman Hall Road, 291, North Pleasantburg Drive which is
16 all Pointsett, 291 and then we went on Whirley Road. We
17 turned on Whirley Road and he said that looked familiar
18 because the bridge was new. It had a big sweeping curve
19 in the bridge which it does and as soon as he saw the
20 bridge he said this is it, this is where I threw the purse
21 out the passenger window.

22 Q. And what did you do?

23 A. We snaked our way and we come across the bridge,
24 and I can give you the exact streets it's on.

25 THE COURT: Solicitor, tell me what ---

Randy Morgan - Cross-Examination

1 MS. MAJOR: This is where the purse was
2 found.

3 THE COURT: What is the relevance of where it
4 was found?

5 BY MS. MAJOR:

6 Q. Did Joshua Humphrey show you where it was found?

7 A. He did. He directed us to the spot where it was
8 found.

9 Q. You can have a seat. Do you recognize what's
10 been marked as State's Exhibit 1?

11 A. Yes, ma'am, that's the purse I got out of the
12 tree.

13 Q. What did you do after you recovered the purse?

14 A. Everything was placed on the property and
15 evidence sheet and photographed in my office and then
16 returned back to the victims.

17 Q. Did you go back to the Flatrock Grill?

18 A. Yes, we did stop back by there to let the victims
19 know that we had recovered their items.

20 Q. Thank you.

21 MS. MAJOR: No further questions.

22 THE COURT: Mr. Chambers.

23 CROSS EXAMINATION

24 BY MR. CHAMBERS:

25 Q. So when you got there and you talked to Buddy, he

Randy Morgan - Cross-Examination

1 wasn't under arrest?

2 A. Right.

3 Q. We've established at this point that he could
4 have just driven his truck away.

5 A. That's correct.

6 Q. You didn't have any reason to keep him there?

7 A. That's correct.

8 Q. And he said I will go to Northern Command and I
9 will talk to you and answer whatever questions I want you
10 to ask?

11 A. Yes, sir. He did it of his own freewill.

12 Q. You later found out about the cars that had been
13 broken into at Flatrock Grill and of course after that you
14 arrested Buddy and along with Mr. Humphrey who we just
15 heard from, correct?

16 A. That's correct.

17 Q. Now, Mr. Humphrey is the one who knew where all
18 these items were located; is that correct?

19 A. He directed us to ---

20 Q. That's where you got all this information,
21 correct.

22 A. Correct.

23 Q. Some of them were found there in the Publix's
24 parking lot?

25 A. Correct.

Randy Morgan - Cross-Examination

1 Q. Others you said you were found on this bridge
2 just off of Whirley Road?

3 A. Yes, sir.

4 Q. Now, Whirley Road is essentially right behind
5 Flatrock Grill?

6 A. It's two streets, three streets, behind Flatrock.

7 Q. Very close. I mean you could walk out the back
8 of Flatrock and you could just walk a few blocks over to
9 Whirley Road and you could throw something off the bridge
10 right there?

11 A. I wouldn't say it's a couple of blocks, maybe a
12 quarter of a mile, but, yes, sir, you could walk there.

13 Q. A quarter of mile you could walk in just a couple
14 of minutes unless you were disabled or something like
15 that?

16 A. I guess you could, I don't know.

17 Q. A quarter mile, that's a couple of blocks, let's
18 be fair about that.

19 A. Okay.

20 Q. So you could easily walk -- it wouldn't take a
21 long time. You're familiar with that area, right?

22 A. Yes, sir.

23 Q. It wouldn't take a long time to walk from Jack-
24 in-the-Box over to the rear of Flatrock, would it?

25 A. No, sir, it wouldn't.

Randy Morgan - Cross-Examination

1 Q. And it wouldn't take a long time to walk from the
2 rear of Flatrock over to Whirley Road over to where this
3 bridge is and throw a purse over there, would it?

4 A. No, sir.

5 Q. And then, in turn, it wouldn't take a long time
6 to walk from that bridge back to the Jack-in-the-Box where
7 someone might be waiting for you while they were eating
8 their lunch, would it?

9 A. No, sir.

10 Q. Okay. Did you ever inquire of Buddy where he
11 worked?

12 A. No, sir. I advised Mr. Harris he was under
13 arrest but I did not interview him, no, sir.

14 Q. Were you familiar with the fact that he worked as
15 an Apoxy System Specialist?

16 A. No, sir.

17 Q. You ever heard of Apoxy System Specialist?

18 A. Yes, sir, I have.

19 THE COURT: He said he never heard of it.

20 MR. CHAMBERS: He said he was familiar.

21 THE WITNESS: I have since then.

22 THE COURT: He said he didn't know he worked
23 there. Move on.

24 BY MR. CHAMBERS:

25 Q. Is that located in Greenville?

Randy Morgan - Cross-Examination

1 A. I think so.

2 Q. Now, did you take the statement from either one
3 of the co-defendants?

4 A. I took the statement from Mr. Humphrey, the
5 co-defendant.

6 Q. Okay. And from where you were sitting, were you
7 able to hear Mr. Harris talking on the telephone?

8 A. I really wasn't listening for him.

9 Q. So you didn't hear this conversation that
10 Humphrey talked about where he heard Buddy talking on the
11 telephone?

12 A. I wasn't listening for him.

13 Q. You didn't take a statement from Buddy, did you?

14 A. No, I did not.

15 Q. That was Investigator Phillips and Investigator
16 Whitmire?

17 A. That's correct.

18 MR. CHAMBERS: That's all questions I have.

19 THE COURT: Thank you. Step down.

20 (Witness leaves the witness stand.)

21 MS. MAJOR: The State calls Investigator
22 Hubert to the stand.

23 THE CLERK: Would you please step forward to
24 be sworn. Please place your left hand on the Bible and
25 raise your right hand.

Heather Hubert - Direct Examination

1 HEATHER HUBERT, having been duly sworn,
2 testified as follows:

3 Thank you. You may be seated. Please state
4 your name for the record.

5 THE WITNESS: Heather Edwards Hubert.

6 DIRECT EXAMINATION

7 BY MS. MAJOR:

8 Q. Investigator Hubert, where do you work?

9 A. Greenville County Sheriff's Office.

10 Q. In what capacity are you employed?

11 A. Currently I'm an investigator in the Sex Crimes
12 Unit, but at the time of this incident, I was a Master
13 Deputy in the Uniformed Patrol.

14 Q. Were you working on February 4, 2010?

15 A. I was.

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

17 A. I was working the west side of Greenville that
18 day and I was asked to go to respond to Hickory Point to
19 standby with a green Dodge Durango to secure the vehicle
20 and wait on tow.

21 Q. What did you do while you were waiting on the
22 tow?

23 A. Prior to any vehicle being detained by the
24 Sheriff's Office, we do an inventory of the vehicle if at
25 all possible.

Heather Hubert - Direct Examination

1 Q. What's an inventory?

2 A. Basically we do sort of a cursory search of the
3 vehicle looking for any items that would be a problem to
4 send to tow and also document items that are in the
5 vehicle mainly for security purposes.

6 Q. Is that done in most cases?

7 A. Yes.

8 Q. Where there is a tow?

9 A. If at all possible. The only time I can think of
10 the only time I have not done an inventory is the vehicle
11 didn't have an owner and the vehicle was locked and we
12 just couldn't get inside of it.

13 Q. You inventoried this car because it was possible
14 to do that?

15 A. Yes, ma'am, I did.

16 Q. What did you find in the car?

17 A. I listed on the inventory sheet.

18 Q. You can refresh your recollection with this
19 inventory sheet.

20 A. Do you want me to read all the items?

21 Q. Yes.

22 A. I list here under equipment and LG cellular
23 phone, a Kodak digital camera and case. Under tools and
24 other items, I listed a tire gage, a hammer, a slingshot,
25 a pocket knife, jumper cables, miscellaneous CD's, compact

Heather Hubert - Direct Examination

1 discs, clothing, gloves, a jump box, miscellaneous papers
2 and miscellaneous hand tools. A jump box I would refer to
3 that is like the kind of item you would keep in your car
4 to do a jump of a dead battery.

5 Q. What happened after you completed the inventory
6 of this car?

7 A. It was towed and also a 24-hour investigator hold
8 was placed on it.

9 MS. MAJOR: No further questions.

10 THE COURT: Any questions.

11 MR. CHAMBERS: No questions of this witness.

12 THE COURT: You can step down.

13 (Witness leaves the witness stand.)

14 MS. MAJOR: Your Honor, at this time the
15 State rests.

16 THE COURT: Okay, take the jury out, please.
17 (Jury exits the courtroom.)

18 All right, any motions?

19 MR. CHAMBERS: Your Honor, I make the motion
20 for directed verdict on both the charges.

21 THE COURT: And I'll have to deny your
22 motion.

23 Would you have some testimony?

24 MR. CHAMBERS: I would to confer with my
25 client but in all probability, no.

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1 THE COURT: I'll give you about five minutes.

2 (Whereupon, there was a short recess.)

3 MR. CHAMBERS: Your Honor, I've discussed the
4 options with my client and we've discussed it before and
5 he confirmed for me that he does not intend to testify and
6 we're not going to produce any evidence.

7 THE COURT: All right.

8 Place him under oath, please.

9 THE CLERK: Would you please stand and raise
10 your right hand.

11 BUDDY ARIZONA HARRIS, having been duly sworn,
12 testified as follows:

13 THE COURT: Mr. Harris, we reached a point in
14 your case where you will have to make a decision as
15 whether you will take the stand and testify or otherwise
16 present testimony in evidence. Mr. Chambers has told me
17 that you made a decision not to do that; is that correct?

18 DEFENDANT HARRIS: Yes, sir.

19 THE COURT: That is your right. You don't
20 have to take the stand and testify or present evidence
21 because the burden is on the State to prove you guilty
22 beyond a reasonable doubt. That's your Constitutional
23 right. I tell you that you have a perfect right to take
24 the stand and tell the jury your side of the story. Okay.
25 If you take the stand and testify that you become like any

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1 other witness subject to cross-examination by the
2 solicitor.

3 I don't know whether you have any prior
4 record for which you could be impeached, but if you do,
5 the solicitor could do that, do you understand that?

6 DEFENDANT HARRIS: Yes, sir.

7 THE COURT: Now, you made the decision not to
8 testify; is that correct?

9 DEFENDANT HARRIS: Yes, sir.

10 THE COURT: Is this a decision you, yourself,
11 have made?

12 DEFENDANT HARRIS: Yes, sir, it is.

13 THE COURT: Mr. Chambers has not put any
14 pressure on your not to take the stand to testify?

15 DEFENDANT HARRIS: No, sir, he has not.

16 THE COURT: And are you under the influence
17 of any alcohol, drugs, or any other substance right at
18 this moment?

19 DEFENDANT HARRIS: No, sir, I am not.

20 THE COURT: You sober?

21 DEFENDANT HARRIS: Yes, sir.

22 THE COURT: You know what you're doing?

23 DEFENDANT HARRIS: Yes, sir.

24 THE COURT: You have made the decision not to
25 testify; is that correct?

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1 rights. So the testimony in this case is complete and
2 what we have remaining is the final argument by the
3 attorneys and my charge on the law.

4 Solicitor, you may proceed.

5 MS. MAJOR: Thank you.

6 Ladies and gentlemen, I told you at the
7 beginning of this case that this case was like a puzzle
8 and there are different pieces. There different pieces of
9 evidence and they come together and they show that the
10 defendant is guilty of these crimes. It's my burden to
11 show that he's guilty of these crimes beyond a reasonable
12 doubt and before you go into your jury deliberations, I
13 want to review with you the pieces of the puzzle, the
14 pieces of evidence that would show that he's guilty beyond
15 a reasonable doubt.

16 The defendant is charged with two counts of
17 auto breaking and two counts of petty larceny.
18 Auto breaking; the elements of auto breaking is breaking
19 into a motor vehicle with intent to steal something
20 inside. Petty larceny; the elements of petty larceny are
21 the taking and carrying away of goods of another without
22 consent.

23 So let's go over all the pieces. We first
24 heard from Jamee Anders and Jessica Martin who testified
25 that their cars were broken into. Jessica Martin

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1 testified her purse was taken and Jamee Anders testified
2 that her car door was open and that her jumper cables were
3 taken.

4 We then had the 911 caller. The 911 caller
5 says I see a car, a green Dodge Durango, two white males
6 in their late 20's driving around looking in cars. You
7 may want to come and check it out.

8 We then have Officer Smith. He pulled that
9 green Durango. Who was driving that car? Buddy Harris
10 was driving that car. Joshua Humphrey was the passenger
11 in that car. They both admitted to being in the Publix's
12 parking lot earlier.

13 You heard from Joshua Humphrey. He told you
14 what happened. He told you how they broke the window with
15 the slingshot using the spark plug. He told you what was
16 taken, he told you how it was taken, he told you what they
17 did with the purse and the wallet. He told you where they
18 went after that.

19 Now, Mr. Chambers may try to get up here and
20 tell you it was all Joshua Humphrey. The only thing tying
21 the defendant to this crime is Joshua Humphrey's
22 testimony. Joshua Humphrey ties him to this crime, yes,
23 it does. He was charged with this as well, but that's not
24 all we have. The Judge is going to charge you that the
25 hand of one is the hand of all and what does this mean.

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1 It means that if a crime is committed by two or more
2 people acting together that the act of one is the act of
3 one.

4 For him to be not guilty of this would mean
5 that he didn't know what was going on and he had nothing
6 to do with this and they weren't acting together. But the
7 evidence, including Joshua Humphrey's testimony and other
8 evidence shows that. The defendant was driving the car.
9 He was the driver of this car. The purse was found here,
10 the wallet was found here, Buddy Harris was driving the
11 car when it was pulled by Officer Smith.

12 We have the 911 caller who says I see a call
13 driving around, a green Dodge Durango, two white males
14 looking in cars trying to steal stuff. What motivation
15 does that 911 caller have to lie. He calls in just to
16 report something, you may want to come and check it out.

17 The both admit to being in the Publix's
18 parking lot. This slingshot that Joshua Humphrey said was
19 used to break the car was in the green Durango. The
20 jumper cables were in the green Dodge Durango. This is
21 not a one man operation. This was not Joshua Humphrey by
22 himself going around breaking into cars and Buddy didn't
23 know what was going on. And by the same token this was
24 not just Buddy Harris doing this. This was both of them
25 together. They were acting together to break into these

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1 cars.

2 Ladies and gentlemen, what makes sense? They
3 break into the two cars, Jamee Anders and Jessica Martin's
4 cars here. They got the purse, they got the evidence with
5 them, they'd better get out of here. They drive around,
6 drive over a bridge and throw it out. They realize
7 there's another wallet in the car that must have fallen
8 out of her purse. They go to Publix's parking lot. They
9 didn't know someone had called 911 on them and then
10 they're stopped shortly right after that.

11 Mr. Chambers told you at the beginning of
12 this trial that it's the State's burden beyond a
13 reasonable doubt and I told you that and I welcome that.
14 Beyond a reasonable doubt does not mean beyond any doubt
15 at all. There are a few things we know with 100 percent
16 certainty. Beyond a reasonable doubt means that you are
17 firmly convinced of the defendant's guilt. Reasonable
18 doubt means it would cause a reasonable prudent person to
19 hesitate.

20 You must look at what's in evidence and
21 what's been present from the stand and then you've got the
22 evidence there. Nothing I have said and nothing
23 Mr. Chambers has said in opening arguments is evidence.
24 The evidence is what you have to convict this defendant.

25 I submit to you that we have proven our case

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1 beyond a reasonable doubt that the defendant broke into
2 these cars along with Joshua Humphrey that day. Joshua
3 Humphrey is in no way innocent. He pled guilty to these
4 autobreakings. He pled guilty. He is as guilty as the
5 defendant is. I ask that you return the only just verdict
6 and that is guilty on two counts of auto breaking and two
7 counts of petty larceny.

8 Thank you.

9 THE COURT: Okay, Mr. Chambers.

10 MR. CHAMBERS: If it please the Court, Your
11 Honor, solicitor.

12 Well, ladies and gentlemen, we have come to
13 the end and it's a much shorter trial, frankly, than I
14 anticipated. I hope and I'm sure none of you will
15 misconstrue that it's not important. I can assure it that
16 it's important for Buddy Harris. This has been pending
17 against him for quite some time, these accusations, these
18 allegations that were made against him. And he's been
19 looking forward to the day that they walk in here and have
20 to back up these allegations, solicitors, all the police
21 officers and everybody that you see sitting over here in
22 the courtroom.

23 We've already discussed and heard from
24 everybody involved in this case at this point. They've
25 already presented to you the evidence that they've chose

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1 to present to you today. It's their case and that's the
2 way the system is set up and that's the way it's supposed
3 to work.

4 You've heard that they have the burden of
5 proof and it's beyond a reasonable doubt. And their task
6 in presenting evidence to you if you're going to find
7 Buddy Harris guilty will leave you firmly convinced of his
8 guilt. Firmly convinced. As we discussed, another way to
9 say that is definitely sure. If you had to bet something
10 important in your life, would you feel comfortable with
11 that decision based on the evidence you've heard in this
12 case.

13 Y'all are going to get to go back there and
14 y'all are going to get to spend as much time as y'all want
15 and as much time as you need to discuss the evidence in
16 this case. And you can talk about what they presented to
17 you and you can talk about what they have not presented in
18 this case. All of you have a voice, so as you go through
19 and you start going through this evidence piece by piece
20 or you start talking about the evidence that they didn't
21 give you, then you can speak up and say, no, I'm not
22 definitely convinced. I don't believe that they have
23 proven and what about this piece of evidence. That's a
24 give and take that y'all through as you decide what
25 happens in this case.

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1 So, I want to spend just a little bit of time
2 going through the evidence that's been presented to you
3 and the evidence that's not been presented to you, and
4 then kind of wrap things up. And I'm going to start with
5 Joshua Humphrey.

6 He is perhaps the most important witness from
7 their standpoint because he is the one who knows
8 everything about this case. He's the one that we know for
9 sure broke into these two ladies' cars. He's the one that
10 we know for sure stole from these two young ladies. We
11 know that because first of all he said he did, but
12 secondly, and most importantly, he's the one who led the
13 police to where everything was located. There is no
14 physical evidence that leads to Buddy Harris but there is
15 physical evidence that links Joshua Humphrey.

16 Now, when you consider his testimony, there
17 are a number of things you have to consider. First of
18 all, you have to consider do I believe that things
19 happened the way they said he did. If you don't believe
20 it, then you have to throw out everything that was said.
21 So if you to look at it is what he said make sense? While
22 admitted his guilt, he painted himself in the most
23 innocent light possible under the circumstances and let me
24 just walk back through what he said.

25 He said he started the day by getting with

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1 Buddy over here and agreeing to ride in to town, ride into
2 Greenville with Buddy from Easley. And I asked him, and I
3 said are you going to drop off a truck at your mom's and
4 he said well, no, we weren't doing that and he said he
5 asked me to go into town with him and he said that he
6 would. That's neither here nor there except to say this,
7 you didn't hear any discussion about we're going to break
8 into cars. Or Buddy said, hey, let's go break into cars,
9 let's go do something like that. As a matter of fact, it
10 was just they were going to town basically just hanging
11 out for the day.

12 And then they said when he says they stopped
13 at Flatrock Grill, again, no mention at all of committing
14 any sort of crime, breaking into cars, doing anything.
15 Now, why would he do it that way? Why would he say it
16 that way? Because he knows they got him and he is still
17 trying to paint himself in the most innocent light
18 possible.

19 So what does he say happened? He says
20 they're going to Flatrock Grill and eat, and if any of you
21 are familiar with that area and I am because I've eaten
22 there on several occasions over the years, and probably
23 the last place that you would park particular at lunch
24 time would be directly behind there. That's where the
25 employees park. It's not marked employee parking but

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1 that's really the only people who park directly behind
2 there. That's the most inaccessible part of Flatrock
3 Grill. There are parking place right in front, just a
4 few, but there's a huge parking lot. There are multiple
5 parking spaces and it would make more sense that you would
6 park in front and walk in.

7 What makes even less sense is that just out
8 of the blue and if you recall this is what Joshua Humphrey
9 said, and if you don't recall, you can always ask to hear
10 testimony. This young lady took everything down, so if
11 there's any confusion, you can ask to listen to the
12 testimony again, and he said we pulled right in between
13 those two cars and that's when Buddy got out and knocked
14 the window out with the slingshot and going into cars that
15 I didn't know anything about, didn't know anything about
16 that. Use your common sense. Does that make any sense at
17 all? It really doesn't. That's a person who has been
18 caught.

19 That's a person that is mad at someone else
20 and we know he was mad at Buddy Harris because he said he
21 overheard Buddy talking, not to the police, but Buddy on a
22 telephone call -- and this is before he talked to the
23 police -- he's saying, listen, I'm riding around with Josh
24 and he broke into some cars and stuff and now they're
25 trying to blame it on me. Once he heard that, that was

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1 plenty of motivation. He told you he was mad and he wants
2 to bring Buddy into it. More importantly, he wants to
3 make Buddy look like he is the worse one. So that is why
4 you get this ridiculous story that at spur of the moment
5 they're stopping at Flatrock to eat, they're parking in
6 the very back and without Josh knowing what's going on,
7 Buddy breaks out a window and starts stealing stuff.

8 Now, you know, it could just as easily have
9 been that Buddy was nowhere around. That Buddy was around
10 the corner at the Jack-in-the-Box and he walks around on
11 his own. All of this stuff happens in close proximity.
12 The fact that Flatrock Grill is very close to Whirley,
13 just a couple of blocks over, walk over and throw that
14 stuff. It is very likely that he could have committed
15 every bit of this without Buddy Harris ever knowing what
16 was going on.

17 We know just from our common sense that Josh
18 Humphrey is not telling you the truth about the way all
19 this stuff happened because it did not make sense the way
20 he tells it.

21 Then the police get a call that there is some
22 sort of suspicious behavior going on over at the Publix's
23 parking lot. It's important to note no cars broken into
24 over there, no crime committed. There is a billfold or
25 something like that that belonged to one of these young

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1 ladies that was found in the bushes at the Publix's
2 parking lot. But who knew it was there? Joshua Humphrey
3 knew it was there. That's who took them there. The same
4 person who took them over to where the bridge was just
5 behind Flatrock. So at every turn Josh Humphrey is
6 implicated, but not Buddy Harris.

7 Now, the solicitor told you a few minutes ago
8 that the hand of one is the hand of all and that's true.
9 His Honor is going to tell you that. But folks, we're not
10 held responsible for somebody else's crime just because we
11 happen to be in close proximity to them. You have to be
12 participating in it.

13 I have been called upon many times to explain
14 this to various people that I represented. Here's the way
15 I always do it: Let's imagine that the solicitor over
16 here asks me for a ride down to a Spinx Station. She says
17 she wants to go in and get a six-pack of beer and I say
18 fine. And on the way over there, she tells me I'm going
19 to rob the place while I'm there and I said, good, go in
20 there and rob it but don't kill anybody, don't hurt
21 anybody while you're robbing it. She goes in, robs the
22 place, murders the person behind the counter, guess what,
23 I didn't go in there. I didn't shoot anybody. I didn't
24 steal anything but I'm just as guilty of armed robbery and
25 murder as she is. That's the hand of one is the hand of

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1 all because we participated in it.

2 On the other hand she never told me she was
3 going to do that and I just gave her a ride and I just
4 drive off oblivious as to what happened, it may look bad,
5 I may find myself if a world of hurt but I didn't do
6 anything. It's not hand of one is the hand of all. I
7 didn't do anything wrong. And unless they've got some
8 proof of that Buddy Harris knew what Josh Humphrey was
9 doing, that's not hand of one is the hand of all.

10 All right. Now, you can contrast all the
11 way through this how these folks behaved. We know for
12 sure that Buddy Harris said go ahead and search my
13 vehicle. We know for sure that Buddy Harris said, I'm not
14 under arrest -- they told him you are not under arrest and
15 you can drive away from here, but he agreed to go to
16 Northern Area Command and talk to these folks, and then
17 based on what Josh Humphrey has to say, they arrest him
18 and he finds himself here today. But he cooperated all
19 through this process.

20 And they searched his car and low and behold
21 as we sit here today and they presented all their evidence
22 to you, there was nothing they presented from that car
23 that would tie Buddy Harris to these crimes.

24 You heard I don't know how many police
25 officers take the stand and talk about a yellow change

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1 purse. Folks, where's the yellow change purse? They not
2 only searched his car, you heard the last deputy who got
3 up here and testified, they impounded the car and kept it
4 for 24 hours and they inventoried everything that was in
5 the car. Where's the change purse? They made a big deal
6 about telling you about a change purse. Where is it?

7 Where are the jumper cables. Now, when they
8 inventoried that car, there was a set of jumper cables in
9 there. There was also the jump box, there were also some
10 gloves, there were also some gloves, there were also some
11 tools. There are the kinds of things that all of us have
12 in our car on a regular basis. I would venture to say
13 that half the people in this room have a set of jumper
14 cables for sure in their cars. I know I do. That doesn't
15 prove anything.

16 They could very easily -- they have the young
17 lady here whose jumper cables were taken, they could very
18 easily have brought the jumper cables in here just like
19 they did this purse right here and say are these your
20 jumper cables. They didn't do that. They didn't do that
21 and it's their case. They get to decide what you see.

22 We know that Buddy talked to the police. He
23 talked Investigators Phillips and Whitmire. I confirmed
24 that with Investigator Morgan right here. Did you hear
25 from them? You did not hear from them and it's their

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1 case.

2 You know, if you wanted to know if Buddy had
3 anything to do with it, they could have dusted this purse
4 for fingerprints, the billfold for fingerprints and then
5 we would know. If they could come in and say now we got
6 a fingerprint off of this, he touched it so he had to know
7 what was going on. That's a much different case, but you
8 didn't hear anything about that. And I guess some of you
9 might be inclined to say, well, is any of that really
10 necessary? I mean we know that Josh Humphrey was with
11 Buddy Harris and Josh Humphrey did it and so -- but that's
12 making it easy for them and that's not what this is about.
13 You're supposed to question everything that you hear with
14 a cynical and skeptical eye and you're supposed to ask
15 yourself at every turn, does this convince me. And I
16 definitely sure that Buddy Harris committed these crimes
17 that he is charged with? That's your responsibility.
18 That's what you took an oath to do.

19 Folks, they have fallen short here. There's
20 not question that Buddy Harris was with Josh Humphrey,
21 none at all. I mean there is no question that Josh
22 Humphrey broke into these cars and stole these things, but
23 when you look at this case from start to finish and you
24 look at and really examine what Josh Humphrey told you and
25 the motivation that he had to lie. What he told you

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1 didn't add up.

2 I mean I could go over and over it again but
3 I think you got the point. I mean, it just doesn't make
4 sense that they're just riding around going to get
5 something to eat and in the spur of the moment Buddy
6 decides to break into a car. That's not how it would have
7 gone. That's somebody that's trying to say, yeah, I did
8 it but he's more at fault than I am.

9 It doesn't make sense that he could have
10 driven away in his truck and he's guilty that he goes to
11 Northern Area Command on his own and talks to them. It
12 doesn't make sense they don't have any physical evidence
13 whatsoever that links him to this crime.

14 And I guess you could say what motivation
15 does Josh Humphrey has to lie. Well, first of all, we
16 know what he was mad because he overheard Buddy simply
17 telling somebody on the phone, listen, I'm down here
18 answering questions because Josh was breaking into cars
19 and now they're trying to drag me into it.

20 It's notable because after committing these
21 crimes and offering up testimony for these prosecutors
22 that he's free. He walked in here and told you that he's
23 out on probation. You can consider all of that, but if
24 you've got to decide whether you're sure or not based on
25 the evidence that they presented, you can ask yourself why

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1 didn't I hear from the investigators who talked to Buddy?

2 Why aren't they hear to talk to us.

3 You can ask yourself if everybody wanted to
4 talk about this yellow change purse and it had some
5 significance in this case, where is that yellow change
6 purse? You can ask yourself if these jumper cables really
7 belonged to this young lady whose jumper cables were
8 stolen? Where are those jumper cables? You can ask
9 yourself if Buddy was involved and they believe it, why
10 have they told you about dusting for prints and getting
11 fingerprints to determine who handled that merchandise.

12 You can ask yourself why Josh Humphrey knew
13 where everything was located and very easily on his own
14 could have disposed of those things without Buddy every
15 knowing what happened.

16 It is very easy to say that somebody did
17 something but it is another thing if you have to back it
18 up, and they have to prove beyond a reasonable doubt, and
19 they got a case based on somebody that you know is lying
20 because if you look at what he told you, it is an obvious
21 lie, it doesn't make sense and it's all designed to put
22 him in the most favorable light and him in the most
23 negative light. That's the bottom line in this case,
24 folks.

25 They have not definitely proven their case.

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1 The appropriate verdict in this case we would submit to
2 you is not guilty.

3 I'm going to do the hardest thing I've had to
4 do all day. I'm going to go over here and I'm going to
5 sit down and I'm going to wonder about all the things I
6 could have said, should have said because this is Buddy's
7 case but I'm his advocate and I always worry did I say the
8 right stuff, did I point out the right stuff? But I
9 always take solace in the fact that you folks took an oath
10 to well and truth try the case and I know that you are
11 going to hold them to the burden, and when you do that in
12 this case, you're going to come back with a verdict on not
13 guilty.

14 I appreciate your time. Thank you.

15 THE COURT: Okay. No one in or out of the
16 courtroom while I'm charging, so if anyone wishes the
17 leave, now is the time.

18 Now, ladies and gentlemen, the defendant in
19 this case as you know is indicted for auto breaking and
20 for petty larceny. Auto breaking is a statutory offense
21 and section 16-15-160 of our Code of Laws provides in part
22 as follows: It is unlawful for a person to break or
23 attempt to break into a motor vehicle or its compartment
24 with the intent to steal anything of value from it or
25 attached or annexed to it or used in connection with it or

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1 any perpetration of any criminal offense.

2 So, ladies and gentlemen, breaking into a
3 motor vehicle or what we call auto breaking is the
4 breaking and entering of an automobile for the purpose of
5 stealing it or anything of value from it.

6 Now, there are several elements of this
7 offense each of which must be proven by the State beyond a
8 reasonable doubt. First of all, the State must prove that
9 there was a break-in. Now, that need not be by means of
10 any great force for any force which is necessary to make
11 an opening is sufficient; therefore, if a car door is
12 closed even though not locked, an opening of that door
13 would constitute a break-in.

14 Next there must be an entering into the car,
15 placing or a head or hand or reaching into the car with an
16 arm, that would constitute an entering. Next, there must
17 be an intent to steal the car itself or something of value
18 from it.

19 Now, intent is defined as a purpose or aim or
20 state of a person's mind which directs his action towards
21 a specific object. So if you find that the automobile was
22 entered into the for purpose or aim to steal it or
23 anything from it, this would constitute the intent
24 necessary to satisfy this element of auto breaking.

25 The defendant, as I told you, is charged with

State versus Harris

1 petty larceny. Larceny is defined as the taking and
2 carrying away by any person of the goods or things
3 personal of another with the felonious or the unlawful
4 intent to permanently deprive that owner of his or her
5 property and to convert to the takers own use.

6 Again, there are several elements of this
7 offense each which the State must prove beyond a a
8 reasonable doubt in order to warrant a conviction for
9 petty larceny. First, there must be a taking and the
10 carrying away of the personal property of another. That
11 is personal property or chadless(ph) as opposed to real
12 estate. Secondly, the property must be the property of
13 another and the ownership of that property must be proved
14 and its value of something under \$1000. And, lastly,
15 there must be a felonious, that is an unlawful intent to
16 permanently deprive that owner of his or her property.

17 Now, ladies and gentlemen, a principle of a
18 crime is one who either in person perpetrates that crime
19 or who deemed present aides, abets, and assists in its
20 commission. I charge you that mere presence at the scene
21 of the crime is not sufficient; however, when one doesn't
22 act in the presence of and with the assistance of another,
23 the act is done by both and were two or more are acting
24 with a common design or intent are present at the
25 commission of a crime, it matters not by whose immediate

State versus Harris

1 agent the crime is committed, for all would be guilty.

2 Intent, however, is a necessary element for
3 there must have been a common design or intent to commit
4 the crimes and the crimes must have been committed thereto
5 with the person aiding and abetting by some overt act.
6 The presence at the commission of a crime means to be
7 sufficiently there so as to be able to aide and abet and
8 assist in its commission.

9 Now, ladies and gentlemen, as jurors in this
10 case you have a function and responsibility that is
11 entirely separate and distinct from my function in the
12 case as the trial judge. The Constitution of our State does
13 not allow me to charge you on the facts of this case or
14 discuss the facts with you or in any way or manner let you
15 know what my personal feelings are, if any, about this
16 case. That's because you and you alone are the judges of
17 the facts. Therefore, if during the course of this trial
18 or during the course of my charge, you have a feeling or
19 you have been left with the impression that I have a
20 personal feeling about this case one way or another, then
21 you disregard that feeling or that impression.

22 Now, it's your duty and your duty alone to
23 weigh the testimony and evidence in this case and to pass
24 upon the credibility or the believability of the witnesses
25 you heard testify. In this connection you have a right to

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1 believe all that a witness told you or disbelieve all that
2 a witness told you. You can believe a part of what a
3 witness told you and disbelieve a part of what a witness
4 told you. You can believe one witnesses against several
5 or you can believe several against one.

6 You also have a right to take into
7 consideration any bias or prejudice you feel a witness in
8 the case might have.

9 Now, I'm the judge of the law as I told you
10 and I am required to charge you the law that applies to
11 the facts. It's not a question of what you feel the law
12 might be or what it should be. It is not necessarily what
13 the lawyers may have told you it is because under your
14 oath, you are required to take the law as I give it to
15 you, apply that law to the facts as you determine those
16 facts to be, and to write your verdict accordingly.

17 Now, ladies and gentlemen, in this case as
18 with all cases, this defendant comes into the courtroom
19 presumes to be innocent and this presumption continues and
20 carries through this entire trial unless and until it is
21 removed by evidence that satisfies you of his guilt beyond
22 a reasonable doubt.

23 The burden is on the State in this case to
24 prove this defendant guilty and to prove each and element
25 of the offenses for which he is charged beyond a

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1 reasonable doubt. Some of you may have in the past served
2 as jurors in civil cases and if so most likely told that
3 it is only necessary to prove that a fact was more likely
4 true than not true. In criminal cases, the State's proof
5 must be more powerful. As I told you it must be beyond a
6 reasonable doubt.

7 Now, proof beyond a reasonable doubt is proof
8 that leaves you firmly convinced that this defendant is
9 guilty. There are very few things we know with absolute
10 certainty and in criminal cases our law does not require
11 proof that over comes any possible doubt. If based on
12 your consideration of the testimony and evidence in this
13 case, you are firmly convinced that this defendant is
14 guilty, then you must find him guilty. If on the other
15 hand, there's a real possibility that he is not guilty,
16 then you must give him the benefit of that doubt and find
17 him not guilty.

18 Now, ladies and gentleman, our law does not
19 compel the defendant in a criminal case to take the stand
20 and testify or present any evidence and no presumption of
21 guilt may be raised and no inference of any kind may be
22 drawn from this defendant's decision not to testify. Our
23 law never imposes upon a defendant in a criminal case the
24 duty or burden of calling any witnesses or producing any
25 evidence or in testifying; therefore, the decision of this

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1 defendant not to take the stand and testify in his behalf
2 can not be taken, held, discussed, or considered against
3 him in any manner whatsoever.

4 Now, ladies and gentlemen, under the oath you
5 took in this case you swore to try this case based only
6 and solely on the testimony and evidence presented in the
7 courtroom. I tell you that it is your duty to lay aside
8 all outside opinions, bias, prejudice, or sympathy you may
9 have in reaching your verdict. The word verdict is taken
10 from the latin word veredicto which means to speak the
11 truth. You have no friends to reward or enemies to punish
12 in this case. I charge you to abide by your oath and
13 return verdicts that speak the truth.

14 Now, you will have with you in the jury room
15 the indictments in this case. They do not constitute
16 evidence. They simply set forth the allegations by the
17 State. They are the legal documents by which the case is
18 brought into the courtroom and considered for you in your
19 determination.

20 Ladies and gentlemen, with respect to your
21 verdicts they are one of two possible verdicts for each
22 indictment, guilty or not guilty. And whatever those
23 verdicts are, they must be unanimous. That is all 12 of
24 you must agree. Madam foreman, you will find a place on
25 the back of each indictment where it says verdict.

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1 Whatever the unanimous verdict of the jury is, guilty or
2 not guilty, please write out that verdict, guilty or not
3 guilty under the line that says verdict and then sign your
4 name on the line which says fore person.

5 At this time, I am required to go over my
6 charge with the lawyers. I need you to go back into your
7 jury room but don't begin deliberating until I send word
8 in for you to do so. Thank you.

9 (Whereupon, the jury exits the courtroom.)

10 All right, anything further from the State?

11 MS. MAJOR: No, Your Honor.

12 THE COURT: From the defense?

13 MR. CHAMBERS: No, Your Honor.

14 THE COURT: Okay. We'll be at ease. Tell
15 them to deliberate and bring in the alternate.

16 (Whereupon, jury deliberations began at
17 12:00 p.m.)

18 Ms. Hendrix, since our 12 jurors have made it
19 through this case, this will conclude your service on the
20 case. We've ordered the lunch for you and when you get
21 that you can take it home with you or leave but you're
22 through. What I need you to do is when you do leave if
23 you'll call back in after 6:00, we'll let you know when to
24 come back. Okay. Thank you.

25 (Whereupon, the alternate was dismissed from

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1 the case.)

2 THE COURT: All right. Be at ease, please.

3 (Whereupon, jury deliberations concluded at
4 1:00 p.m.)

5 I understand we have a verdict. Anything
6 before I bring the jury?

7 MS. MAJOR: Nothing from the State.

8 MR. CHAMBERS: Nothing from the defense, Your
9 Honor.

10 THE COURT: Bring them on.

11 (Whereupon, the jury re-enters the
12 courtroom.)

13 Okay. Publish the verdicts, please.

14 THE CLERK: Your Honor, in Case No. 2010-GS-
15 23-4204, the State versus Buddy Arizona Harris, indictment
16 for petty larceny. The verdict is guilty. Signed
17 fore person, Michele Jackson.

18 2010-GS-23-2141 indicted for breaking and
19 entering a motor vehicle, the verdict is guilty. Signed
20 fore person, Michele Jackson. Indictment 2010-GS-4203,
21 indictment for petty larceny, the verdict is guilty.
22 Signed fore person, Michele Jackson.

23 2010-GS-23-2140, indicted for breaking and
24 entering a motor vehicle, the verdict is guilty. Signed
25 forenoon, Michele Jackson.

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1 If this is your verdict, please raise your
2 right hand.

3 (Jury collectively complies.)

4 THE COURT: Anything further for the jury?

5 MS. MAJOR: No, sir.

6 MR. CHAMBERS: Nothing from the defense.

7 THE COURT: Thank you, ladies and gentlemen,
8 for your service on this case. We're through for today.
9 What I need for you to do is call in after 6:00 p.m. and
10 we'll let you know when to come back. Okay. So call in
11 after 6:00 p.m., and thank you so much for your service on
12 this case.

13 (Whereupon, the jury was dismissed for the
14 evening.)

15 Any motions?

16 MR. CHAMBERS: Your Honor, I'd like to make a
17 motions for judgment notwithstanding the verdict and a
18 motion for a new trial.

19 THE COURT: And I'll have to deny your
20 motions.

21 All right, you exercised your Constitutional
22 Right not to testify in your defense. At this time, you
23 have a perfect right to address the Court with respect to
24 sentence. Is there anything, sir, that you'd like to say
25 now before I sentence you?

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1 DEFENDANT HARRIS: Yes, sir. I didn't take
2 the stand because I do have a past record and I knew that
3 would make me look like a worse guy than what I really
4 was. All in all, I give the guy a ride and stopped to get
5 something to eat and the guy did what he did. I didn't
6 participate. When I was asked, I told them exactly what
7 happened to the police officers. I agreed with it to go
8 to the police station and give a statement, and in giving
9 this statement, it really wasn't the best thing to do I
10 don't reckon.

11 I mean I've done a lot in my past wrong and
12 he was going to keep harping on my past, my past, my past,
13 my past and I knew my past is bag and that's the only
14 reason I didn't take the stand to tell my side of the
15 story which is really a bad decision.

16 THE COURT: Okay. Does he have a prior
17 record?

18 MS. MAJOR: Yes, Your Honor. 1992, petty
19 larceny, 1993 burglary third degree, escape, 1993 petty
20 larceny, two counts of burglary second degree, 2003, three
21 counts of forgery, two counts of failure to return rental
22 property, two counts of receiving stolen good, two counts
23 of obtaining goods under false pretenses, 2004, two counts
24 of receiving stolen goods, two counts of forgery, 2009 use
25 of a vehicle without consent and petty larceny.

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1 THE COURT: Mr. Chambers.

2 MR. CHAMBERS: Your Honor, my client has,
3 except for the trouble that he finds himself in and what
4 he was telling you about his past, has really straightened
5 his life up. He works. He has a finance who is here with
6 him. They have been very supportive of each other. She
7 was just telling me during the break the biggest problems
8 he has is he continues to have some friends and associates
9 that do things that are bad things and he shouldn't be
10 around them.

11 We know from the testimony earlier that the
12 co-defendant go a probationary sentence and I ask the
13 Court to take that into consideration and I ask the Court
14 to be as lenient as possible under the circumstances.

15 THE COURT: Solicitor, I made a mistake, do
16 you have a blank ---

17 MS. MAJOR: I can go get one if you would
18 just let me know what indictment that was.

19 THE COURT: 4204 for petty larceny.

20 MS. MAJOR: Thank you.

21 Here you are, Your Honor.

22 THE COURT: All right, Mr. Harris, Indictment
23 2010-2140, indictment for auto breaking, the sentence of
24 the Court is you be committed to the Department of
25 Corrections for a period of five years. Indictment for

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1 auto breaking 2010-2141, the sentence of the Court is that
2 you be committed to the Department of Correction for a
3 period of five years consecutive to the other sentence
4 provided on the service of three years. The balance is
5 suspended, probation for five years.

6 And on each of the two petty larceny,
7 indictments 30 days concurrent.

8 ---END OF TRANSCRIPT RECORD---

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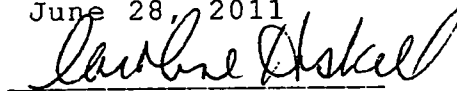
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State versus Harris

1 I, the undersigned, Caroline Hiskell,
2 Official Court Reporter for the Thirteenth Judicial
3 Circuit of the State of South Carolina, do hereby certify
4 that the foregoing is a true, accurate, and complete
5 transcript of record of all the proceedings had and
6 evidence introduced in the trial of the captioned case,
7 relative to appeal, in the Circuit Court of Greenville
8 County, South Carolina on the 18th day of May, 2011.

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

11
12
13 June 28, 2011

14 

15 Caroline Hiskell
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25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BUDDY ARIZONA HARRIS,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether he trial court judge erred when he sentenced Harris to 8 years incarceration when that term of imprisonment is disproportionate to the crimes of two counts of auto-breaking and petit larceny when the only items stolen were a purse and jumper cables?

STATEMENT OF THE CASE

Buddy Arizona Harris was indicted by the Greenville County grand jury for 2 counts of auto breaking, and 2 counts of petit larceny. He was tried before the Honorable Victor Pyle, and a jury on May 18, 2011. He was represented by Randy Chambers, Esquire. He was convicted on all counts, and sentenced to 5 years on one count of auto breaking, and an additional 5 years, provided on the service of 3 years, and 5 years probation, to be served consecutively to the first sentence.

This appeal timely follows.

ARGUMENT

The trial court judge erred when he sentenced Harris to 8 years incarceration when that term of imprisonment is disproportionate to the crimes of two counts of auto-breaking and petit larceny when the only items stolen were a purse and jumper cables.

Harris was convicted of offenses that occurred on February 4, 2010. On that date, two young women who worked at a local restaurant had their cars broken into. One victim had her purse, which contained her change purse, stolen from her car. The other victim, whose car was unlocked, had jumper cables removed from her car. R. 10, l. 14- 23, l. 13. Harris and his co-defendant, Joshua Humphrey, were stopped by police officers after police received a phone call from the local Publix grocery store complaining that two white males were acting suspiciously and looking into cars. R. 39, ll. 15-21. Officers stopped them, and they were taken back to police headquarters. They spoke to the police officers. Harris's co-defendant, after hearing Harris implicate him solely in these crimes, then took law enforcement officers to where they had disposed of the victim's pocketbook, and gave a complete confession to these crimes. At trial, he testified against Harris who has consistently maintained that he did not participate in these crimes. R. 43, l. 4- 58, l. 4. Harris did not testify at trial.

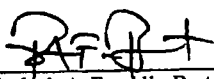
Harris was convicted, and the trial court judge sentenced him to the statutory maximum of 5 years on one count of auto breaking, and then ran that sentence consecutively to another five-year sentence which he suspended on the service of 3 years, plus an additional 5 years of probation. Under the unique circumstances of this case where relatively minor items were stolen, the trial court judge abused his discretion by imposing such a lengthy sentence.

"An abuse of discretion occurs when the trial court's ruling is based on an error of law or factual conclusion without evidentiary support." State v. Tumbleston, 376 S.C. 90, 93, 654 S.E.2d 849, 851 (Ct. App. 2007). An excessive sentence can violate the 8th Amendment to the Federal Constitution and the South Carolina State Constitution. State v. Conally, 227 S.C. 507, 88 S.E.2d 591 (1955). See also State v. Kimbrough, 212 S.C. 348, 46 S.E.2d 273 (1948) (an excessive sentence can violate our state provision forbidding cruel and unusual punishment); South Carolina State Constitution, Article I, §19. And see Weems v. United States, 217 U.S. 349 (1910) (imprisonment of 12 to 20 years for falsifying a public document was held to constitute cruel and unusual punishment). Since the items at issue here are of relatively minor value, and because the crimes themselves were not aggravated, the trial court judge abused his discretion by sentencing Harris to 8 years active incarceration. Respectfully, Harris asks this Court to remand his case for a new sentencing hearing.

CONCLUSION

For the preceding reason, Harris respectfully asks this Court to remand his case for a new sentencing hearing.

Respectfully submitted,


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of March, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that 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."



ELIZABETH A. FRANKLIN-BEST
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BUDDY ARIZONA HARRIS,

APPELLANT

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 Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 27th day of March, 2012.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of March, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BUDDY ARIZONA HARRIS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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S.C. Code Ann. § 16-13-160 (2003) 3

S.C. Code Ann. § 16-13-30 (Supp. 2009) 3

STATEMENT OF ISSUE ON APPEAL

The defendant states that his sentence of eight years imprisonment was disproportionate to the two counts of auto breaking and petit larceny, since only a purse and jumper cables were stolen, and asks whether the sentence was error. (Appellant's Statement of Issue on Appeal).

STATEMENT OF THE CASE

The Greenville County Grand Jury charged the defendant for acts committed on, or about, February 4, 2010, with two counts of petit larceny (less than one thousand dollars) (2010-GS-23-4203 and 2010-GS-23-4204) and two counts of breaking and entering a motor vehicle (2010-GS-23-2140 and 2010-GS-23-2141). The defendant and his counsel came to trial May 18, 2011 before the Honorable Victor Pyle, Judge, and a jury. The jury found the defendant guilty. The court imposed concurrent sentences of thirty days imprisonment for each count of petit larceny. For breaking and entering a motor vehicle the court imposed five years imprisonment (2010-GS-23-2140) and a consecutive term of five years imprisonment suspended on service of three years and probation for five years (2010-GS-23-2141). The defendant served opposing counsel a timely notice of appeal.

ARGUMENT

There is no basis to review the court's imposition of sentence.

During the sentencing hearing, the defendant said that he had not participated. He told the officers exactly what happened, but he admitted doing a lot of things wrong in the past. The assistant solicitor offered the defendant's record. Defense counsel noted that the defendant worked and had really straightened up his life, and his fiancé thought he was around the wrong people. For breaking and entering a motor vehicle the court imposed five years imprisonment (2010-GS-23-2140) and a consecutive term of five years imprisonment suspended on service of three years and probation for five years (2010-GS-23-2141). The court imposed concurrent sentences of thirty days imprisonment for each count of petit larceny. (ROA. p. 101, line 21 - p. 104).

Breaking and entering a motor vehicle, S.C. Code Ann. § 16-13-160 (2003), is punishable by not more than five years imprisonment, and [simple] petit larceny, S.C. Code Ann. § 16-13-30 (Supp. 2009), is punishable by not more than thirty days imprisonment. Sentencing is the responsibility of the trial judge, and the court gave both the defendant and defense counsel an opportunity to canvass matter in mitigation. Where the sentence is within the limits permitted by law and there is no showing of partiality, prejudice, oppression or corrupt motive, the sentence should be affirmed. State v. Benning, 338 S.C. 59, 524 S.E.2d 852 (Ct.App. 1999). Moreover, the defendant does not show where he raised a challenge at trial to the imposed sentence, and the assignment of error should not be considered. "[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 9, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BUDDY ARIZONA HARRIS,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., 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 his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 9th day of March, 2012.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

BUDDY ARIZONA HARRIS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule
211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

March 9, 2012

**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.

Buddy Arizona Harris, Appellant.

Appellate Case No. 2011-193086

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-474
Submitted July 2, 2012 – Filed August 1, 2012

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Senior Assistant
Attorney General Harold M. Coombs, Jr., all of
Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Buddy Arizona Harris appeals his sentences for two counts of petit larceny and two counts of breaking and entering a motor vehicle. The trial judge imposed a sentence of five years' imprisonment for the first count of breaking and entering a motor vehicle; a consecutive sentence of five years' imprisonment for the second count of breaking and entering a motor vehicle, suspended on the service of three years, with five years' probation; and concurrent sentences of thirty days' imprisonment for each count of petit larceny. Harris argues the sentence is disproportionate to the crimes committed because the only items stolen were a purse and jumper cables. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authority: *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review.").

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Greenville)Buddy Arizona Harris #191201)

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

v.)

2012-CP-23-06446

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

ENTERED COMPUTER

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Manning Corr. Pre Release
2. Name and location of Court which imposed sentence General Sessions
Greenville Co 2d.
3. Name(s) of co-defendant(s) (if any) Joshua Humphrey
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010 AS2302140 A/W # 11178581 Larceny/Breaching into Motor Vehicle

- (b) 2010 GS 000141 A/w # M178576 Mercury / loading into motor vehicle
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 5-18-2011 5 years state Dept Corr.
- (b) 5-18-2011 5 years Probation upon service of 3 years of Probation 5 yrs
- (c) 2010 GS2300141 Consecutive to 2010 GS2300140
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Jury Trial May 18th 2011 @ Arceneville
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. That the Sentence is Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted July 2, 2012 - Filed August 1, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel. Counsel's representation
- (b) fell below objective standard of reasonableness, but for Counsel
- (c) unprofessional error, result of proceeding would have been different.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Mr. Randy Chambers, assistance as Attorney in the Case of
- (b) State of South Carolina vs Buddy Arizona Harris County of
- (c) Greenville May 1st 2011. Mr Chambers representation fell. ^{See} Attorney
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Direct Appeal
(S.C. Court of Appeals)
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO ^{DA} Filed habeas Corpus w/ this PCR.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Submitted July 2, 2012 - Filed August 1 2012 / The sentence
- ii. Affirmed because "Counsel for defendant failed to
- iii. raise challenge to sentence at trial. So the issue will
- iv. Not be preserved for Appellate review."
- (b) the name and location of the Court in which each was filed:
- i. The South Carolina Court of Appeals
- ii. P.O. Box 11549
- iii. Columbia SC 29211

State of South Carolina
County of Greenville
Buddy Arizona Harris
vs

State of South Carolina

Form 5

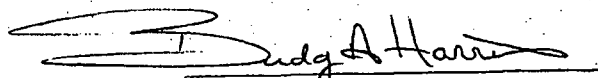
In The Court of Common Pleas

Application For
Post-Conviction Relief

Attachment Pg 3 # 11

Mr Randy Chambers, assistance as Attorney in the Case of State of South Carolina vs. Buddy Arizona Harris County of Greenville May 18th 2011, was defective and requires a reversal of the Conviction. Mr Chambers' representation fell below objective standard of reasonableness and that there is reasonable Probability that, but for Mr Chambers unprofessional errors, result of Proceeding should have been different. Counsel's errors were so serious that it deprived defendant Buddy Arizona Harris of a fair trial. If Counsel had done his duty to Make reasonable investigations or to Make a reasonable decision, the outcome of trial would have been different. As in Strickland vs Washington 466 U.S. 668, 104 S.Ct. 2052 and in Hill vs Cockhart 410 U.S. 1006 S.Ct. 336 (1965)

The Counsel also erred at the sentencing hearing by not raising a challenge at trial to the imposed sentence. In State v Johnston 333 S.C. 459, 510 S.E.2d 423 (1999) (A) Challenge to Sentencing Must be raised at trial, or the issue will not be Preserved for appellate review. If Mr. Chambers, Counsel for defendant would have raised that his Sentence of eight years imprisonment was disproportionate to the two Counts of Auto breaking and Petit larceny. Sentencing at trial would have been different!


Buddy A. Harris

- iv. _____
- (c) the disposition thereof:
- i. Sentence Affirmed
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. Submitted July 2, 2012 Filed August 1, 2012
- ii. _____
- iii. Initial Brief of Appellant was filed September 22, 2011
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____
- _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? Randy Chambers Esquire
 (c) your sentencing? Randy Chambers, Esquire
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

(a) the name and address of each attorney who represented you:
 i. Randy Chambers, Esquire / Breen R Stevens
201 East North St. / 1330 Lady Street Suite 401
 ii. Greenville, SC 29601 / Columbia S.C. 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Randy Chambers, Esquire represented the trial
@ Greenville S.C.
 ii. _____
 iii. Breen R Stevens, represented the Appeal with
the Court of Appeals.

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

Reversal of the Conviction, New Trial and/or
Sentencing

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
 County of _____)

VERIFICATION

I, Buddy Arizona Harris, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Buddy A Harris

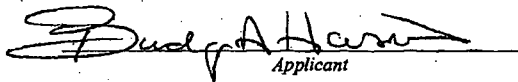
SWORN to and subscribed before me this 10th
 day of September, 2012.
Elizabeth D. Wren (T.S.)
 Notary Public

My Commission Expires: My Commission Expires May 30, 2017

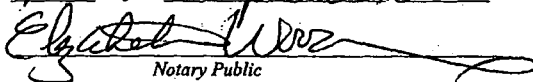
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Buddy Arizona Harris, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
10th day of September, 2012


Notary Public

My Commission Expires: My Commission Expires May 30, 2017

**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.

Buddy Arizona Harris, Appellant.

Appellate Case No. 2011-193086

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-474
Submitted July 2, 2012 – Filed August 1, 2012

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Senior Assistant
Attorney General Harold M. Coombs, Jr., all of
Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Buddy Arizona Harris appeals his sentences for two counts of petit larceny and two counts of breaking and entering a motor vehicle. The trial judge imposed a sentence of five years' imprisonment for the first count of breaking and entering a motor vehicle; a consecutive sentence of five years' imprisonment for the second count of breaking and entering a motor vehicle, suspended on the service of three years, with five years' probation; and concurrent sentences of thirty days' imprisonment for each count of petit larceny. Harris argues the sentence is disproportionate to the crimes committed because the only items stolen were a purse and jumper cables. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authority: *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review.").

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

~~Bill D. Cockburn~~

~~So. Court has "1105-115"~~

~~"Strickland vs. Washington"~~

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillegov.org

OCTOBER 9TH 2012

BUDDY A HARRIS 191201
MANNING CORRECTIONAL INSTITUTION
502 BECKMAN DR
COLUMBIA SC 29203

BUDDY HARRIS

ENCLOSED YOU WILL FIND A COPY OF YOUR POST CONVICTION
RELIEF APPLICATION. YOUR CIVIL CASE NUMBER IS
2012CP2306446.

A COPY OF YOUR PCR HAS BEEN FORWARDED TO THE
ATTORNEY GENERAL'S OFFICE.

ONCE IT IS DETERMINED THAT A HEARING SHALL BE
SCHEDULED, THE PROCESS FOR ATTORNEY ASSIGNMENT WILL
BEGIN. THIS MAY TAKE SEVERAL MONTHS.

WE ONLY FILE THE PCR APPLICATIONS. WE DO NOT SET COURT
DATES NOR ARE WE ABLE TO ANSWER QUESTIONS CONCERNING
YOUR CASE.

THANK YOU
CLERK OF COURT'S OFFICE

FILED
OCT 9 2012
CLERK OF COURT
JW

P.C.R.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Buddy Arizona Harris,
S.C.D.C. #191201,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-23-6446

RETURN

ENTERED COMPUTER

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
MAY 15 2013
PM 3:50

In response to the post-conviction relief application filed October 9, 2012, the Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections. The Greenville County Grand Jury indicted the Applicant at the April 2011 term of General Sessions for two (2) counts of breaking and entering a motor vehicle (2010-GS-23-2140, -2141), and two (2) counts of petit larceny (2010-GS-23-4203, 4204). Randall L. Chambers, Esquire, represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On May 18, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to consecutive terms of five years for one count of breaking and entering a motor vehicle (2010-GS-23-2140) and five year suspended on service of three years and five years probation on the second count of breaking and entering a motor vehicle (2010-GS-23-2141). Judge Pyle levied concurrent sentences of thirty days for each count of petit larceny.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A.

Copy mailed to applicant
~~order~~ to appoint atty prepared
on 5 / 15 / 13

Farnklin-Best, Esquire, perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Harris, Op. No. 2012-UP-474 (S.C. Ct. App. filed August 1, 2012).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the appellate records, and the Department of Corrections records.

II.

In his application for post-conviction relief the Applicant alleges his conviction was unlawful for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Counsel did not adequately prepare the case.
 - b. Counsel failed to object to the sentence.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

"rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 2, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

BUDDY ARIZONA HARRIS, 191201)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2012-CP-23-6446

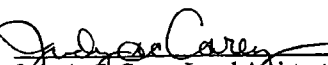
AFFIDAVIT OF SERVICE BY MAIL

FILED
CLERK OF COURT
GREENVILLE, SC
2013 MAY 15 PM 3:50

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Buddy Arizona Harris, 191201
Manning Correctional Institution
502 Beckman Drive
Columbia SC 29203**

DATED this 2nd day of May, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

BUDDY ARIZONA HARRIS,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-06446

FEBRUARY 19, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

DAVID HARRISON, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Index

2

1

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Randall Lee Chambers				
Ratigan	25			
Harrison		33		
				PAGE
Certificate of Reporter				44

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Index

3

PLAINTIFF' S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT' S EXHIBITS

	(NONE)		

COURT' S EXHIBITS

	(NONE)		

1 **FEBRUARY 19, 2014**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor, may it
6 please the court. This is the case of Buddy Harris
7 versus the State of South Carolina. The docket number
8 is 2012-CP-23-6446. Mr. Harris was indicted for two
9 counts of breaking and entering a motor vehicle and two
10 counts of petit larceny. He was represented on these
11 charges by Mr. Chambers. The case was brought to trial
12 before Judge Pyle in May of 2011. Mr. Harris was found
13 guilty as indicted. On May 18th of 2011, Judge Pyle
14 sentenced consecutive sentences of five years for one
15 count of breaking and entering a motor vehicle and five
16 years suspended on service of three years and five years
17 probation on the second count of breaking and entering a
18 motor. He then levied concurrent sentences of thirty
19 days for each count of petit larceny. Mr. Harris did
20 file an appeal. The Court of Appeals affirmed his
21 convictions and sentences in August of 2012. And the
22 state is ready to proceed.

23 THE COURT: Mr. Harrison.

24 MR. HARRISON: Please the court, Your Honor.
25 We would call Mr. Harris.

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

5

1 THE COURT: All right, sir. If you would come
2 around to be sworn.

3 MR. HARRISON: Do you need your file with you,
4 Mr. Harris?

5 MR. HARRIS: No, sir.

6 THE CLERK: Mr. Harris, please place your left
7 hand on the bible. Raise your right hand.

8 You do solemnly swear or affirm that the testimony
9 you're about to give in this case will be the truth, the
10 whole truth and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Please state your full
13 name for the record.

14 THE WITNESS: Buddy Arizona Harris.

15 THE CLERK: Thank you. You may be seated.

16 **BUDDY ARIZONA HARRIS,**

17 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MR. HARRISON:**

20 Q. Mr. Harris, you went to trial on May the 18th of
21 2011; is that correct?

22 A. Yes, sir, it is.

23 Q. Who was your attorney at that time?

24 A. Mr. Randall Chambers.

25 Q. How long had Mr. Chambers been representing you at

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

6

1 that point?

2 A. If I'm not mistaken right at fifteen months.

3 Q. Fifteen months?

4 A. Yes.

5 Q. Was Mr. Chambers appointed counsel for you or was

6 he what we refer to as retained counsel?

7 A. He was retained.

8 Q. So you had paid him as a private attorney in this

9 matter?

10 A. Yes, sir.

11 Q. How many times did you meet with Mr. Chambers

12 prior to your trial?

13 A. I met with him one time when he was paid and I met

14 him three days before the trial to discuss the matter of

15 the trial.

16 Q. So you met with him when you initially hired him

17 and you didn't see him again for months until -- you

18 said it was three days before your trial?

19 A. Yes, sir.

20 Q. Okay. Had he provided you with discovery

21 materials or anything prior to your meeting with him

22 before the trial?

23 A. No, sir, he did not.

24 Q. Did he provide you with discovery materials on

25 that day you met him three days before your trial?

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Buddy Arizona Harris - Direct Examination by Mr. Harrison

7

1 A. I don't think I received my discovery until after

2 I was sentenced.

3 Q. So you could have documents -- or there's no

4 evidence of where he had provided you with any discovery

5 or discussed any of this matter with you prior to three

6 days before trial; is that correct?

7 A. Yes, sir.

8 Q. In the course of your trial, a co-defendant

9 testified against you; is that correct?

10 A. Yes, sir, he did.

11 Q. Do you know whether or not that co-defendant had

12 any kind of prior records?

13 A. I was aware that he -- out of his mouth he had,

14 but not ---

15 Q. Do you know whether or not, in your discovery, it

16 showed that your alleged co-defendant had a record? Do

17 you know what -- I'll say a rap sheet; do you know what

18 I'm talking about?

19 A. No, sir.

20 Q. Do you know whether or not you were provided that

21 in your discovery?

22 A. No, sir, I wasn't.

23 Q. ~~When he took the witness stand -- well, let me~~

24 back that up. A big thrust of the case against you was

25 testimony from a co-defendant; is that correct?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

8

1 A. Yes, sir.

2 Q. In other words, the evidence that was found about
3 the breaking into the cars, that evidence that was found
4 was all found as a result of the co-defendant; is that
5 correct?

6 A. Yes, sir, it is.

7 Q. So he took everybody around -- took the police
8 around and showed them where he says a purse was thrown
9 out or this was thrown out, and they recovered some of
10 those items; is that correct?

11 A. Yes, sir.

12 Q. And he knew exactly where they were?

13 A. That's correct.

14 Q. So you contend that his credibility was a big
15 issue within your trial?

16 A. Yes, sir.

17 Q. Would you have liked to have seen your lawyer --
18 when I use the term here, lawyer term, do you know what
19 I mean when I say impeachment? Do you know what that
20 means?

21 A. Vaguely, yeah.

22 Q. All right. In other words, asking someone a
23 question about their criminal past or some inconsistency
24 in their testimony, that's sort of like -- well, the
25 word is impeach, but it's to shed a light and by shining

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

9

1 that light on there, it might show that his testimony is
2 less than believable. Do you understand that?

3 A. Yes, sir.

4 Q. Do you think that asking him about his criminal
5 record would have been helpful for the jury ---

6 A. Yes, sir, it would have.

7 Q. --- to determine whether or not he was telling the
8 truth? He also, your co-defendant, was asked by your
9 counsel about you guys going to eat at Jack In The Box.
10 Your lawyer asked that question; didn't he?

11 A. Yes, sir, he did.

12 Q. And your co-defendant had denied that; is that
13 correct, at trial?

14 A. Yes, sir, he did.

15 Q. And it was your contention that you were actually
16 at a Jack In The Box earlier that day and not where they
17 allege; is that correct?

18 A. That is correct.

19 Q. And did you bring any witnesses with you to the
20 courtroom who could have established that you, in fact,
21 had gone to that Jack In The Box?

22 A. Yes, sir, I did.

23 Q. ~~Does the name Daniel Harris, and I believe it's~~

24 Greg Thompson. But Mr. Harris and Mr. Thompson; does

25 that ring a bell with you?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

10

1 A. Yes, sir.

2 Q. Who are those individuals?

3 A. One is my uncle. The guy that I work with is my
4 uncle. And the other guy, Greg Thompson, is a guy that
5 his garage, we had to do epoxy floors for. We was going
6 to do his garage. We was there to bid a job and sign a
7 contract. That's what the whole meeting at Jack In The
8 Box was about.

9 Q. So y'all had a meeting at Jack In The Box?

10 A. Yes, sir.

11 Q. And your co-defendant alleged that y'all had gone
12 to Flatrock Grill?

13 A. Yes, sir.

14 Q. Something like that?

15 A. Something like that.

16 Q. Your lawyer asked him about Jack In The Box in the
17 testimony; didn't he?

18 A. Yes, sir, he did.

19 Q. But your lawyer never produced anything to
20 contradict that; did he?

21 A. No, sir.

22 Q. Okay. The two witnesses that you had brought, Mr.
23 Harris and Mr. Thompson, did you bring those witnesses
24 yourself or were they as a result of a subpoena by your
25 attorney?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

11

- 1 A. I brought them myself.
- 2 Q. Did your attorney subpoena any witnesses for you?
- 3 A. No, sir, he did not.
- 4 Q. Had you told him about these witnesses when you
- 5 met him three days before your trial?
- 6 A. I did then and I did the first time. Both times I
- 7 met with him I told him that I had witnesses.
- 8 Q. So when you initially hired him, you told him you
- 9 had some witnesses?
- 10 A. Yes, sir.
- 11 Q. Did you have those names for him at that time?
- 12 A. Yes, sir, I did.
- 13 Q. Do you know whether or not he ever interviewed any
- 14 of those witnesses?
- 15 A. No, sir, he never did.
- 16 Q. And you met him three days before the trial again,
- 17 and did you reaffirm about these witnesses that would
- 18 contradict ---
- 19 A. Yes, I did.
- 20 Q. Did he then -- did you let him know the day of
- 21 your trial that you had those witnesses in the courtroom
- 22 with you?
- 23 A. Yes, sir, I did.
- 24 Q. To your knowledge had he ever interviewed any of
- 25 those witnesses?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

12

1 A. No, sir, he didn't.

2 Q. Did you mention to your lawyer that there would be

3 this conflict over where you were, the Jack In The Box

4 versus Flatrock Grill, did you mention to your lawyer

5 that the potential existed for video cameras that would

6 show that you were at that Jack In The Box?

7 A. Yes, I did ask him is there some way we could get

8 video surveillance.

9 Q. And was that when you first met with him?

10 A. Both times I mentioned that.

11 Q. Okay. So coming from your trial date about

12 fifteen months back from when you hired your attorney,

13 you mentioned that not only did you have witnesses about

14 Jack In The Box, who had been there, but that the video

15 tape from Jack In The Box would probably prove that you

16 were there?

17 A. Yes, sir, it would have.

18 Q. Did you go yourself and make any investigation

19 about whether there were cameras there in the parking

20 lot and so forth at Jack In The Box?

21 A. Once I made bond, yes, sir, I did do that. I did

22 know that.

23 Q. And what did you discover when you went out there

24 after you were out on bond?

25 A. Well, the Jack In The Box has cameras at all their

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

13.

1 registers behind it where they can see. Also, the whole
2 Cherrydale area right there, between there and the
3 Flatrock Grill has cameras from one end to the other of
4 Cherrydale.

5 Q. All right. Did you tell your attorney that -- did
6 you discuss that with your attorney?

7 A. I mentioned it.

8 Q. Did he indicate to you that he would either look
9 into it or investigate it or subpoena those or anything
10 like that?

11 A. He sort of just kind of blew it off, said it
12 wouldn't matter anyway.

13 Q. Now, was that because he thought that the actual
14 live body witnesses would be sufficient? Or did he --
15 did you have any discussion? He just ---

16 A. There was a brief discussion and that was never
17 discovered -- I mean, discussed.

18 Q. Do you know of anything that your attorney had
19 done in terms of investigation of any of this from the
20 time you hired him until three days before your trial?

21 A. No, sir. I don't think he done no investigations.

22 Q. Do you believe that failing to interview witnesses
23 ~~you had there that could contradict the state's chief~~
24 witness against you, do you think that that falls below
25 a reasonable standard for an attorney to exercise?

1 A. Yes, sir, I do.

2 Q. Do you believe that had he called those witnesses
3 to contradict the testimony of the co-defendant, that
4 the outcome of your trial might have been different?

5 A. Yes, sir, I do believe it would have.

6 Q. Now, as your trial wound down, there came a time
7 when it was time for you to put up your case.

8 A. Yes, sir.

9 Q. Do you remember that?

10 A. Yes, sir, I do.

11 Q. And that's after the state's put up their evidence
12 and the state had closed their case and it becomes your
13 turn. You elected or -- you didn't testify in your
14 case; is that correct?

15 A. Yes, sir.

16 Q. Did you call any witnesses in your case?

17 A. No, sir.

18 Q. Did you put up any evidence whatsoever in your
19 case?

20 A. No, sir.

21 Q. You were examined by the court, they called you up
22 there, the judge did, Judge Pyle, and he examined you
23 about -- and explained to you your right to take the
24 stand and your right that it couldn't be used against
25 you. Do you remember that?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

15

1 A. Yes, sir, I do.

2 Q. Okay. Well, did you want to testify?

3 A. Yes, sir, I did want to testify.

4 Q. Well, why didn't you testify?

5 A. My attorney at the time said that if I testified,
6 because I had a prior record, that they would hold that
7 against me and I -- it would be impeached or thrown out
8 and it wouldn't matter anyway, so I would be really
9 wasting my time. So I didn't, you know. But I wanted
10 to tell my side of the story and I never got a chance.

11 Q. So your side never got told by anybody?

12 A. No, sir.

13 Q. Well, once you elected, you yourself, not to
14 testify, did you have a discussion with your lawyer at
15 that point about, well, I've got other witnesses here?

16 A. Yeah. I told him, I said, -- I told him before
17 the trial, I said, I've got witnesses here. And he
18 said, well, if we need them we'll use them. But I think
19 I've got this. That was his exact words, I think.

20 Q. And so after you chose not to testify, there were
21 no witnesses called?

22 A. No, sir.

23 Q. ~~And you subsequently wound up convicted; is that~~
24 correct?

25 A. Yes, sir, I did.

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

16

1 Q. One of the things you've complained about was that
2 you were sentenced in one of the counts -- in one of the
3 counts you got five years, which is within the statute
4 for your conviction. On the other count, you were
5 sentenced to five years, but that was suspended down to
6 service of three years and then five years of probation
7 on top of that; is that correct?

8 A. That is correct.

9 Q. Is it your contention that that second sentence,
10 the one with the three years suspended and five years,
11 that that constitutes a sentencing outside the statute?

12 A. Yes, sir, it does.

13 Q. So actually you were exposed to the potential for
14 an eight year sentence on a charge that carried five; is
15 that correct?

16 A. That is correct.

17 Q. Now, your lawyer -- you filed an appeal; did you
18 not?

19 A. Yes, sir.

20 Q. And the appeal got perfected?

21 A. Yes, sir.

22 Q. And it resulted in an opinion; is that correct?

23 A. Yes, sir, it did.

24 MR. HARRISON: Your Honor, I would call the
25 court's attention to appellate case number 2011-193086,

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

17

1 an appeal from Greenville County, Judge Pyle, an
2 unpublished opinion, number 2012-UP-474, submitted July
3 2nd, 2012, filed August the 1st of 2012.

4 Q. Is that the opinion that results from the Court of
5 Appeals from your appeal of your sentence?

6 A. Yes, sir.

7 Q. Did you seek to raise the issue about this
8 potential eight year sentence on a five year charge in
9 your appeal?

10 A. Yes, sir, I did.

11 Q. Okay. Did the Court of Appeals say that that
12 couldn't be challenged because the challenge to the
13 sentencing had to be raised at trial or the issue
14 wouldn't be preserved for appellate review?

15 A. Yes, sir.

16 Q. Okay. So what does that say to you? Do you
17 understand what that means?

18 A. Yes, sir.

19 Q. All right. What does that mean to you?

20 A. That my lawyer was ineffective assistance of
21 counsel. He didn't raise it at trial. It was an error
22 on his part.

23 Q. ~~So you contend that your lawyer should have~~
24 objected to the potential eight year sentence that you
25 had received here, but that you can't even -- couldn't

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

18

1 even raise it on appeal because your lawyer failed to
2 object to it?

3 A. Yes, sir.

4 Q. Now, there were some other issues in that there
5 were some discussions, some impeachment stuff that was
6 -- the court knew wasn't explored by your counsel at the
7 trial; is that correct? Some other issues?

8 A. Yes, sir.

9 Q. For example, do you contend that some of the
10 indictments and the warrants and so forth on -- for
11 example, one of the vehicles mentioned jumper cables and
12 a GPS and some other materials taken?

13 A. Yes, sir.

14 Q. Yet at trial the testimony was only that jumper
15 cables were taken?

16 A. Yes, sir.

17 Q. There was no mention of that?

18 A. Yes, sir.

19 Q. Did your lawyer explore the discrepancy of those
20 issues with those witnesses?

21 A. No, sir, he didn't.

22 Q. Or with the officers who had written the incident
23 reports?

24 A. No, sir.

25 Q. So the fact that only jumper cables were stolen,

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Direct Examination by Mr. Harrison

19

- 1 yet other items were also mentioned within that
2 automobile, that discrepancy was never highlighted or
3 discussed before the jury; was it?
4 A. No, sir, it wasn't.
5 Q. I think I've tried to cover all the complaints,
6 Mr. Harris, but are there any other complaints that you
7 have that I have not addressed for you here today?
8 A. No, sir. I think you covered them well.
9 Q. Is your opinion or your allegations that the sum
10 total of all of these constitute a failure of counsel
11 here?
12 A. Yes, sir.
13 Q. And do you believe he falls below a reasonable
14 standard in how he proceeded with your trial?
15 A. Yes, sir, I do.
16 Q. And would you like the -- do you believe that
17 you're entitled to a re-sentencing as a result of your
18 sentence being in excess and not being challenged or
19 objected to by your counsel at the time of sentencing?
20 A. Yes, sir.
21 Q. Do you believe that the sum total of these errors
22 that have been committed or that you allege have been
23 committed here, that in taken in sum total here, that
24 you should be granted a new trial in this matter?
25 A. Yes, sir.

1 Q. That's all the questions I have, Mr. Harris.

2 Answer any that the state has.

3 A. Thank you.

4

CROSS EXAMINATION

5 **BY MS. RATIGAN:**

6 Q. So Mr. Harris, when you met with Mr. Chambers

7 those two times, did you discuss your case with him?

8 A. The first time was when we initially paid him.

9 Mr. Chambers just had come in from jogging ---

10 Q. Okay.

11 A. --- and it was just brief, about the payment, and

12 he said he would set up a time for us to come and talk.

13 And that happened three days before I went to trial.

14 Q. Okay. And how much time elapsed between that

15 first meeting where you paid him and then that meeting

16 right before trial?

17 A. Fourteen or fifteen months. I'm not quite sure on

18 that. Fourteen or fifteen months, though.

19 Q. And were you out on bond at that point?

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

21 Q. Did you attempt to contact Mr. Chambers in that

22 fourteen or fifteen months to set up an additional

23 meeting?

24 A. Yes, I have.

25 Q. And you just never got around to having a second

1 meeting with him before the trial date came up?

2 A. No, ma'am, I didn't.

3 Q. But your testimony is that you would call him and
4 try to set up meetings, and just nothing ever happened?

5 A. Nothing ever come forth.

6 Q. Now, in that second meeting three days before
7 trial, at that point did you review the state's evidence
8 with Mr. Chambers?

9 A. No, ma'am.

10 Q. What did you talk about in that second meeting
11 then?

12 A. We went in the second meeting and it didn't last
13 probably fifteen minutes the whole meeting. He said,
14 this is how the trial's going to go. I said, well, I've
15 got witnesses; what about the witnesses? And his exact
16 words at that time was, I've got this. I think this is
17 open and shut.

18 Q. Did you ever tell him your version of what had
19 happened that day with Mr. Humphrey?

20 A. No, ma'am. I don't think we ever discussed that
21 or took a deposition of that.

22 Q. And did you want a trial in this case?

23 A. Yes, ma'am.

24 Q. And at any point in those fourteen or fifteen
25 months that you had retained Mr. Chambers, did you have

1 your witnesses call him?

2 A. I asked him did I need to get affidavits or

3 anything from them? And he said that I could do that.

4 And I did get affidavits from them.

5 Q. Okay. But did you ask your witnesses to call Mr.

6 Chambers?

7 A. Yes, I did.

8 Q. And I believe it's Harris and Thompson. What were

9 their first names again?

10 A. Greg Thompson and Daniel Harris.

11 Q. And you told them to call Mr. Chambers and then

12 you also got affidavits from them?

13 A. Yes, sir. Yes, ma'am. Excuse me.

14 Q. And when you were pulled over by the officers, the

15 jumper cables were found in your truck; is that correct?

16 A. No, ma'am.

17 Q. They were not? Okay. And was there a change

18 purse found in your truck?

19 A. No, ma'am.

20 Q. And you testified that Daniel Harris and Greg

21 Thompson were in court with you that day?

22 A. Yes, ma'am, they was.

23 Q. And when you mentioned them to Mr. Chambers, he

24 basically just said, I've got this. I'm not going to

25 call them?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Cross Examination by Ms. Ratigan

23

1 A. Yes.

2 Q. When you went to court that day, were you unhappy
3 with the way that Mr. Chambers had kind of handled your
4 case?

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

6 Q. Well, why didn't you tell the court that you were
7 unhappy with Mr. Chambers?

8 A. I never got a chance.

9 Q. You never got a chance to address the judge? You
10 never wanted to speak up and say, you know, Mr. Chambers
11 hasn't handled my case the way that I would have liked?

12 A. The only time I got to speak was after I had been
13 sentenced.

14 Q. What about when the judge was questioning you
15 about whether or not you wanted to testify?

16 A. I was instructed then that if I testified it would
17 bring up my past record and it wouldn't make no
18 difference anyway, it would just get impeached and
19 thrown out.

20 Q. Okay. But why didn't you tell the judge at that
21 point -- you said you never had a chance to talk with
22 the judge. You did talk with the judge about that. So
~~23 why at that point did you not say, you know, I'm unhappy~~
24 with the way this is going, Judge. Mr. Chambers hasn't
25 done what I asked him to do. Why didn't you say

1 anything about that?

2 A. Well, at that time when the judge instructed me of
3 that, the trial wasn't over yet.

4 Q. So you think -- you thought you couldn't say
5 anything about how unhappy you were until after the

6 trial?

7 A. I didn't know I was, you know, ...

8 Q. But you had a prior record. You've had criminal
9 charges before; haven't you?

10 A. Yes, ma'am, I have.

11 Q. And didn't you tell Judge Pyle that you were not
12 testifying and that there had been no pressure put on
13 you by Mr. Chambers?

14 A. Something like that. Something of that matter.

15 Q. And your testimony today is that your sentence is
16 illegal because it's eight years?

17 A. Yes, ma'am.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Any redirect?

20 MR. HARRISON: Just briefly.

21 **REDIRECT EXAMINATION**

22 **BY MR. HARRISON:**

23 Q. You did talk to the judge about that the decision
24 not to testify and put up evidence really wasn't yours;
25 didn't you?

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Buddy Arizona Harris - Redirect Examination by Mr. Harrison

25

1 A. I think so. I did say that.

2 Q. When the judge sentenced you, at the time of your
3 actual sentencing, after conviction, did you tell the
4 judge on the record that you really wish you had
5 testified?

6 A. Yes, sir, I did.

7 Q. I believe that's all I have. Thank you, Mr.
8 Harris.

9 A. Thank you.

10 THE COURT: Thank you. You can step down.
11 You may call your next witness.

12 MR. HARRISON: Nothing further from the
13 appellate, Your Honor.

14 THE COURT: All right. Anything from the
15 state?

16 MS. RATIGAN: Yes, Your Honor. We call Mr.
17 Chambers.

18 THE CLERK: Mr. Chambers, please place your
19 left hand on the bible. Raise your right hand.

20 You do solemnly swear or affirm that the testimony
21 you're about to give in this case will be the truth, the
22 whole truth and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please state your full
25 name for the record.

1 THE WITNESS: My full name is Randall Lee
2 Chambers.

3 RANDALL LEE CHAMBERS,

4 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. RATIGAN:

7 Q. Mr. Chambers, do you recall representing Mr.
8 Harris on these charges?

9 A. I do.

10 Q. And were you, in fact, retained by Mr. Harris?

11 A. I was. Initially I had to go and check with the
12 public defender's office because I do a lot of part-time
13 work for the public defender's office. For some reason
14 I thought that this had been an appointed case. But in
15 looking back on it, he did, in fact, retain me.

16 Q. Okay. And did you file the usual Brady and Rule 5
17 motions?

18 A. I did.

19 Q. Did you receive those items from the state?

20 A. I did.

21 Q. Did you review them with Mr. Harris?

22 A. I not only reviewed them with him, I believe I
23 gave him a copy of it. That's my normal practice. I
24 will tell you that because of my mix-up, I did not pull
25 this file. So everything that I'm telling you is from

Buddy Arizona Harris -vs- State of South Carolina (2012-CP-23-06446)
Randall Lee Chambers - Direct Examination by Ms. Ratigan

27

1 my recollection. But I can tell you, in any case where
2 I'm retained, I do exactly the same thing in every case.
3 We even have a checklist in our office that we follow.
4 And what we do in a case -- first of all, when I meet
5 with somebody, typically they don't pay me any money at
6 that point. Some do. But for the most part, people
7 come in, they meet with me. It's a free consultation.
8 I discuss their case with them. Usually -- it's usually
9 at least thirty minutes to an hour. And then I indicate
10 to them that if they decide they want to hire me, I've
11 quoted them a fee. Told them what they need to pay
12 down. And then they'll come back in and pay. And at
13 that point I tell them, you don't have to make an
14 appointment; just call and make sure somebody's here in
15 the office and come on in and pay. And I believe that's
16 what happened in this case. I believe I met with Buddy.
17 He had come back later to pay the retainer fee. My
18 paralegal at the time -- I can't even remember who it
19 was, because I've kind of gone through a couple in the
20 last few years -- would have been there to get the
21 retainer. And I think he's exactly right, on that
22 particular day, I had come in from jogging. He happened
23 to be there. I didn't know he was coming in. And I
24 just spoke to him for a few minutes. My paralegal got
25 the retainer from him and had him sign an agreement.

1 And we went from there. But I know that I met with him
2 before that because, you know, I've never had a case
3 where I just said to somebody, ten or fifteen minutes
4 and I've there in my jogging clothes, I never just said,
5 hey, I've got this; I don't need to know anything about
6 your case. I've never done that in my life.

7 Q. Now, Mr. Harris has testified you met him that one
8 time and then one other time that was three days before
9 trial. Do you recall -- I mean, that would have ---

10 A. I honestly don't recollect how many times I met
11 with him. I can tell you what I do in every single case
12 where I represent somebody. Especially on a retained
13 case, I will have people, when we request the discovery,
14 when we get the discovery, I will -- if it's not very
15 much I'll send a copy to the client and indicate that
16 they need to call me and come in so that we can go over
17 it together. And then if it's a lot, I'll just go ahead
18 and set an appointment and have them come in and we go
19 through the discovery. We go through every bit of the
20 discovery. And I ask people early on, are there any
21 witnesses that you want me to call? Anybody that I need
22 to talk to? And we arrange to talk to those people. I
23 will usually meet with somebody again when I have gotten
24 an offer of some sort from the solicitor's office. We
25 will usually meet in my office. And as a typical

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1 course, people get bond carded in, you know, a half a
2 dozen times or more prior to going to trial. I mean,
3 I've never had a case where that didn't happen. So I am
4 -- I know that it's not a fact that I only met with him
5 twice, you know, for roughly thirty minutes total.

6 Q. And do you recall that Mr. Harris had a co-
7 defendant, a Josh Humphrey?

8 A. I do recall that.

9 Q. And do you recall whether or not you received an
10 NCIC report on Mr. Humphrey?

11 A. I don't believe I ever received one on him. I
12 believe that I was under the understanding -- of the
13 understanding that he did not have any prior charges.

14 Q. Did your client ever tell you that Mr. Humphrey
15 had priors?

16 A. He may have. I really don't remember that. But
17 I'll put it to you this way. Obviously if a co-
18 defendant is the main witness against my client, I'm
19 aware of the fact that he has prior offenses, I'm
20 certainly going to use that to impeach him. And if he
21 had -- so if he had prior offenses and I didn't know
22 about them and I didn't use it to impeach him, then I
~~23 would agree with Buddy, that that is -- that that was~~
24 prejudicial to him. Because I certainly would have used
25 that to impeach him.

1 Q. Did Mr. Harris give you the names of Daniel Harris
2 and Greg Thompson about allegedly having been at Jack In
3 The Box that day?

4 A. I don't remember any witnesses that he mentioned
5 to me.

6 Q. If he had given you witness names, I believe you
7 testified your general practice would have been to try
8 and track those people down and talk to them?

9 A. Well, yeah, you know, I try a lot of cases.
10 Honestly, I win a lot of cases. I don't like to go into
11 them trying to lose. And if there were witnesses that
12 could have contradicted what the story was that was
13 being told by the co-defendant, then I would have wanted
14 to talk to them.

15 Q. Did Mr. Harris ever tell you during the trial,
16 hey, I've got these people here to testify for me?

17 A. If he did I don't remember it. And I would have
18 -- you know, obviously if they're there and they've got
19 something of value, I want to put them up. Now,
20 obviously the solicitor at that point may have said, you
21 didn't let me know about them beforehand and we might
22 have had an issue there, but I would have at least
23 brought it to the judge's attention.

24 Q. Okay.

25 A. And I certainly would have talked to them to see

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1 if they had anything to say that was of value.

2 Q. Okay. Now Mr. Harris testified that he had
3 mentioned to you the possibility of going and trying to
4 get surveillance videos from Jack In The Box or out
5 there in Cherrydale. Do you recall having a
6 conversation with him about that?

7 A. He may have mentioned it, you know. And I didn't
8 get any surveillance video. I didn't subpoena any
9 surveillance video. I don't recall that it was a big
10 issue about that somehow -- where that Jack In The Box
11 is, I mean you could throw a rock from it to where the
12 Flatrock Grill is. So I don't think that that was that
13 big an issue other than I was trying to contradict what
14 the co-defendant had to say. But it's all in that same
15 area.

16 Q. Right. Now, when you discussed with Mr. Harris
17 whether or not he would testify at the trial, did you
18 discuss the possibility of him being impeached with a
19 prior record?

20 A. I did.

21 Q. Did you give him an opinion one way or the other
22 about whether you thought he should testify?

23 A. I mean, I'm pretty sure that I told him -- in
24 fact, I know I told him, I'm not just pretty sure --
25 that he had a substantial enough record that it would

1 probably prejudice him. And if I recall correctly, he
2 had some of other same kinds of offenses on his prior
3 record that would have probably come in before the jury.
4 And so I indicated to him that that was an issue. I
5 told him what I tell everybody, if you feel strongly
6 that you want to testify, then certainly that's your
7 right to get up there and tell your story. But I think
8 I did tell him, you know, I think it's a bad idea. And
9 I also told him that if we didn't -- if he didn't
10 testify, because we didn't have any other evidence to
11 put up, that I would get the last argument. And I felt
12 like that we had done all we could with the co-defendant
13 in trying to impeach him and to show that what he said,
14 you know, didn't amount to proof beyond a reasonable
15 doubt.

16 Q. And in addition to the co-defendant's testimony,
17 were items such as the jumper cables and a change purse
18 found in Mr. Harris' truck; do you remember?

19 A. That was the testimony. And they introduced those
20 into evidence.

21 Q. And did you discuss with Mr. Harris kind of the
22 prejudicial impact, obviously, that would have on the
23 case?

24 A. I did.

25 Q. Okay. And my last question is, in your opinion,

1 the sentence that Mr. Harris received, was it illegal?

2 Was there a basis to object?

3 A. He had two counts of auto breaking, carried five
4 years each, and the judge gave him consecutive
5 sentences. I mean, I personally didn't think it was
6 fair, but it didn't seem to be illegal to me.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: You may cross examine.

9 MR. HARRISON: Just briefly, Your Honor.

10 **CROSS EXAMINATION**

11 **BY MR. HARRISON:**

12 Q. Good morning, Mr. Chambers. You did cross examine
13 in your -- the co-defendant, you cross examined the co-
14 defendant. You did ask him about the Jack In The Box;
15 didn't you?

16 A. I did.

17 Q. And it would have been helpful -- and he denied
18 that they had gone to the Jack In The Box as a result of
19 your cross examination?

20 A. He did deny that.

21 Q. And it would have been helpful if you had had
22 independent witnesses who could have backed up that very
23 story; in other words that could contradict him about

24 the Jack In The Box?

25 A. It would have been helpful.

1 Q. Because it wasn't necessarily the issue and the
2 impeachment of him was not necessarily the issue that's
3 like sort of a big deal, but just his adamant denial of
4 that would just be an impeachment of a portion of his
5 testimony?

6 A. If he lies about one thing, then he certainly lied
7 about other things.

8 Q. There you go. Okay. And you did also, in the
9 course of the trial and I'm not sure -- you know, and I
10 understand the confusion, you don't have your whole file
11 here with you and that happens to me; it happens to
12 lawyers all the time. I understand that. But there's
13 no real -- there's nothing -- strike that. I believe
14 your testimony is you don't recall there being any
15 impeachment evidence like there's a criminal record for
16 the co-defendant?

17 A. No, I don't. And you know, I filed all the usual
18 motions. And typically the solicitor will provide us
19 with a rap sheet. Usually they do that right before
20 trial. And I will usually have a discussion with the
21 solicitor. Now, I don't remember this specifically, but
22 the solicitor is here and I've tried cases with her
23 before and she's always been very good about producing
24 those sorts of things. And usually as a matter of
25 course I ask, you know, do you have a rap sheet on the

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1 -- on this person that's going to testify. You know,
2 had I been given one and there was something that I
3 could use, then I certainly would have used it to
4 impeach.

5 Q. So what impeachment you could do is against him
6 about any prior record was only as a result of --
7 literally at the eleventh hour being provided such
8 information by the state?

9 A. I mean, I didn't get any or I would have used it.
10 I mean, you don't really need it way in advance.

11 Q. But you did. You did. If I may -- he wound up
12 testifying in the court that he had pled guilty prior to
13 coming to court to not only these charges but some
14 additional charges?

15 A. Well, I'm talking about anything prior to that.
16 He did, he did do that. And I believe I got into him
17 about a deal and that sort of thing, ---

18 Q. That's exactly right.

19 A. --- the things that he had already pled guilty to.
20 Yeah.

21 Q. So you were able to impeach him with information
22 that the solicitor's office gave you right before trial
23 ---

24 A. Yeah.

25 Q. --- about auto breaking, narcotics possessions,

1 and that sort of thing?

2 A. Oh, yeah, yeah. On those things. And the
3 indication was -- I believe he got some sort of ---

4 Q. Eighteen months of probation.

5 A. Yeah, exactly.

6 Q. Yeah. But you weren't given that until you were
7 -- you weren't given that, even though he had done his
8 plea earlier, you weren't given that information until
9 just literally right before you got to trial?

10 A. I believe that's true, yeah.

11 Q. That's sort of what the record reflects, Mr.
12 Chambers. Even though he had been sentenced, you
13 weren't given that information because, look, even if
14 it's the same crime, as lawyers we know, that don't
15 matter when you confess to it, you pled guilty to it,
16 that's subject to impeachment by the court. It don't
17 matter if it was this crime or one from five years ago;
18 isn't that right?

19 A. That's exactly right.

20 Q. And so it sort of -- I guess it was a little bit
21 of a shock to you to come in here and find out, wait a
22 minute, you mean he's pled guilty and he got eighteen
23 months and these other charges? Weren't you just
24 shocked?

25 A. I don't know that I was shocked. But yeah.

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1 Q. But you were able to impeach him about those
2 issues?

3 A. I was.

4 Q. And again, Mr. Chambers, you're doing a good job
5 from your memory. But again, a lot of what we're
6 talking about here today is you're talking about not
7 necessarily memory of the thing, but what your standard
8 procedures would be?

9 A. That's exactly right, yeah. I mean, ---

10 Q. I understand. It's like writing a will. You
11 can't testify about whether somebody necessarily was
12 competent twenty years ago, but you can testify that you
13 wouldn't let them sign if they weren't twenty years ago.
14 So I understand that. So you testified from that. So
15 when you testify about standard operating procedures or
16 general procedures within your practice, you don't know
17 for certain that -- how many times you met with this
18 individual?

19 A. I don't. And I've gotten better about keeping
20 notes and stuff just from these sorts of occasions.
21 But, you know, I don't always make a note in the file
22 when I meet with somebody. But I do that, like I said,
23 I do that in every case. The only time that's not the
24 case, and I'm not saying this happened with Buddy's
25 case, you know, sometimes you have clients that just

1 kind of disappear on you; you don't see them for a long
2 time. And then they resurface. But, you know, if what
3 he testified to a few minutes ago was really what was
4 going on in the case, then he should have fired me. You
5 know, if I had a lawyer that didn't talk to me for over
6 a year and I could never get an appointment set up and
7 all those things, I would think he would have fired me.
8 But the truth of the matter is, I mean, I am not -- I
9 make myself readily available. I tell my support staff,
10 client calls in and wants an appointment, you know, make
11 an appointment. Check with me, but we're going to make
12 an appointment. I'm pretty good about returning phone
13 calls. I tell people they can email me, anyway they
14 want to. I even get my emails on my iPhone so I can
15 always respond to those. So I can just tell you -- I
16 can tell you how many times I met with him, but I can
17 tell you that in my normal course I meet with them at
18 least on those occasions that I told the assistant
19 attorney general a few minutes ago.

20 Q. And again, when you talked about -- when you were
21 talking about, as you testified earlier when you were
22 talking about meetings, again, we're talking about
23 you're basing that upon sort of standard procedures
24 here?

25 A. Yes.

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1 Q. In other words, so that one of the things you did
2 discuss in your direct testimony here was that, when I
3 receive discovery, and I mean you in terms of you, but
4 when you receive discovery, that it is the normal course
5 of business that you then contact the client to discuss
6 the discovery that's going on and provide them with
7 copies of that?

8 A. That's exactly right. Yeah.

9 Q. Okay. But we don't know what if that's what took
10 place here because we're relying upon your memory?

11 A. I can't say that for sure, no.

12 Q. Okay. Would there be some ---

13 A. But it would be unusual. It would be unusual.

14 Q. I understand. But unusual things happen?

15 A. They do.

16 Q. Okay. And so when we -- so we don't know, for
17 example, when the state gave you their discovery, how
18 late in the game was it or ---

19 A. I don't know, but I mean, ---

20 Q. It's your memory there wasn't anything unusual
21 about discovery being provided to you late?

22 A. Yeah. I mean, if I got something the last minute

23 ---

24 Q. You would have filed a motion?

25 A. --- I would have been asking Judge Pyle to give me

1 a continuance.

2 Q. I understand. So I think that just based on what
3 we have here, I think it would be safe to assume, and I
4 hate making assumptions, but that you were provided the
5 discovery sometime in advance of the trial, because had
6 you been provided it immediately before the trial, you
7 would be hitting the roof, like all of us do when we get
8 that late discovery?

9 A. Exactly.

10 Q. Correct?

11 A. Yeah.

12 Q. And do you recall at the time of his sentencing
13 him making some comment to the judge about how he wish
14 he had testified?

15 A. I didn't remember until I looked at the
16 transcript, but yeah.

17 Q. But it's within that transcript; isn't it?

18 A. It is. And you know, I'll be honest with you. I
19 probably had second thoughts about it, too. That's
20 always a tough decision whether somebody is going to
21 testify or not.

22 Q. And it's made doubly tough when you don't have --
23 if the defendant doesn't testify and they don't have any
24 witnesses, that makes it doubly touch; doesn't it,
25 because all you've got is basically your cross

1 examination and your closing argument. And we all know
2 how important that last bite of that apple is getting in
3 the closing argument. I can understand that. Would you
4 say that it was -- that part of the decision for him not
5 to testify was not only his prior record but you were
6 also -- to get that little -- as they say, that last
7 bite to the jury?

8 A. Oh, that was definitely part of the consideration.

9 Q. Do you believe that the sentence of -- the second
10 sentence, sentencing him to five years, but suspending
11 it to three and five years of probation would
12 potentially subject someone under a five year statute to
13 a possible eight years of incarceration?

14 A. I never really gave it any thought. I mean I just
15 -- you know, in terms of the sentence itself, he was
16 facing a possible ten years and sixty days. It seems
17 like a legal sentence to me. I thought it was unduly
18 harsh, you know, to be quite honest with you.

19 Q. But a sentence of three years consecutive to the
20 first -- or five years, a sentence of five, suspended it
21 to three but added five years of probation on top of it,
22 would you agree that that potentially subjects an
23 individual to eight years of sentencing over a five year
24 statute?

25 A. I don't really follow that argument. Yeah, I

1 don't really follow that. I don't see that.

2 Q. Well, had you made some objection to that at the
3 time of his sentencing, at least it would have been
4 preserved for the record for appeal; is that correct?

5 A. That's absolutely correct.

6 Q. And we all know that if you fail to object at the
7 time of sentencing to any sentencing provisions, that
8 the Supreme Court is going to tell us all, you failed to
9 preserve it?

10 A. I mean, if your position is correct and it is
11 somehow an illegal sentence, then I should, I guess,
12 have made an objection to it and preserved it for the
13 record. So in that sense, if I was wrong and I failed
14 to do that, then that was wrong on my part.

15 Q. That's commendable of you, Mr. Chambers. I
16 believe that's all the questions -- oh, one second.
17 That's all I have, Mr. Chambers. Thank you, sir.

18 THE COURT: Any redirect?

19 MS. RATIGAN: No redirect. The state would
20 rest, Your Honor.

21 THE COURT: Thank you, Mr. Chambers. You may
22 step down.

23 Anything in reply?

24 MR. HARRISON: Nothing further, Your Honor.

25 THE COURT: Okay. I'll review this and make a

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1 decision in the next couple of weeks, hopefully, and
2 notify the attorneys.

3 MS. RATIGAN: Thank you.

4 MR. HARRISON: Thank you, Your Honor.

5

6 [END OF REQUESTED TRANSCRIPT OF RECORD]

CERTIFICATE OF REPORTER

1
2 I, the undersigned Danette P. Hanks, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 19th day of
10 February, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 August 29, 2014
16
17

18
19 

20 Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Buddy Arizona Harris,)
 S.C.D.C. #191201,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-6446

RECEIVED

JUN 08 2014

ORDER OF DISMISSAL

SC Court of Appeals

ENTERED COMPUTER

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 9, 2012. The Respondent made its return on May 2, 2013. An evidentiary hearing into the matter was convened on February 19, 2014 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by David R. Harrison, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Randall L. Chambers, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the April 2011 term of the Greenville County Grand Jury for two counts each of breaking and entering a motor vehicle (2010-GS-23-2140, -2141) and petit larceny (2010-GS-23-4203, -4204).

[Handwritten signature]

He was represented by Randall L. Chambers, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 18, 2011, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to consecutive terms of five years for one count of breaking and entering a motor vehicle¹ and five years suspended on service of three years and five years probation on the second count of breaking and entering a motor vehicle.² Judge Pyle levied concurrent sentences of thirty days for each count of petit larceny.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire, perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Harris, Op. No. 2012-UP-474 (S.C. Ct. App. filed August 1, 2012).

ALLEGATIONS

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

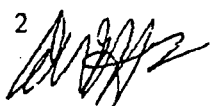
1. Ineffective assistance of trial counsel.
 - a. Counsel did not adequately prepare the case.
 - b. Counsel failed to object to the sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

¹ 2010-GS-23-2140.

² 2010-GS-23-2141.

² 

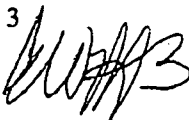
Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

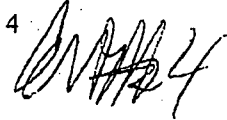
For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-13, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he only had two meetings with trial counsel before the trial – once to make a payment and once to discuss the case three days before trial. The Applicant stated they did not discuss his version of events. The Applicant stated his co-defendant's NCIC report was not in the discovery materials. The Applicant stated he gave trial counsel the names of two witnesses (Daniel Harris and Greg Thompson) who could testify that he was at Jack In The Box that day and not at the crime scene. The Applicant stated trial counsel did not interview these witnesses, but that they were present at trial. The Applicant stated these witnesses were not

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called at trial because trial counsel said "I got this." The Applicant stated he asked trial counsel about videotapes from Jack In The Box but trial counsel stated this evidence would not make a difference. The Applicant stated he wanted to testify but trial counsel said his prior record could be held against him. The Applicant stated trial counsel should have objected to his illegal sentence.

Trial counsel testified he could not recall the number of meetings he had with the Applicant but was confident they met more than twice and that he would also see the Applicant when he was bond carded in to court. Trial counsel testified he filed discovery motions, received those materials, reviewed them with the Applicant, and gave him a copy of the materials. Trial counsel confirmed he did not receive the co-defendant's NCIC report in the discovery materials but stated he did not know if the co-defendant had any prior convictions. Trial counsel testified he impeached the co-defendant on cross-examination with the charges related to this case. Trial counsel testified he did not recall whether the Applicant gave him the names of any witnesses but that he would have tracked down any potential witnesses and spoken to them. Trial counsel testified he would have called witnesses at trial if their testimony had any value. Trial counsel testified the Applicant may have mentioned a possible recording from Jack In The Box but that he did not follow up on this because it was not a big issue and the Jack In The Box was located so close to the crime scene. Trial counsel testified he discussed the Applicant's prior convictions with him and that they would be used for impeachment. Trial counsel testified he told the Applicant his prior record was bad enough (and contained similar crimes as the ones he was charged with) that it would prejudice him but stated he would have had the Applicant testify at trial if he felt strongly about it. Trial counsel testified the Applicant's sentence may not have been fair, but it was a legal sentence.

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This Court finds the Applicant failed to meet his burden of proving trial counsel failed to properly prepare and investigate the case. Trial counsel testified he had several meetings with the Applicant and that they reviewed the State's evidence. Trial counsel testified he provided the Applicant a copy of the discovery materials. Trial counsel testified he would have investigated any potential witnesses in the case. This Court finds trial counsel's testimony is credible. This Court finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds the Applicant failed to articulate what more trial counsel should have done in their meetings and trial preparation for the case. See Jackson v. State, 329 S.C. 345, 349-50, 495 S.E.2d 768, 770 (1998) (finding applicant failed to prove prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses when he failed to substantiate at the PCR hearing that the victims and witnesses had criminal records).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called two witnesses at trial to testify he was at Jack In The Box that morning. Trial counsel testified he would have investigated any witnesses the Applicant provided and would have called witnesses at trial if they had value. This Court finds trial counsel's testimony is credible. Regardless, as these alleged witnesses did not testify at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving trial counsel should

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have investigated whether videotape from Jack In The Box could have been useful to his defense. Trial counsel testified there was little value in such evidence, as the Jack In The Box was located very close to the crime scene. This Court notes trial counsel did question the co-defendant about the Applicant's presence at the Jack In The Box. (Trial transcript, pp.68-69). Regardless, as the Applicant failed to present any video recordings at the PCR hearing, this Court cannot speculate as to its potential impact at a trial. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel erred in not presenting a defense case at trial. The Applicant stated he wanted to testify but trial counsel said his prior record could be used against him. Trial counsel confirmed they discussed the right to testify and that he told the Applicant both that his prior record of similar crimes would be prejudicial and he would lose the ability to give the final closing argument. This Court finds trial counsel's testimony is credible. This Court notes the trial judge thoroughly questioned the Applicant about whether or not he wanted to testify, and the Applicant said he would not. (Trial transcript, pp.86-88). This Court finds the Applicant's decision not to testify was informed and voluntary. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice). This Court further finds that, in light of the Applicant's prior record and that he would lose the final closing argument, trial counsel made a strategic decision not to present a defense case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding

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where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to his sentence. This Court finds the sentence imposed by the trial judge in this case was, in fact, a legal and appropriate sentence. See, e.g., State v. Wickenhauser, 309 S.C. 377, 382, 423 S.E.2d 344, 347 (1992) (noting the maximum sentence for DUI, fourth offense is five years and finding a sentence of four years suspended on the service of eighteen months and five years probation does not exceed the maximum sentence because "any actual period of incarceration under this sentence will not exceed the maximum statutory limit"). As such, there was no basis upon which trial counsel could have argued it was illegal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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CONCLUSION

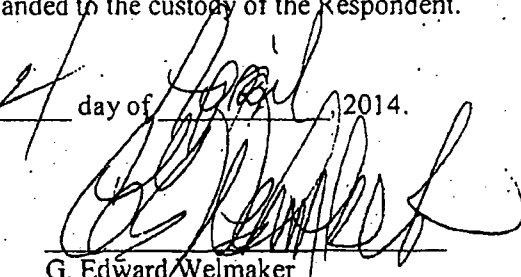
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

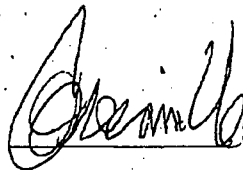
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4 day of April, 2014.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit


South Carolina.

WITNESSES

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Brian Barrickman

Greenville County Sheriff's Office

2/4/2010

ARREST WARRANT NUMBER

M178581

DOCKET NO. 2010-GS-23-

SSA

The State of South Carolina

County of Greenville

002140

COURT OF GENERAL SESSIONS

April TERM 2010 2011

THE STATE

VS.

BUDDY ARIZONA HARRIS

ACTION OF GRAND JURY

RETURN

Bobby D. Harris

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0258

BREAKING AND ENTERING A MOTOR VEHICLE

VIOLATION § 16-13-0160

Michelle Jackson 5/18/11
Foreperson of Petit Jury Date:

RECEIVED

MAR 17 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BREAKING AND ENTERING A MOTOR VEHICLE

At a Court of General Sessions, convened on

APR 12 2011

the Grand Jurors of Greenville

County present upon their oath:

That BUDDY ARIZONA HARRIS did in Greenville County, on or about the 4th day of February, 2010, unlawfully break or attempt to break into a motor vehicle belonging to JESSICA MARTIN, to wit: a 2003 Ford Taurus, with the intent to steal the same or anything of value therefrom. This is in violation of §16-13-160 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Samantha Adair
SOLICITOR

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WITNESSES

Brian Barrickman

Greenville County Sheriffs Office

2/4/2010

DOCKET NO. 2010-GS-23-002141

SSA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010

THE STATE

VS.

BUDDY ARIZONA HARRIS

ARREST WARRANT NUMBER

M178576

ACTION OF GRAND JURY

TRUE BILL

Buddy Harris
Foreperson of Grand Jury

VERDICT

Guilty

Michelle Jackson
Foreperson of Petitioner
5/18/11
Date:

Indictment for

0258

BREAKING AND ENTERING A MOTOR VEHICLE

VIOLATION § 16-13-0160

RECEIVED

MAR 17 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BREAKING AND ENTERING A MOTOR VEHICLE

At a Court of General Sessions, convened on

APR 12 2011

the Grand Jurors of Greenville

County present upon their oath:

That BUDDY ARIZONA HARRIS did in Greenville County, on or about the 4th day of February, 2010, unlawfully break or attempt to break into a motor vehicle belonging to MICHAEL CROWSON, to wit: a 1999 Ford Escort, with the intent to steal the same or anything of value therefrom. This is in violation of §16-13-160 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Samantha Adair
SOLICITOR

WITNESSES

Q25

Brian Barrickman

Greenville County Sheriffs Office

2/4/2010

DOCKET NO. 2010-GS-23-4204

EEM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2011

THE STATE

VS.

BUDDY ARIZONA HARRIS

ARREST WARRANT NUMBER

M178577

TRIPPLE

Foreperson of Grand Jury

VERDICT

Guilty

0480

Indictment for

PETT LARCENY

VIOLATION § 16-13-0030

Michelle J. J. 5/18/11
Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

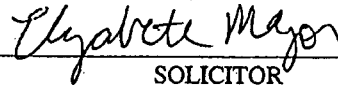
INDICTMENT FOR
PETIT LARCENY

At a Court of General Sessions, convened on **APR 12 2011** the Grand Jurors of Greenville

County present upon their oath:

That BUDDY ARIZONA HARRIS did in Greenville County, on or about the 4th day of February, 2010, feloniously take and carry away the personal property of MICHAEL CROWSON, to wit: a set of jumper cables with a total value of less than One Thousand Dollars (\$1,000.00) with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

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WITNESSES

Qm3

Brian Barrickman

Greenville County Sheriff's Office

2/4/2010

ARREST WARRANT NUMBER

M178582

ACTION OF GRAND JURY

THOMAS

Foreperson of Grand Jury

Buddy Harris

VERDICT

Guilty

Michelle Jackson 5/18/11
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-23-

SSA

004203

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010 2011

THE STATE

VS.

BUDDY ARIZONA HARRIS

0480

Indictment for

PETIT LARCENY

VIOLATION § 16-13-0030

RECEIVED

MAY 27 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
PETIT LARCENY

At a Court of General Sessions, convened on APR 12 2011

the Grand Jurors of Greenville

County present upon their oath:

That BUDDY ARIZONA HARRIS did in Greenville County, on or about the 4th day of February, 2010, feloniously take and carry away the personal property of JESSICA MARTIN, to wit: a purse, two change purses and various credit/debit/gift cards with a total value of less than One Thousand Dollars (\$1,000.00) with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Samantha Adair
SOLICITOR