

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

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S.C. Supreme Court

ARNOLD L. WARD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001807

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 07-GS-26-00418

State of South Carolina,)
)
Plaintiff,)
)
-VS-)
)
Arnold Ward,)
)
Defendant.)
_____)

TRANSCRIPT OF RECORD

April 13, 2010
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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1 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
2 **THE JURY.)**

3 THE COURT: All right, this is the matter of the
4 State of South Carolina, County of Horry, versus Arnold
5 Lea Ward, whereby the State has charged the defendant
6 with attempted burglary, first degree. As I understand
7 it, the Defense has a motion in that ---

8 MR. RICHARDSON: Yes, sir, and that's on Indictment
9 Number 2007-GS-26-418.

10 THE COURT: 418, yes, 2007-GS-26-418, and the
11 Defense has a motion in that the State has indicated that
12 it intends to prove the elements of first degree burglary
13 by evidence that the crime was committed in the nighttime
14 and that also evidence that prior he -- the defendant has
15 prior burglary and/or housebreaking convictions, two or
16 more, again that being one of the parts of the elements
17 of first degree burglary. You can either prove it by
18 it's committed by a person with a prior record of two or
19 more convictions of burglary or housebreaking, or a
20 combination of both, or the entering occurs in the
21 nighttime.

22 All right, Mr. Floyd, I'll be glad to hear from you,
23 sir.

24 MR. FLOYD: May it please the Court, Your Honor.
25 Mr. Ward is charged with attempted burglary, first

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1 degree. The allegations are that this occurred somewhere
2 around midnight. There's no question about that, and
3 that certainly would put it into -- should it have
4 occurred, that would certainly put it within the statute
5 of first degree burglary as far as the elements go, and
6 we are -- the Defense is not arguing the time that this
7 happened at, the time of night.

8 The State further tries to get into burglary, first
9 degree, by the fact that he has two or more priors for
10 housebreaking and based upon the documents that the
11 Solicitor has given me, those indictments are for
12 housebreaking and larceny.

13 Those indictments, Judge, are all from 1985. They
14 are over twenty years old, when this happened. It's our
15 position, first of all, that those are too stale. While
16 I don't think it's been specifically addressed, the
17 courts have taken a view on what -- what priors can be
18 used and the age on them for the purposes of impeachment.
19 This particular case, these convictions are more than
20 twice that length, and we think it would be highly
21 prejudicial versus probative when they've already got the
22 elements, if it occurred. If a crime occurred, they've
23 already got the elements for that particular offense.
24 Trying to use a prior record that under ordinary
25 circumstances would in no way be admissible, ---

1 THE COURT: All right, hold on one second. (Judge
2 John speaks to his law clerk.) I'm sorry; go ahead.

3 MR. FLOYD: Trying to bring that in, that's back-
4 dooring, trying to get something in that wouldn't come
5 in, that's not needed, very prejudicial to the Defense,
6 and serves no probative value since they've already got
7 the elements should the jury believe that a crime was
8 committed.

9 THE COURT: All right. All right, Solicitor, Mr.
10 Floyd makes an interesting argument. Should the
11 defendant testify, you couldn't cross examine him as to
12 his prior convictions because it would fall without the
13 rule regarding impeachment as far as the age, and it also
14 might be violative of the rules that it is so similar to
15 the crime for which he is charged that under the
16 probative value analysis, it would probably fall out on
17 that, understanding that an element of first degree
18 burglary is a burglary that is committed by a person with
19 a prior record of two or more convictions for burglary or
20 housebreaking, but if you've got evidence that is
21 otherwise incompetent, would not be able to be used in
22 the case, should it now be -- should the jury now be
23 allowed to hear it. What do you say about that?

24 MR. RICHARDSON: Your Honor, and I believe I
25 provided a copy to both the Defense and to Your Honor

MOTIONS

9

1 yesterday in chambers regarding the cases I'm going to be
2 citing. The first, State v. Benton, it was a -- the cite
3 is 338 South Carolina 151, 526 S.E. 2d 228. Your Honor,
4 on the handout that I gave you, it's Page 5 of 6.

5 THE COURT: Right. Well, I'm -- and I'm not really
6 -- I think that the point is a little bit different. I
7 agree with you that if he's got convictions for burglary
8 or housebreaking and the current crime occurred in the
9 nighttime, I think the cases that you've cited and the
10 cases that are set forth, that's State v. Benton, State
11 v. James, the Hamilton -- the Hamilton case, and also
12 State v. Simmons, I think the Supreme Court or the Court
13 of Appeals have decided, just because you've got
14 nighttime and prior burglaries, that's not mutually
15 exclusive and the Defense can't force the State to just
16 accept an acknowledgement that he's had these prior
17 convictions and to keep the State from putting in that
18 evidence.

19 What I'm more concerned with is you've got evidence
20 that would not be proper for this jury normally to hear
21 because of the age, the staleness of them, because that
22 goes -- and let me -- let me get to the rules just so
23 that I'm citing it directly, and that's South Carolina
24 Rule of Evidence 609, and it says, "Evidence of a
25 conviction under this rule is not admissible if a period

1 of more than ten years has elapsed since the date of the
2 conviction or the release of the witness from confinement
3 imposed for that conviction, whichever is the later date,
4 unless the Court determines in the interest of justice
5 that the probative value of the conviction supported by
6 specific facts and circumstances substantially outweigh
7 its prejudicial effect," and then that goes to the 403
8 analysis, and all the cases indicate except in crimes of
9 a sexual nature that if the crime is similar you can't
10 put it in.

11 Now, I've never understood the distinction. The
12 Supreme Court has carved out this exception on, you know,
13 lewd -- lewd act on a minor and the CSC in a -- say, "Now
14 it's more probative just because it looks like it," where
15 they use the same argument on every other crime in
16 existence to say, "No, that's improper. You can't do it
17 because it's so similar."

18 Now, I don't know how you -- that's going, you know,
19 in a different argument, I don't know how you reconcile
20 that, but that's -- that's the problem here.

21 MR. RICHARDSON: Yes, sir, and while it's not the
22 focus of my argument on this, Your Honor, the evidence,
23 even if it is similar in nature if you make a wild
24 argument with regard to that, the State may be allowed to
25 get into modus operandi to identify. However, we're not

1 talking about a method to impeach the defendant that
2 would fall outside of the ten years, and actually in
3 State v. Simmons, on Page 11 of 14, -- and State v.
4 Simmons, for the record, is 352 South Carolina 342, 573
5 S.E. 2d 856. On the printout that I did, it was Page 11
6 of 14, on the second column, Your Honor.

7 I believe the defendant made the similar argument
8 that in that instance, this being a case that was decided
9 by the Supreme Court, 2002, in that case the defendant's
10 priors included a 1981 guilty plea to three counts of
11 housebreaking, an '83 conviction for common law burglary,
12 and a '98 plea to first degree burglary, but those would
13 fall well without the ten years. We're not talking about
14 something being used to impeach the defendant or shows a
15 propensity, but we're talking about a crime that the
16 State Legislature has determined that this is an element.
17 They don't impose a time limit on that, Your Honor.

18 It just says that if someone has a conviction for
19 two or more housebreakings, and I think State v. James
20 doesn't overrule that. State v. James just should be
21 held for -- as holding stating that, "Yes, we say that
22 you can -- two or more means your first degree burglary,
23 but you can only enter two. You can't enter seven," and,
24 Your Honor, I think all the case law, it should be
25 apparent that the State cannot be forced to stipulate to

1 one of the elements that it must prove.

2 And in each of these cases, I believe the burglaries
3 did occur at night. Even if the burglary occurred at
4 night, there was violence done. There was a weapon used.
5 The State would still be allowed as a element in its case
6 in chief to put forward the defendant's prior convictions
7 up to two of a prior housebreaking, or the State would
8 have to put forward evidence of at least two.

9 THE COURT: At least two, but obviously as Simmons
10 has indicated ---

11 MR. RICHARDSON: And, Your Honor, I'll pass up ---

12 THE COURT: --- probably it is two that you could
13 put in.

14 MR. RICHARDSON: Yes, sir, and I'll pass up to the
15 Court, we have three for housebreaking. Certainly I
16 would only seek to introduce two at this time. The State
17 has asked for a copy that was clocked by the Clerk of
18 Court for Clarendon County. As an oversight -- I had
19 requested clocked copies before. Those should be back by
20 ten-thirty, Your Honor.

21 THE COURT: All right. Now, those would be ---

22 MR. RICHARDSON: And those have been previously
23 provided to Mr. Floyd.

24 THE COURT: All right. It was in Clarendon.

25 All right, Mr. Floyd, I appreciate your argument.

MOTIONS

13

1 It does seem somewhat inconsistent that evidence that is
2 impermissible for one purpose is permissible for another
3 purpose, but looking at the intent of the Legislature
4 regarding the first degree burglary offense and its
5 elements and the South Carolina Supreme Court's decision
6 in State v. Simmons, where though they did not
7 specifically address it, they specifically allowed in
8 that particular case the State to use 1981 convictions
9 for housebreaking which in Mr. Simmons' case was clearly
10 more than ten years prior to the crime that he was on
11 trial for, so I'm going to overrule your objection and
12 allow the State to present evidence of two crimes for
13 housebreaking and grand larceny, and, Solicitor, you've
14 got three of them. I'm going to leave it to you ---

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: --- to pick which two that you want to
17 put in, and I will give a limiting instruction to the
18 jury that they are not to consider the prior convictions
19 as evidence that the defendant committed the crimes for
20 which he's currently on trial, nor could you consider the
21 conviction as any kind of character evidence regarding
22 the defendant, but that the State has been allowed to
23 introduce it to try and carry its burden of proof under
24 the elements of first degree burglary.

25 MR. FLOYD: Your Honor, ---

1 THE COURT: Yes, sir, Mr. Floyd.

2 MR. FLOYD: I'm sorry. I didn't mean to interrupt.

3 THE COURT: No, no; go ahead.

4 MR. FLOYD: And I'm not arguing with the Court, ---

5 THE COURT: Yes, sir.

6 MR. FLOYD: --- but I want to -- I'm aware of what
7 the courts have ruled in those cases. My argument was
8 that all evidence, you do it in an analysis of
9 prejudicial versus probative.

10 THE COURT: Right, and it's a 403 analysis, and I
11 appreciate that, but I find that the State has the
12 ability to -- and the responsibility -- not only the
13 ability, but it has the responsibility to prove the
14 elements of first degree burglary. Even if the Defense
15 is not arguing about one of the elements, that it
16 occurred in the nighttime, the State is not then
17 prohibited from putting in other elements to make it
18 clear to the jury that this was a first degree burglary
19 crime because it met an element of first degree burglary,
20 so ---

21 MR. FLOYD: Yes, sir, and I understand your ruling.
22 I just wanted it to be clear that that was my
23 argument, ---

24 THE COURT: Yes, sir.

25 MR. FLOYD: --- was that they already had the

MOTIONS

15

1 elements, and my next issue on that, Judge, was if we
2 look at the face of the indictments ---

3 THE COURT: Yes, sir.

4 MR. FLOYD: --- where in the old days we stamped
5 them and people did a guilty plea, ---

6 THE COURT: Yes, sir.

7 MR. FLOYD: --- all three of these cases were heard
8 on May 11th, 1995. Under our law, I believe that makes
9 that one conviction and not multiple convictions.

10 THE COURT: All right. Well, let's look at this,
11 Solicitor. You've got here 85-GS-14-79 that says that
12 Arnold Ward, regarding housebreaking and grand larceny,
13 and it's dated -- a stamp of -- it appears to be March
14 11, 1985, and looks like it was signed by Ernest Finney
15 as a Circuit Court Judge at that point in time. 85-GS-
16 14-78 has a stamp date of March 11, 1985, and -- let's
17 see, that was 78, 79, and 85-GS-14-15, which appears also
18 to be dated March 11, 1985. What's the State's position
19 on that?

20 MR. RICHARDSON: Your Honor, while he entered the
21 plea all on one day, the three separate counts, all these
22 occurred at separate times. The burglary certainly -- we
23 had one that occurred, I believe, in February, one that
24 occurred in Decem- -- or two that occurred in December,
25 if I recall correctly. Your Honor, those would be

1 separate crimes. This isn't part of a spree. It
2 wouldn't be one conviction. He has three separate
3 sentences on there, Your Honor, ---

4 THE COURT: All right.

5 MR. RICHARDSON: --- whether they run all
6 concurrent or not.

7 THE COURT: It appears that maybe 78 and 79 -- 78
8 and 79 might be all one occurrence or a crime spree, but
9 it certainly appears -- because they -- one occurred on
10 February 7th or alleged -- or says it occurred on
11 February 7th, 1985. That's February 7, 1985; that would
12 have been 85-GS-14-78 and 85-GS-14-79 occurred on
13 February 8th, 1985, but 85-GS-14-15 occurred on December
14 3rd, 1984, more than two months prior to the other two
15 occasions and, therefore, certainly if the State intended
16 to use 85-GS-14-15 and one of the other two, 78 or 79,
17 then it would be two separate -- certainly two separate
18 offenses not related in any way and would be two separate
19 convictions, two separate crimes, for which the defendant
20 was convicted.

21 Therefore, again, I respectfully decline to grant
22 your motion on that ground.

23 MR. FLOYD: The Defense certainly takes exception
24 with the Court.

25 THE COURT: Yes, sir, I understand that. I

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17

1 understand that.

2 MR. RICHARDSON: Your Honor, by way of seeking to
3 limit the prejudicial effect, to only go forward as the
4 elemental effect, the State would certainly -- and will
5 introduce the convictions as a Court's Exhibit and will
6 be happy to read a stipulation ---

7 THE COURT: Well, what I would ask that you do is
8 you could just introduce -- you can introduce all three
9 of these here as a Court's Exhibit for the record, but as
10 far as before the jury, the page that is set forth as the
11 -- that has the conviction on it and the signature of
12 Judge Finney on 85-GS-14-15, ---

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: --- and either 78 or 79, whichever one
15 you pick, ---

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: --- have -- those two pages would be
18 the documents that would go in front of the jury, because
19 all that is necessary is for you to show that he has been
20 convicted of those crimes, housebreaking or burglary.

21 MR. RICHARDSON: The sentencing page, Your Honor?

22 THE COURT: Yes, sir, the sentencing page, not the
23 arrest warrant or the indictment that goes into
24 extraneous facts about the case, so we'll just have the
25 two sentencing pages, but I will hand all three of these

1 documents to the Clerk so that -- I mean, I'm sorry, to
2 the Court Reporter so that she can mark them and the full
3 copies can be part of the record.

4 MR. RICHARDSON: And I will substitute the clocked
5 copies whenever they get here.

6 THE COURT: That's fine. Well, the clocked copies
7 would just be the two pages, then, ---

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: --- so they'll be separate.

10 MR. RICHARDSON: And they may be clocked -- they
11 may be clocked on the front.

12 MR. FLOYD: Dixie, there's no reason to mark those
13 if we're going to be putting in the clocked copies.

14 THE COURT: Well, I would really -- I want a full
15 and complete copy in, and then you're going to have the
16 one-page document that's going in front of the jury, so
17 that's why I want the full and complete document in.

18 MR. FLOYD: Yes, sir.

19 THE REPORTER: Do you want me to mark all three of
20 these?

21 THE COURT: That's fine. You can mark them all as
22 -- well, there's three separate ones. You probably ought
23 to do it separately, and then if you catch your
24 investigator, you might tell them to have them stamped as
25 a true and correct copy.

MOTIONS

19

1 MR. RICHARDSON: They probably have already gotten
2 the front page, Your Honor. I'll just peel off the page.

3 THE COURT: All right, very good.

4 MR. FLOYD: Just one thing on the matter of
5 clarification on that issue. The Solicitor mentioned at
6 some point motive or moderm (sic) operandi. These are
7 being admitted as an element of the first degree ---

8 THE COURT: Only for the purpose ---

9 MR. FLOYD: If we are to give them some kind of ---

10 THE COURT: No, no, no, no, no. He was making that
11 as a separate argument. The only allowance that I'm
12 making here or allowing it to be entered is to prove an
13 element of first degree burglary, along with my limiting
14 charge to the jury that they won't consider it for and
15 cannot consider it for any other purpose.

16 MR. FLOYD: And, Judge, while we're on that, this
17 won't take but a second, the remainder of his record,
18 because I do anticipate him testifying, I think the
19 State would agree it is clearly not admissible under our
20 rules.

21 THE COURT: What is the remainder of ---

22 MR. FLOYD: It's a driving under suspension. I
23 think there might be a criminal domestic violence, first
24 offense, and I think there was one other thing.

25 MR. RICHARDSON: And ABHAN. There is an ABHAN from

1 about '07, '08, somewhere in there.

2 THE COURT: How about y'all look at that and if
3 there is an issue if and when he testifies, then y'all
4 let me know, okay?

5 MR. FLOYD: It looks like there's only one that
6 wasn't showing on my NCIC that he's informed me of.

7 MR. RICHARDSON: And he's pled on that since this
8 case.

9 THE COURT: All right, very good.

10 I'm going to go downstairs and get the juries, and
11 then we'll go from there. Thank y'all, and see if you
12 can't locate your client, please.

13 MR. FLOYD: Yes, sir.

14 AFFIDAVIT AND ARREST WARRANT FOR PRIOR CONVICTION OF
15 12/3/84 MARKED AS COURT'S EXHIBIT NUMBER 1.

16 AFFIDAVIT AND ARREST WARRANT FOR PRIOR CONVICTION OF
17 2/8/85 MARKED AS COURT'S EXHIBIT NUMBER 2.

18 AFFIDAVIT AND ARREST WARRANT FOR PRIOR CONVICTION OF
19 2/7/85 MARKED AS COURT'S EXHIBIT NUMBER 3.

20 (OFF THE RECORD)

21 ON THE RECORD

22 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, ladies and gentlemen, what
25 we're going to do is pick the jury in the case of the

1 State of South Carolina versus Arnold Ward.

2 Now, the State of South Carolina has charged the
3 defendant with a crime, and that's how the process works.
4 To the charge, the defendant has pled not guilty, and
5 that, again, putting the burden of proof on the State of
6 South Carolina to prove the defendant guilty beyond a
7 reasonable doubt.

8 I'm going to read to you certain information that is
9 contained in the charge or the indictment as it is
10 called. Now, this is merely the charge that the State
11 makes against the defendant. It is not evidence. It is
12 not proof of any kind. It is the charge to which the
13 defendant has been accused of by the State of South
14 Carolina.

15 The State, in the charge in the indictment, says
16 that Arnold Ward did in Horry County on or about October
17 31, 2006, wilfully and unlawfully attempt to enter the
18 dwelling of Shane Holley located at [REDACTED] in
19 the Myrtle Beach section of Horry County without consent
20 and with the intent to commit a crime therein, in
21 violation of the laws of the State of South Carolina,
22 1976 as amended, that being the crime of burglary, first
23 degree, attempted.

24 Is there any member of the jury panel that knows
25 anything about this particular case, has any information

1 about this case, or needs to bring anything to the
2 Court's attention at this time regarding this particular
3 case? If so, please stand. (No response.)

4 All right, let's get the witness list, then. The
5 possible or the potential witnesses in this case are as
6 follows: Shane Holley; Detective John Lewis, Horry
7 County Police Department; Chester Skowronski, formerly of
8 the Horry County Police Department; Chris McNeil,
9 formerly of the Horry County Police Department; Corporal
10 Anthony Sawyer of the Horry County Police Department;
11 Lori Rabon, Horry County Police Department; Investigator
12 Carmen Burke, Fifteenth Circuit Solicitor's Office;
13 Arnold Lea Ward; Ray Coleman; Tracy Butler; Sherry
14 McCall; and Scott Lavanski.

15 Is there any member of the jury panel that's related
16 by blood or marriage, close personal friends,
17 acquaintances of, does anybody know anybody that's a
18 possible or potential witness in this case? If so,
19 please stand. (No response.)

20 All right, now, some of you might have been in Court
21 yesterday, and if you've heard these questions, obviously
22 you understand this is a separate case, a new case, and
23 you need to respond again.

24 Yes, sir?

25 MR. RICHARDSON: Your Honor, if I may also bring to

1 the Court's attention, Gerodie Livingston, he's a
2 potential.

3 THE COURT: All right, sir. I thought you had
4 substituted the other investigator for him.

5 MR. RICHARDSON: I just wanted to make sure, Your
6 Honor, whichever one is available.

7 THE COURT: Okay, very good.

8 So Investigator Gerodie Livingston of the Fifteenth
9 Circuit Solicitor's Office is another potential witness.

10 All right, is there any member of the jury panel
11 that you, yourself, or a member of your immediate family
12 has ever had any matters of any kind handled by the
13 Fifteenth Circuit Solicitor's Office? Now, remember,
14 that's the prosecuting office that covers Horry and
15 Georgetown Counties. If so, please, stand.

16 Yes, ma'am, your name and juror number, please.

17 SUSAN AGLE: Juror number 1, Susan Agle.

18 THE COURT: And was it yourself or a family member?

19 SUSAN AGLE: A family member.

20 THE COURT: Can you give to the State of South
21 Carolina and to the defendant a fair and impartial trial?
22 Can you be a fair and impartial juror in this case?

23 SUSAN AGLE: Yes, sir.

24 THE COURT: Thank you very much, ma'am.

25 Is there any member -- I'm sorry; yes, ma'am.

1 HELEN GRAINGER: Helen Grainger, number 143.

2 THE COURT: All right. Was it yourself or a family
3 member?

4 HELEN GRAINGER: A family member.

5 THE COURT: All right. Can you give to the State
6 of South Carolina and to the defendant a fair and
7 impartial trial? Can you be a fair and impartial juror
8 in this case?

9 HELEN GRAINGER: Yes, sir.

10 THE COURT: Thank you very much. Anybody else?
11 (No response.)

12 Any member of the jury panel that's related by blood
13 or marriage, close personal friends or acquaintances of
14 anybody employed at the Fifteenth Circuit Solicitor's
15 Office, either here in Horry or in Georgetown County? If
16 so, please stand. (No response.)

17 All right, is there any member of the jury panel
18 that's related -- I'm sorry. Yes, sir, your name and
19 jury number.

20 LEON BELL: Leon Bell.

21 THE COURT: All right, sir, and are you related to
22 somebody in the Fifteenth Circuit Solicitor's Office?

23 LEON BELL: No, sir. I just know somebody.

24 THE COURT: Okay, and who is that?

25 LEON BELL: I know Roy Hollingsworth.

1 THE COURT: All right. Can you give to the State
2 of South Carolina and to the defendant a fair and
3 impartial trial? Could you be a fair and impartial juror
4 in this case?

5 LEON BELL: Yes, sir.

6 MR. FLOYD: What number was that, Judge?

7 THE COURT: Your jury number again, please, sir?

8 LEON BELL: Sixteen.

9 THE COURT: Thank you very much.

10 Is there any member of the jury panel that's related
11 by blood or marriage, close personal friends or
12 acquaintances of anybody employed at the Horry County
13 Public Defender's Office? If so, please stand. (No
14 response.)

15 Is there any member of the jury panel that either
16 you, yourself, or a member of your immediate family has
17 ever had any matters handled by the Horry County Public
18 Defender's Office? If so, please stand. (No response.)

19 Does any member of the jury panel have any kind of
20 personal, political, religious, philosophical belief that
21 you believe would prevent you from being a fair and
22 impartial juror in this case? If so, please stand. (No
23 response.)

24 All right. Is there any member of the jury panel
25 that you, yourself, are a former law enforcement officer

1 or you've got a current family member who is currently in
2 law enforcement or was in the past in law enforcement?
3 If any of that applies to you, please stand.

4 Yes, ma'am, your name and jury number.

5 FELICIA KING: Jury number 206, Felicia King, and
6 my son is a police officer.

7 THE COURT: And with what department, please,
8 ma'am?

9 FELICIA KING: North Myrtle Beach.

10 THE COURT: All right. Can you give to the State
11 of South Carolina and to the defendant a fair and
12 impartial trial? Could you be a fair and impartial juror
13 in this case?

14 FELICIA KING: Yes, sir.

15 THE COURT: Yes, ma'am, your name and juror number,
16 please.

17 CHRISTINE PEARSON: Number 283, Christine Pearson.
18 My husband works for DHEC.

19 THE COURT: All right, ma'am. Can you give to the
20 State of South Carolina and to the defendant a fair and
21 impartial trial? Could you be a fair and impartial juror
22 in this case?

23 CHRISTINE PEARSON: Yes, sir.

24 THE COURT: Thank you very much.

25 All right, is there any member of the jury panel

1 that -- or a member of your immediate family that's a
2 member of any kind of victims' rights or law enforcement
3 support organizations? Let me just give you some
4 examples, those being Mothers Against Drunk Driving,
5 Citizens Against Violent Crime, South Carolina Sheriffs
6 Association, South Carolina Law Enforcement Officers
7 Association, South Carolina Troopers Association, just
8 some kind of victims' rights or law enforcement support
9 organization. If so, please stand.

10 Yes, ma'am, your name and juror number, please,
11 ma'am.

12 SUSAN WHARFF: Juror number 405, Susan Wharff. My
13 business is based on clients for some of those.

14 THE COURT: All right. Can you give to the State
15 of South Carolina and to the defendant a fair and
16 impartial trial? Could you be a fair and impartial juror
17 in this case?

18 SUSAN WHARFF: Yes.

19 THE COURT: Thank you very much.

20 All right, ladies and gentlemen, I'm going to ask
21 whether you, yourself, or a member of your immediate
22 family has ever been the victim of a crime. Now, please
23 understand I will not ask you what occurred. I do not
24 want you to volunteer any information to me about what
25 occurred. The question will be straightforward. Was it

1 yourself or a family member, and then I'll ask the
2 qualification question. Is there any member of the jury
3 panel that either you, yourself, or a member of your
4 immediate family has ever been the victim of a crime? If
5 so, please stand.

6 All right, starting on the first row, ma'am, your
7 name and jury number again.

8 SUSAN AGLE: Juror number 1, Susan Agle.

9 THE COURT: And was it yourself or a family member?

10 SUSAN AGLE: A family member.

11 THE COURT: Can you give to the State of South
12 Carolina and to the defendant a fair and impartial trial?
13 Could you be a fair and impartial juror in this case?

14 SUSAN AGLE: Yes.

15 THE COURT: Thank you very much. Yes, ma'am?

16 SUSAN WHARFF: Juror number 405, Susan Wharff. It
17 was a family member.

18 THE COURT: Can you give to the State of South
19 Carolina and to the defendant a fair and impartial trial?
20 Could you be a fair and impartial juror in this case?

21 SUSAN WHARFF: Yes.

22 THE COURT: Thank you very much. All right, ma'am,
23 right here.

24 LISA JOHNSON: Juror 193, Lisa Johnson. It was my
25 family member.

1 THE COURT: All right, ma'am. Can you give to the
2 State of South Carolina and to the defendant a fair and
3 impartial trial? Could you be a fair and impartial juror
4 in this case?

5 LISA JOHNSON: Yes, sir.

6 THE COURT: Thank you very much. Yes, ma'am?

7 WANDA ROBINSON: Number 319, Wanda Robinson. It
8 was myself.

9 THE COURT: All right, ma'am. Can you give to the
10 State of South Carolina and to the defendant a fair and
11 impartial trial? Could you be a fair and impartial juror
12 in this case?

13 WANDA ROBINSON: Yes, sir.

14 THE COURT: Thank you very much. Yes, ma'am?

15 HELEN GRAINGER: Number 143, and a family member.

16 THE COURT: All right, and your name, please,
17 ma'am.

18 HELEN GRAINGER: Helen Grainger.

19 THE COURT: All right, ma'am, and can you give to
20 the State of South Carolina and to the defendant a fair
21 and impartial trial? Could you be a fair and impartial
22 juror in this case?

23 HELEN GRAINGER: Yes, sir.

24 THE COURT: Thank you very much. Yes, ma'am?

25 MARY BRITT: Number 35, Mary Britt, myself.

1 THE COURT: Can you give to the State of South
2 Carolina and to the defendant a fair and impartial trial?
3 Could you be a fair and impartial juror in this case?

4 MARY BRITT: Yes, sir.

5 THE COURT: Thank you very much. Yes, sir?

6 LEON BELL: Number 16, Leon Bell.

7 THE COURT: Was it yourself or a family member?

8 LEON BELL: Family member.

9 THE COURT: Family member, all right, sir. Can you
10 give to the State of South Carolina and to the defendant
11 a fair and impartial trial? Could you be a fair and
12 impartial juror in this case?

13 LEON BELL: Yes, sir.

14 THE COURT: Thank you very much.

15 All right, let me ask you my general or what I say
16 is my catch-all question. Do you know of any reason,
17 have any question in your mind, any doubt in your mind
18 that you believe you cannot give to the State of South
19 Carolina and to the defendant a fair and impartial trial,
20 that is for any reason whatsoever you believe you cannot
21 be a fair and impartial juror in this case? If so,
22 please stand. (No response.)

23 All right, any further questions from the State?

24 MR. RICHARDSON: Your Honor, if we may -- if you
25 may inquire if anyone in the voir dire knows either Mr.

1 Floyd or myself.

2 THE COURT: All right, very good. All right,
3 Solicitor, if you would identify yourself to the jury,
4 please.

5 MR. RICHARDSON: I am Brad Richardson, senior
6 assistant prosecutor with the Solicitor's Office here in
7 Horry.

8 THE COURT: All right, Mr. Floyd, would you stand
9 and identify yourself, please, sir.

10 MR. FLOYD: I am Thomas Floyd, and I'm an attorney
11 practicing in the Public Defender's Office.

12 THE COURT: Is there any member of the jury panel
13 that's related by blood or marriage, close personal
14 friends, acquaintances of either of these lawyers that
15 have identified themselves to you? If so, please stand.

16 Yes, ma'am, your name and juror number, please.

17 DONNA ROOKS: 322 Donna Rooks.

18 THE COURT: All right, ma'am, and which lawyer do
19 you know?

20 DONNA ROOKS: Bradley Richardson.

21 THE COURT: Can you give to the State of South
22 Carolina and to the defendant a fair and impartial trial?
23 Can you be a fair and impartial juror in this case?

24 DONNA ROOKS: Yes, sir.

25 THE COURT: Thank you very much. All right, and --

1 Yes, ma'am, your name and juror number again, please.

2 CHRISTINE PEARSON: Juror number 283, Christine
3 Pearson, and I know Brad.

4 THE COURT: All right, ma'am. Can you give the
5 State of South Carolina and the defendant a fair and
6 impartial trial? Could you be a fair and impartial juror
7 in this case?

8 CHRISTINE PEARSON: Yes, sir.

9 THE COURT: Thank you very much. Anyone else? (No
10 response.)

11 Any further questions from the State?

12 MR. RICHARDSON: No, sir, Your Honor.

13 THE COURT: From the Defense?

14 MR. FLOYD: No, sir.

15 THE COURT: All right, ladies and gentlemen, the
16 way the process works, the Clerk of Court will call in
17 random order the names from your group. If and when your
18 name is called you will come forward. You will come to a
19 point basically right in front of the Court Reporter, Ms.
20 Dixie, right there, and you will stand, and turn, and
21 face to the back of the courtroom.

22 At that point in time, the Clerk will inquire of the
23 State whether to present or to excuse the juror. If
24 you're excused by the State, obviously you go back and
25 have a seat from whence you came. If you are presented

1 by the State, the Clerk will turn to the Defense to
2 either seat or excuse the juror. If you are seated by
3 the Defense, then the Clerk will instruct you to go have
4 a seat in the jury box. If you are excused, you go back
5 to your seat in the courtroom.

6 All right, Madam Clerk.

7 THE CLERK: 53, Kelly Canady. What say the State?

8 MR. RICHARDSON: Please present Ms. Canady.

9 THE CLERK: Defense?

10 MR. FLOYD: Seat the juror.

11 THE CLERK: Please be seated in the jury box.

12 143, Helen Grainger. What say the State?

13 MR. RICHARDSON: Please present Ms. Grainger.

14 THE CLERK: Defense?

15 MR. FLOYD: Please excuse the juror from the trial
16 of this case.

17 THE CLERK: You're excused from this particular
18 case.

19 409, Gregory Williams.

20 MR. FLOYD: 409?

21 THE CLERK: Yes, sir.

22 What say the State?

23 MR. RICHARDSON: Please present Mr. Williams.

24 THE CLERK: Defense?

25 MR. FLOYD: Seat the juror.

1 THE CLERK: Please be seated in the jury box.

2 407 Stephanie Wilhelm. What say the State?

3 MR. RICHARDSON: Please present Ms. Wilhelm.

4 THE COURT: Defense?

5 MR. FLOYD: Please excuse the juror from the trial
6 of this case.

7 THE CLERK: You're excused from this particular
8 case.

9 36, Laurie Brown. What say the State?

10 MR. RICHARDSON: Please present Ms. Brown.

11 THE CLERK: Defense?

12 MR. FLOYD: Seat the juror.

13 THE CLERK: Please be seated in the jury box.

14 172, Karen Hodges. What say the State?

15 MR. RICHARDSON: Please present Ms. Hodges.

16 THE CLERK: Defense?

17 MR. FLOYD: Please excuse the juror from the trial
18 of this case.

19 THE CLERK: You're excused from this particular
20 case.

21 26, Kevin Bort. What say the State?

22 MR. RICHARDSON: Please excuse Mr. Bort.

23 THE CLERK: You're excused from this particular
24 case.

25 391, Donna Vanderwiele. What say the State?

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1 MR. RICHARDSON: Please present Ms. Vanderwiele.

2 THE CLERK: Defense?

3 MR. FLOYD: Seat the juror.

4 THE CLERK: Please be seated in the jury box.

5 319, Wanda Robinson. What say the State?

6 MR. RICHARDSON: Please present Ms. Robinson.

7 THE CLERK: Defense?

8 MR. FLOYD: Please excuse the juror from the trial
9 of this case.

10 THE CLERK: You're excused from this particular
11 case.

12 299 Wayne Purdy. What say the State?

13 MR. RICHARDSON: Please present Mr. Purdy.

14 THE CLERK: Defense?

15 MR. FLOYD: Seat the juror.

16 THE CLERK: Please be seated in the jury box.

17 88, James Culp. What say the State?

18 MR. RICHARDSON: Please present Mr. Culp.

19 THE CLERK: Defense?

20 MR. FLOYD: Seat the juror.

21 THE CLERK: Please be seated in the jury box.

22 16, Leon Bell. What say the State?

23 MR. RICHARDSON: Please present Mr. Bell.

24 THE CLERK: Defense?

25 MR. FLOYD: Seat the juror.

1 THE CLERK: Please be seated in the jury box.
2 25, Lisa Bond. What say the State?
3 MR. RICHARDSON: Please present Ms. Bond.
4 THE CLERK: Defense?
5 MR. FLOYD: Seat the juror.
6 THE CLERK: Please be seated in the jury box.
7 135, Gerald Gibson.
8 MR. FLOYD: What was that number again?
9 THE COURT: 135.
10 MR. FLOYD: 135; thank you.
11 THE CLERK: What say the State?
12 MR. RICHARDSON: Please present Mr. Gibson.
13 THE CLERK: Defense?
14 MR. FLOYD: Seat the juror.
15 THE CLERK: Please be seated in the jury box.
16 177, Audrey Hosley. What say the State?
17 MR. RICHARDSON: Please present Ms. Hosley.
18 THE CLERK: Defense?
19 MR. FLOYD: Seat the juror.
20 THE CLERK: Please be seated in the jury box.
21 321, Marvin Rogers. What say the State?
22 MR. RICHARDSON: Please present Mr. Rogers.
23 THE CLERK: Defense?
24 MR. FLOYD: Please excuse the juror from the trial
25 of this case.

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1 THE CLERK: You're excused from this particular
2 case.

3 361, Marce Smith. What say the State?

4 MR. RICHARDSON: Please present Ms. Smith.

5 THE CLERK: Defense?

6 MR. FLOYD: Please excuse the juror from the trial
7 of this case.

8 THE CLERK: You're excused from this particular
9 case.

10 29, Gerard Boyle. What say the State?

11 MR. RICHARDSON: Please present Mr. Boyle.

12 THE CLERK: Defense?

13 MR. FLOYD: Please excuse the juror from the trial
14 of this case.

15 THE CLERK: You're excused from this particular
16 case.

17 168, Robert Hensley. What say the State?

18 MR. RICHARDSON: Please present Mr. Hensley.

19 THE CLERK: Defense?

20 MR. FLOYD: Seat the juror.

21 THE CLERK: Please be seated in the jury box.

22 322 Donna Rooks. What say the State?

23 MR. RICHARDSON: Please present Ms. Rooks.

24 THE CLERK: Defense?

25 MR. FLOYD: Please excuse the juror from the trial

1 of this case.

2 THE CLERK: You're excused from this particular
3 case.

4 193, Lisa Johnson. What say the State?

5 MR. RICHARDSON: Please present Ms. Johnson.

6 THE CLERK: Defense?

7 MR. FLOYD: Please excuse the juror from the trial
8 of this case.

9 THE CLERK: You're excused from this particular
10 case.

11 237, Michael Mahoney. What say the State?

12 MR. RICHARDSON: Please present Mr. Mahoney.

13 THE CLERK: Defense?

14 MR. FLOYD: Seat the juror.

15 THE CLERK: Please be seated in the jury box.

16 120, Phyllis Fessman.

17 THE COURT: This will be for the alternate,
18 gentlemen.

19 THE CLERK: What say the State?

20 MR. RICHARDSON: Please present Ms. Fessman.

21 THE CLERK: Defense?

22 MR. FLOYD: Please excuse the juror in the trial of
23 this case.

24 THE CLERK: You're excused from this particular
25 case.

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1 206, Felicia King. What say the State?

2 MR. RICHARDSON: Please present Ms. King.

3 THE CLERK: Defense?

4 MR. FLOYD: Please excuse the juror from this case.

5 THE CLERK: You're excused from this particular
6 case.

7 35, Mary Britt. What say the State?

8 MR. RICHARDSON: Please present Ms. Britt.

9 THE CLERK: Defense?

10 MR. FLOYD: Seat the juror.

11 THE CLERK: Please be seated in the jury box.

12 THE COURT: All right, is there any objections to
13 the jury as empaneled, from the State?

14 MR. RICHARDSON: Nothing from the State, Your
15 Honor.

16 THE COURT: From the Defense?

17 MR. FLOYD: No, sir.

18 THE COURT: All right. I find the jury has been
19 properly empaneled pursuant to Batson v. Kentucky and
20 J.E.B. v. Alabama.

21 All right, ladies and gentlemen of this particular
22 jury, I'm going to ask that you go back to your jury room
23 in just a moment and do one thing for me, and that is I'm
24 going to have you select your foreperson for this
25 particular jury. Let me go over briefly what the duties

1 and responsibilities of the foreperson are.

2 If we are here in the courtroom and the jury needs
3 attention to some matter, whatever that might be, the
4 foreperson would raise their hand, get the Court's
5 attention, and we'll handle the matter whatever it might
6 be.

7 If you're back in the jury room and some matter
8 comes up and the jury needs attention to something, then
9 the foreperson will write out a note, sign it, hand it to
10 the bailiff, and it will come to me, and again, we'll
11 handle the matter, whatever it might be.

12 When we have concluded the evidentiary portion of
13 the trial, we've heard the closing arguments of the
14 attorneys, and I have given you the law that you will
15 apply to the facts and evidence that you find to be true
16 in this particular matter, and then I have submitted the
17 case to you for your deliberations and your unanimous
18 decision in this particular matter, then the foreperson's
19 duties change in this regard. The foreperson is going to
20 act like the chairman at a meeting, to guide the
21 discussions if necessary, but remembering that the
22 foreperson's voice and vote carries no more weight than
23 any other member of the jury. Everybody is equal in that
24 regard, but somebody does need to be in charge.

25 Again, if there is some question or some matter that

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1 the jury needs attention to, and again, the foreperson
2 would write out that note, sign it, hand it to the
3 bailiff, and again it will come to me and we will handle
4 that matter, whatever it might be.

5 The final duty and responsibility of the foreperson
6 is once the jury has well and truly deliberated this case
7 and reached its unanimous decision in this particular
8 matter, then the foreperson will take the verdict form
9 that the Court will provide to you, check the appropriate
10 block or write the appropriate word and thereafter sign
11 their name as the foreperson that this indeed is the
12 unanimous verdict of the jury in this particular case.

13 Regarding who can be the foreperson, Ms. Britt, you
14 can vote on the foreperson, but being the alternate,
15 obviously you cannot be the foreperson. Other than that,
16 everyone else is eligible to be the foreperson, so if
17 y'all would go back to the jury room, select a
18 foreperson, knock on the door and let the bailiff know
19 who that is, please. Thank you.

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
21 THE JURY.)

22 THE COURT: All right, as I understand it, we have
23 some matters that we need to resolve prior to starting
24 the trial in this matter. As I understand it, we have a
25 Jackson V. Denno hearing and a Neil v. Biggers hearing,

1 is that correct?

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

3 THE COURT: All right, whichever one you would like
4 to proceed -- which one do you want to start with?

5 MR. RICHARDSON: Your Honor, we'll go ahead with
6 the Neil v. Biggers.

7 THE COURT: All right, sir.

8 MR. RICHARDSON: The State would call Mr. Shane
9 Holley.

10 THE COURT: All right. Just hold on a second.

11 (Pause) All right, I'm sorry, Solicitor. Go ahead.

12 Sir, do you want to come forward.

13 "BUDDY" SHANE HOLLEY, being first duly sworn,
14 testifies as follows:

15 THE CLERK: State your full name and spell your
16 last name.

17 MR. HOLLEY: "Buddy" Shane Holley, H-O-L-L-E-Y.

18 DIRECT EXAMINATION BY MR. RICHARDSON:

19 Q. Mr. Holley, could you please tell the Court just a
20 little bit about yourself.

21 A. Yes, sir. My name is Shane Holley. I'm forty-two
22 years old. I currently reside at [REDACTED] in
23 Myrtle Beach, South Carolina, along with my wife and
24 three young children.

25 Q. Okay, and I'm going to direct your attention to

1 the night of October 30th or the early morning hours of
2 October 31st, 2006. Were you the victim of an attempted
3 burglary?

4 A. Yes, sir.

5 Q. Okay. Can you tell the Court briefly about that,
6 what happened.

7 A. It was just before Halloween. We put the kids to
8 bed about eight-thirty, nine o'clock, my wife and I. Our
9 home is three stories. Our childrens' bedrooms are on
10 the middle floor. My wife and I went upstairs, watched
11 T.V. for an hour, hour and a half, went to bed by 10:30.
12 Just after midnight, my alarm went into what is termed --
13 it's got two stages, and the first stage went off kind of
14 like a loud alarm clock, a constant beep.

15 Q. You're talking about a burglar alarm?

16 A. Yeah, the burglar alarm in our home. Having never
17 had a false alarm in that home, it obviously startled me,
18 so I obtained my weapon, proceeded down the steps and
19 deactivated the alarm, because after sixty seconds it
20 goes into a very loud squealing, alarm mode, so not to
21 startle the children, I wanted to turn that off and check
22 the premises.

23 I turned the light on that goes -- actually my home
24 is unique in that it does have a basement in it. I
25 turned the light on that would be under the stairs so I

1 could see because there are points of entry down there as
2 well, and as I proceeded through what would be my dining
3 room, I have a -- two front doors of sorts. I have a
4 primary front door that is solid, and then I have a glass
5 door in my actual kitchen that I proceeded to view out.

6 Upon reaching that section, two things. I could
7 hear what I deemed to be pressure being placed against my
8 primary front door. It was like something was pushing on
9 it, and then as I viewed outward, a gentleman stepped
10 back, and when he stepped back from that door, probably
11 from me to you, I could see him at that point. He
12 then ---

13 Q. What kind of lighting was there at that point?

14 A. At that point he was up against the house.
15 There's a street light that's probably thirty-five feet
16 away. It was to his back at that point and he had on a
17 dark hoodie. He proceeded to turn, walk down the steps,
18 and the way my walkway goes, it circles right back in
19 front of where I was. There are bushes in between us,
20 but he went back down my driveway and then turned and
21 came around my Suburban, and when he came around my
22 Suburban, that's when the street light really was shining
23 on him.

24 I don't know if he saw me because at that point
25 there would be light to my back that I had turned on. In

1 the initial stages, I don't think he realized I was
2 there. At that point, I went over and hit the outside
3 lights, and he fled down the driveway and went out
4 through the back.

5 Q. You say he was wearing dark clothing?

6 A. Yes, sir. He had a hoodie on. My wife was on the
7 phone with 911 at the time, upstairs. I asked her to
8 stay where she was at, and in a matter of moments as I
9 was continuing to check and, you know, make sure there
10 was no other breaches or anyone trying to get in, because
11 that alarm had went off for a reason, she yelled down and
12 said, "Hey, they got him," and, I mean, it was a matter
13 of three or four minutes.

14 PHOTOGRAPH MARKED FOR IDENTIFICATION AS STATE'S
15 EXHIBIT NUMBER 1.

16 Q. I hand you what's been marked as State's Exhibit
17 1. Do you recognize State's Exhibit 1?

18 A. Yes, sir. That's my home.

19 Q. Okay, and is that a true and accurate depiction of
20 your home?

21 A. Yes, sir.

22 MR. RICHARDSON: Your Honor, for the purposes of
23 this hearing, I would introduce it.

24 THE COURT: Is there any objection to that?

25 MR. FLOYD: I'd like to look at it. (Mr.

1 Richardson hands Exhibit to Mr. Floyd.)

2 Q. Just so the Court can understand, you say there's
3 two front doors on your home?

4 A. Yes, sir. What we contend -- you know, our
5 primary door is right here, which is the door that I
6 heard the pressure being placed against the weather
7 stripping, because it swings inward. It's a double-door.
8 I was standing over here. You can't see it very well
9 through that palm tree, but I was standing at this glass
10 door.

11 Q. Okay, so this glass door is back down near the
12 palm tree?

13 A. The glass door is, yes, and there's a little
14 recess right there of about six feet from the front door.

15 Q. Okay. As you face the photograph, you said the
16 defendant went over by your Suburban. Could you indicate
17 which side of the photograph you are talking about?

18 A. The defendant proceeded down my stairs, down my
19 sidewalk, and around my Suburban, on the right-hand side
20 of the photo.

21 Q. All right, the right-hand side of the photo, and
22 what kind of lighting is over there?

23 A. At that point, there is a street light that would
24 be on the left-hand side corner of my lot that would be
25 shining back across.

1 Q. So you said the lighting is fairly decent?

2 A. Decent.

3 Q. How long did you have a view of the suspect?

4 A. When he first stepped back from the door to the
5 point where he got around the corner, to where he went
6 out of view off the corner of my house, ten, twelve
7 seconds at least.

8 Q. What was your state of mind during this viewing?

9 A. Kind of surreal because I was actually quite calm
10 because my thoughts were -- I had two thoughts. Number
11 one, my three children were on that floor, and I had the
12 thought of is this one individual, or there were multiple
13 individuals, I was trying to be conscious of my actions,
14 and the other was, you know, when I realized then that
15 the -- we had a problem with one of our front doors, that
16 that door had a slight crack in it, I realized then that,
17 you know, what was going on, and that's when I hit the
18 lights, and when I hit the lights is when he took off
19 down the driveway.

20 Q. Now, your wife was on 911?

21 A. Yes, sir.

22 Q. Did you give her any information to give to the
23 police?

24 A. Yes, sir. They asked if I had seen anyone, and I
25 said yes. They -- they asked if I could describe them.

1 I told them that it was a shorter individual, between, I
2 assumed, five-four and five-six, I think, is what I said,
3 a white male with a dark-colored hoodie. I wasn't sure
4 if it was blue or green, but it was dark, a black -- they
5 responded to quiz me if it was possibly a black gentleman
6 because there had been a subsequent break-in in our
7 neighborhood earlier in that day, and I told them no,
8 that the individual I saw was a white male, and that's
9 about what it was.

10 Q. And the police arrived at your home?

11 A. Very quickly, with -- with Mr. Ward.

12 Q. All right. After the police arrived, did you have
13 the opportunity to identify the suspect?

14 A. Yes, sir. When the police arrived, the 911
15 operator had advised me to make sure and put the weapon
16 away, which I had done, and I had the front door open. I
17 believe two actual vehicles, Horry County Police vehicles
18 arrived. One of them was a Ford Explorer that they had
19 the defendant in the back of. A very large gentleman, I
20 can't pronounce his last name, a very large policeman,
21 came up and asked me while I was on my front porch if
22 this was the individual, and I said, you know, "Would you
23 ask him to step out of the truck," which they did. At
24 that time, I identified Mr. Ward as the individual who
25 had went around my Suburban.

1 Q. Okay. The lighting conditions, what was it like
2 whenever they brought him back? Was the lights on or ---

3 A. By then, I had all my lights on, yes. I had
4 plenty of light at that point.

5 Q. Okay. Did the defendant do or say anything in
6 your presence whenever the police got there with him?

7 A. Well, when he first arrived, he was trying to be
8 polite in explaining to me that he had never been to my
9 home, that he had never seen me, had never been on my
10 porch.

11 Q. Was this under questioning or ---

12 A. He -- he just started talking. When I walked off
13 the porch and was walking out and, you know, commented
14 to the officer who asked me, "Is this the individual?"
15 and I said, "Yes," he started commenting, "Sir, I've
16 never been to your home. I've never been on your porch.
17 I don't know you, sir. I've never seen you," and at
18 that point, he then made a statement about that he was
19 looking for work, which I found kind of bizarre, but at
20 that point, the police took me back inside and said, you
21 know, "We need to get a statement from you," which I gave
22 them.

23 Q. Okay, and you gave a written statement describing
24 the defendant?

25 A. Yes, sir.

1 WRITTEN STATEMENT OF SHANE HOLLEY MARKED FOR
2 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 2.

3 Q. I'm going to hand you what's been marked as
4 State's Exhibit 2 for identification. Can you review
5 that and tell me if you recognize it.

6 A. Yes, sir, that is correct; that is my statement.

7 Q. And you gave that statement that night?

8 A. Yes, sir, after the incident, yes, sir.

9 Q. And how do you describe the suspect in that case?

10 A. I described that he was at the front door, that he
11 turned, walked down our front steps, walked around the
12 walk and around our Suburban, and I could see that he was
13 in a dark-colored hooded sweatshirt.

14 Q. And that was the information you had given to the
15 police previous to that?

16 A. Any other?

17 Q. About him being a white male?

18 A. Yes, sir. I gave that -- I gave that when they
19 were questioning me. The 911 operator was questioning my
20 wife and she was yelling down the questions.

21 Q. And whenever the police brought the defendant back
22 up, you identified him then?

23 A. Yes, sir.

24 Q. How sure were you of your identification?

25 A. A hundred percent.

1 Q. And the person you identified that evening, the
2 person, do you see him in the courtroom today?

3 A. Yes, sir.

4 Q. Could you point him out.

5 A. Mr. Ward.

6 Q. And is that the person that you saw at the front
7 door when your alarm went off?

8 A. Yes, sir.

9 MR. RICHARDSON: Your Honor, no further questions
10 of this witness.

11 THE COURT: All right. Mr. Floyd.

12 CROSS EXAMINATION BY MR. FLOYD:

13 Q. Mr. Holley, on that evening did you identify Mr.
14 Ward, the person, or did you identify the clothing he was
15 wearing?

16 A. Both.

17 MR. FLOYD: Thank you.

18 THE COURT: Any redirect?

19 MR. RICHARDSON: No, sir, Your Honor.

20 THE COURT: You may step down, sir.

21 Any other witnesses?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: All right, sir. Any arguments, Mr.
24 Floyd?

25 MR. FLOYD: No, sir.

1 THE COURT: In this Neil v. Biggers hearing, or
2 under the due process clause, evidence of the
3 identification of an accused would have to be excluded if
4 the process used to obtain the identification was so
5 unnecessarily suggestive as to give rise to a very
6 substantial likelihood of misidentification. In
7 evaluating an out-of-court identification, the process we
8 use is was the out-of-court identification unduly
9 suggestive and if the Court would find that, then was the
10 identification nevertheless so reliable that no
11 substantial likelihood of misidentification existed.

12 When you look at those things, there are certain
13 things that you look at, the witness's opportunity to
14 view the person at the time of the crime, the witness's
15 degree of attention, the accuracy of the witness's prior
16 description of the person, the witness's level of
17 certainty at the time of the confrontation and the time
18 between the incident and the confrontation, that is the
19 viewing of the particular person.

20 In this particular matter, I would first find that
21 the out-of-court identification process was not unduly
22 suggestive. It was the result of a description given to
23 the police officials by the victim in this matter. They
24 responded to that and found a person matching the
25 description given by the victim.

1 Even if in some way that the out-of-court
2 identification process was unduly suggestive, certainly
3 there is no indication at all of misidentification. The
4 factors of reliability here are all present. The witness
5 had a more than ample opportunity to view the person at
6 the time of the crime. His degree of attention, he
7 indicated he was absolutely certain. He had a high
8 degree of attention because of the nature of the matter.

9 The accuracy of the person that he viewed is the
10 person he described to the police officials. Again, I
11 state about his level of certainty he indicated was a
12 hundred percent, and as he indicated, the time between
13 the incident and his viewing or the confrontation was
14 extremely short, a few minutes, so there's no indication
15 of misidentification or unreliability. Therefore, I
16 would certainly allow the witness's testimony in this
17 matter as to identification of the defendant as the
18 person who committed the crime and obviously will give a
19 charge to the jury about they are the ultimate deciders
20 of the reliability of the identification.

21 Anything further on the Neil v. Biggers issue?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: All right. As to the Jackson V. Denno
24 hearing, ---

25 MR. RICHARDSON: The State would call Detective

1 John Lewis.

2 THE COURT: All right, sir. Do you anticipate this
3 is going to be a -- is it a long statement or ---

4 MR. RICHARDSON: It's not an audio-recorded
5 statement, Your Honor. We can ---

6 THE COURT: I was thinking about the jury. Do we
7 need to give them a short break or, you know, let them
8 walk around, or is it going to be relatively short?

9 MR. RICHARDSON: You may want to let them go smoke,
10 Your Honor. You may want to let them go smoke, but, I
11 mean, this will take about fifteen minutes, I guess.

12 THE COURT: All right. See if anybody -- if they
13 need to step outside for a few moments or not, and
14 otherwise, just have them stay in the jury room. We'll
15 be with them as quick as we can.

16 JOHN LEWIS, being first duly sworn, testifies as
17 follows:

18 THE CLERK: State your full name and spell your
19 last name.

20 MR. LEWIS: John Lewis, L-E-W-I-S.

21 THE COURT: All right, Solicitor.

22 DIRECT EXAMINATION BY MR. RICHARDSON:

23 Q. Please tell us where you are employed and how long
24 you have worked there.

25 A. I am employed with the Horry County Police

1 Department. I have been employed there approximately ten
2 years, and a total of approximately thirteen in law
3 enforcement.

4 Q. And how are you employed?

5 A. I am a detective for the County Police.

6 Q. And back in October of 2006?

7 A. I was a detective at that time as well.

8 Q. In the course of your duties, were you involved in
9 the investigation of a burglary or an attempted burglary
10 that occurred at [REDACTED] here in Horry County?

11 A. I was.

12 Q. And we've already briefly heard about that. Did
13 you develop any suspects with regard to that
14 investigation?

15 A. We -- we did.

16 Q. And who was that?

17 A. The defendant, Mr. Ward.

18 Q. At any time did you have the opportunity to
19 conduct any interviews with the defendant?

20 A. I did interview him after the incident.

21 Q. And that was Mr. Ward?

22 A. Correct.

23 Q. When and where was that?

24 A. The interview was on November 1st at approximately
25 12:00 P.M. at the J. Reuben Long Detention Center.

1 Q. And describe the area where the interview took
2 place.

3 A. It's in the interview room that is located at the
4 jail. It's approximately eight to ten feet by five feet
5 wide. There is nothing in there except a table and a
6 couple of chairs.

7 Q. Who all was present during the interview?

8 A. It was just myself and the defendant, just the two
9 of us.

10 Q. And what was the defendant's condition during this
11 interview?

12 A. He was coherent. He was not disorderly or unruly.
13 He was cooperative. He was not under the influence of
14 anything, did not appear to be anything out of the
15 ordinary, just normal.

16 Q. Did he appear to be suffering from any mental
17 disabilities or impairments to the best of your
18 knowledge?

19 A. No, he didn't.

20 Q. Did the defendant appear to understand the English
21 language?

22 A. He did.

23 Q. Did he respond appropriately to your questions?

24 A. He did.

25 Q. And no doubt about it, he was at J. Reuben Long

1 and he was in custody?

2 A. Yes.

3 Q. How long did this interview take?

4 A. Approximately -- I started at approximately 12:15
5 and his written statement is timed at 1:10, so
6 approximately an hour.

7 Q. At any time was the defendant denied food, drink
8 access, or restroom access during the interview?

9 A. No.

10 Q. To your knowledge, did you or anyone do or say
11 anything to this defendant which would be viewed as
12 threats, or coercion, or promises of leniency or any type
13 of reward in order to obtain the statement from him?

14 A. No.

15 Q. Was the defendant advised of the nature of the
16 investigation and why he was being held there?

17 A. Yes.

18 Q. Was the defendant advised of his constitutional
19 rights?

20 A. Yes.

21 Q. And how was this accomplished?

22 A. I used our standard advisement of Miranda rights
23 form for the Police Department.

24 Q. Do you have that form?

25 A. I do.

1 MR. RICHARDSON: Let me mark it for identification.

2 MIRANDA RIGHTS FORM MARKED FOR IDENTIFICATION

3 AS STATE'S EXHIBIT NUMBER 3.

4 Q. Detective, I'm going to hand you what is marked
5 for identification as State's Exhibit 3, and what is
6 that?

7 A. This is our standard advisement of Miranda rights
8 form that we use at the Horry County Police Department.

9 Q. And is this the form you gave the defendant?

10 A. Well, I gave it to him to review and sign it.

11 Q. How did you present it to him?

12 A. What I normally do is I'll read the Miranda rights
13 form to him. I use a little check mark when I read each
14 of the rights off, and then we have some standard
15 questions that we ask, and they are yes or no, and then I
16 will check the appropriate answer that the defendant
17 provided to me, and at the end after I've asked the last
18 question, I'll ask him to sign it and then initial the
19 check marks with his initials.

20 Q. Could you give the Court a demonstration of how
21 you presented this form? You don't have to go through
22 each check mark. Just read the form as you presented it
23 to the defendant.

24 A. "You have the right to remain silent. Anything
25 you say can and will be used against you in a court of

1 law. Do you understand?" "You have the right to talk
2 with a lawyer and have him present with you while you are
3 being questioned. Do you understand?" "If you cannot
4 afford to hire a lawyer, one will be appointed to
5 represent you before any questioning if you so desire.
6 Do you understand?" "But if you make a statement or
7 answer any questions, you have the right to stop at any
8 time. Do you understand?" "Do you understand your
9 rights as I've read them to you, yes or no?" "Can you
10 read or write, yes or no?" "Are you under the influence
11 of any alcohol or drugs, yes or no?" "And understanding
12 your rights, do you wish to waive them and make a
13 statement or answer any questions at this time, yes or
14 no?"

15 Q. Did the defendant indicate that he understood his
16 rights?

17 A. Yes.

18 Q. And how did he do so?

19 A. Verbally he told me when I was done reviewing his
20 Miranda rights. I had him initial next to the check
21 marks that those were the appropriate answers or his
22 answers.

23 Q. And to your knowledge, did the defendant waive his
24 constitutional rights?

25 A. Yes, he did.

1 Q. And gave a statement?

2 A. Yes.

3 Q. To your knowledge, that waiver was freely and
4 voluntarily given?

5 A. Yes, it was.

6 Q. Did you or anyone to your knowledge do anything,
7 make any undue promises of leniency, or threats, or
8 coerce the defendant in any way to get him to waive these
9 rights?

10 A. No.

11 Q. And he signed that form?

12 A. Yes, he did.

13 Q. At any point during the interview, did the
14 defendant indicate that he wished to stop the interview?

15 A. No, he did not.

16 Q. At any point during the interview, did the
17 defendant inform you that he wished to have an attorney
18 present?

19 A. No, he did not.

20 Q. Did you memorialize the interview in any way,
21 shape, or form?

22 A. I had asked or requested the defendant to provide
23 his statement after the interview in a written form on
24 one of our standard voluntary written statement forms.

25 Q. But this -- this interview was not video-taped or

1 audio-recorded?

2 A. No.

3 Q. Do you have a copy of that written statement?

4 A. Yes, I do.

5 WRITTEN STATEMENT OF ARNOLD WARD MARKED FOR
6 IDENTIFICATION AS STATE'S EXHIBIT NUMBER 4.

7 Q. I'm going to hand you what's now been marked as
8 State's Exhibit 4. Do you recognize that item?

9 A. Yes. This is the written statement that was
10 provided by the defendant.

11 Q. And do you know that that is indeed the statement
12 provided by the defendant?

13 A. Well, I had him fill it out, so it's in his
14 handwriting, not mine. Mine is a lot messier. Also, I
15 witnessed him complete that written statement while we
16 were still at the jail, and I signed the witness block.

17 Q. Okay, and so that's his statement?

18 A. Correct.

19 Q. And could you read that statement for the Court.

20 A. "On Monday, I work 'til around six, where I stop
21 by my wife's home for a few seconds and got our dog to
22 take to vet next day. I then went back to work on trim
23 until around ten that night. I took my worker home,
24 Myrtle Beach. On the way back, stop at Longbay to check
25 on project we are to start. While there, open my door to

1 check out job and dog gets out of truck. Chase dog
2 around. Nobody help" -- I can't read that one word, "for
3 around one hour, knocking on doors to try to get help.
4 When help gets there, they arrest me, not care about my
5 dog. I explain everything to them the same way I explain
6 to you. Still no help on anything."

7 Q. And that's the statement that he signed?

8 A. Correct.

9 Q. Now, and that statement didn't take an hour to
10 write?

11 A. No, that we -- the hour was us discussing what had
12 happened that day, and then at the end I asked him just
13 to fill out the form.

14 Q. Could you relate to the Court what, if anything
15 else, the defendant told you. Did you make notes?

16 A. I did.

17 Q. Would reviewing your notes help refresh your
18 recollection?

19 A. It would.

20 MR. FLOYD: Judge, I'd like those notes made
21 available to me.

22 MR. RICHARDSON: He should have a copy, Your Honor.

23 THE COURT: Do you have a copy of those?

24 A. For the record, I'll be reviewing from my
25 investigative report.

1 Q. Just take a moment and review your notes.

2 A. (Pause.)

3 Q. Detective, if you could just fill in the gaps for
4 us. What else, if anything, did the defendant tell you?

5 A. Okay. Well, when I first interviewed him, I gave
6 him an opportunity to tell me his statement unabated or
7 stopped, just let him flow freely, and so after he
8 provided his statement, I had some further, more direct
9 questions to try to fill in the gaps.

10 The first thing that I inquired upon was about his
11 truck. He had parked his truck up at the front of the
12 development, the Longbay Estate development and parked it
13 there at the businesses. He initially said that he was
14 going to have a friend, James Robertson, pick up his
15 truck, but then he had changed his statement that his
16 mother was going to pick up his truck, and his mother's
17 name was Carol.

18 Now, he stated that he was in that area to check on
19 a job and that while he was there, his dog exited the
20 vehicle and was able to escape from him, and he was
21 trying to catch his dog or obtain some help to catch his
22 dog, and so he admitted to going to three houses to
23 attempt to find help and call the police or animal
24 control, but he had a cell phone on him.

25 Additionally, where he parked his vehicle were --

1 it's a little small strip mall, if you're familiar from
2 across the Harley shop on the south of the front gate,
3 there's a bar in that little strip mall that there would
4 have been people and a phone, of course. Also, across
5 the street, there's the Iron Gate Saloon, as well, and
6 there is a bar there.

7 Third, he admitted going to the incident location
8 and knocking on the door, but he denied ever opening the
9 door, and I knew from the investigation and based on the
10 victim, Mr. Holley's information, that the alarm went off
11 due to the kitchen door being opened, and Mr. Holley had
12 reiterated that to me. He found the door open or ajar.

13 Once he had denied opening the door, I asked a
14 question -- I asked him if he was wearing gloves when he
15 did this, and he stated no. I followed up that question
16 and asked him if there would be any reason for his
17 fingerprints to be on the door handle, and then he
18 changed his statement and said that he did check or touch
19 the door handle, so first it was one thing, and then
20 afterwards it was a different thing.

21 Fourth, he said that he was -- he wanted to obtain
22 help in finding his dog from the, and I quote, "S.P.C."
23 and they would help him catch his dog at night. I asked
24 him what S.P.C. stood for, because I don't know, and he
25 couldn't provide me at that time what S.P.C. stood for.

1 And then the fifth thing, he said that he went to
2 the house -- he was going to houses and trying to locate
3 assistance to locate his dog. He did state that while he
4 was at the victim's house, Mr. Holley, when he was
5 walking away, he said he did look back and see the lights
6 come on outside, but he never returned to that house or
7 the house that he was initially looking for.

8 Additionally, he said that he was going to return,
9 but he was going to return the long way, which made no
10 sense, and he actually had provided a sketch that he drew
11 hissself while we were doing the interview, and he marked
12 an "X" where he was when he saw this light and how he was
13 going to go the opposite way or the long way around to
14 get to the help that he was looking for.

15 Q. And that was the basics of the interview?

16 A. And -- let me just make sure. Yes.

17 Q. And this concluded about a little bit after one
18 o'clock?

19 A. The written statement, he timed it at 1:10, so if
20 it took five minutes to write that, you know, an
21 estimate, so it started about 12:15, ended about 1:15.

22 Q. And so for a total of an hour?

23 A. About an hour.

24 Q. And no further statements, correct?

25 A. No, sir.

1 MR. RICHARDSON: Your Honor, I have no further
2 questions. Answer any questions the Defense may have.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION BY MR. FLOYD:

5 Q. Detective Lewis, did you respond to Long Bay that
6 night?

7 A. I did not, the patrol officers.

8 Q. What time did you get this case the following day?

9 A. I -- I don't know, sometime between the time I
10 would have got to work and I got up to the jail to
11 interview him, basically somewhere between eight and
12 twelve.

13 Q. Why didn't you tape-record this statement? I know
14 that's kind of standard policy and has been for some time
15 now.

16 A. I don't have a marked-down reason. I thought
17 about some of the different options. My tape recorder
18 might have been broke when I got out there and I was
19 stuck just using the written statement. My batteries
20 might have been dead, or I might have forgot it at my
21 office or didn't have it on me, so I just used the
22 written statement.

23 Q. No other law enforcement people were out at the
24 jail that day that may have had a tape recorder?

25 A. Not that I'm aware of.

1 Q. All right, but typically you would tape-record a
2 statement rather than going on your own notes, wouldn't
3 you?

4 A. I've done it both ways. There's no rhyme or
5 reason, so to speak.

6 Q. All right. You'd prefer to have it tape-recorded
7 in the courtroom so attorneys like me can't ask you a
8 bunch of questions, right?

9 A. I'm sorry. Say that again.

10 Q. You'd prefer to have it tape-recorded so attorneys
11 like me can't ask you a bunch of questions about it?

12 A. Either way, you'll ask, so ...

13 Q. All right. Reading Mr. Ward's statement here,
14 there's one place about half-way down, "Chased dog
15 around," and you kind of slid over that.

16 A. Yeah, I ---

17 Q. "Chased dog around neighborhood"?

18 A. Your guess is as good as mine. It looks like
19 N-A-B-O-R -- N-A-B-O-R. I don't know if it says -- it
20 could be neighborhood or nobody -- neighborhood.

21 Q. I'm not arguing with you.

22 A. Yeah.

23 Q. N-A-B-O-R-H-O-O-D?

24 A. Hood. Yeah, that appears correct.

25 Q. All right, and this statement was twelve to one

1 o'clock out at the jail?

2 A. Well, my Miranda form, I believe, says that he
3 signed -- or I dated it at 12:15, so we started then, and
4 then he's got the time stamp there at 1:10 on the written
5 statement, so give or take there, about an hour, or
6 that's the time he started the written statement aspect.

7 Q. Okay. Thank you, sir.

8 MR. FLOYD: I've got no further questions.

9 THE COURT: Redirect?

10 MR. RICHARDSON: No further questions, Your Honor.

11 THE COURT: You may step down, sir.

12 Any other witnesses?

13 MR. RICHARDSON: None for the State, Your Honor.

14 THE COURT: All right. Anything from the Defense?

15 MR. FLOYD: For the purposes of this hearing,
16 Judge, I don't think so.

17 THE COURT: All right, very good.

18 Any arguments on behalf of the Defense at this point
19 in time?

20 MR. FLOYD: (No response.)

21 THE COURT: Any arguments, legal arguments, that
22 you have at this point in time?

23 MR. FLOYD: I'm sorry, Judge. I thought that was a
24 question you asked ---

25 THE COURT: No, no. As far as the Defense was, did

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1 you want to present any witnesses for the hearing?

2 MR. FLOYD: No, sir.

3 THE COURT: And no legal arguments either, right?

4 MR. FLOYD: No, sir.

5 THE COURT: All right, very good.

6 In this particular matter and the purpose of a
7 Jackson V. Denno hearing regarding a statement of the
8 defendant, the Court's purpose is to find out whether or
9 not the statement was voluntary and if the defendant was
10 in custody, whether the requirements of Miranda were
11 complied with in this particular matter.

12 I find from the testimony of the detective as to all
13 the surrounding circumstances as to the statement by the
14 defendant that it was voluntary, that he knew what he was
15 doing, he was not coerced or forced in any way, he was
16 not promised anything, no comfort was withheld from him,
17 and always it was the voluntary statement of the
18 defendant.

19 Further, the defendant obviously was in custody at
20 that point in time. I do find that the detective
21 complied with the requirements of Miranda, that the
22 defendant voluntarily waived his rights given to him. He
23 did not ask to have an attorney present. He voluntarily
24 gave the statement. He did not at any point in time
25 decline to answer the questions. He did not ask to stop

1 answering the questions, and he voluntarily made -- gave
2 a written statement.

3 I find that all the oral and the written statements
4 were voluntary and that the detective complied with the
5 requirements of Miranda, and therefore, I'm going to
6 allow the jury to hear the statements as described, the
7 oral statements and the written statements, as testified
8 to by the detective. The jury will be allowed to hear
9 that.

10 Obviously it is the jury's ultimate decision to
11 decide whether or not the confession was voluntary and
12 whether or not the requirements of Miranda were complied
13 with.

14 All right, anything further from the State in
15 regards to this case before we get started?

16 MR. RICHARDSON: No, sir, Your Honor. I would just
17 ask for about five minutes.

18 THE COURT: Anything from the Defense before we get
19 started?

20 MR. FLOYD: I was going to trump him. I was going
21 to ask for about ten minutes.

22 THE COURT: All right. Well, let's see if we can't
23 narrow it down to five minutes then so we can get
24 started. We've kept the jury waiting for a while. Thank
25 you very much.

1 (OFF THE RECORD)

2 ON THE RECORD

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
4 THE JURY.)

5 THE COURT: All right, would you ask Juror Number
6 409 to come out, please, Greg Williams, Juror Number 409.
7 (Juror 409, Gregory A. Williams, enters the courtroom.)
8 If you just want to stand right there, Mr. Williams, it
9 will be fine.

10 Mr. Williams, you indicated that at sometime in the
11 past, you said approximately thirty years or however long
12 ago, that you now remembered that you went to school with
13 Mr. Floyd, is that correct?

14 MR. WILLIAMS: That's correct.

15 THE COURT: All right, sir. My question to you
16 then is despite the fact that that might have occurred,
17 can you give to the State and to the defendant a fair and
18 impartial trial?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: Can you be a fair and impartial juror
21 in this case?

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: Very good. Thank you very much. Go
24 back and have a seat, and we'll be right with you. Thank
25 you very much.

1 (Mr. Gregory Williams exits the courtroom and returns to
2 the jury room.)

3 THE COURT: Anything further from the State on that
4 issue?

5 MR. RICHARDSON: No, sir, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. FLOYD: I didn't recognize him either.

8 THE COURT: All right.

9 NOTE FROM JUROR NUMBER 409 MARKED AS
10 COURT'S EXHIBIT NUMBER 4.

11 MR. RICHARDSON: Your Honor, as a matter of
12 housekeeping, I talked with Mr. Floyd and he is taking
13 under consideration right now whether he wants me to call
14 a witness to introduce the clocked copies of -- my
15 intention is to introduce the sentencing portion on 85-
16 GS-14-79 and Number 15, Your Honor.

17 THE COURT: All right, sir.

18 MR. RICHARDSON: For the record, Your Honor, 79 is
19 the incident that occurred on or about February ---

20 THE COURT: Hold on one second. I'm sorry. I was
21 having the Court Reporter do something. (Pause.) All
22 right, go ahead.

23 MR. RICHARDSON: For the record, Indictment Number
24 85-GS-14-79 is the incident that occurred February 8th,
25 1985, and 85-GS-14-15 is the incident that occurred on or

1 about December 3rd, 1984.

2 THE COURT: All right, and what you have are
3 basically the sentencing portions where it shows that the
4 defendant was found guilty of the housebreaking, and the
5 sentence?

6 MR. RICHARDSON: The final page, Your Honor. On
7 the front page -- it is a four-page document and it
8 indicates certified true copy of the original file in
9 this office dated 4/13/10, Beulah G. Roberts, Clerk of
10 Court, Clarendon County, South Carolina.

11 THE COURT: Good. All right, Mr. Floyd, are you
12 going to require the State to produce a witness that they
13 traveled to Clarendon County and they got those records
14 from the Clerk of Court?

15 MR. FLOYD: Judge, I -- I'm not going to require
16 them to put up a witness just for that. These are
17 certified as true copies. Certainly, that ---

18 THE COURT: So obviously you're not waiving -- and
19 certainly the Court takes note. You're not waiving your
20 arguments that you previously made as to their
21 introduction. Those are all on the record -- on the
22 record. The Court has ruled on those, you know, against
23 your position, but certainly that has nothing to do with
24 whether or not they are authentic copies or not?

25 MR. FLOYD: Yes, sir.

1 THE COURT: All right, very good.

2 MR. FLOYD: In regard to that when he goes to
3 formally introduce them, I will make a quick objection
4 subject to my prior ---

5 THE COURT: Very good. Very good, and then
6 I'll ---

7 MR. FLOYD: What exact documents are we putting in?

8 THE COURT: Let me see it. Let me see them, and
9 I ---

10 MR. RICHARDSON: As I understand it, Your Honor, it
11 will be that final page. It has the sentencing on there,
12 on the ---

13 THE COURT: All right, so what I intend to have in
14 there before the jury -- I know that they have marked the
15 whole thing as a certified true copy, but what I want to
16 go back before the jury is just the last page so you
17 don't have all this extraneous information about what
18 they allege to have occurred. It's just proof that he
19 was convicted at that point in time of the two
20 housebreakings, so it would just be the sentencing
21 sheets. Even though the certified is on the first page
22 of it, we can just mark it -- you can just mark it as a
23 whole if you want to, and then ---

24 MR. RICHARDSON: The Court's Exhibit is the whole
25 statement, and this is ---

1 THE COURT: Is the final page, okay?

2 MR. FLOYD: Yes, sir.

3 THE COURT: Very good. All right, anything else
4 from the State?

5 MR. RICHARDSON: Nothing else from the State, Your
6 Honor. We'll just have these marked -- or do you want
7 them marked as Court's Exhibits on the front, and then
8 I -- I will mark the separated page as the State's
9 Exhibit?

10 THE COURT: Once you -- I guess now since they
11 are ---

12 MR. RICHARDSON: For purposes of the hearing, we
13 marked a copy, Your Honor.

14 THE COURT: We'll just leave it as it is and then
15 we'll just mark the extra page, and they will be just two
16 separate pages, so just take off those two separate pages
17 is what she's (the Court Reporter) asking, the sentence
18 sheets, just that.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Make sure it's the right number, the
21 third page for the State's Exhibit.

22 MR. RICHARDSON: Yes, sir, Your Honor. It's just
23 that the others don't have the stamp on there. That's
24 the only reason I was ---

25 THE COURT: Okay; okay. What I thought we were

1 doing was the thing that is marked as a true and correct
2 copy, that whole thing was coming in, and then we were
3 having one page ---

4 MR. RICHARDSON: Separated out.

5 THE COURT: --- separated out.

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: Okay, so that's what we're doing,
8 right?

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

10 THE COURT: All right, good.

11 THIRD PAGE OF CERTIFIED PRIOR RECORD OF 12/7/84

12 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT

13 NUMBER 12.

14 THIRD PAGE OF CERTIFIED PRIOR RECORD OF 2/11/85

15 MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT

16 NUMBER 13.

17 THE COURT: All right, is the State ready for the
18 jury?

19 MR. RICHARDSON: The State is prepared to go
20 forward, Your Honor.

21 THE COURT: All right. Defense?

22 MR. FLOYD: Yes, sir.

23 THE COURT: All right. Now, looking at the time,
24 go through the opening statements; your first witness
25 that you're going to call, how long is that first witness

1 going to take?

2 MR. RICHARDSON: It will be Mr. Holley, what
3 occurred that night, Your Honor, and the victim's
4 identification.

5 THE COURT: All right. Will it be substantially
6 longer than Mr. Holley's testimony that he gave
7 previously?

8 MR. RICHARDSON: Yes, sir, Your Honor. We will get
9 more into the meat of it.

10 THE COURT: All right. How long do you think it's
11 going to be?

12 MR. RICHARDSON: I would guess thirty to forty-five
13 minutes, Your Honor.

14 THE COURT: All right. Well, we'll just see about
15 that then.

16 Ask the jury to come in, please.

17 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE**
18 **JURY.)**

19 THE COURT: All right, Mr. Purdy, the jury has
20 selected you to be the foreperson for this particular
21 jury, is that right?

22 MR. PURDY: Yes, sir.

23 THE COURT: All right, so, Mr. Purdy, and Ms.
24 Britt, if y'all will just occupy those two seats that you
25 are currently in all the time, because I need to know

1 where the foreperson and the alternate are. The rest of
2 you, just fill in wherever it is you happen to come in
3 from the jury room.

4 I got the note about -- and as I indicated before, I
5 understand you have lives outside the courthouse. What I
6 will tell you is what we try to do is as best we can, I
7 will try and stop right around five o'clock or maybe a
8 little bit before then. If there is a circumstance such
9 that we would go beyond that, I'll let you know, but
10 normally we try to do that so that people can take care
11 of their activities that they need to take care of back
12 home.

13 The first thing that's going to happen before we get
14 started is the Clerk will administer your oath to you, so
15 if you will please stand at this time.

16 (The jurors' oath is administered by the Clerk of
17 Court. All jurors stand, raise their right hand, and
18 answer in the affirmative to the oath as administered by
19 the Clerk.)

20 THE COURT: All right, is there any member of the
21 jury panel that did not take the oath as given by the
22 Clerk of Court, if you would please stand at this time.

23 (No response.) The Court seeing no one standing, the
24 Court finds that the jury has been properly sworn in this
25 particular matter.

REMARKS BY THE COURT

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1 All right, ladies and gentlemen, as I indicated to
2 you in the initial qualification, the State has charged
3 the defendant, Mr. Ward, with the criminal offense of
4 burglary, first degree, attempted. Now, as I told you,
5 the information I read to you from the indictment, again,
6 that wasn't evidence. It's not evidence in this case.
7 The only reason I read it to you, that was the charge
8 against him, was to see if you happen to know anything
9 about this case beforehand.

10 The evidence will come in the trial of this case
11 from witnesses that are sworn under oath before you or
12 maybe some type of documentary evidence or other evidence
13 that the Court may allow. That will be the evidence that
14 you will base your decision upon.

15 Now, to the charge that the State has brought
16 against or levied against the defendant in this case, he
17 has pled not guilty. That puts the burden of proof on
18 the State of South Carolina to prove the defendant guilty
19 beyond a reasonable doubt. The defendant is presumed
20 innocent. The defendant doesn't have anything to show to
21 you. The defendant doesn't have a thing to prove to you.

22 The State by the evidence it presents has to prove
23 to you the guilt of the defendant of the crime they've
24 charged him with beyond a reasonable doubt. That's the
25 State's burden now and it carries it throughout the

1 entirety of the trial, and that's the burden they'll have
2 when you are discussing this case at the end when you are
3 making your decision. The State has the burden of proof
4 at all times.

5 Now, part of your job in this case is going to be
6 judging the credibility, and that is the believability of
7 the witnesses that come before you, because in this trial
8 you collectively will be the judges of the facts of this
9 case. I will not indicate to you in any way what I
10 believe the facts of this case are or what I find to be
11 true in this matter. That's not my job.

12 That's your job. That's your responsibility, and
13 when you are judging the credibility and believability,
14 and I'll talk to you about this when I give you my
15 closing arguments, but -- or closing statements to you,
16 but you will think about it and you will say, "Well, how
17 do I judge credibility and believability?" You do it
18 every single day of your life. When somebody tells you
19 something, you are automatically judging whether or not
20 you believe them, and how do you do that? You use your
21 good common sense and your good judgment in conducting
22 your own affairs. You apply that to the facts and
23 evidence you find in this case. You find the facts and
24 evidence you find to be true, and then you weigh that
25 evidence you found to be true against the State's burden

REMARKS BY THE COURT

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1 to prove the defendant guilty beyond a reasonable doubt,
2 and that will be your job and responsibility in this
3 particular case.

4 And during the course of the trial, and I'll just go
5 over briefly how the trial will be conducted when I get
6 done with these brief statements to you, the lawyers will
7 have their opening statements whereby they will introduce
8 their case to you.

9 Now, these statements aren't evidence. They can't
10 be considered by you as evidence in the case, but they
11 are important because they are each side's initial
12 presentation to you of what they believe or expect will
13 happen during the course of the trial. Then we will go
14 into the evidentiary portion of the trial. That will be
15 the witnesses that come before you who testify under oath
16 as to the questions and answers that are given at that
17 point in time, as well as any type of photographs or
18 documentary evidence of any kind that the Court would
19 deem proper to come into this case.

20 When we get done with the evidentiary portion of the
21 trial, we will have the closing arguments of the
22 attorneys. Now, again, those closing arguments, they're
23 not evidence. You've already heard the evidence at that
24 point in time, but again, they are important. They are
25 each side's summation to you of what they believe the

1 evidence has shown to you during the course of the trial,
2 remembering, of course, that you are the judge of the
3 facts of this particular case.

4 After that, I will give you the law that you will
5 apply to the facts that you find to be true in this
6 particular case, and then I will send the case to you,
7 and submit the case to you for your deliberations and
8 your unanimous decision in this particular matter.

9 One of the reasons I went over this brief outline of
10 the trial with you is to emphasize the fact to you that
11 I'm asking you first not openly to talk about this case
12 until you've heard all the evidence and you know the law
13 to apply to the facts that you find to be true. If you
14 would do so beforehand, you might be discussing the case
15 before you've heard all the evidence, or you certainly
16 would not know the law that you need to know to apply to
17 the facts, so don't discuss the case until I send it to
18 you at the very end for your deliberations. You will
19 have all the time that you deem necessary to talk about
20 it before you reach your decision.

21 Also, whenever we take a break or you go home for
22 the evening, you can't talk about this case with anyone,
23 because unintentionally somebody will give you their
24 opinion about the case. They don't have one. Y'all
25 aren't supposed to have one until the very end, and you

1 can't do any research on your own. You can't look up
2 anything on the Internet. You can't communicate with
3 anybody about it.

4 I told you about the use of cell phones. Even when
5 you have them at home, or your computer, you can't be --
6 you know, get on Facebook or whatever and tell somebody
7 what you're doing until the case is over. When it's over
8 with, you can do whatever you want, but until then, you
9 have to, and your job and your responsibility is to make
10 your decision solely and completely on the evidence you
11 hear in this courtroom and from no other source, so with
12 that, I'll leave it to the attorneys for their opening
13 statements.

14 Solicitor.

15 MR. RICHARDSON: Your Honor.

16 Folks, criminal cases, the development of it, it's
17 kind of like putting a puzzle together. You're presented
18 with evidence. It comes in. You've got to piece it
19 together, see where it all fits, see what it says, see
20 what the picture is at the end. That's what this job is,
21 and that's what we're doing, and my job is to show you
22 those puzzle pieces, to present them to you so that you
23 can see the picture, so that you can render a true and
24 just verdict, and that's what we'll attempt to do today,
25 to show you that in the early morning hours, shortly

1 after midnight, October 31st, 2006, here in Horry County,
2 Mr. Shane Holley was sitting at home, laying in his bed
3 with his alarm set and his family there.

4 The next morning was going to be Halloween. They
5 had gone to bed, had come in off the road, traveled a
6 good bit, and he's laying there in bed asleep when he
7 hears a scary sound. He's got a burglar alarm, and that
8 warning alarm starts going off, beep-beep, beep-beep,
9 beep-beep. Something is going on. It's an alarm. It
10 wakes him up. He'll tell you he'd never had a false
11 alarm before, so this startled him. He's got his family
12 there, his three children, his wife, and he'll tell you
13 it startled him, and he got up out of bed, told his wife,
14 "Call 911."

15 Mr. Holley is going to tell you that he was
16 upstairs, and he grabbed a firearm he kept at the house,
17 and he went to go check to see what was wrong. He turned
18 the alarm off. His wife was on 911. There was no reason
19 for the alarm to go off and his kids running around, but
20 he wanted to see what was happening.

21 He'll tell you how he walked down the stairs, down
22 to the front door, and he went to check, and as he did,
23 he heard a noise outside. He said he heard pressure
24 being put on his front door, but he knew his wife was on
25 911 and she was calling for help.

1 He'll tell you how he flipped on the flood lights
2 and a street lamp was outside, and as he looked outside,
3 "What happened? Why is my alarm going off?" He sees
4 someone that he identified as the defendant. He gives
5 out a description to the 911 operator, or his wife does,
6 and thankfully, the police arrived shortly thereafter.

7 He sees this subject take off through the back yard,
8 and he's caught a short time later. Mr. Holley is going
9 to tell you how the defendant was brought back to his
10 home about five minutes later and how he identified him.
11 He said, "That's the man that was at my front door.
12 That's the man that set my burglar alarm off. That's the
13 man that ran through my back yard."

14 You see, folks, what we're having here is -- is in a
15 burglary case, the State would have to show you that
16 someone entered a home with intent to commit a crime
17 therein, and he was armed, and it occurred at night, or
18 some of the other elements, but the State is not trying
19 to tell you that a burglary occurred. All we're trying
20 to say is that is what the defendant was attempting to
21 do. He was attempting to commit a burglary, and but for
22 that -- but for that burglar alarm, it would have
23 occurred, folks. That warning went off, and the
24 defendant heard the noise, and he had to run, and that's
25 what we have here.

1 You're not going to hear a lot of forensic evidence
2 here. You're not going to hear about fingerprints, and
3 DNA, and all these cool things that you see on CSI.
4 Folks, as I told you, working a prosecution is like
5 putting a puzzle together. Sometimes you have a big ol'
6 jigsaw puzzle, five hundred pieces and a picture that's
7 perfect. It's already put together, and sometimes when
8 you get it together, you don't know what it is, but in
9 this case, folks, we'll show you.

10 Shortly after midnight, the burglar alarm went off
11 and woke Mr. Holley up. He went downstairs. He looks
12 out. He sees the defendant, and he sees the defendant
13 leave. The defendant is identified by Mr. Holley when
14 the police bring him back, and you'll also hear that
15 Detective Lewis spoke to the defendant. He gave some
16 other story about why he was there. Folks, it's after
17 midnight. There could be only one intent there.

18 Now, folks, this is a real simple puzzle, and once
19 all the pieces are in place and you see the picture,
20 you'll know the defendant is guilty of attempted first
21 degree burglary, and that's the verdict I'm going to ask
22 you to find.

23 THE COURT: All right, Mr. Floyd.

24 MR. FLOYD: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. FLOYD: Good morning, ladies and gentlemen. As
2 you know, my name is Thomas Floyd. I'm representing
3 Arnold Ward here today on this charge of attempted
4 burglary. I'm not going to take up a whole lot of your
5 time right now. This is just the opening statements for
6 us to tell you a little bit about the case. Any concerns
7 that you may have about this case taking weeks, it's not
8 going to take that long. We'll probably finish up
9 sometime tomorrow.

10 The first thing I want to tell you is that the State
11 has the burden of proof, as the Judge has told you, to
12 prove their case beyond a reasonable doubt. The charge
13 they brought in this courtroom today is that of attempted
14 burglary in the first degree. One of the things they
15 have to prove in there is that Mr. Ward, Arnold, intended
16 to commit a burglary, that he intended to commit a crime,
17 that he intended to break into the house.

18 The charge of attempted does not take that away from
19 them. They still have to prove that, and that's
20 important in this case because you haven't heard
21 everything about this case. I can tell you right now you
22 aren't going to hear Arnold ran away from that home. Not
23 unless that's something that's popped up since 2006, you
24 are not going to hear that.

25 This case is about what Arnold was thinking at that

1 time of night, but you're going to hear a lot more
2 surrounding circumstances than what you have heard so
3 far, and I ask you to be open-minded, because this case
4 is important to the State of South Carolina. It's
5 important to Arnold Ward, and as you sit here, you've got
6 no person to judge in this case. You've got no friends
7 to reward. You've got no enemies to punish.

8 You just have to decide as a juror after hearing all
9 of the evidence whether the State has put up evidence
10 enough to convince you beyond a reasonable doubt of all
11 of the elements of a crime, and the Judge will tell you
12 what the law is, what the elements of the crime is at the
13 close of this case.

14 I want to thank you right now for being here. I
15 know it's a hardship on all of you. Nobody wants to sit
16 here and judge another person, or I don't think you
17 should want to judge another person. That should be an
18 easy thing to do, and that's why I started off by telling
19 you, you've got no person to judge because the evidence
20 is presented to you.

21 I want to thank you at this time and I want to ask
22 your attention during this trial because it is a very
23 important matter. Thank you.

24 THE COURT: All right, Solicitor, your first
25 witness, please, sir.

1 MR. RICHARDSON: Thank you, Your Honor. The State
2 would call Mr. Shane Holley.

3 THE COURT: Please come around to be sworn, sir.

4 "BUDDY" SHANE HOLLEY, being first duly sworn,
5 testifies as follows:

6 THE CLERK: State your full name and spell your
7 last name.

8 MR. HOLLEY: My name is "Buddy" Shane Holley,
9 H-O-L-L-E-Y.

10 DIRECT EXAMINATION BY MR. RICHARDSON:

11 Q. I guess I can still say good morning, Mr. Holley.

12 A. Good morning.

13 Q. Could you tell us a little bit about yourself,
14 where you're from, where you live, what you do, what-not.

15 A. My name is Shane Holley. I'm forty-two years old.
16 I still reside at [REDACTED], which is in Longbay
17 Estates, just south of the Myrtle Beach State Park. I
18 have a wife and three children. I do quite a bit of
19 traveling. The type of work I do, I represent programs
20 that I sell products into Lowe's companies, so I am away
21 from home quite a bit.

22 Q. Okay, and [REDACTED], you said that's in the
23 Longbay Estates area?

24 A. Yes, sir, right across from the Harley shop on the
25 very southern end of Myrtle Beach.

1 Q. And that's here in Horry County, correct?

2 A. Yes, sir.

3 Q. Now, that's where you were living back in October
4 of '06?

5 A. Yes, sir.

6 Q. And I believe you just indicated your job took you
7 out of town a good bit?

8 A. It does. I have a office in Atlanta and one in
9 Greensboro, North Carolina, as well as here.

10 Q. And would that be apparent to anyone watching your
11 home?

12 A. It could be, yes, sir.

13 Q. Let's go back to the night of October 30th, the
14 early morning hours of October 31st, 2006. Were you on
15 the road on that day; were you at home?

16 A. I had just gotten back home.

17 Q. And who all was living in the home at that time?

18 A. My wife, and my -- he's now thirteen; at the time,
19 he was ten. My eight year old, who was five, and my five
20 year old, who was two.

21 Q. You, and your wife, and three children?

22 A. Yes, sir.

23 Q. And I'm going to show you what was previously
24 marked for identification as State's Exhibit 1 and see if
25 you recognize that photograph.

1 A. That's my home.

2 Q. And you can tell that's your home?

3 A. Yes, sir.

4 Q. Is that how your home appeared on October 31st,
5 2006?

6 A. Yes, sir.

7 Q. Except it was dark that night?

8 A. It was dark that night.

9 THE COURT: Any objection to State's 1?

10 MR. FLOYD: No, sir.

11 THE COURT: It's in evidence without objection.

12 STATE'S EXHIBIT NUMBER 1 ADMITTED INTO EVIDENCE.

13 MR. RICHARDSON: Your Honor, the State seeks to
14 publish State's 1.

15 THE COURT: Is there any objection to that?

16 MR. FLOYD: No, sir.

17 THE COURT: You may publish.

18 Q. Mr. Holley, as I pass that around to the jury, on
19 that photograph, State's 1, we see a set of front doors.
20 It looks like double front doors.

21 A. That's the primary set of front doors, yes, sir.

22 Q. Are there any other entrances on the front of that
23 house?

24 A. Yes, sir. To -- as that picture is shown, to the
25 right of that there is another set of double doors that

1 technically are in the kitchen. They're glass.

2 Q. And on those there's palmetto trees?

3 A. Yes, sir.

4 Q. That night, if you could briefly take us through
5 the night of October 30th, 2006, that was the night
6 before Halloween?

7 A. Yes, sir.

8 Q. Were the kids excited?

9 A. Yes, sir.

10 Q. Just you and your family home that night?

11 A. Yes, sir.

12 Q. And was that a weekend night, a weekday night, do
13 you recall?

14 A. It was a weekday. I had gotten back in from a
15 trip to Atlanta.

16 Q. At what time did everybody get to bed?

17 A. We try to put our kids to bed, especially the
18 younger ones, about eight-thirty, so by nine o'clock,
19 they're fairly well situated in bed. My wife and I --
20 our home is three stories. Our kids' bedroom is on the
21 middle floor. Our bedroom is on the third floor, so we
22 put the kids to bed between eight-thirty and nine
23 o'clock.

24 Q. When you say the kids' bedroom is on the middle
25 floor, is that the same floor that the front door is on?

1 A. Yes, sir, that would be correct.

2 Q. So there's a level below that as well?

3 A. Yes, sir.

4 Q. So you get everybody -- you get the kids to bed
5 about nine o'clock or so, or they're good in bed about
6 nine o'clock?

7 A. Yeah, the little ones, yeah.

8 Q. And you and your wife go up to your bedroom?

9 A. Yes, sir.

10 Q. Y'all watch T.V. for a little while and then you
11 go to sleep?

12 A. Yes, sir.

13 Q. Now, prior -- prior to you and your wife retiring
14 for the evening, did you take any precautions at the
15 house?

16 A. We set the alarm, lock the doors.

17 Q. Did you have any lights on in the house when you
18 went to sleep?

19 A. No, sir.

20 Q. Okay, so the house was dark?

21 A. Yes, sir.

22 Q. And the outside of the house, how was that lit?

23 A. It was dark other than the street light.

24 Q. There's a street light outside?

25 A. Yes, sir, on the front corner of my lot.

1 SEVEN (7) PHOTOGRAPHS MARKED FOR IDENTIFICATION
2 AS STATE'S EXHIBIT NUMBERS 5, 6, 7, 8, 9, 10, AND 11.

3 Q. Now, I'm going to show you a set of photographs
4 marked State's 11 -- I'm sorry -- State's 5, 6, 7, 8, 9,
5 10, and 11.

6 MR. RICHARDSON: I'm going to show them to Mr.
7 Floyd real quick.

8 MR. FLOYD: Begging the Court's indulgence.

9 THE COURT: Yes, sir. (Pause.) Any objection to
10 those?

11 MR. FLOYD: There might be, Judge. I'm just trying
12 to -- on one of them particularly, just trying to see how
13 it comes out.

14 THE COURT: All right. Have the defendant -- or
15 have the witness identify them, then.

16 Q. Mr. Holley, if you'll take a look at State's 5, 6,
17 7, 8, 9, 10, and 11. Take your time and look through
18 them.

19 A. (Witness looks at Exhibits.) Yes, sir.

20 Q. Do you recognize those photographs?

21 A. Yes, sir.

22 Q. How do you recognize those photographs?

23 A. They are external and internal shots of my home
24 and my doors.

25 Q. Do they fairly and accurately depict your home as

1 of October 31st, 2006?

2 A. Yes, sir.

3 MR. RICHARDSON: Your Honor, for purposes -- and as
4 Mr. Holley indicated, they are external and internal
5 photographs of his home. The State would seek to move
6 them into evidence at this time.

7 THE COURT: Any objection to State's 5 through 11,
8 is that correct? Solicitor, it's 5 through 11?

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: Any objection to those?

11 MR. RICHARDSON: I believe I can answer one of Mr.
12 Floyd's questions. (Mr. Richardson and Mr. Floyd speak
13 quietly off-the-record.) Number 10.

14 THE COURT: You have an objection to Number 10?

15 MR. FLOYD: To Number 10.

16 THE COURT: All right, so 5, 6, 7, 8, 9, and 11,
17 there's no objection, is that correct?

18 MR. FLOYD: Yes, sir.

19 THE COURT: All right, so 5, 6, 7, 8, 9, and 11 are
20 in evidence without objection. Let me see Number 10.

21 STATE'S EXHIBIT NUMBERS 5, 6, 7, 8, 9, AND 11

22 ADMITTED INTO EVIDENCE.

23 MR. RICHARDSON: You want to see Number 10, Your
24 Honor?

25 THE COURT: Yes, sir. Are you going to still

1 attempt to introduce it?

2 MR. RICHARDSON: Yes, sir, Your Honor, at the
3 appropriate time.

4 THE COURT: All right. Let me see it. (Mr.
5 Richardson hands Exhibit to the Court.) All right, sir.
6 You will develop further testimony for that one, then.
7 All right, very good. You may proceed.

8 MR. RICHARDSON: Thank you, Your Honor.

9 Q. Let's look at State's Number 5. Could you tell us
10 what we see in State's Number 5?

11 A. That would be a shot from, you know, someone with
12 their back to my actual glass doors and what I would be
13 viewing out of the glass doors towards the -- what we
14 call our primary front door and the steps.

15 Q. And that's the kitchen door?

16 A. Yes, sir, that's the kitchen door.

17 Q. And State's Number 6, could you tell us what you
18 see here?

19 A. That would be the handles to the double door on
20 our front porch. One of them is fake; one works.

21 Q. One is a dummy?

22 A. Yes, sir.

23 Q. All right.

24 MR. RICHARDSON: Your Honor, I'll just pass these
25 along so the jury could take a look at it for just a

1 moment.

2 THE COURT: All right. Any objection to the
3 publication for the ones that are in evidence?

4 MR. FLOYD: No, sir.

5 THE COURT: All right, very good.

6 Q. All right, I'm going to hand you State's Number 7,
7 8, and 11.

8 MR. FLOYD: Judge, in regards to Number 11, and I
9 apologize for backing up because I just finished saying I
10 didn't have a problem, it's kind of the same objection
11 that I'm having with Number 10, so we'll just let that
12 develop and I'll take that up as it comes up.

13 THE COURT: All right, sir.

14 Q. All right, as to 7, 8, and 11, could you just tell
15 us what we're seeing there on Number 7?

16 A. Number 7, that is an outside shot of the kitchen
17 door. Number 8 is a close-up shot of the handles on the
18 kitchen door, and Number ---

19 Q. An exterior of it?

20 A. Exterior, yes, and Number 11 is an interior shot
21 of the kitchen doors.

22 MR. RICHARDSON: Your Honor, we would publish at
23 this time.

24 THE COURT: Any objection to the publication
25 regarding those that are in evidence?

1 MR. FLOYD: In regards to Number 11, that was the
2 one that I mentioned of kind of having the same
3 objection.

4 THE COURT: All right.

5 Have him testify as to what Number 11 shows exactly.

6 Q. Once again, if you could tell us what Number 11
7 shows.

8 A. These doors are manufactured by Peachtree Windows
9 & Door Company. As we're looking at the photo, both of
10 these doors will open, but the right-hand door in this
11 photo has a head and foot bolt. That means it is locked
12 unless you physically open those to swing both of those
13 out. The left-hand door in this photo was what would be
14 the operator, which would be the door that you would walk
15 up to to swivel the lock, which in this particular case
16 should throw three pins to lock the door in three
17 positions. It's a three-point lock.

18 Q. That's an interior view, looking outside in the
19 yard through the door?

20 A. Out of my kitchen, that -- yes, sir, that is my
21 kitchen door.

22 THE COURT: I'm going to allow State's 11 in
23 evidence over the objection of the Defense.

24 STATE'S EXHIBIT NUMBER 11 ADMITTED INTO EVIDENCE.

25 MR. RICHARDSON: May I publish, Your Honor?

1 THE COURT: Yes, sir, you may publish.

2 MR. RICHARDSON: If we could give the jury a few
3 minutes, Your Honor.

4 THE COURT: They will have all the time they need.

5 MR. RICHARDSON: Yes, sir.

6 Q. Now, Mr. Holley, you indicated -- you just told us
7 that interior door, that you have one -- as you face
8 outside, one on your right-hand side and one on your
9 left-hand side as you look out towards your yard?

10 A. Of that particular door, yes, sir.

11 Q. The kitchen door?

12 A. The kitchen door, yes, sir; there are two actual
13 doors.

14 Q. And did they operate properly, both those doors?

15 A. The doors open and close properly and would latch
16 properly, but the locking mechanism had failed while I
17 was out of town. It was not locking properly.

18 Q. And that's on the door you -- the operator door?

19 A. That would be the left-hand operator door. The
20 spring had broken in one of the three-point locking
21 mechanisms and jammed it. It wouldn't go into the
22 turnstile to lock it.

23 Q. And what effect, if any, did that have on that
24 door?

25 A. No effect on it opening and closing and in the

1 manner of shutting and latching from the standpoint of a
2 normal closed door, but it would not allow me to throw
3 the three-point locks.

4 Q. So basically the door wouldn't lock?

5 A. That's correct.

6 Q. Did you take any steps -- with the door not
7 locking, was there anything you'd come up with to act as
8 a lock or any kind of latch?

9 A. Well, we proceeded to order a new one. They're
10 not something that the local supply houses have on the
11 shelf, so we ordered a new lock and took a leather belt,
12 a leather strap, and bound the two doors together on the
13 inside.

14 Q. I show you what's been previously marked as
15 State's 9. See if you can identify 9 for us, please,
16 sir.

17 A. That is the best I could do. That was my lock.

18 Q. Does that fairly and accurately depict the method
19 which you used to secure that door?

20 A. On that night, yes, sir.

21 MR. RICHARDSON: Your Honor, the State would seek
22 to publish State's Number 9.

23 THE COURT: Is there any objection to publication
24 for Number 9?

25 MR. FLOYD: No, sir.

1 THE COURT: You may do so.

2 Q. Once again, prior to going to bed, I know you told
3 us you turned on the alarm, and you locked the doors?

4 A. And windows.

5 Q. And windows, and I guess you belted the back door?

6 A. Yes, sir.

7 Q. To the best of your ability?

8 A. It had been belted a couple of days since it had
9 broken.

10 Q. Now, did you have any type of -- you had just
11 indicated you activated the burglar alarm. Tell us what
12 kind of burglar alarm that is. How did it activate?

13 A. It's a keypad ADT secured system that you just
14 punch in a code and set it to activate where you can move
15 about in the house and not set it off, but that's how I
16 set it.

17 Q. But what would cause it to activate?

18 A. Either a window -- we have motion sensors, but, of
19 course, they're not activated when we're in. We have
20 break-sensors, which means if there's a window break, it
21 would set it off, and then we have the magnetic sensors
22 that if a window or doors opened, it will set it off.

23 Q. So basically if it's breached?

24 A. If it's breached, it goes off.

25 Q. If any door or window is breached, does the alarm

1 automatically go into full effect?

2 A. No, sir. It is a -- it's got a sixty second delay
3 where it's like a real loud pulsing alarm clock. It just
4 is a constant beep-beep, real loud, but the external and
5 the internal screamers, or whatever they're called, the
6 sirens, don't go off until after sixty seconds.

7 Q. Now, after you went to bed that night -- I guess
8 you went to bed around -- on October 30th, expecting to
9 wake up October 31st. Did you get a full night's sleep?

10 A. No, sir.

11 Q. What happened to interrupt your sleep?

12 A. Well, it was just after midnight the first-stage
13 alarm went off. We'd never had a false alarm, so it
14 startled me. I asked my wife to call 911, and I grabbed
15 my pistol and went downstairs, because that's the floor
16 that -- the third floor would be impossible almost to
17 access without a ladder, so I was more concerned about
18 getting to -- protecting my kids.

19 Q. And your kids stayed down on that floor?

20 A. Yeah. They're on the middle floor, which is where
21 the -- there's two panels that you can deactivate the
22 alarm. The alarm key pad is at the bottom of the steps
23 coming from the third floor to the middle floor. It
24 indicates the breach point, which indicated my kitchen
25 door, so I deactivated the alarm and reached around and

1 turned on -- I oddly have a basement in my home, which is
2 kind of unique in Myrtle Beach, but I did turn on a
3 bottom set of lights that are under the stairs because,
4 you know, I wanted to be able to have some light. If
5 someone tried to come up those stairs to my kids, I
6 wanted to have light for a shot.

7 Q. Yes, sir, so you make your way down the steps,
8 down to the level where your kids are. Did you turn off
9 your alarm?

10 A. I did.

11 Q. And you were armed?

12 A. Yes, sir.

13 Q. Once you reached that level, you hit the light.
14 Did you do anything else?

15 A. Well, I knew where to go, because the alarm tells
16 me, so I -- at the bottom of the steps, a line directly
17 to the living room, which the front door is right into
18 that section, what I call our primary door, and then a
19 little alcove comes back, and over to the left is where
20 the kitchen door is, so I proceeded to that kitchen door
21 to where the alarm said that, you know, it had been
22 breached.

23 Q. Did you observe anything when you got to the
24 kitchen door?

25 A. Two things. The first thing I noticed was the

1 front door. I could hear the door being squeezed and
2 compressed. I could hear pressure being placed on that
3 door. I didn't know what to think of that immediately,
4 but when I looked out, looking from my glass over the
5 angle, I saw Mr. Ward step back from the front door at
6 that point, and I knew what was going on.

7 Q. So you had gone to the kitchen first?

8 A. Yes, sir.

9 Q. Because you heard a noise at the other front door?

10 A. Ten feet away, I mean, fifteen tops. I could hear
11 -- I could hear pressure being put on that door.

12 Q. Now, what kind of lighting was there outside?

13 A. At that time, just the street light was on.

14 Q. And what was your vantage point? You indicated
15 you saw Mr. Ward. How far away was he?

16 A. When he stepped back at that point, he may have
17 been from me to the young lady in the peach and pink
18 colored sweater. Ten feet, I guess that would be, twelve
19 feet.

20 Q. And you had a street light out there?

21 A. It was at his back at that point, but there was a
22 street light, yes, sir.

23 Q. And what kind of clothes did he have on?

24 A. Well, the thing that immediately struck me was he
25 had a dark-colored hoodie on, a sweatshirt, and dark

1 clothing.

2 Q. And what kind of condition were you in at this
3 point?

4 A. Oddly calm. I was processing the fact that I
5 needed to not over-react, because my initial reaction was
6 to confront him, but then I had three children in the
7 home and so I had to be rational, that I do have other
8 points of entry, and I didn't know if he was alone, so my
9 reaction was to protect my wife and kids.

10 Q. And once you see the defendant, do you make any
11 noises or anything?

12 A. No. Where I was standing, my refrigerator was
13 coming to my back, and it's black, so I was fairly well
14 concealed. He turned, walked down my steps, was
15 appreciative enough to step over my kids' Halloween
16 decorations and walk down my driveway, and at that point
17 he come around my Suburban, which, you know, I would have
18 probably been standing at this level when he would have
19 walked around at my feet, and that's when I really got a
20 real good look at him because the street light then was
21 shining towards his face, which is when I think he saw
22 me, because that's when I hit -- just on the other side
23 of the door, I hit the outside lights and he went down
24 the driveway and out through the back yard.

25 Q. You say you believe he saw you at that point?

1 A. Something set him off because before I hit the
2 lights, he went down the driveway, and at the point I hit
3 the lights, I've got windows in the back of my kitchen as
4 well, I could see him going through the back yard -- the
5 back light.

6 Q. Take a look at State's Number 1 again we published
7 to the jury. Where was it where you saw the defendant
8 first?

9 A. He was right in front of my front doors.

10 Q. And where were you located?

11 A. I was standing in these glass doors right here.

12 Q. All glass, so you had a good view?

13 A. Yes, sir. When he stepped back, I did.

14 Q. And whenever you last saw the defendant, ---

15 A. He come down the steps and went around, went
16 around my Suburban, and I was looking at him right off
17 the -- right across the hood of my Suburban.

18 Q. And where were you located?

19 A. Still right here at this glass door.

20 Q. And you had hit the lights at that point?

21 A. Well, I stepped across and hit the lights on the
22 other side of the door.

23 Q. And you never stepped outside?

24 A. No, sir.

25 Q. In which direction did the defendant take off?

1 A. He went down my driveway and into a lot -- the
2 last I saw him, he was heading in towards a wooded lot.

3 Q. And this may seem like a silly question, but
4 what's out here in front of your house?

5 A. A street.

6 Q. What's behind that?

7 A. A vacant wooded lot.

8 Q. Now, while you're down there with your pistol and
9 you're checking the doors, is anybody else in your house
10 doing anything?

11 A. Yes, sir. At the point where I had hit the lights
12 -- well, of course, my wife was communicating with me
13 then with the 911 operator. They were asking me
14 questions about what I had seen and who I had seen, and I
15 was relaying information to them.

16 Q. And did y'all give them any kind of description?

17 A. Yeah. The 911 operator asked me what his race
18 was. I said he was a white male. I said he looked
19 fairly short, between five-four, I think I told her, and
20 five-six, somewhere in that neighborhood. I told her he
21 had on a dark-colored hoodie. She responded because my
22 wife yelled back at me and said, you know, are you sure
23 he was white, because subsequently there had been another
24 break-in that same day in our neighborhood from a black
25 gentleman, and I told her no. I said, "This is -- this

1 is a white guy." I could see him.

2 Q. So you were pretty sure of what you had seen?

3 A. Yes, sir.

4 Q. Now, your doors, that front main door, what was
5 its condition when you went to it?

6 A. The front main door, it was locked. I mean, the
7 deadbolt was thrown. You can go up and squeeze the latch
8 and you'd think that door should open, but it's got a
9 deadbolt. That is the locking mechanism on it.

10 Q. How about those french doors or the kitchen doors?

11 A. He could -- that door at that point in time, you
12 know, when we were on 911 is when I realized that door
13 had been opened and was open about, you know, roughly an
14 inch, inch and a quarter. It was still open at the time
15 I got to it.

16 Q. Okay. I'm going to show you what's been marked as
17 State's Exhibit 10.

18 MR. RICHARDSON: Your Honor, this is one the
19 Defense had a prior objection to it.

20 THE COURT: All right. Well, just have him
21 identify it.

22 Q. Can you tell us what we're looking at there?

23 A. That is the -- that is my kitchen door, the front
24 door, less my belt, the lock, looking out towards the
25 front porch.

1 Q. And what, if anything, does that photograph show?

2 A. That's about the state of what the door was left
3 in when I found it, but it still had the belt on it.

4 Q. Is that about as far as you could get with the
5 belt on there?

6 A. Yes, sir.

7 MR. RICHARDSON: Your Honor, the State would seek
8 to introduce ---

9 Q. Does that fairly and accurately depict the
10 condition you found the door that night?

11 A. That's the belt, yes, sir; that's the belt.

12 MR. RICHARDSON: Your Honor, the State would seek
13 to introduce State's Number 10.

14 THE COURT: Any objection?

15 MR. FLOYD: My objection to it, Judge, is it's not
16 a fairly and accurate depiction because it's ---

17 THE COURT: Well, I'll ---

18 MR. FLOYD: That has the belt on it, and it's also
19 speculation ---

20 THE COURT: I understand your objection. Thank
21 you, sir.

22 MR. FLOYD: It's also speculation as to that being
23 how the door -- how much the door was open with the belt
24 being ---

25 THE COURT: All right, sir. I understand your

1 objection, Mr. Floyd. Thank you. I overrule your
2 objection. I'll allow you to ask questions on cross
3 examination. I'm going to allow it into evidence over
4 the objection of the Defense. Thank you very much.

5 STATE'S EXHIBIT NUMBER 10 ADMITTED INTO EVIDENCE.

6 MR. RICHARDSON: The State would seek to publish,
7 Your Honor.

8 THE COURT: You may do so.

9 Q. Are you familiar with your alarm, Mr. Holley?

10 THE COURT: I'm sorry -- that was 10, is that
11 correct?

12 MR. RICHARDSON: That's State's Number 10, yes,
13 sir, Your Honor.

14 THE COURT: All right. Go ahead, sir.

15 Q. You're familiar with what would trigger your
16 alarm?

17 A. Yes, sir.

18 Q. The door being open that much, would that trigger
19 the alarm?

20 A. Yes, sir.

21 Q. How long had you had the belt on that door?

22 A. The door had broken the Friday or Saturday before
23 I left. I was gone Sunday. I had to go over to Atlanta
24 to my office Sunday and come back Monday. That's when we
25 belted it, and we had ordered that part that Friday.

1 Q. Had you tried to open that once you had the belt
2 on there? Had you tested it basically?

3 A. Yeah; yes.

4 Q. In your test on it, how far would the door open
5 with the belt on?

6 A. I mean, if you really leaned on it, it would -- it
7 would come open, you know, a couple of inches. I'm a
8 fairly good size guy, so I could pull it a little bit. I
9 got it as tight as I could, even put a new hole in the
10 belt trying to get it as tight as I could.

11 Q. So when we left off, y'all had given a description
12 on 911. You're still standing there and you had seen the
13 defendant leave, correct?

14 A. Yes, sir.

15 Q. I'm going to show you what's ---

16 (Mr. Richardson shows document to Mr. Floyd.)

17 MR. FLOYD: Okay.

18 MR. RICHARDSON: If I could have that marked,
19 please, ma'am.

20 PHOTOGRAPH OF MAP MARKED FOR IDENTIFICATION AS
21 STATE'S EXHIBIT NUMBER 14.

22 Q. Let me show you what's been marked as State's
23 Number 14. Do you recognize that?

24 A. It's some type of mapping, probably off the
25 Internet, showing the upper Longbay Section of Longbay

1 Estates.

2 Q. Is that a fair and accurate depiction of that
3 area, a map of that area?

4 A. Yes, sir.

5 Q. And that's fairly accurate?

6 A. Yes, sir.

7 MR. RICHARDSON: Your Honor, the State would seek
8 to introduce State's Number 14 into evidence.

9 THE COURT: Any objection?

10 MR. FLOYD: No, sir.

11 THE COURT: State's 14 is in evidence without
12 objection.

13 STATE'S EXHIBIT NUMBER 14 ADMITTED INTO EVIDENCE.

14 Q. Now, the double yellow line, do you know what that
15 indicates on Number 14?

16 A. That would be Kings Highway.

17 Q. Kings Highway or Business 17?

18 A. Yes, sir.

19 Q. And [REDACTED] is the first wide road?

20 A. Yes, sir.

21 Q. And if you could indicate on State's Number 14 --
22 if you could mark on there approximately your home's
23 location.

24 A. My home is about right here because this curve on
25 Woodview is right -- right behind me.

1 THE COURT: All right, when you're doing that, you
2 have to speak up.

3 MR. FLOYD: I'm sorry?

4 A. I'm sorry. I'm about the end of that curve right
5 there, so the "X" I've marked.

6 Q. About where you put the "X"?

7 A. Yes, sir.

8 Q. About mid-way down the road?

9 A. Yes, sir.

10 Q. And your home faces out toward [REDACTED]?

11 A. Yes, sir, and there's nothing on the other side
12 other than woods and a wall.

13 Q. And whenever the defendant -- whenever you saw him
14 leave, he left back towards Woodview Lane?

15 A. Yes, sir. He went down my driveway.

16 MR. RICHARDSON: The State seeks to publish, Your
17 Honor.

18 THE COURT: Any objection to publication?

19 MR. FLOYD: No, sir.

20 THE COURT: You may do so.

21 Q. Now, did the police ever arrive at your home, Mr.
22 Holley?

23 A. Pardon me?

24 Q. Did the police ever arrive at your home that
25 night?

1 A. Very quickly, yes, sir, extremely quickly, and I
2 mean no disrespect by that.

3 Q. Extremely quickly?

4 A. Yes, sir.

5 Q. Within minutes?

6 A. Max, five minutes. My wife was still on the phone
7 with the 911 operator, and she was asking me -- the
8 operator had asked me to put the pistol away because the
9 police were en route to my house, and her statement was,
10 "They got him." That's was my wife's statement, so I
11 went and put the pistol away.

12 Q. So your wife indicated "They got him"?

13 A. Yes, sir.

14 Q. Now, you indicated you had a pretty good
15 opportunity to view the suspect, correct?

16 A. Yes, sir, while he was at the driveway.

17 Q. Did the police ever bring anybody to your
18 attention that night?

19 A. Yes, sir. They brought a gentleman back to my
20 home.

21 Q. And how soon after your pre-alarm had gone off was
22 it that the police arrived back with someone in their
23 car?

24 A. From the point I came out of the bed to the point
25 the police were in front of my home was probably ten

1 minutes.

2 Q. Tell us a little bit about that, about the police
3 arriving.

4 A. Well, my wife was telling me that the 911 operator
5 said that they would be in front of the house in just a
6 couple of minutes, for me to put the pistol away, so I
7 went, put the pistol away, went to the front door, and
8 I'm almost sure that a -- a cruiser like an Impala pulled
9 up, and then there was a Ford Explorer behind it.

10 Q. Okay, and once that Ford Explorer showed up, what,
11 if anything, did you observe?

12 A. A very large police officer get out.

13 Q. Okay.

14 A. He got out, came up and asked me if we were the
15 ones who had called 911, and I told him yes. He asked
16 me, he said, "Is this the gentleman that's been at your
17 house?" and he was still in the back of the truck, and I
18 said, "Would you ask him to step out. I mean, I'd like
19 to really be able to look at him and see him," and I had
20 all my lights on at that point in time. He did, and I
21 looked at him, and it was the defendant, Mr. Ward.

22 Q. And how sure are you of your identification? How
23 sure were you then?

24 A. A hundred percent.

25 Q. And the person you identified that night, do you

1 see him in the courtroom today?

2 A. Yes, sir.

3 Q. Could you tell us who that is.

4 A. Mr. Ward.

5 Q. And what color shirt is he wearing?

6 A. Brown.

7 Q. How sure are you of your identification today?

8 A. That's Mr. Ward. I'm sure.

9 Q. Okay. Had you ever seen the suspect prior to that
10 night?

11 A. Nothing that I could relate, no, sir, recollect.

12 Q. Was he a friend of the family?

13 A. No, sir.

14 Q. Not related to you?

15 A. No, sir.

16 Q. To your knowledge, had he ever been in your home
17 before?

18 A. No, sir.

19 Q. To your knowledge, would he have any reason to be
20 in your home?

21 A. No, sir.

22 Q. And to your knowledge, did anyone invite him to
23 your home?

24 A. No, sir.

25 Q. You gave a statement to the police that night?

1 A. Yes, sir.

2 Q. I show you what's been marked as State's Number 2.
3 Would you review that.

4 A. (Witness reviews State's Exhibit Number 2.)
5 That's my statement, yes, sir.

6 (Mr. Richardson shows document to Mr. Floyd.)

7 MR. FLOYD: Yeah, that's fine.

8 Q. What was the purpose of that statement?

9 A. The police officers asked me to, you know, give
10 them a recollection of what happened there, the chain of
11 events that happened that night.

12 MR. RICHARDSON: The State would just seek to
13 introduce Number 2, Your Honor.

14 THE COURT: Is there any objection to State's 2?

15 MR. FLOYD: No, sir.

16 THE COURT: It's in evidence without objection.

17 STATE'S EXHIBIT NUMBER 2 ADMITTED INTO EVIDENCE.

18 Q. Does that contain all the information from that
19 night, or would it be classified as a summary?

20 A. I think that's a summary of everything that went
21 on.

22 Q. Whenever you encountered the defendant that night,
23 when the police arrived back, did the defendant make any
24 statement?

25 A. Yes, sir. When he got out of the truck, his

1 initial statements was that -- he was very polite. He
2 said, "Sir, I've never been to your house, sir." He made
3 the statement, "I've never been on your porch, sir. I
4 don't know you, sir," and then he made a statement that
5 he was just looking for work, and the officers then put
6 him back in the truck and asked me to go back inside.

7 Q. And was that in response to any questioning?

8 A. Not from me, no, sir. I just -- I was asked by a
9 police officer if this was the gentleman I had seen, and
10 I told him yes.

11 Q. The first thing out of his mouth was he had never
12 been to your house before?

13 A. That is correct.

14 Q. And he was out looking for work?

15 A. That is -- that was a later statement, yes, sir.

16 MR. RICHARDSON: Thank you, Mr. Holley. If you
17 will answer any questions Mr. Floyd might have.

18 A. Yes, sir.

19 THE COURT: Cross examination.

20 MR. FLOYD: Just a few questions, Mr. Holley.

21 CROSS EXAMINATION BY MR. FLOYD:

22 Q. Your primary door is a double door made out of
23 wood, correct?

24 A. That would be correct. The primary door where the
25 doorbell is is the wood doors.

1 Q. How far -- and I'm going to refer to your
2 secondary door as french doors, ---

3 A. The kitchen doors.

4 Q. --- would that be accurate? They're made out of
5 glass?

6 A. Yes, sir.

7 Q. How far are these two doors apart?

8 A. In direct correlation, ten, twelve feet.

9 Q. Do they face in the same direction?

10 A. Yes, sir. They both face [REDACTED].

11 Q. If you walked out of the french doors to your
12 primary door, ---

13 A. Yes, sir.

14 Q. --- how far of a walk would that be?

15 A. Ten or twelve feet, you know, ---

16 Q. And if you walk out ---

17 A. --- so if you walk out, maybe fifteen max.

18 Q. And you've got a grill that sits right there?

19 A. Yes, sir.

20 Q. Now, did you see Mr. Ward at your french doors on
21 that particular night?

22 A. No, sir.

23 Q. When you came downstairs and found the french door
24 slightly ajar, ---

25 A. Yes, sir.

1 Q. --- and that's what caused your alarm to start
2 beeping?

3 A. Yeah. It pops up -- it pops up the breach point.

4 Q. Now, did you see Mr. Ward at your front door from
5 the french doors?

6 A. When he stepped back from my front door, I could
7 see Mr. Ward.

8 Q. You saw him step back, and he turned and walked
9 down your steps?

10 A. That is correct, yes, sir.

11 Q. He walked down your driveway?

12 A. When he walked down my sidewalk in front of the
13 house, around my Suburban, then yes, sir.

14 Q. And it was pretty much at that time the police got
15 there?

16 A. No, sir.

17 Q. Right; you had said before three or four minutes
18 total?

19 A. No. After -- after he exited the property, my
20 wife yelled and said, "They got him," and that's when
21 they brought him back, probably two or three minutes
22 later, so it was -- probably was ten or twelve minutes
23 elapsed time from the point the alarm went off until they
24 were back.

25 Q. I'm sorry. I misunderstood you. I thought you

1 had said three or four minutes, so -- and even stepped
2 over or stepped around the Halloween decorations?

3 A. Stepped over the grim reaper that was deflated,
4 yes, sir.

5 Q. And this photograph what's marked as State's
6 Exhibit Number 5, ---

7 A. Yes, sir.

8 Q. --- that would be the view from your french doors?

9 A. That would be, I would say, with someone's back to
10 my french doors, yes, sir.

11 Q. So from that picture, they would be standing on
12 the porch side of your front door?

13 A. That would be my assumption only because I can't
14 see any of the crossbar members.

15 Q. Do your french doors open out to the porch or in
16 to your kitchen?

17 A. The french doors open out.

18 Q. And that's out to the porch?

19 A. Yes, sir. The primary doors open in.

20 Q. I'm sorry. I misunderstood you.

21 A. The kitchen -- the kitchen doors, what we would
22 call the french doors, they go out.

23 Q. Out to the porch, so you'd walk out, open them ---

24 A. Well, you would have to throw a head and foot bolt
25 to open the right-hand one, but the left-hand one would

1 be a handle.

2 Q. And the primary door opens in?

3 A. What we would call the primary door would open in,
4 yes, sir, a similar situation of a head and foot bolt
5 ones.

6 MR. FLOYD: And I think that's about all I have for
7 you at this particular time. I did want to ---

8 Q. How long did you say you traveled?

9 A. Quite often.

10 Q. Three days a week, four days a week, something
11 like that?

12 A. It would vary. I mean, sometimes I would be out
13 for two or three days at a time. There would be times I
14 would be gone for a week, and it just varied on the need
15 of me being in the other plants.

16 Q. And I'm not trying to get too personal, but are
17 you pretty much home on the weekends, though?

18 A. A combination. My furthest plant was in Atlanta,
19 so I would leave on Sundays to go over there.

20 Q. Was there any construction going on in Longbay
21 during that period of time?

22 A. I believe on the Ocean Boulevard, what we call the
23 rich section. I live in the poor section. There was
24 some construction going on.

25 Q. So there was some construction going on in Longbay

1 at that time?

2 A. I do believe so, yes, sir.

3 Q. Are you aware -- and I understand, you know, if
4 you can't answer this question, I understand it. You've
5 told me you traveled a lot. Are you aware of any
6 remodeling that was going on in any of the houses around
7 there?

8 A. I was in the building supply industry, but
9 primarily it was on new construction, so I didn't know of
10 remodeling going on, but I may not have known, to be
11 fair.

12 Q. Yes, sir.

13 MR. FLOYD: Bear with me one second.

14 A. Yes, sir.

15 MR. FLOYD: I believe that's all I have. Thank
16 you, sir. I've got no further questions.

17 THE COURT: Any redirect?

18 MR. RICHARDSON: No, sir, Your Honor.

19 THE COURT: All right, sir, you may step down.
20 Thank you.

21 MR. RICHARDSON: Your Honor, as a matter of
22 housekeeping, if I could just introduce my two documents
23 at this time.

24 THE COURT: If you'd like to do so now, yes, sir.

25 MR. RICHARDSON: For the record, State's Number 12

1 and 13.

2 THE COURT: All right, sir. Mr. Floyd, is there
3 any objection to State's 12 and 13 coming into evidence
4 at this time?

5 MR. FLOYD: Subject to pre-trial rulings of the
6 Court, my objection.

7 THE COURT: All right. I'm going to allow State's
8 12 and 13 into evidence consistent with my prior ruling
9 over the objection of the Defense.

10 STATE'S EXHIBIT NUMBER 12 AND 13, THIRD PAGE
11 OF PRIOR RECORD FOR 85-GS-14-79 AND 85-GS-14-15,
12 ADMITTED INTO EVIDENCE.

13 MR. RICHARDSON: Yes, sir, Your Honor. Just for
14 the record, State's Number 12, ---

15 THE COURT: Do you wish to publish them?

16 MR. RICHARDSON: Yes, sir, Your Honor.

17 THE COURT: You may publish.

18 MR. RICHARDSON: Your Honor, what I have on State's
19 Number 12 is on Indictment 85-GS-14-79, indicating that
20 Arnold Ward and a co-defendant were convicted for
21 housebreaking on March 11th, 1985. State's Number 13 is
22 on Indictment 85-GS-14-15, showing Arnold Ward had been
23 convicted for housebreaking for purposes of the elements
24 of first degree burglary, Your Honor, ---

25 THE COURT: All right.

1 MR. RICHARDSON: --- and that conviction was also
2 March 11th, 1985. It is signed by Judge Finney on both
3 of those, Your Honor.

4 THE COURT: All right, sir. Thank you.

5 All right, ladies and gentlemen, as to those two
6 documents that were introduced by the State at this point
7 in time showing the defendant having been convicted of
8 two housebreakings in 1985, those are introduced solely
9 and only for the purpose of the State proving one of the
10 elements of burglary in the first degree. There are
11 several ways that burglary in the first degree can be
12 proved. There are certain elements of burglary in the
13 first degree. One of the elements is a conviction of the
14 defendant of two or more crimes of burglary or
15 housebreaking.

16 Now, you are to consider that as evidence in this
17 case solely and only for the purpose of the State proving
18 to you beyond a reasonable doubt the elements of first
19 degree burglary, attempted, as charged in this particular
20 case. You are not to consider those prior convictions as
21 any evidence that the defendant committed the crime for
22 which he is currently on trial. It's not evidence about
23 that, and you cannot consider a conviction as any kind of
24 character evidence or character of the defendant.

25 You should not conclude and cannot conclude, it

1 would be a violation of your oath, that because the
2 defendant was convicted of those two housebreakings
3 previously that he is likely to have committed the
4 offense for which he is currently charged. You are to
5 consider them as to whether or not the State is proving
6 to you beyond a reasonable doubt the certain elements of
7 first degree burglary. That's the only purpose.

8 All right, with that, ladies and gentlemen, we're
9 going to break for lunch. Looking at the time, I'm going
10 to ask that you be back at two o'clock. Y'all be back at
11 two o'clock, please, be back in your jury room and we
12 will resume the trial at that point in time.

13 Please remember now, don't talk about the case.
14 Don't allow anybody to talk to you about it, and I'll see
15 you back at two o'clock. Thank you very much.

16 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
17 **THE JURY.)**

18 REMAINING TWO PAGES OF COURT'S EXHIBITS 1, 2, AND 3
19 (PREVIOUSLY MARKED) COLLECTIVELY MARKED AS
20 COURT'S EXHIBIT NUMBER 5.

21 THE COURT: All right, anything further from the
22 State at this point in time?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: Anything further from the Defense at
25 this point in time?

1 MR. FLOYD: No, sir.

2 THE COURT: All right. Now, Mr. Floyd, is your
3 client, Mr. Ward, out on bond?

4 MR. FLOYD: He is out on bond, Your Honor.

5 THE COURT: All right, sir.

6 All right, Mr. Ward, if you'd stand up for a moment,
7 please, sir.

8 I'm assuming, Mr. Floyd, you're going to ask that
9 the bond continue at this point in time?

10 MR. FLOYD: I was going to ask that, Judge.

11 THE COURT: All right, sir. Now, what I'm going to
12 have you do, because that issue will probably come up
13 when we break for the evening, you're going to need to
14 communicate with the bonding company to make sure that
15 they will stay on the bond during the pendency of the
16 trial now that the trial has started. All right, if you
17 will do that for me over the lunch break, please.

18 MR. FLOYD: Yes, sir.

19 THE COURT: Now, Mr. Ward, regarding this
20 particular matter, I'm going to allow you at this point
21 in time, pending what Mr. Floyd finds out, to stay out on
22 bond. Now, what that means is you are free to go to
23 lunch and come back at two o'clock, but understand that
24 this trial is going to resume at 2:00 P.M. whether you
25 are here or not. Your absence will not delay this trial.

1 The trial will continue even if you are not present. Do
2 you understand that?

3 MR. WARD: Yes, sir.

4 THE COURT: And obviously it's in your best
5 interest to be here to help your attorney defend this
6 case, but you understand we'll continue on whether you're
7 here or not? You understand that?

8 MR. WARD: Yes, sir.

9 THE COURT: You also understand the other
10 consequence of it is if you're not here at 2:00 P.M.,
11 then I'm going to issue a bench warrant for your arrest
12 then and the law enforcement will be out there looking
13 for you to arrest you and put you in jail? You
14 understand that?

15 MR. WARD: Yes, sir.

16 THE COURT: All right, sir, understanding that,
17 I'll allow you to stay and continue on bond, and, Mr.
18 Floyd, you find out about the company staying on the
19 bond, all right?

20 MR. FLOYD: Yes, sir.

21 THE COURT: Thank you very much. We'll be back at
22 two o'clock then.

23 (OFF THE RECORD - Lunch Recess)

24 **ON THE RECORD**

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF

1 THE JURY.)

2 THE COURT: All right, Solicitor, are you ready to
3 go forward?

4 MR. RICHARDSON: The State is ready to go forward,
5 Your Honor.

6 THE COURT: All right. Defense?

7 MR. FLOYD: Yes, sir.

8 THE COURT: Ask the jury to come in, please.

9 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
10 JURY.)

11 THE COURT: All right, Solicitor, your next
12 witness, please, sir.

13 MR. RICHARDSON: Thank you, Your Honor. At this
14 time, the State would call Detective John Lewis of the
15 Horry County Police Department.

16 THE COURT: All right, sir. Please come around and
17 be sworn.

18 JOHN LEWIS, BEING FIRST DULY SWORN, TESTIFIES AS
19 FOLLOWS:

20 THE CLERK: State your full name and spell your
21 last.

22 MR. LEWIS: John Lewis, L-E-W-I-S.

23 DIRECT EXAMINATION BY MR. RICHARDSON:

24 Q. Good afternoon, Detective.

25 A. Good afternoon.

1 Q. Could you please tell us a little bit about
2 yourself, where you are employed, in what capacity, how
3 long.

4 A. Yes. I currently work for the Horry County Police
5 Department as a detective. I've been employed
6 approximately ten years with the Horry County Police
7 Department. I've been in the Detective Division for
8 about seven. I have about a total of thirteen years of
9 total law enforcement.

10 Q. And were you so employed back in October of 2006?

11 A. I was.

12 Q. And in what capacity?

13 A. I was a detective at that time as well.

14 Q. Now, as a detective, could you tell the jury a
15 little bit about that, what your job actually entails.

16 A. A detective, as you probably all know from
17 watching T.V., you have the uniformed officers who you
18 see out there in the police cars that says Police on it
19 in big letters. They've got those blue lights on the top
20 of them and what not. They're what you would consider
21 our first line responder. If you call for help, they're
22 going to be the first ones to get there and determine
23 what's happening at the scene or at your location.

24 In certain cases on serious crimes, a detective
25 might be called to assist and take over the investigation

1 or if the investigation doesn't warrant to have the
2 detective right then and there, they'll complete the
3 initial paperwork and it will get passed on to us and we
4 will get it the next morning when we come in.

5 Of course, detectives, we kind of work banker hours,
6 and so the twenty-four hour shift, the uniformed guys are
7 out there day, night, rain, sleet, you name it, they're
8 there, and that was the situation with this case. And,
9 of course, you already know that it occurred at night.
10 The uniformed officers responded and did what they needed
11 to do. They did the paperwork, passed it on, and then I
12 got it the next morning and completed a detailed
13 investigation for this case.

14 A detective will take the initial information and
15 try to put the Solicitor -- put all the pieces of the
16 puzzle together so we have a good understanding of what
17 happened in that incident.

18 Q. And in the course of your duties as a detective
19 with the Horry County Police Department, did you -- did
20 you come -- did you have the opportunity to investigate
21 an attempted burglary at [REDACTED]?

22 A. I did.

23 Q. And what county -- I know it's a simple question,
24 but what county is that located in?

25 A. That is located in Horry County.

1 Q. Could you tell us a little bit about your
2 investigation.

3 A. Yes. As you're already aware, this incident
4 occurred around midnight at [REDACTED], which is in
5 the Myrtle Beach section of Horry County. It's in the
6 Longbay Estates, if you're familiar with that area, right
7 across from the Harley shop, just south of the front gate
8 and the State Park. There's a nice little community of
9 residential homes in there that abut the State Park, as
10 well as the ocean, and right there at 17 Business.

11 The patrol officers did what they did that night. I
12 got the investigation the next morning. I was aware of
13 the incident. They had already located the defendant and
14 placed him under arrest and transported him to the jail.
15 What they didn't have an opportunity to do, which was one
16 of the first things that I did, was conduct the interview
17 with the defendant to obtain his information or his
18 statement about what had happened that night, and I did
19 that on the following day.

20 This occurred on a Tuesday night, early Wednesday
21 morning, around midnight, and I went up and interviewed
22 him on November 1st, approximately twelve-fifteen at the
23 local -- at the J. Reuben Long Detention Center, the
24 County Jail.

25 Q. Let's back up a little bit. Prior to going to

1 interview the defendant, did you have an opportunity to
2 familiarize yourself with the case?

3 A. Yes. I had a copy of the initial police reports
4 that the road officers had done out there at the scene.
5 We get copies of all that as well.

6 Q. Okay. I'm going to show you what's been
7 previously marked and admitted as State's Number 14. Do
8 you recognize that item?

9 A. Yes. This would be most likely from MapQuest. It
10 just shows a pop-down view, you know, an outline of that
11 community. It marks [REDACTED], which is where the
12 victim's house resides, and the Woodview Lane, which is
13 right behind his house, kind of like a circle.

14 Q. Now, and there's a road that [REDACTED] and
15 Woodview Lane branch off of. Do you have the name of
16 that road?

17 A. That, I believe, is Dogwood Road or Dogwood
18 Circle.

19 Q. Is there any particular relevance to Woodview Lane
20 and Dogwood?

21 A. That was where the road officers that responded
22 that night to the victims called for assistance via the
23 911, where they located the defendant that night right
24 after that inci- -- the alarm going off and him leaving.
25 They found him right there at that intersection.

1 Q. Back behind the house?

2 A. Yes, depending on your viewpoint or what not. The
3 house faces towards 17, so that would mean that the back
4 of his house is going towards the ocean, so he would have
5 been behind the house and a little bit to the right,
6 depending on your perspective.

7 Q. So he would be away from 17 Business?

8 A. Yeah. He would have been found -- it would go 17
9 Business, then [REDACTED], then [REDACTED], so he
10 would have been going away from 17 Business towards the
11 ocean, so -- and Mr. Holley's house faces 17, so he would
12 have been behind it.

13 Q. During the course of your investigation, did you
14 ever learn if the defendant -- how the defendant had
15 arrived in that area?

16 A. Yes. We -- I knew or learned through the
17 investigation that he had a vehicle and he drove to that
18 area.

19 PHOTOGRAPH OF SIGN MARKED FOR IDENTIFICATION AS
20 STATE'S EXHIBIT NUMBER 15.

21 Q. Now, I'm going to show you what's been previously
22 marked State's Exhibit Number 15 for identification. See
23 if you recognize that.

24 A. Yes, I do recognize this.

25 Q. And what do you recognize the document to be?

1 **A.** That is one of the pictures. When I worked on
2 this case and did the investigation, one of the things
3 that I did is I responded to that -- to Mr. Holley's
4 residence in that area and became familiar with what was
5 going on, where the roads were, and I photographed
6 everything, as well as that picture there shows a picture
7 of the little sign that denotes Longbay Estates. That is
8 right there at 17 Business and Dogwood, and it says
9 Longbay Estates.

10 **Q.** And is there a shopping center in this picture?

11 **A.** Yeah, right there, and if you're familiar, there's
12 Wallerbears, which is a little surfing shop. There's
13 like a soccer business in there. Also, there's a -- Bay
14 Pawn Shop is right in there, and there's a bar that has
15 changed names quite a few times here recently with some
16 of the new things going on in the City, and so it's just
17 a little strip mall, nothing out of the ordinary.

18 **Q.** And is this a fair and accurate representation of
19 that area?

20 **A.** Yes. I go by that location at least once a week.

21 **Q.** Does this photograph bear any relevance with
22 regard to the defendant's vehicle?

23 **A.** Yes. Now, where this -- this location -- where
24 these businesses are, it's right on 17, and you can see
25 it as you're traveling on 17. The defendant's vehicle

1 was parked at these businesses, this parking lot,
2 according to his statement that I obtained from him.

3 MR. RICHARDSON: Your Honor, the State seeks to
4 introduce Number 15.

5 THE COURT: Any objection?

6 MR. FLOYD: No objection.

7 MR. RICHARDSON: May I publish at this time, Your
8 Honor?

9 THE COURT: All right. State's 15 is in evidence
10 without objection and you may publish.

11 STATE'S EXHIBIT NUMBER 15 ADMITTED INTO EVIDENCE.

12 Q. You said there's a bar there?

13 A. Yes. Yes, there is a bar there. I think there's
14 two actually.

15 Q. And those bars, do you know if they have any
16 phones inside?

17 A. I do not have direct knowledge if they have a
18 phone, or a pay phone of that nature, but I would infer
19 that a bar would have a phone.

20 MR. FLOYD: Objection.

21 THE COURT: Sustained.

22 Q. Do you know the hours of operations for those
23 bars?

24 A. Not directly. I would suspect, you know, ---

25 MR. FLOYD: Objection.

1 THE COURT: Sustained.

2 Q. But those are bars there, correct?

3 A. Yes.

4 Q. And what's their proximity to that shopping
5 center?

6 A. Well, the Harley shop is right across the street
7 from it. Also, just south of the Harley shop, there's
8 that car wash and the fireworks store, as well as the
9 Iron Gate Saloon.

10 Q. In the course of your investigation, did you ever
11 have the opportunity -- I believe you indicated you did
12 have the opportunity to speak with the defendant?

13 A. I did. Yes, I did.

14 Q. And where was that?

15 A. I conducted that interview at the jail, the J.
16 Reuben Long Detention Center, because he was arrested
17 that night and was awaiting the normal process under
18 those circumstances.

19 Q. And when did that interview take place?

20 A. I interviewed him. He was arrested -- or the
21 incident occurred, depending on how you look at it, on
22 October 31st, around twelve in the morning. I went up
23 that same day, Wednesday, November 1st, 2006, at
24 approximately twelve-fifteen, so twelve hours later.

25 Q. And that reminds me, as an elemental thing,

1 midnight, is that during the evening hours?

2 A. It is. It's dark or nighttime.

3 Q. And you interviewed the defendant on November 1st?

4 A. Correct.

5 Q. That would be about thirty-six hours after he was
6 arrested?

7 A. I don't think it would have been thirty-six. I
8 think it would have been twelve hours.

9 Q. He was arrested shortly after midnight on October
10 31st, is that correct? Do you need a moment to review?

11 A. Well, depending on -- I interviewed him on
12 Wednesday, on November 1st of 2006, at 12:15. He was
13 arrested at approximately -- or located at 12:13 A.M. on
14 that same day, so depending on how you look at the
15 confusing times and dates of that, but I interviewed him
16 twelve hours later.

17 Q. Who was present during that interview?

18 A. It was just myself and the defendant. There was
19 nobody else present.

20 Q. And you indicated you were at J. Reuben Long
21 Detention Center, right?

22 A. That's correct.

23 Q. Was it a big room you were in?

24 A. I would say if you just -- this box right here,
25 maybe a little bit bigger, maybe eight feet by five feet.

1 It's not very wide, a table and a couple of chairs to sit
2 down to have a quiet and private conversation.

3 Q. And the defendant's condition, what was his
4 condition at this interview?

5 A. He was normal, coherent. He wasn't argumentative
6 or disorderly with me. He didn't show any signs of
7 anything out of the ordinary from a normal person.

8 Q. Did he appear to be under the influence of any
9 drugs or anything at that point?

10 A. No, he was not.

11 Q. Did he appear to be suffering from any mental
12 difficulties?

13 A. No, he was not.

14 Q. How about the English language, did he appear to
15 understand?

16 A. Yes. He spoke fluently and understood equally.

17 Q. Did he respond appropriately to your questions?

18 A. Yes, he did.

19 Q. No doubt about it, he was in police custody at
20 that point?

21 A. That is correct. He was at the local -- at the
22 detention center, the jail.

23 Q. How long did this interview take?

24 A. I started at approximately 12:15, and he finished
25 -- we finished up probably about 1:15 because when I had

1 him fill out a written statement about what had happened,
2 it was timed at 1:10, so, you know, you figure it would
3 take five to ten minutes to write that out, so about an
4 hour.

5 Q. Was the defendant denied any kind of food, drink,
6 restroom breaks during this period of time?

7 A. No.

8 Q. To your knowledge, did you or anyone do or say
9 anything to the defendant that would be viewed as threats
10 or coerced, or promises, promises of leniency in order to
11 obtain a statement from the defendant?

12 A. No, not at all.

13 Q. Was the defendant advised of the nature of this
14 investigation?

15 A. Yes, he was.

16 Q. And was he advised of his constitutional rights?

17 A. Yes. I did advise him of his Miranda rights.

18 Q. How was this accomplished?

19 A. We have a standard form that we use at the Horry
20 County Police Department. It's called our advisement of
21 Miranda rights. It has those rights typed on there and
22 we -- or I just read it word for word right there from
23 that form. There's some -- a couple of questions
24 specifically at the end of that, yes or no, and I check
25 the appropriate box that the person that I'm interviewing

1 -- and at least in this case, the defendant, whatever he
2 responds, yes or no, I put a check mark there.

3 Q. Let me show you what's been marked as State's
4 Number 3 for identification and see if you recognize that
5 item.

6 A. Yes. This is the standard form that we use at our
7 Police Department. This is the original copy that I used
8 that night, or that day, I should say.

9 Q. Can you demonstrate to the jury exactly how you
10 went over this, the Miranda form, that's the one you were
11 talking about?

12 A. Uh-huh (affirmative response).

13 Q. And this is the actual one presented to Mr. Ward?

14 A. Yes, that's correct.

15 MR. RICHARDSON: Your Honor, I would seek to
16 introduce State's Number 3 into evidence.

17 THE COURT: Any objection?

18 MR. FLOYD: No, sir.

19 MR. RICHARDSON: And we would seek to publish it to
20 the jury at this point.

21 THE COURT: All right. It's in evidence without
22 objection, and you may publish.

23 STATE'S EXHIBIT NUMBER 3 ADMITTED INTO EVIDENCE.

24 Q. Now, if you could demonstrate to the jury how you
25 presented it to Mr. Ward and what went on during that

1 period of time.

2 A. I would just go ahead and usually I kind of have
3 my own order, organization of how I do things. Usually I
4 will go ahead and get all the person or defendant's
5 personal information, full name, address, cell phone, you
6 know, age, birthdate, all that general stuff. Then after
7 that I would go ahead and let him know that I'm going to
8 advise him of his Miranda rights and read it to him, and
9 I would just say, "You have the right to remain silent.
10 Anything you say can and will be used against you in a
11 Court of law, and do you understand?" If he says he
12 understands, I put a little check mark right next to
13 that.

14 "You have the right to talk with a lawyer and have
15 him present with you while you are being questioned. Do
16 you understand that?" Check. "If you cannot afford to
17 hire a lawyer, one will be appointed to represent you
18 before any questioning if you so desire. Do you
19 understand?" Check.

20 "If you make a statement or answer any questions,
21 you have the right to stop at any time. Do you
22 understand that?" Check. Then we have four questions
23 here, "Do you understand your rights as I have read them
24 to you, yes or no?" and in this case, he checked --
25 answered yes, so I put a check mark there.

1 The next, "Can you read and write?" and, of course,
2 yes or no. He responded yes, so I put a check there. I
3 actually went a little further on this and I asked him
4 what his highest level of education was, and he -- I have
5 noted here that he has four years of college, and I also
6 noted that he stated Clemson and USC, and that just goes
7 -- that's just a little extra that I will do just to make
8 sure that he can read and write, and so if he has four
9 years of college, I would suspect that he can perform
10 those functions.

11 The next question would be, "Are you under the
12 influence of any alcohol or drugs?" and he responded no,
13 and that's what I checked. And last, "Understanding your
14 rights, do you wish to waive them, make a statement, or
15 answer any questions at this time?" and in that
16 situation, he responded yes, and so I checked it.

17 After that, I -- after I read him his Miranda, then
18 I ask him to sign his name next to the signature block
19 which is on here, and in this case, I asked him to put
20 his initials next to the check marks to those questions
21 that he agreed that he gave those answers, I didn't force
22 him or anything of that nature, and his AW's, and the
23 defendant's name is Arnold Lea Ward, so AW representing
24 his initials, and then I filled out the date, time,
25 location, witness was myself, and the case number.

1 Q. Thank you. Let me put that back in the evidence.

2 Did the defendant acknowledge he understood those
3 rights?

4 A. Yes, he did.

5 Q. And to your knowledge, the defendant freely and
6 voluntarily waived his constitutional rights?

7 A. He did.

8 Q. Now, did you or anybody to your knowledge do
9 anything to make any undue promises of leniency, promises
10 of reward, threats or coercion in any way to get the
11 defendant to sign this?

12 A. No.

13 Q. And he did sign it?

14 A. And he did sign it, correct.

15 Q. At any point did the defendant ask to stop the
16 interview?

17 A. No.

18 Q. At any point did he say, "Hold on. I need an
19 attorney"?

20 A. No, he did not.

21 Q. Now, did you do anything to record this interview,
22 like memorialize it?

23 A. I had -- after the interview was concluded, I had
24 him fill out a standard voluntary written statement form
25 about what he had told me.

1 Q. And did you record it in any other way, though?

2 A. No. I did not use any type of tape recorder or
3 video recorder.

4 Q. And why?

5 A. I don't have anything in my notes, but I would
6 suspect that probably my batteries were dead in my tape
7 recorder. At the jail, they don't have video recording
8 in those rooms, so if my tape recorder batteries were
9 dead, or if I didn't have it, or forgot it, I wouldn't
10 have it, but I always keep the back-up paperwork in my
11 file, so I just use that.

12 Q. Did you make any notes that day?

13 A. I did. I took notes during our interview.

14 Q. And why did you take notes?

15 A. Well, it helps me to remember everything that's
16 said as I'm doing the interview, so that way at a later
17 point in time after I'm done with everything and I type
18 up my reports to pass on to the Solicitor's Office, it
19 helps jog my memory.

20 Q. And have you reviewed those notes in preparation
21 for this trial?

22 A. I have.

23 Q. Now, you mentioned you had the defendant write a
24 statement?

25 A. Yes, correct.

1 Q. Let me show you what's been marked as State's
2 Number 4. See if you recognize that item.

3 A. I do recognize this.

4 Q. And what do you recognize State's Number 4 to be?

5 A. This is our standard voluntary statement --
6 written voluntary statement form that we use with the
7 Horry County Police Department. It is the statement that
8 the defendant, Arnold Ward, had handwrote himself after
9 we concluded our interview. It's timed at 1:10. Roughly
10 we started about 12:15, so that's about an hour later.
11 It has his signature at the bottom, and it also has my
12 signature as the witness that he wrote it, and one other
13 little thing that I do, I always use a blue pen. That
14 way when I make copies, I know which one my original is.

15 Q. And this is his statement?

16 A. That is the original.

17 MR. RICHARDSON: The State would seek to introduce
18 State's Number 4 and publish to the jury at this time.

19 THE COURT: Any objection?

20 MR. FLOYD: No, sir.

21 THE COURT: You may do so. It's in evidence
22 without objection.

23 STATE'S EXHIBIT NUMBER 4 ADMITTED INTO EVIDENCE.

24 Q. Detective Lewis, if you can read that for the
25 jury.

1 A. Okay. "On Monday, I worked 'til around six, where
2 I stopped by my wife's home for a few seconds and got our
3 dog to take to vet next day. I then went back to work
4 and worked on trim until around ten that night. I took
5 my worker home, Myrtle Beach. On the way back, stop at
6 Longbay to check on project we are to start. While
7 there, open my door to check out job and dog gets out of
8 truck. Chase dog around neighborhood for around one
9 hour, knocking on doors to try to get help. When help
10 gets there, they arrest me. Not care about my dog. I
11 explain everything to them the same way I explain to you.
12 Still no help on everything."

13 Q. And that's the statement he wrote himself?

14 A. That's the statement he wrote.

15 Q. Is that all the information he gave to you on that
16 interview?

17 A. No. Like we talked probably for a good hour, and
18 at the end I gave him the opportunity to write down what
19 he had said, and that's what he wrote, but I have more
20 information that I made notes on.

21 Q. How about fill in the gaps for us, if you would.

22 A. As you are aware, this incident occurred roughly
23 around twelve midnight. You've already heard the
24 testimony of the victim, the owner of the house, Mr.
25 Holley, about his alarm, et cetera. Now, I'm aware of

1 his information, and as the Solicitor said, you know,
2 this is like putting a puzzle together, and so some of
3 the pieces of the puzzle are Mr. Holley's statement and
4 his information, so I gather that.

5 Some of the information would have come from the
6 officers that were on the scene that night, and so I got
7 their information, and, of course, the defendant, some of
8 the pieces of the puzzle come from him, and his
9 information, and his statement.

10 So I had already obtained some of the information
11 from the officers' reports, and Mr. Holley's statement,
12 et cetera, and then once I interview -- when I begin to
13 interview a person, whether a victim, a witness, or a
14 defendant, the first thing I always ask them is, "Just
15 tell me everything you know about this situation," and I
16 just let them talk freely about their version of events,
17 and that's what I did, and so I reiterated in my report
18 here, in my notes, basically what's in that written
19 statement right there.

20 But after they give me their first version of it,
21 then I go back over it with my specific questions where I
22 think there's pieces of puzzle missing, or there's some
23 gaps that I'm trying to fill in, or some holes, et
24 cetera, so I can have a complete picture of what's going
25 on.

1 After he gave me his initial statement, I had some
2 specific questions that I wanted to fill in, and when I
3 did that, I came up with some, in my opinion, concerning
4 answers or statements that he provided, and I'll
5 summarize those.

6 When I interview somebody, I know, based on my
7 experience, I need to look at it from a reasonable
8 person's viewpoint because I know if there's going to be
9 a charge, when we get to this point, you know, three and
10 a half years later, you, the jury, are going to be
11 instructed to look at the reasonableness, so I have to
12 look at it ---

13 MR. FLOYD: Your Honor, I'm going to object on
14 that. That's a summary of the law the Court will give.

15 THE COURT: All right. Just confine your answers
16 to the questions asked by the Solicitor. Thank you.

17 Let's move along.

18 A. So when he provided his first name and I go into
19 more specific questions, these are some of the things
20 that came out that were of an unusual -- he drove there
21 in his vehicle to go, in his statement, to check on
22 another job site that was in that same development that
23 Mr. Holley lives, and that he had his dog and his dog
24 escaped, and he was trying to catch his dog or track his
25 dog back and couldn't do it, so he needed some help.

1 One of the first things we had learned is that he
2 had parked his vehicle up at that little business complex
3 which is right next to the highway, and it's not in the
4 development where Mr. Holley lives or anywhere near that.
5 I don't know why he did that, don't know why he wouldn't
6 just drive around, looking.

7 Additionally, when I asked him about that in regards
8 to his truck being up there, I learned that -- initially
9 he said that he was going to have a friend, a Mr. James
10 Robertson pick up his truck, but then when I questioned
11 him a little bit further, that statement changed so that
12 he was going to have his mother, Carol, pick up the
13 truck. I don't know why that changed.

14 MR. FLOYD: Objection to him commenting on those.
15 He's allowed to ---

16 THE COURT: Just -- Mr. Floyd, all right.

17 Let's respond directly to the questions asked
18 without extraneous comments. Thank you.

19 Go ahead, Solicitor, your next question.

20 Q. Detective, if you'll just tell us any statements
21 he made and any follow-up questions you had with regard
22 to those statements he made.

23 A. Okay. He had stated that -- that -- of course,
24 his dog had escaped and he was trying to get help in
25 locating his dog. He admitted to going to three houses

1 to attempt to find help, or to call the police, or animal
2 control, but he had a cell phone on him.

3 Also, regarding that vehicle that he parked up there
4 at that little strip mall, there were several businesses
5 in that strip mall there and a couple of them were bars.

6 Q. Did you ---

7 A. The third thing -- I'm sorry.

8 Q. I'm sorry. Did you ask him any questions with
9 regard to the doors, the french doors?

10 A. Yeah. The third thing, he admitted to me that he
11 did go to the incident location, or Mr. Holley's
12 residence, and knocking on the door, but he denied
13 opening the door. However, when I asked him if he was
14 wearing any gloves, he replied no, and I followed up with
15 that question and I asked him if there would be any
16 reason we would find his fingerprints on the door, and
17 then he changed his statement to include then that he did
18 check or touch the door handle.

19 Fourth, he said that he wanted help in finding his
20 dog from the, and I quote, "the S.P.C.," end quote, and
21 that's why he wanted to use the phone, but he couldn't
22 explain to me what the S.P.C. stood for or what it was at
23 that time during the interview.

24 And fifth, after he left the house, Mr. Holley's
25 house, he did admit to me that he did look back and see

1 the lights come back on or come on at Mr. Holley's house,
2 but he did not return to the house to get the help that
3 he was wanting to find his dog.

4 Q. Did the defendant ever indicate where he was when
5 he -- where he was when he saw the lights?

6 A. During my interview, I actually had him draw out a
7 map of his version of it, and I have that here, and I can
8 use mine or yours.

9 MR. RICHARDSON: I'll get it marked first.

10 Mr. Floyd.

11 MR. RICHARDSON: Just for purposes of the record,
12 let's mark it, mark it for identification as State's
13 Number 18, Your Honor.

14 THE COURT: All right, sir.

15 SKETCH MARKED FOR IDENTIFICATION AS STATE'S

16 EXHIBIT NUMBER 18.

17 Q. Do you recognize State's 18?

18 A. Yes. This is the sketch or drawing that the
19 defendant provided to me during our interview.

20 MR. RICHARDSON: The State would seek to introduce
21 State's Number 18 into evidence.

22 THE COURT: Any objection?

23 MR. FLOYD: No, sir.

24 THE COURT: You may -- it's in evidence. You may
25 publish it if you choose to do so.

1 STATE'S EXHIBIT NUMBER 18 ADMITTED INTO EVIDENCE.

2 Q. Now, Detective Lewis, you had said the defendant
3 marked an "X". Can you show me where that "X" is?

4 A. Yeah. It's right here, and I actually put a
5 little note there and signed my initial thing. This "X"
6 is where he -- he was here when he sees the lights come
7 on, was his statement, so I made a little note to myself
8 that that was the "X".

9 Q. And with regard to that "X", where is the victim's
10 home?

11 A. It would have been up in this area, maybe this
12 right here would have been by his drawing.

13 Q. Okay. Did the defendant ever tell you where this
14 work project was?

15 A. He did not -- well, by saying it was in Longbay.
16 He did provide me some information of his boss or co-
17 worker, who I was able to confirm that they did have a
18 project or work site in the Longbay Estates.

19 Q. And who was that person you spoke with?

20 A. I spoke with a Mr. Ray Coleman by phone, during a
21 phone interview, that he did confirm that they did have a
22 site in there, Longbay.

23 Q. And when did you speak with Mr. Coleman?

24 A. I have Thursday, November 2nd, at approximately
25 1:00 P.M., so that was about twenty-four hours later

1 after the interview I was able to conduct that follow-up.

2 Q. How about the dog, did you ever verify on that?

3 A. Well, I did call the defendant's wife, Ms. Tracy
4 Butler, and I did speak to her by phone. She did state
5 that they had an Eskimo Spitz dog, and during my
6 conversation with her she never told me that the
7 defendant, her husband, had taken the dog. However, when
8 I did ask her the specific question, she did volunteer
9 that information that he did have or take the dog.

10 Q. Okay, and that was -- when did you speak with her?

11 A. That would have been the same day.

12 Q. The same day you spoke to the defendant or the
13 same day you spoke to Mr. Coleman?

14 A. The same day with Mr. Coleman.

15 Q. So twenty-four hours after ---

16 A. Twenty-four hours later, that's right.

17 Q. Now, while at the jail, did you obtain anything
18 while you were there?

19 A. Yes. While I was at the jail, I obtained the
20 clothes for evidence that the defendant was wearing the
21 night he was arrested.

22 BAG CONTAINING VARIOUS ITEMS OF CLOTHING MARKED
23 FOR IDENTIFICATION AS STATE'S EXHIBIT NUMBER 16.

24 BAG CONTAINING SHOES MARKED FOR IDENTIFICATION
25 AS STATE'S EXHIBIT NUMBER 17.

1 Q. I'm going to show you what's been marked as
2 State's 17 and 16.

3 MR. RICHARDSON: Mr. Floyd, would you like to see
4 these?

5 MR. FLOYD: Huh-uh (negative response).

6 Q. If you will take a look at 17 and 16 and tell me
7 if you recognize these items. Have you got some gloves?

8 A. Yeah.

9 Q. For the record, what was in 17?

10 A. That was the shoes.

11 Q. The shoes you obtained from the defendant?

12 A. Yeah, the black -- black shoes, uh-huh, and in
13 State's 16 would have been a blue or navy blue hoodie
14 sweatshirt, the blue, navy blue long-sleeve shirt,
15 bluish-purplish pants, and a pair of black laces for the
16 shoes.

17 Q. Okay. Do you recognize these items?

18 A. Yes.

19 Q. How do you recognize these items?

20 A. These were the items that I obtained from the
21 jail. When you go to the jail, they take your clothes
22 off of you. They give you the orange stuff to wear,
23 orange jumpsuit, and this would have been placed into his
24 property, and so I obtained these items for the evidence
25 of this case.

1 MR. RICHARDSON: The State would seek to introduce
2 State's 17 and 16 into evidence.

3 THE COURT: Any objection?

4 MR. FLOYD: No, sir.

5 THE COURT: All right. 17 and 16 are in evidence
6 without objection.

7 STATE'S EXHIBIT NUMBER 16 AND 17 ARE
8 ADMITTED INTO EVIDENCE.

9 MR. RICHARDSON: For the record, 16 contains, the
10 shoestrings, the pants, the long-sleeve T-shirt, and the
11 hoodie sweatshirt. 17 contains the black shoes, Your
12 Honor.

13 Q. And these are the items the defendant had on at
14 the time he was arrested?

15 A. That's correct.

16 Q. And that was on October 31st in the early morning
17 hours?

18 A. That's correct.

19 MR. RICHARDSON: The Court's indulgence, Your
20 Honor.

21 THE COURT: Yes, sir.

22 Q. Did there come a time when you were able to speak
23 with the victim in this case?

24 A. Yes. On Friday, November 3rd of 2006, at
25 approximately 3:00 P.M., I met with the victim at his

1 residence to conduct just a follow-up interview and to
2 get an understanding of what had occurred that night.

3 Q. So you could get the full picture?

4 A. Excuse me?

5 Q. So you could get the full picture?

6 A. Yes, so I could put all the pieces of the puzzle
7 together.

8 Can I expand on one point?

9 Q. Now, just let me caution you. You can't speak
10 about any hearsay that the victim may have told you.

11 A. No. It goes back to the interview, one thing I
12 didn't get to finish with the defendant.

13 Q. Detective, is there anything you left out
14 regarding the interview ---

15 A. Yes, ---

16 Q. --- of the defendant?

17 A. --- there is. In regards to the -- my fifth point
18 about the defendant leaving the house, he admitted that
19 he turned -- he did look back and see the lights come on
20 outside, but he did not return to the house that he was
21 searching for. He told me that he was going to return,
22 but to go the long way around and not the short way to
23 get to that help, and that's one of the reasons that I
24 had him draw the sketch, which I think the State's 18,
25 where he was and then also the way that he was going to

1 go to go and get that help.

2 Q. Maybe the jury would be able to see; let's go back
3 to State's 18. You have marked Highway 17 there,
4 correct?

5 A. Yeah. Highway 17 is up here. You could see I
6 have -- he has the ocean down here.

7 Q. This road leading from 17, what road is that?

8 A. That would have been Dogwood, and this would have
9 been the victim's street here, which is [REDACTED], and this
10 would have been the house, Mr. Holley's residence, right
11 here.

12 Q. [REDACTED]?

13 A. [REDACTED]. Right here is a little "X", which you will
14 be able to look at closer, and I have made a little note
15 in a little parentheses, and he was here when he sees the
16 lights come on, and I put my initials there, so he's
17 here ---

18 Q. And that would have been on what street?

19 A. That would have been Dogwood. He said he was on
20 Dogwood.

21 Q. And that road runs perpendicular or parallel to
22 [REDACTED]?

23 A. That runs perpendicular. [REDACTED] is this way ---

24 Q. They intersect?

25 A. They intersect, and Dogwood is there, so he says

1 he's here. He would have to go up, take a dog-leg left
2 to get back, but he was going to go the long way around
3 to get back there, and that was his statement.

4 MR. RICHARDSON: Your Honor has already given
5 permission to publish it. I'm just handing to the jury
6 the ---

7 THE COURT: All right, sir. Anything else?

8 MR. RICHARDSON: Detective Lewis, I believe I don't
9 have any other questions. If you'll just kindly answer
10 any questions Mr. Floyd may have.

11 THE COURT: Cross examination.

12 MR. FLOYD: May it please the Court.

13 CROSS EXAMINATION BY MR. FLOYD:

14 Q. Detective Lewis, who arrested Arnold that night?

15 A. The patrol officers on the scene that night
16 located and placed him into custody.

17 Q. Who was that?

18 A. That was an officer, Chris McNeil, and Officer
19 Chester Skowronski, and an officer, Anthony -- Corporal
20 Anthony Sawyer, were the responding officers out there.

21 Q. Did you speak with them before you interviewed Mr.
22 Ward?

23 A. I don't recall if I actually spoke to them person
24 to person or via the phone, but I had their written
25 report already each of them had provided.

1 Q. So you reviewed their reports, and that was when
2 you went to interview Mr. Ward?

3 A. That's correct.

4 Q. Now, you didn't record this statement that Mr.
5 Ward made in any fashion?

6 A. Not using some type of a tape recorder. There's
7 no video recorder in the interview rooms at the jail. I
8 had him just produce the written statement.

9 Q. Isn't it true in the normal course of your
10 investigations y'all do take reports and/or video
11 statements in that condition?

12 A. Yeah, there are situations we will tape-record or
13 alert our office. We have video recording available.

14 Q. The reason I ask that is because that gives you a
15 much more accurate showing of what was actually said,
16 what was actually talked about, correct?

17 A. You can assume that.

18 Q. Well, let's assume that because I noticed while
19 you were testifying a few minutes ago with the Solicitor,
20 you constantly were looking down reading from your notes.

21 A. Correct.

22 Q. So you don't remember what went on in that room?
23 You had to look at your notes and just what you wrote
24 down on your notes?

25 A. Yeah, I -- I don't recall this case from three and

1 a half years ago and that's why we'll take notes.

2 Q. And that's why it's better to have these
3 recordings so that we all can see exactly what was said
4 rather than your interpretation of it, correct?

5 A. That's correct.

6 Q. Now, you were never on the Longbay Estate on
7 October 30th, October 31, that evening when this
8 occurred?

9 A. That's correct. I was never there that night.

10 Q. And at what point did you actually get the police
11 reports from the other officers, and this time frame has
12 got me a little confused also, because we actually go all
13 the way through October 31st before we get to November
14 1st, so was it on October 31st or was it November 1st
15 when you talked with all these people that were involved
16 that night?

17 A. I think you asked a two-part question, first about
18 the paperwork, and then when did I talk to everybody?

19 Q. It might have sounded that way, so I'll rephrase
20 it. Was it October 31st or the morning of November 1st
21 when you talked with all these people about the
22 investigation that had taken place?

23 A. Well, the first person that I interviewed during
24 this case would have been the defendant, and that was on
25 November 1st at approximately 12:15 at the jail. Then

1 after I had spoke with him, on the following day,
2 Thursday, November 2nd, about 1:00 P.M., that's when I
3 conducted the phone interviews with his co-worker that
4 confirmed, Ray Coleman, that there was a work site in
5 that Longbay Estates, and also spoke with Tracy Butler,
6 the defendant's wife, about the dog.

7 Q. Maybe I misunderstood you a minute ago. I thought
8 you said you had discussed it with the officers and the
9 other people that were involved and you had started
10 putting the puzzle together, is that correct?

11 A. I did speak with the officers. Now, I don't
12 recall if I spoke with them in person that next morning
13 or if I just utilized their written reports that they
14 completed that night as my point of reference.

15 Q. And you don't recall if that took place on October
16 31st or on November 1st?

17 A. I do not recall.

18 Q. Well, you made a -- mentioned speaking with
19 Arnold's wife and her not mentioning that Arnold had the
20 dog that night, is that correct?

21 A. That's correct.

22 Q. When you asked her, though, she did tell you that
23 he had the dog, is that correct?

24 A. She did, that's correct.

25 Q. So she responded to your question?

1 A. That's correct.

2 Q. And when you were interviewing Arnold, he
3 responded to your questions?

4 A. Yes. He provided a statement.

5 Q. And, in fact, when you checked on why he would
6 have a reason to be in the neighborhood, they told you he
7 was working there, isn't that correct?

8 A. I wouldn't use the term "working there." They had
9 a job site and he was going to check on it.

10 Q. And you followed up on that and that was correct?

11 A. Yes. Mr. Ray Coleman did confirm that.

12 Q. And I didn't ask you this. You asked him a lot of
13 preliminary about his education and all. What kind of
14 work was Arnold doing?

15 A. I have contractor, Basic Builders.

16 Q. All right, and this occurred late October, early
17 November?

18 A. Yeah, that 31st, the 1st, that time, date change.

19 Q. And this was late at night also, correct?

20 A. The incident that occurred at Mr. Holley's
21 residence with the alarm, that happened at, you know, the
22 midnight hour. My interview occurred at the jail
23 approximately 12:15.

24 Q. Correct. This was at night, and I'm sorry; to be
25 more correct, this was at night when everything happened

1 over in Longbay Estates? We know it was twelve o'clock
2 to one o'clock when you interviewed him at the jail?

3 A. That's correct.

4 MR. FLOYD: Begging the Court's indulgence just a
5 minute.

6 Q. And he told you other things that evening also,
7 such as he had a co-worker with him?

8 A. Are you refer- ---

9 Q. Earlier.

10 A. Earlier, not at the Longbay.

11 Q. He had told you that he had taken that co-worker
12 home prior to that, correct?

13 A. To the Budget Inn.

14 Q. So he was cooperating with you throughout your
15 questioning?

16 A. If you're asking for my opinion, did he provide me
17 a statement, yes.

18 Q. Okay; all right. Did he provide -- let's word it
19 that way; did he provide you a statement?

20 A. Yes, he did provide a statement.

21 Q. Did you ask him to give you a statement?

22 A. I did.

23 Q. That's cooperation, isn't it, maybe?

24 A. Well, ---

25 MR. FLOYD: Thank you, sir. I've got no further

MOTIONS

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1 questions.

2 THE COURT: Redirect, Solicitor?

3 MR. RICHARDSON: Nothing, Your Honor.

4 THE COURT: All right, sir.

5 You may come down.

6 All right, your next witness, please, sir.

7 MR. RICHARDSON: Your Honor, at this point, the
8 State would rest.

9 THE COURT: All right, very good.

10 Mr. Floyd, you have some matters of law for the
11 Court at this point in time?

12 MR. FLOYD: Yes, sir.

13 THE COURT: All right. Ladies and gentlemen, if
14 you would go to your jury room for a few minutes while I
15 discuss this with the attorneys. Thank you.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
17 THE JURY.)

18 THE COURT: All right, Mr. Floyd, be glad to hear
19 from you, sir.

20 MR. FLOYD: Judge, we would move for a directed
21 verdict at this time based upon the lack of sufficiency
22 of the evidence in this case. We don't feel the State
23 has met its burden of proof. We also would renew our
24 motions that were made pre-trial in regards to the use of
25 the prior burglary convictions and in particular our

1 feelings that those cases were disposed of at one
2 particular time by a guilty plea and our feelings that
3 that is one conviction and not two.

4 Likewise, Judge, we do not feel that the State has
5 proven or met its burden of proof in this case as to an
6 attempted armed -- or attempted burglary, excuse me. At
7 best, he was on a porch, knocked on the door, and walked
8 away.

9 THE COURT: All right, sir. First, as to the issue
10 as to the prior convictions being a single incident, the
11 Court previously ruled, and I reaffirm the ruling, that
12 from the information provided by the certified records
13 that the matters that were presented occurred on two
14 different days several months apart, were completely
15 different incidents, and were convictions on separate
16 matters. As to the lack of sufficiency of evidence,
17 Solicitor, would you like to respond?

18 MR. RICHARDSON: Your Honor, here it is a little
19 different than our normal courses of action, and this is
20 an attempted burglary case. Of course, the act itself is
21 not completed. The State would put forth it has put up
22 sufficient evidence to send it forward to the jury,
23 because the Court should be concerned with the existence
24 of any evidence, not the weight of the evidence, and I
25 would rely, Your Honor, first on the fact that the door

1 was open according to Mr. Holley's testimony and set off
2 the alarm. The only way the alarm sets off is by the
3 door being broken, which basically that might be enough
4 for burglary in this case more than attempted burglary.

5 The State would submit that the burglar alarm scared
6 him off and the lights came on, and the defendant heard
7 -- heard the victim, and that he ran from the scene. The
8 defendant has given conflicting statements. One was an
9 excited utterance, "Mister, I've never been at your
10 house," especially after he's arrested, and then to the
11 detective, "Oh, I was looking for my dog." He also said
12 he was looking for work. He was wearing dark clothes,
13 dark shoes, a dark sweatshirt, a dark T-shirt under the
14 sweatshirt, and dark pants when he fled from the scene.
15 He fled from the officers; he gave inconsistent
16 statements, Your Honor.

17 The State would also rely -- as far as the intent to
18 commit a crime therein with first degree burglary, the
19 State would go back to State v. Haney, 257 S.C. 89, and
20 I'm just reading some headnotes here, Your Honor, and
21 it's under the old housebreaking burglary, the breaking
22 and entering statute, where it states "The fundamental
23 theory in the absence of other intent or explanation for
24 breaking and entering is that the usual object or purpose
25 of burglarizing a dwelling house at night is theft."

1 This occurred at night. We had the two prior
2 housebreakings that suffice to establish that element as
3 well, Your Honor. It's just that the alarm worked this
4 time. It stopped the act from happening, and thankfully
5 so, Your Honor, and the State would just move forward,
6 that the jury has enough in which it can go forward at
7 this point.

8 THE COURT: Yes, sir, Mr. Floyd.

9 MR. FLOYD: Just briefly in reply, Judge, I've got
10 to take exception to some of the comments. He did not
11 run from the scene. That is not the testimony that was
12 in this courtroom. He walked away from the scene. He
13 didn't leave the scene.

14 If we take it that he heard the burglar alarm go
15 off, he didn't leave. The testimony has been that he
16 stayed on the porch and went to -- walked around to the
17 front door, and then walked away from the scene. I take
18 exception with the fact that the burglar alarm scared him
19 off. That's not what the testimony has shown. I take
20 exception with the fact that they are relating him
21 running from the scene when that is not what the
22 testimony has shown.

23 THE COURT: All right. Regarding the directed
24 verdict, the -- obviously the basic laws, the defendant
25 is entitled to a directed verdict when the State fails to

1 produce evidence of an offense charged. The Court, at a
2 directed verdict stage, is concerned with the existence
3 of evidence, not with its weight. Its credibility and
4 believability is to be judged by the jury. My only
5 concern is whether or not the evidence exists, and if
6 there's any direct evidence or substantial circumstantial
7 evidence reasonably tending to prove the guilt of the
8 accused of the crime for which he has been charged, the
9 case should be submitted to the jury.

10 In this particular matter, I do not find that the
11 jury would be merely speculating as to the guilt of the
12 accused, and in that, the evidence as presented, if so
13 believed by the jury, would support a conviction for
14 attempted first degree burglary.

15 Regarding an attempt, it's defined as an effort to
16 accomplish a crime which does not succeed and includes a
17 specific intent to do a particular criminal act, and the
18 State must show more than mere preparation and intent.
19 There has to be some overt act committed in an effort to
20 commit the crime. There is testimony that, number one,
21 there was pressure on the front door as far as the
22 testimony of the victim in this particular matter, as
23 well as the other door being ajar when it was secured as
24 best the household members could make that particular
25 door, the lock being broken. Therefore, there is

1 sufficient evidence of entry in this particular matter.

2 And regarding the elements, the other elements,
3 there is evidence of the matter occurring in the
4 nighttime and the defendants having two -- the defendant
5 having two prior housebreakings that are properly
6 introduced regarding that particular element.

7 Therefore, I would respectfully decline to grant
8 your motion for a directed verdict in this case.

9 All right, Mr. Floyd, is the Defense ready to
10 present some witnesses?

11 MR. FLOYD: Judge, I would like a few minutes.

12 THE COURT: Well, we'll take a short break, but I'm
13 just wondering do you have witnesses that you intend to
14 present?

15 MR. FLOYD: Yes, sir, I do have some witnesses. I
16 would like some time to -- Mr. Coleman had been out of
17 town, just got here, and I was talking to him briefly
18 when we started back up this afternoon. I would like a
19 little bit of time to talk with him.

20 THE COURT: All right. Well, we'll take a short
21 break and then we'll come back and resume the trial then.

22 MR. RICHARDSON: Your Honor, do you want to address
23 the matter of the defendant's record real quick or ---

24 THE COURT: As I understand it, you have witnesses
25 that you intend to present before you are going to

1 present the defendant as a witness in this case?

2 MR. FLOYD: That's one thing, Judge, I'm not too
3 certain. Standing here right now, I've only got one
4 witness here at this time besides him, and I'm not
5 certain what order I'm going to ---

6 THE COURT: All right. Well, let's take a short
7 break. You can talk about that, and then when we come
8 back, we'll go into the questions as to -- or advising
9 the defendant of his right to testify and advising him of
10 his constitutional rights and in that, we will go over
11 whatever criminal record there may or may not be that he
12 can be asked about, all right?

13 MR. FLOYD: Yes, sir.

14 THE COURT: We'll come back in fifteen minutes, all
15 right, so 3:15. Let's just say 3:15.

16 (OFF THE RECORD)

17 ON THE RECORD

18 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
19 THE JURY.)

20 THE COURT: Mr. Floyd, how many witnesses do you
21 think you're going to have?

22 MR. FLOYD: Judge, I have two here this afternoon
23 -- well, my client and Mr. Coleman here this afternoon.
24 Mr. Ward's wife is on the way. I don't anticipate these
25 witnesses being very lengthy at all, but Mr. Ward will

1 probably be the most lengthy of them.

2 THE COURT: All right, is your client ready for me
3 to question him regarding his right to testify, Mr.
4 Floyd?

5 MR. FLOYD: Yes, sir.

6 THE COURT: All right. If you would stand, please,
7 sir. Ma'am, if you would place him under oath.

8 THE CLERK: Please raise your right hand. (Mr.
9 Ward raises his right hand, and being first duly sworn,
10 answers questions of the Court as follows:)

11 THE COURT: All right, Mr. Ward, at this time I'm
12 going to explain to you certain of your rights. If you
13 don't understand anything that we're talking about, I
14 need for you to stop, and you can raise your hand, and
15 tell your attorney, but when I'm asking you these
16 questions or I'm talking to you, I have to know that you
17 understand what we're talking about, do we agree?

18 MR. WARD: Yes, sir.

19 THE COURT: All right. Now, we've reached the
20 stage of the trial where you can present your defense.
21 You have the right to claim the protection given to you
22 by the Fifth Amendment to the Constitution of the United
23 States, which states in part that no person shall be
24 compelled in any criminal case to be a witness against
25 themselves. That means that you cannot be forced to

1 testify in this case. Nobody can make you testify in
2 this case. You can testify; you're certainly welcome to
3 testify, but that's your choice to do so. Do you
4 understand that?

5 MR. WARD: Yes, sir.

6 THE COURT: And that being your right to have and
7 claim the protection to the Fifth Amendment to the
8 Constitution of the United States, no one can waive or
9 give up that right except you. Do you understand that?

10 MR. WARD: Yes, sir.

11 THE COURT: All right. Now, if you decide to
12 testify, you're going to be subject to the same rules
13 that all the other witnesses that have testified in this
14 case such that you will be examined or questioned by your
15 attorney as to certain matters. You'll be cross examined
16 as to all matters deemed relevant by the Court by the
17 Solicitor.

18 Further, if you've got a conviction that involves
19 dishonesty or a crime punishable by imprisonment for more
20 than one year and the Court determined the probative
21 value of that would outweigh its prejudicial value, I
22 would allow the State to ask if you've been convicted of
23 that crime.

24 Solicitor, is there any crime that you intend to
25 test the witness's credibility with?

1 MR. RICHARDSON: Your Honor, the defendant, it
2 looks like he entered a plea of assault and battery of a
3 high and aggravated nature December 13th, 2006, placed on
4 -- six years suspended on three years' probation.

5 THE COURT: All right, so that would be the one
6 matter that you would question him about?

7 MR. RICHARDSON: That's the only one within ten
8 years, Your Honor.

9 THE COURT: All right, sir, very good, and
10 understanding that, the only -- you can't bring up the
11 two housebreakings because that's without the -- without
12 the time limit and they're only in there for the element
13 of first degree burglary.

14 MR. RICHARDSON: Certainly, Your Honor.

15 THE COURT: All right, very good, so you
16 understand, then, Mr. Ward, then the Court will allow the
17 State to ask if you have been convicted of -- was it
18 assault and battery of a high and aggravated nature?

19 MR. RICHARDSON: That's correct, Your Honor.

20 THE COURT: All right, assault and battery of a
21 high and aggravated nature as a prior crime. If you
22 admit to that, then that's the end of it. They cannot
23 question you further about it. Obviously if you denied
24 it, then the State would be allowed to question you
25 further to determine whether or not that occurred. Do

1 you understand that?

2 MR. WARD: Yes, sir.

3 THE COURT: All right, sir, and I find that its
4 probative value as to the issue of credibility outweighs
5 any prejudicial effect to you, so I'm going to allow the
6 State to do it.

7 Now, if you decide to testify, that's got to be your
8 decision. It's got to be made freely. It's got to be
9 made voluntarily. It's got to be made knowing that you
10 have the right to claim the protection given to you by
11 the Fifth Amendment to the Constitution of the United
12 States of America.

13 Now, before we go any further, -- and, well, let me
14 tell you one other thing. If you decide not to testify,
15 if you've made your decision to claim that protection, I
16 would tell the jury that they can't consider that or give
17 that fact any consideration whatsoever. They can't talk
18 about it. It's not part of their decision-making process
19 in this matter. Do you understand that?

20 MR. WARD: Yes, sir.

21 THE COURT: All right, sir. Before I ask you
22 whether you want to testify, do you have any questions
23 that you need to ask your attorney?

24 MR. WARD: No, sir.

25 THE COURT: Have you understood what we have just

1 talked about?

2 MR. WARD: Yes, sir.

3 THE COURT: All right, sir. Do you wish to testify
4 in this case?

5 MR. WARD: Yes, sir.

6 THE COURT: Very good, sir. You may have a seat.
7 Thank you.

8 All right, then is the Defense ready to proceed?

9 MR. FLOYD: Yes, sir.

10 THE COURT: All right. Ask the jury to come in,
11 please, ma'am.

12 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, Mr. Floyd, your first
15 witness, please, sir.

16 MR. FLOYD: The Defense calls Arnold Lea Ward.

17 THE COURT: Please come around and be sworn, sir.

18 ARNOLD LEA WARD, being first duly sworn, testifies
19 as follows:

20 THE CLERK: Please state your full name and spell
21 your last name.

22 MR. WARD: My name is Arnold Lea Ward, W-A-R-D,
23 Ward.

24 DIRECT EXAMINATION BY MR. FLOYD:

25 Q. Mr. Ward, how old are you?

1 A. I'm forty-nine this year.

2 Q. All right, sir, and what kind of work do you do?

3 A. I'm a sub-contractor and a contractor.

4 Q. Where do you live?

5 A. I live in Garden City and Murrells Inlet. I live
6 on that deadly line, so it's kind of both places.

7 Q. Are you married?

8 A. Yes. I've been married for nineteen years now.

9 Q. Children?

10 A. Yeah; I have two.

11 Q. I'm going to go back to 2006, which I'm sure you
12 remember that day.

13 A. Very well.

14 Q. What were you doing on the day of October 30th,
15 2006?

16 A. On that day I had two other contracts that I was
17 working on all day long. We were building a house and
18 doing an addition, and as well, we had three other
19 contracts doing trim, which we done at night, in the
20 afternoons and night. After we framed all day, we'd go
21 in and do those in the afternoons.

22 Q. So you were working during 2006?

23 A. Yes, sir.

24 Q. Who was working with you on that day?

25 A. I had like ten employees, but the guys that was

1 working with me was Mike Coltice, Scott Lavanski, and I
2 think one of the Mexicans. I can't remember his name
3 that was working with me that day. We had three guys
4 working with us that day.

5 Q. Were you working on one of Mr. Coleman's projects
6 that day?

7 A. No. We had just finished up a project for Mr.
8 Coleman probably two months prior to that. I did have a
9 few loose ends there that I had to go and take care of,
10 but we didn't work for him that day.

11 Q. I know the construction business is kind of slow
12 right now. During 2006, were you able to stay busy, stay
13 working?

14 A. I couldn't catch up. I mean -- I mean, I had so
15 many contracts, that I had contractors begging me to take
16 time off to do their work. I was in fear of not having
17 enough time to take care of Mr. Coleman's project at the
18 time from the contracts I had already.

19 Q. But you were able to draw a paycheck in all of
20 2006?

21 A. Yes, sir.

22 Q. I'll show you that and ask you, if you would, to
23 identify it.

24 A. Yes, this is my partial form for 2006 on my tax
25 return.

1 Q. And are those tax returns that you filed?

2 A. Yes, sir.

3 MR. FLOYD: We would move to introduce this as
4 Defense 1.

5 THE COURT: All right. Is there any objection to
6 that?

7 MR. RICHARDSON: No, sir, Your Honor.

8 THE COURT: All right. Defendant's 1 is in
9 evidence without objection.

10 TAX RETURN FOR ARNOLD L. WARD INTRODUCED INTO

11 EVIDENCE AND MARKED AS DEFENDANT'S EXHIBIT NUMBER 1.

12 Q. What happened when you finished, in going back to
13 October 30th, 2006, what happened when you finished doing
14 the framing work that day?

15 A. We got off about six o'clock that afternoon. My
16 wife had called. I had a incident with my pup, and she
17 wanted me to come by and pick him up, so we took off a
18 little bit early. Usually we would work all the way into
19 dark, but that day I took off a little bit early and went
20 by and got my pup and started my trim a little bit early
21 that day, which was located on Woodland Drive in Garden
22 City area is where we were working.

23 Q. What time did you work on that?

24 A. I think we worked probably until about nine-thirty
25 or ten o'clock. It was like ten by the time we'd left

1 there, and one of the guys that was working with me, his
2 truck was broke down and he needed a ride home, so I was
3 going to give him a ride home.

4 Q. Who was that?

5 A. Scott Lavanski.

6 Q. So you gave him a ride home?

7 A. I gave him a ride home.

8 Q. And that was approximately what -- what time?

9 A. Probably between ten and ten-thirty by the time I
10 got him home.

11 Q. What did you do next?

12 A. Well, I sat over at his house probably for about
13 thirty minutes or so with him and his wife and some
14 friends, and we were supposed to stop by Ray Coleman's
15 project on the way through and check on some material,
16 but me and him talking, I'd passed the place, and it's
17 one of the things he kept bringing to my attention, that
18 when I went back through, I had to stop and check.

19 Q. All right, and is that referred to as the Smith
20 project?

21 A. Yes, sir.

22 Q. I hand you this document and ask you if you can
23 identify it?

24 A. Yes, sir. This is the contract that me and Mr.
25 Coleman had wrote up on payment plans and payment

1 schedules on the project itself.

2 Q. And where was this Smith project or Smith condo
3 going to be?

4 A. It was located in Longbay Estates.

5 Q. Longbay Estates?

6 A. Yes, sir. I'm not actually sure of the name of
7 the road. It's the one that goes straight down, the Dog-
8 -- Dogwood, I think it is.

9 MR. FLOYD: Your Honor, we have made this Defense
10 Exhibit Number 2.

11 THE COURT: Any objection to Defendant's 2?

12 MR. RICHARDSON: No objection, Your Honor.

13 THE COURT: So Defendant's 2 is in evidence without
14 objection. You may proceed.

15 JOB CONTRACT PAY SCHEDULE INTRODUCED INTO EVIDENCE

16 AND MARKED AS DEFENDANT'S EXHIBIT NUMBER 2.

17 Q. So had y'all actually started working on that
18 project in Longbay Estates?

19 A. No, sir. He spoke with me in August about doing
20 this project, but there was a delay in the project. The
21 two brothers that was building it was two contractors,
22 and I think they were arguing back or forth on the house
23 they wanted to build, whether a duplex, a condo, or
24 whatever, and we demolished the home that was there.

25 Ray Coleman had demolished the home that was there

1 and told me that the project was starting any time, that
2 I needed to just keep in contact with him and check the
3 job to see -- you know, find out when the materials and
4 stuff had got there.

5 The night that I'd went by there, the poles had
6 already been drove, and I was just checking to see if the
7 bands was there to see if we could go ahead and start it
8 since we were sixty days behind on the project already.

9 Q. What happened -- what happened next?

10 A. Well, when I got to the -- when I got to the area,
11 I had got out of the truck not thinking, and I noticed
12 there wasn't no bands or no materials or nothing there,
13 so I walked over to the lock box to see if maybe he had
14 put the blueprints in there to give me an idea of kind of
15 what we had to do, you know, something to study on that
16 night, and when I turned back around, I noticed my pup
17 had jumped out of the truck and took off, going back up
18 the road towards 17.

19 I followed him up about half-way of the road. When
20 I went back, then I turned around from there. I couldn't
21 catch him, and I turned around from there and I went back
22 to my truck and got my phone, and I called my wife a
23 couple of times on my phone. It was just about dead from
24 being used all day long, and I called my daughter, which
25 worked at the steakhouse during the time and left a

1 message with her. She didn't leave her phone on during
2 the time she was working.

3 She usually got off around eleven-thirty or twelve.
4 I left a message with her to please come down and try to
5 help me catch the pup, because they was a little better
6 with it than I was, and I knowed she didn't know the area
7 very well, so I told her, I said, "Whenever you get to
8 the Harley shop, just look across the road and I'll have
9 my truck parked there. Just turn right beside my truck
10 and come down that road, you know, find me," so I took my
11 truck up to that area right in front of the store and I
12 parked it there and I walked back down towards the area
13 where I had last seen my pup.

14 The road I seen him go on, which I don't -- I don't
15 know what the name of it is, but it loops all the way
16 around, which comes back in front of the area of the
17 house that I was at. Well, after I had went all the way
18 around the area and I hadn't seen my pup, by then my
19 phone was completely dead from me trying to call people.

20 I went to Mr. Shane's house, and I noticed there was
21 a vehicle in the driveway and it looked like a light was
22 on in his dining room ---

23 Q. Let me interrupt you right there. Do you know Mr.
24 Shane?

25 A. No, sir, except from the case itself. I don't

1 think I've ever met him or seen him before. I've worked
2 in this area a lot, but I don't think I've ever met him
3 personally.

4 Q. I just wanted to clarify that.

5 A. Okay.

6 Q. What happened next?

7 A. Okay, well, like I say, I noticed it looked like
8 the dining light was on, and I noticed there was a car at
9 his house, so I walked up to his front door to start with
10 and I knocked on it. Well, with the appearance of what I
11 was wearing, which is more or less winter clothes and
12 construction clothes for me, the darker you wear, the
13 cleaner you can keep them, I walked -- I noticed he had a
14 double glass door there, which the light was coming
15 through, so I stepped to the double glass door and I
16 reached up to knock again.

17 Well, when I knocked on this door, it varied back
18 and forth, which scared me, and like I told the
19 investigator, I'm not sure whether I reached down to grab
20 the handle to shut it or not. I don't think if it was
21 open I would have left this door open. It kind of scared
22 me a little bit, so I moved back to the front door, where
23 I tried to knock again. I waited a few minutes. I
24 didn't hear anybody. I didn't hear anything there, so I
25 proceeded to leave. I was going to go back to my truck

1 and see if my daughter came.

2 When I went down the stairs and I went around the
3 Suburban, a light came on, and I turned and I looked back
4 up at the house thinking that maybe someone would answer
5 the door or something, but I noticed it wasn't the porch
6 light or anything. It was the flood lights on the house
7 itself, and I thought, "Well," -- my next thought to that
8 was, "Well, I must have walked in front of a sensor," and
9 the lights came on, but I did wait there a few seconds
10 and see if someone answered the door.

11 When no one answered the door, so I proceeded on
12 back to the road where I could get back up to my truck to
13 wait on my daughter or try to get somebody to call so I
14 could get some help, you know.

15 Q. Let me ask you about these doors. How far apart
16 were they?

17 A. Not very far; not very far, the distance from here
18 to the jury maybe, maybe a little more or a little less.
19 It wasn't that far apart. It was easy to see from where
20 I was standing at the front door.

21 Q. Which door did you go to first? Did you go to the
22 wood door or to -- what I'm referring to as the french
23 doors or the glass doors?

24 A. The very first door I went to was the double
25 doors. The very first doors I went to was the front

1 doors, the one with no glass at all.

2 Q. Okay.

3 A. Okay, and the reason I didn't stand there was
4 because there was no lights there. There was no way to
5 vision out to see me or anything, and I seen the double
6 glass doors, and I felt, "Well, that would be a better
7 area to stand," for someone to look at you and ask you,
8 you know, "Hey, what do you want?"

9 You know, I'm a complete stranger up here in dark
10 clothes, knocking on your door at this time, you know, so
11 -- which I actually didn't know it was that late at night
12 during the time, you know, that I knocked on the door. I
13 thought it was only like ten-thirty or eleven. I hadn't
14 looked at my clock to see what time it was, so, I
15 actually didn't know it was twelve o'clock, that late, or
16 I wouldn't have even knocked on his door.

17 Q. Now, when you were standing at the french doors or
18 the glass doors, did you see anybody inside the house at
19 that time?

20 A. No, sir, I didn't see anyone there.

21 Q. After that, did you go back to the front door or
22 the wooden doors?

23 A. Yes, sir. After I knocked on the french doors and
24 they moved and it kind of give me a little rush, a head
25 rush, I went back to the front door and re-knocked again

1 at the front door.

2 Q. What did you do after that?

3 A. I stood there for a few minutes and no one
4 answered, and no one hollered out. I didn't hear any
5 noise, so I figured no one was home, so I proceeded to
6 leave.

7 Q. In which -- and tell me about leaving now. How
8 did you leave the house?

9 A. I just walked down the stairs and checked out his
10 cute little ornaments he had in his yard, and walked out
11 the driveway and left.

12 Q. Which direction did you walk away from?

13 A. I went around his Suburban, went out his lane, and
14 went through the yard right beside his house, on the
15 other side of his house into the highway in front of his
16 house.

17 Q. Was there another house beside his there?

18 A. Yes, sir. There was a house, both sides of his.
19 They're like twelve foot, fifteen foot apart maybe.

20 Q. And what happened when you walked back out to the
21 street?

22 A. Nothing right then. I walked back around the
23 curve and came back up and was going to my truck to see
24 if maybe my daughter had made it in the area or if I
25 could use a phone up in that area, and I seen an officer,

1 and that's when I stepped out and was flagging him down
2 to stop him to see if he could call Animal Control or
3 S.P.C., Southern Pet Patrol, or, you know, maybe even
4 call my wife or somebody to come help me catch the
5 animal.

6 Q. And you had your cell phone at that time?

7 A. My cell phone was completely dead. After calling
8 my wife three times, leaving two messages on my
9 daughter's phone, and my phone was completely dead. I
10 could turn it off, wait a few minutes, turn it on, and
11 I'd get a signal for like two minutes, and it would die
12 out on me, and that's all that was left on it. I brung
13 that to the officer's attention when he first arrested
14 me. When he tried to call Ray Coleman that night, he had
15 to use his own phone because mine was completely dead.

16 Q. I show you what's been marked as State's Exhibit
17 18. Is that the drawing that you made?

18 A. Yes, sir, it is.

19 Q. Okay. We talked a little bit about -- or there's
20 been some testimony about what the sketch means over
21 here, or down here, excuse me.

22 A. Yes, sir.

23 Q. Tell me about that "X".

24 A. One of the X's is actually his home. The other X
25 is where I was arrested. The investigator said it was

1 where I seen the light is, but actually if you go stand
2 on this X, you can't even see Mr. Holley's house.
3 There's ten houses between it in the houses. What I
4 described to him was he said the long way around. What I
5 described to him on this was that the road loops in a
6 circle and comes back to the same point. I took the
7 circle around and came back to the same point, which is
8 the X that he said that I seen the light in, which I
9 didn't.

10 Q. Did you walk all the way around the block again
11 after going up on the porch there?

12 A. Yes, sir, I did. It's not really a full block.
13 It's probably a circle with ten to fifteen houses in it,
14 or maybe even that many houses. I'm not really sure.

15 Q. And when the police came up to you on that street
16 -- how many police came up to you on the street that
17 night?

18 A. The first officer was in a car. It was a single
19 officer that arrested me, and when he stopped and
20 initially handcuffed me, then another one drove up in a
21 jeep, and I think there was one more sitting at Mr.
22 Holley's house when we arrived there. I think there was
23 three of them involved that night that arrested me.

24 Q. All right, so y'all went back to Mr. Holley's
25 house?

1 **A.** Actually, we went -- actually, we went to where
2 the job site was first, and I showed him where I had
3 turned around with my truck and everything, where the pup
4 had got out. Then we went to Mr. Holley's house and when
5 we first initially pulled up there, he asked me if I'd
6 ever been there, and the house didn't look familiar. It
7 was at night, and I looked and I said, "No, I ain't never
8 been here," and then after him pulling on up where I
9 could see the home, I said, "Yeah, okay. Yeah, I've been
10 here," you know.

11 After that, they took me -- they took me back to my
12 truck. They searched my vehicle and then took me to J.
13 Reuben Long.

14 **Q.** Well, why did you go up on Mr. Holley's porch?

15 **A.** I was going to knock on the door and see if he
16 would make a call to my daughter to see if she had got
17 out of work yet. Mistake. I should have never -- never
18 walked up there and knocked on that man's door. I should
19 have never -- I should have just went and looked for my
20 dog.

21 **Q.** And again when you go back to where you had your
22 truck parked at, why was it again you parked your truck
23 there?

24 **A.** I parked the truck there because my daughter
25 wasn't familiar with the area. She knew where 17 was.

1 She could make it from Garden City/Surfside into Myrtle
2 Beach and all, but so far as telling her stores, or
3 areas, or anything like that, she is completely lost.

4 I left a message on her phone that if she looked
5 straight across from the Harley shop, because I knew she
6 was familiar with the Harley shop there, that she would
7 see my truck in that area and that would be the road to
8 turn down. It was more or less a flag to help me, get
9 help to me, is basically what I was using my truck for.

10 Q. And that's right at the entrance to Longbay?

11 A. That's right at the entrance to Longbay Estate. I
12 had two places to park. Either I could park in the
13 parking lot at the store, or I could park in the middle
14 of the road on Longbay Estate.

15 Q. So after you parked your truck there, you went and
16 did what?

17 A. After I parked the truck, I came back -- I came
18 back down the road that I seen -- that my pup -- the last
19 place I seen my pup go before I went and got my truck. I
20 went back down that road and circled the block to see if
21 I seen where maybe he was or, you know, if I could -- if
22 I could hem him up or something and just catch him
23 somehow or another down in that area, at least know where
24 he was at for whenever my daughter, or my wife, or
25 whoever got there to help me, or the dog catcher or

1 whoever would -- I could say, "Okay, there he is, you
2 know; help me get him."

3 I kind of had fear of leaving my truck in that area.
4 I did have a lot of tools and stuff on the back of my
5 truck that night, and the officers that searched my truck
6 that night would -- could testify, that was there, that I
7 had a check for Twenty Two Thousand on the dashboard. I
8 had Eight Hundred Dollars in the floorboard when they
9 arrested me, because they was asking me what the money
10 was for. I had no probable cause to do anything. I was
11 checking on a job and trying to catch my dog.

12 Q. All right, sir, and did you ever open the french
13 doors at Mr. Holley's house?

14 A. No, sir, I never opened them. I did knock on them
15 and they did sway back and forth. I'm not going to say
16 they did a big fan, but they did sway back and forth when
17 I knocked on them.

18 Q. When you knocked on them and they swayed like
19 that, did you ever hear the alarm go off?

20 A. No, sir, I never -- I -- as a matter of fact, I
21 stood there for a few minutes because most houses do have
22 alarms like that that if you break the plane on a door or
23 the window, they go off loud obviously, but I never heard
24 nothing.

25 Q. What would you have done had you heard it?

1 A. Probably waited there until the cops got there and
2 tried to explain my situation the same way I did with
3 them anyway. I had no reason to run. I had no reason to
4 hide.

5 Q. How often have you worked with Mr. Coleman?

6 A. Oh, a long time, probably, I guess, eight to ten
7 years, somewhere in that area, a bunch of little
8 projects, a bunch of big projects. We've built a couple
9 of million dollar condos, and we've remodeled a few
10 places together, and I guess about ten years now I've
11 been knowing him and working with him.

12 Q. Did you go up to Mr. Holley's home that night to
13 break into it?

14 A. No, sir, I didn't.

15 MR. FLOYD: Thank you, Mr. Ward. I've got no
16 further questions for you.

17 THE COURT: All right, cross examination.

18 MR. RICHARDSON: Thank you, Your Honor.

19 CROSS EXAMINATION BY MR. RICHARDSON:

20 Q. Mr. Ward, you indicated that you're familiar with
21 Longbay, correct?

22 A. Yes, sir.

23 Q. It's a dead-end back there, right?

24 A. Yes, sir.

25 Q. So if the police come in, you can't escape at that

1 point, correct?

2 A. Exactly. There is no escape out of there. As a
3 matter of fact, at the back two roads, I think they've
4 got fences up on both sides.

5 Q. No reason to run then, right?

6 A. No, sir. I have no reason to run.

7 Q. The name, Scott Lavanski, you gave Detective Lewis
8 a different name, didn't you?

9 A. Some people call him Mike, Mike Coltis.

10 Q. Wasn't the name you gave him was James Robertson?

11 A. No. That's the guy that worked with me. He works
12 with me also, but he wasn't with us that night. He was
13 on another project right down the road from us. James
14 Roberts is the guy that picked my truck up.

15 Q. So James Roberts picked your truck up, not your
16 mother-in-law or your mother?

17 A. My mother-in-law was bedridden with cancer. I'm
18 pretty sure she didn't go pick up anything. She was the
19 only person I can contact through J. Reuben Long. I
20 contacted Carol Greenaw (ph.), which is my mother, and
21 she contacted James Roberts to go pick my truck up, which
22 is my foreman.

23 Q. You said you were wearing dark clothes because
24 they're just easy to work in, right?

25 A. Easy to keep clean.

1 Q. And you'd been working all day?

2 A. Most of the day, yeah.

3 Q. Sub-contracting, what kind of work are you doing?

4 A. Basically I lay out walls and read blueprints is
5 all I do, ride and go get materials.

6 Q. Lay out walls. You don't do any mudding or
7 anything?

8 A. No, I don't do -- we build homes. We don't ---

9 Q. You're doing trim work, you said?

10 A. We do trim work, yeah.

11 Q. Is this your hoodie?

12 A. Yes, sir.

13 Q. No paint, no grease, nothing on it?

14 A. I don't paint. I don't do mechanic work, sir. I
15 build homes. Sawdust brushes off of you.

16 Q. Sawdust brushes right off?

17 A. Yeah.

18 Q. Is there any sawdust you see there?

19 A. I don't see any. I see some dust. I'm not sure
20 if it's sawdust or not.

21 Q. See any sawdust falling out of there?

22 A. No, sir, I don't.

23 Q. How about on the leather of the belt, do you see
24 any sawdust there?

25 A. No, sir, I don't.

1 MR. RICHARDSON: And that's State's 17 and 16 for
2 the record.

3 Q. I'm going to show you what the State introduced as
4 State's Number 4. That's your statement, correct?

5 A. Yes, sir, it is.

6 Q. Could you tell us in that statement where you
7 indicated you called your wife?

8 A. Sir?

9 Q. Could you indicate to us in that statement where
10 you told -- where you told John Lewis that you called
11 your wife?

12 A. Where I called her?

13 Q. About the dog. You said you called your wife
14 about the dog?

15 A. Yes, sir, the night -- that night.

16 Q. Do you indicate that in your handwritten
17 statement?

18 A. No, sir, I didn't.

19 Q. How about your daughter, do you indicate you
20 called your daughter on that handwritten statement?

21 A. No, sir, but I did indicate it to John -- the
22 investigator. He has it in his reports. That's why on
23 the end of it there it says the same thing I've told you,
24 I've told them.

25 Q. But nowhere in this statement does it indicate

1 that you called your wife?

2 A. No, sir, not in that statement, not in my
3 handwritten statement.

4 Q. Longbay Estates has about forty or fifty homes in
5 it, correct?

6 A. I would say approximately that many, yeah.

7 Q. State's Number 15, what does that sign say?

8 A. Longbay Estates.

9 Q. Okay, and there's a wall right here?

10 A. Yes, sir.

11 Q. Is that the parking lot where you parked your car?

12 A. It's not actually a wall. It's a hedgebush row,
13 but yeah.

14 Q. But that sign is right at the entrance, though,
15 correct?

16 A. Yes, sir, and my truck was parked about where that
17 red truck is parked right there, a little bit further up
18 next to the road where she could see it.

19 Q. Is that sign visible from the road?

20 A. Yes, sir.

21 Q. What steakhouse was your daughter working at?

22 A. Sir?

23 Q. What steakhouse was your daughter working at?

24 A. Lone Star.

25 Q. Where was that located?

1 **A.** The Garden City area. They usually got off
2 between eleven and twelve o'clock.

3 **Q.** Did you mention Scott Lavanski's name in your
4 handwritten statement?

5 **A.** No, sir, I didn't.

6 **Q.** I believe on Direct you indicated that after you
7 went and knocked on Mr. Holley's door, by your statement,
8 you walked back towards your truck, is that what you
9 said?

10 **A.** No, sir, that's not what I said.

11 **Q.** You said you walked away from your truck, correct?

12 **A.** When I first left Mr. Holley's, I walked the
13 circle back around to see if I seen my pup, and then
14 started walking back towards my truck. The road around
15 Mr. Holley's house is a circle.

16 **Q.** So your testimony would be that you walked just on
17 the road; you didn't cut through any yards or anything?

18 **A.** I didn't go through any yards. I went up to Mr.
19 Holley's house and knocked on the door, and I walked from
20 his driveway through his neighbor's yard back to the
21 road, and that's the only time I was off the highway.
22 The rest of the time I was on the highway walking around
23 looking for my pup, or I call him a pup. He's a pretty
24 good size dog. He's about this big (indicating).

25 **Q.** You said that your daughter and your wife were

1 better with the dog than you were?

2 A. Yes, sir.

3 Q. But your wife turned him over to you that night?

4 A. Yes, sir.

5 Q. And in your handwritten statement you said you had
6 been to your wife's home. Were you and your wife living
7 apart at that point?

8 A. No, we're not.

9 Q. But you indicate you went over to your wife's
10 home?

11 A. Well, I went to where we were staying. We had
12 three homes at the time. We were staying over in the
13 south side of Myrtle Beach, down around the back side of
14 Surfside. We were leaving that home, moving into our new
15 home, and I was remodeling and painting on it. During
16 the time we were packed up, moving, we were staying, as a
17 matter of fact, right down the road from this gentleman
18 here, at Myrtle Beach Resorts.

19 My dog -- my wife had took the dog over to the
20 apartment that afternoon, which we wasn't supposed to
21 have dogs in the place to start with, and a friend of
22 ours had come over and he'd snapped at it, and it scared
23 her that she was going to get in trouble for having the
24 pup at the apartment, so she called me to come get it,
25 said to take it back to the house and leave it at the

1 house.

2 Q. So you were paying for three homes at that point?

3 A. No, sir. We were moving out of one into another,
4 and we were staying at the resort during the time we were
5 moving.

6 Q. Okay.

7 A. I was paying for two homes down south in Clarendon
8 County, my lake house and my farm house, at the time. I
9 wasn't actually buying any homes here.

10 Q. Okay, and do you have any proof of that Twenty Two
11 Thousand check you said was in your floorboard?

12 A. No, sir, not now, except for the officers that
13 arrested me there. I didn't figure it would be evidence
14 of here. It shows on my reports and on my tax returns
15 how much I made that year.

16 Q. So that Twenty Two Thousand Dollar check is on
17 that tax report?

18 A. No, sir. I made Thirty Five Thousand on that tax
19 form. It's part of -- the Twenty Two Thousand is part of
20 the Thirty Five Thousand tax form that I made that year
21 on that that was taxable. That isn't my gross income.
22 That's just my taxable money.

23 Q. Okay. You have a conviction for assault and
24 battery of a high and aggravated nature?

25 A. Yes, sir, I did.

1 Q. And that was December '06?

2 A. Sir?

3 Q. That was December '06?

4 A. Yes, sir, it was.

5 MR. RICHARDSON: Your Honor, I have no further
6 questions of this defendant.

7 THE COURT: Redirect?

8 MR. FLOYD: No, sir.

9 THE COURT: All right, sir. You may step down,
10 sir.

11 Your next witness, Mr. Floyd.

12 MR. FLOYD: We'd call Ray Coleman.

13 THE COURT: Mr. Coleman, please come around and be
14 sworn, sir.

15 RAY COLEMAN, being first duly sworn, testifies as
16 follows:

17 THE CLERK: Please state your full name and spell
18 your last name.

19 MR. COLEMAN: Kenneth Ray Coleman, C-O-L-E-M-A-N.

20 DIRECT EXAMINATION BY MR. FLOYD:

21 Q. Mr. Coleman, do you live here in Horry County?

22 A. Georgetown County.

23 Q. Where do you live over in Georgetown County?

24 A. Murrells Inlet.

25 Q. What do you do for a living?

1 A. I'm a contractor.

2 Q. And how do you know Arnold Ward?

3 A. I first met Mr. Ward as a recommendation from an
4 associate of mine, that he was an excellent framer.

5 Q. About how long ago was that?

6 A. Eight to ten years ago.

7 Q. Does he work for you often?

8 A. Off and on, he's done several projects for me.

9 Q. And that's been over the past decade?

10 A. Eight to ten years.

11 Q. Did y'all have a project going on in Longbay
12 Estates back in October or November of 2006?

13 A. I had two -- two clients from Rock Hill that were
14 actually builders that wanted to build a spec home in
15 Longbay Estates and they contacted me. My wife sold them
16 the lot that the house was going to be built on.

17 Q. Sir, I've got -- and I'm going to ask you to
18 identify for me the -- can you tell me what that is?

19 A. This is actually the building permit dated August
20 23rd, 2006, where I pulled a demolition permit where we
21 tore down the house that was existing there, and it's got
22 me listed as the contractor, and it's got Russell and
23 Darrell Smith as the owners.

24 Q. That was who you were doing work for?

25 A. Yes, sir.

1 MR. RICHARDSON: All without objection, Your Honor.
2 I believe it would be Defendant's 3, 4, and 5.

3 THE COURT: Just a second; just a second. So that
4 one is Defendant's 3, is that correct?

5 THE REPORTER: Yes, sir.

6 THE COURT: All right. Defendant's 3 is in
7 evidence without objection.

8 BUILDING PERMIT INTRODUCED INTO EVIDENCE AND
9 MARKED AS DEFENDANT'S EXHIBIT NUMBER 3.

10 Q. I'm going to show you another building permit.
11 Can you tell me what ---

12 A. Yeah, this is Building Permit Number 126524. It's
13 actually the building permit for the actual construction
14 of the home that they decided finally to build.

15 Q. Okay.

16 A. There was a question about whether we were going
17 to do a duplex, and in that area, -- it was [REDACTED] was the
18 address, [REDACTED], and it was in the rental
19 section of that neighborhood, and it also has Russell
20 Smith as the owner and me as the contractor, and it's
21 dated 11/20/2006.

22 Q. And I'm going to show you -- is that the building
23 permit and ask you if you could identify it?

24 A. This permit number is 132344. It's the actual
25 building permit for a swimming pool install for owner,

1 Russell Smith, has me as the contractor, and it's dated
2 6/21/2007, and roughly about ten or eleven days after
3 this date, the house was on a rental program and rented
4 through Garden City Realty.

5 MR. FLOYD: These are Defense 4 and 5.

6 TWO BUILDING PERMITS INTRODUCED INTO EVIDENCE AND
7 MARKED AS DEFENDANT'S EXHIBIT NUMBERS 4 AND 5.

8 Q. So y'all had been in -- or had this project going
9 in Longbay Estates?

10 A. I'm sorry; would you repeat that.

11 Q. You and Mr. Ward had had this project going in
12 Longbay Estates working on this Smith house?

13 A. I had been talking to the Smiths since they
14 purchased the property for probably a couple of months,
15 and the delay was -- whenever I'd get a big project
16 coming up, I'd get up with Lea and -- because I wanted to
17 make sure that I obtained him to do the framing for me,
18 just to give him a heads-up what was coming up, and
19 because of the delay on the two brothers trying to make a
20 decision whether they wanted to do a duplex or a house,
21 it took from actually probably March of that year until
22 we actually tore the house down in August to make a
23 decision.

24 Q. And August was when they made a decision about
25 what they wanted to do next?

1 A. Yeah, and then I tore the house down and we had to
2 get the plans. They were mail-ordered plans from the
3 Sader Company, and they were delayed in coming, and in
4 the meantime after I tore the house down and prepared the
5 property, I contracted with Thompson Construction Company
6 to put the piles in. It was a raised beach house, and
7 there was -- there was just a delay from August until
8 November 20th before we actually started, and I had asked
9 -- I had asked Lea to stop by the job periodically to see
10 if I had the plans in the box, because he was busy and
11 had a lot of jobs going on, and I'm like, "Just come by
12 and pick up the plans and look for the cradle system and
13 the trusses."

14 Q. So on August the 30th of 2006 ---

15 A. 23rd.

16 Q. October 30th of 2006 when this occurred, ---

17 A. Okay, the incident, I guess?

18 Q. Yes; did you know that Arnold was going to be over
19 there that night?

20 A. Not particularly that night. I just left it open,
21 stop by from time to time.

22 Q. And how well do you know Arnold?

23 A. Well, like I said, he's -- he's worked for me off
24 and on for eight to ten years. I've had him at my
25 personal house working, and I've never had anything

1 missing. He's had free realm (sic) of my house. He goes
2 in and uses the bathroom. I have no problem. I might be
3 there; I might not be there. I have at any given time
4 Ten to Twenty Thousand Dollars worth of tools just laying
5 around on my carport. He's been there. Never had a
6 problem.

7 Q. What kind of jobs do y'all work?

8 A. Anything from remodeling a condo, a typical beach
9 condo, to new work. I would say on the range of Forty
10 Five Thousand Dollar jobs to a point Four Million Dollar
11 house.

12 Q. And y'all have built beach houses together over
13 there?

14 A. Duplex, a couple of duplexes. To give you an
15 idea, about sixty-four hundred square foot duplexes. The
16 one house was the same size of a duplex altogether.
17 Actually, it was bigger.

18 MR. FLOYD: Thank you, sir. I've got no further
19 questions. Please answer any questions Mr. Richardson
20 might have.

21 THE COURT: Cross examination.

22 MR. RICHARDSON: Thank you.

23 CROSS EXAMINATION BY MR. RICHARDSON:

24 Q. I just want to make sure we are clear as far as
25 saying y'all build beach houses together. You hire the

1 defendant; he works for you, correct?

2 A. As a sub-contractor, that's right.

3 Q. So y'all aren't in business together? He's not a
4 member of your corporation?

5 A. No, sir.

6 Q. Okay, and I believe the defendant testified that
7 he went down there looking at pylons
8 s down at Longbay Estates. Those pylons would not have
9 been put in until the building permit was issued, right?

10 A. That's right.

11 Q. So those pylons could not be put in until November
12 -- so November 20th, 2006?

13 A. November 20th, that's right.

14 Q. Which is after October 30th and 31st?

15 A. That's right.

16 Q. So there would not have been any pylons down in
17 that area that night?

18 A. On October 30th, no.

19 Q. And you've known the defendant for a while?

20 A. I'm sorry?

21 Q. You've known the defendant for a while?

22 A. Eight to ten years.

23 Q. And he hasn't stolen from you?

24 A. Never had a problem.

25 Q. But he works for you?

1 A. Yes, sir.

2 Q. You weren't out there on that night, correct?

3 A. No, sir.

4 Q. And what type of work does the defendant actually
5 do for you?

6 A. Pretty much, Lea can do most anything.

7 Q. Works with his hands?

8 A. Yes, sir, uh-huh.

9 Q. So he does work with his hands on your job site?

10 A. That's right. Now, when you say on -- with his
11 hands, he has a crew, and he has picked up a saw and cut
12 boards.

13 Q. He does pick up a saw from time to time?

14 A. I have seen him many times. I've seen him use a
15 nail gun.

16 Q. So he doesn't just walk around with a cup of
17 coffee, a cigarette, and ---

18 A. On the big jobs, he pretty much lays out
19 everything, and, you know, on the duplex, he had like ten
20 or twelve people working, so he worked in a supervisory,
21 you know, position, but on the smaller jobs, he does
22 whatever.

23 Q. Small jobs, so if he had five jobs going, he's
24 probably doing some of the work?

25 A. He has.

1 MR. RICHARDSON: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MR. FLOYD: Just very, very briefly, Judge.

4 REDIRECT EXAMINATION BY MR. FLOYD:

5 Q. Mr. Coleman, you mentioned something about the
6 pylons wouldn't have been driven until November?

7 A. November 30th, that's right.

8 Q. Does that mean there would have been absolutely
9 nothing going on on that site?

10 A. From my recollection and also from the permit
11 being pulled, it was just a vacant lot that had been
12 prepped to put the pylons there, but there's a job box on
13 the property in the back of the property that mainly he
14 was probably coming by to check to see the plans.

15 Q. So even though the pylons weren't driven, if I
16 understand correctly, the plans were there, the property
17 was being prepped; you just hadn't started physically
18 building?

19 A. The property had already been cleared and prepped,
20 and we were waiting for the pylons.

21 MR. FLOYD: Thank you, sir. No further questions.

22 THE COURT: All right, sir, you may step down.

23 All right, Mr. Floyd, further witnesses on behalf of
24 the Defense?

25 MR. FLOYD: Judge, may we approach?

1 THE COURT: Yes, sir.

2 (A Bench conference was held in the presence, but
3 out of the hearing, of the jury.)

4 THE COURT: All right, ladies and gentlemen, if
5 you'd go to your jury room for a few moments, and we'll
6 come back for one other witness, all right? Thank you.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
8 THE JURY.)

9 THE COURT: All right, we'll take a short break for
10 about five or ten minutes, and you can talk to the
11 witness. We'll come in and take that witness. It's my
12 intention, gentlemen, that we'll stop for the day. We'll
13 come back tomorrow morning at -- we'll come back tomorrow
14 morning at nine o'clock and resume the trial in this
15 matter, all right? Thank you very much.

16 MR. RICHARDSON: Thank you, Your Honor.

17 MR. FLOYD: Thank you, Judge.

18 (OFF THE RECORD - 10 minute recess)

19 ON THE RECORD

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
21 THE JURY.)

22 THE COURT: All right, as I understand it, that
23 would be the Defense's last witness, is that right, or
24 not?

25 MR. FLOYD: Judge, I believe it is my last witness.

1 I would ask that I be allowed to wait until in the
2 morning to formally rest, but I do believe that will be
3 my last witness.

4 THE COURT: Well, my intention is at nine o'clock
5 we would go into the arguments and the charge. My
6 intention was to finish all the testimony today, but if
7 for some reason something new comes up, I'll hear you,
8 but just understand my intention was to finish up the
9 testimony today, okay?

10 MR. FLOYD: And, Judge, I intend this to be my last
11 witness.

12 THE COURT: Well, that's fine, but, I mean, you
13 know, I'm telling you if something comes up, I'll be glad
14 to listen to you in the morning and we'll just see where
15 we are, okay?

16 MR. FLOYD: Yes, sir.

17 THE COURT: All right, ask the jury to come in,
18 please.

19 And when I -- after we do the witness and I excuse
20 the jury, gentlemen, we'll go over the verdict form and
21 the charge so that we're all on the same page.

22 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, Mr. Floyd, your next
25 witness, please, sir.

1 MR. FLOYD: The Defense calls Tracy Butler.

2 THE COURT: All right, Ms. Butler, if you would
3 come around to be sworn, please, ma'am, come around up
4 here, right up here, please, ma'am. Put your left hand
5 on the Bible and raise your right hand, please, ma'am.

6 TRACY BUTLER, being first duly sworn, testifies as
7 follows:

8 THE COURT: Please have a seat, and when you get
9 situated, if you would state your full name for the
10 record, please, ma'am, and make sure you are right behind
11 the microphone, you're speaking directly into that
12 microphone, okay? Thank you, ma'am. If you would go
13 ahead and state your full name now.

14 TRACY BUTLER: My name is Tracy Diane Butler.

15 THE COURT: All right, Mr. Floyd.

16 MR. FLOYD: Thank you, Judge.

17 DIRECT EXAMINATION BY MR. FLOYD:

18 Q. Tracy, how do you know Arnold here?

19 A. He's my husband.

20 Q. When did y'all get married?

21 A. In 1995. We met in '92, and we got married in
22 '95.

23 Q. Do you work anywhere?

24 A. I work at the Murrells Inlet Post Office.

25 Q. All right. Do you own a dog?

1 A. Yes.

2 Q. What kind?

3 A. A Eskimo Spitz.

4 Q. Are you familiar with Arnold getting in this
5 trouble back in October of 2006?

6 A. Yes.

7 Q. Was the dog with you at that time?

8 A. For a short time he was, and then an incident
9 happened and I couldn't keep him with me anymore, so I
10 asked Arnold to come get the dog and take him to the new
11 house that he was working on.

12 Q. At some point did you find out that the dog was
13 loose?

14 A. The next morning on my cell phone I had a message
15 from him saying the dog had got out, would I go look for
16 him, so I couldn't do it that morning, so I done it that
17 -- probably around lunchtime went looking for him and
18 found him.

19 Q. Where did you find him at?

20 A. Right by the Harley shop, back up in there, just
21 wandering about.

22 Q. Is that close to Longbay Estates, do you know?

23 A. I'm not sure. I'm not sure. I'm not familiar
24 with the area too well, this area. I stay back in Garden
25 City area. I don't come to Surfside or Myrtle Beach too

1 often.

2 Q. Are you a little nervous here today?

3 A. I'm nervous when I speak, yes, publicly speaking.

4 Q. But if I understand correctly, you were in the
5 area of the Harley shop?

6 A. Yes.

7 Q. And when exactly was this, do you remember?

8 A. Excuse me?

9 Q. When was this?

10 A. On the 31st of October of 2006.

11 Q. Was anybody with you when you went and got this
12 dog?

13 A. My sister.

14 Q. Your sister was with you?

15 A. Uh-huh (affirmative response).

16 Q. At some point did you talk to Detective Lewis with
17 the Horry County Police Department?

18 A. I think I recall it, yes. I did speak to someone,
19 and he asked me about the dog, and I told him yeah, I had
20 to go find the dog, and that's basically it. We didn't
21 talk that long.

22 MR. FLOYD: Thank you, ma'am. I've got no further
23 questions for you.

24 THE COURT: All right, Solicitor, cross
25 examination.

1 CROSS EXAMINATION BY MR. RICHARDSON:

2 Q. Ms. Butler, at the time your husband was arrested,
3 you were living -- you were living at Stanley Drive?

4 A. No. We were at Myrtle Beach Resorts.

5 Q. Okay, and you say "we," so the defendant was
6 living at Myrtle Beach Resort, too?

7 A. Yes, off and on. He'd come stay and then he'd --
8 he was real busy, real busy.

9 Q. How big was this place at Myrtle Beach Resorts?

10 A. A three-bedroom condo.

11 Q. How big was the dog?

12 A. It's not a big dog.

13 Q. What was his name?

14 A. Bear.

15 Q. I'm sorry?

16 A. Bear.

17 Q. Bear, and that dog -- do you still have the dog?

18 A. Yeah, and he still don't like children.

19 Q. You say you do agree you spoke with John Lewis,
20 correct?

21 A. Yes.

22 Q. And that was on November 2nd?

23 A. I think so.

24 Q. And the defendant had been incarcerated for two to
25 three days at that point?

1 A. Yes.

2 Q. Had you spoken with him on the phone at that
3 point?

4 A. Once before, yes, before I spoke with the -- Lewis
5 is his name?

6 Q. Yes, ma'am.

7 A. I couldn't remember his name, it's been so long.

8 Q. And you went and got the dog yourself, correct,
9 you say?

10 A. Me and my sister.

11 Q. You didn't call the S.P.C.?

12 A. No.

13 Q. Have you ever heard of the S.P.C.?

14 A. Yeah.

15 Q. Is that Southern Pet Control?

16 A. Yes.

17 Q. And y'all have been married how long now?

18 A. Since '95.

19 Q. Since '95, so it should be about fifteen years?

20 A. A good little while, yes, a good little while, but
21 we've been together since '92.

22 Q. And you don't want to see him go to jail?

23 A. No, I don't.

24 Q. Thank you.

25 MR. RICHARDSON: No further questions.

1 THE COURT: Any redirect, Mr. Floyd?

2 MR. FLOYD: No, sir.

3 THE COURT: All right, ma'am, you may step down.

4 At this point in time, is there any further
5 witnesses from -- on behalf of the Defense?

6 MR. FLOYD: No, sir.

7 THE COURT: All right, very good.

8 All right, ladies and gentlemen, we are going to
9 stop for the evening.

10 Is there going to be any reply?

11 MR. RICHARDSON: I don't believe so, Your Honor.

12 THE COURT: All right, very good.

13 At this point in time, ladies and gentlemen, we have
14 concluded the evidentiary portion of the trial. The next
15 matters that will come up will be the closing arguments
16 of the attorneys, then my charge to you on the law, the
17 law that you're going to apply to the facts that you find
18 to be true in this matter, and then I give the case to
19 you for your deliberations and your unanimous decision.

20 Now, once I give the case to you, it's yours until
21 you reach a decision, however long or short that may be,
22 so since we have the closing arguments, the charge on the
23 law, and then the submission of it to you, I don't intend
24 to do that now with the time and understanding that,
25 again, y'all have lives outside the courthouse, so I want

1 to give you some opportunity not to be here all night
2 trying the rest of this case, so we're going to come back
3 tomorrow morning at nine o'clock. I want you back in
4 your jury room at nine o'clock in the morning and we will
5 come back in and we will resume this trial to its
6 conclusion at that point in time.

7 Remember, don't talk about the case. Don't allow
8 anybody to talk to you about it. Don't look up anything
9 about this case. If you happen to go home and it takes
10 you by this general area, you can't be doing any research
11 on your own, and "Oh, I want to go look at where this
12 house was," or "I want to go look where that was," you
13 can't do that. That's not part of this case. What you
14 decide the case on is what you hear in the courtroom and
15 from no other source.

16 All right, see you back tomorrow morning at nine
17 o'clock. Thank you very much.

18 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
19 **THE JURY.)**

20 THE COURT: All right, Mr. Floyd, again, I will
21 tell you that if you have some matter you want to bring
22 to my attention in the morning, I'll be glad for you to
23 do so, but with the -- it appearing that the Defense has
24 rested, and the State has no reply witnesses, I'll be
25 glad to hear any motions that you might have at this

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1 point in time.

2 MR. FLOYD: At this time, Judge?

3 THE COURT: Yes, sir. Again, you know, the Court
4 reserves the right at any point in time up until the
5 submission to the jury to allow further testimony in
6 if the Court deems -- deems it necessary, so if it ---

7 MR. FLOYD: Yes, sir. I was about to go forward
8 with my motions.

9 THE COURT: All right.

10 MR. FLOYD: Judge, we would renew our motion for a
11 directed verdict at this time, renewing our motions made
12 in regard to the use of the indictments in proving the
13 elements of burglary, first degree, as well as the use of
14 the indictments -- or prior convictions, excuse me, as
15 two prior convictions when the guilty plea was entered
16 all on one day.

17 We would also renew our motion for a directed
18 verdict based upon all the evidence that's in the record
19 at this time, not feeling the State has met its burden of
20 proof of proving that a crime was committed beyond a
21 reasonable doubt.

22 THE COURT: All right, sir. All right, no need for
23 me to reiterate the directed verdict standard again, but
24 again, as to the two matters of the two housebreakings, I
25 took those as two separate incidents based upon the

1 information contained in the indictments as being two
2 separate matters. They may have pled on the same day.
3 They were two separate matters. They were two different
4 convictions for housebreaking.

5 Understanding your argument about the length of time
6 since that -- those have occurred, those being in 1985,
7 and I understand that, but the Supreme Court has -- and
8 the Court of Appeals have already ruled on that
9 particular issue allowing its admission when it is only
10 submitted regarding an element of burglary, first degree,
11 either attempted or burglary, first degree, it being one
12 of the potential elements of the crime, that being a
13 person who has been convicted twice or more of
14 housebreaking or burglary, so I would respectfully
15 decline to grant your motion in that regard.

16 As to the sufficiency of the evidence, again, I'm
17 not concerned with the weight of the evidence, that is
18 the credibility or the believability of the evidence.
19 That's the jury's job. My job is to decide whether or
20 not the evidence exists. There is evidence that exists,
21 which if so believed by the jury, that again being their
22 job, would be sufficient to convict the defendant of the
23 crime charged. Therefore, I'm going to respectfully
24 decline to grant your motion for a directed verdict.

25 Any further motions on behalf of the Defense at this

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1 time?

2 MR. FLOYD: Yes, sir. As instructed by Your Honor
3 over the lunch period, I contacted Al Holcombe, the
4 bondsman on Mr. Ward's bond. He informed me that he
5 would stay on the bond. His only, I guess, limitation of
6 any type was he would stay on the bond until the case
7 goes ---

8 THE COURT: Right, until the matter is submitted to
9 the jury, is that right?

10 MR. FLOYD: Yes, sir.

11 THE COURT: Very good.

12 All right, let's cover that right now since we --
13 since it's been brought up.

14 Mr. Ward, again, if you'd stand up for just a
15 minute, please, sir. (Mr. Ward stands.) You understand
16 now that your bondsman is going to stay on your bond, so
17 I'm going to allow you to go home for the evening under
18 that bond. Now, you understand, as I told you at lunch,
19 if for some reason you would not reappear or come back in
20 the morning at nine o'clock, this trial will proceed on
21 without you. You understand that?

22 MR. WARD: Yes, sir.

23 THE COURT: Obviously it's in your best interest to
24 be here to help your attorney, but your absence will not
25 stop the trial. Secondly, obviously if you did not

1 reappear, then the Court would issue a bench warrant for
2 your arrest and the police agencies would be actively
3 then looking for you to arrest you under that bench
4 warrant. You understand that?

5 MR. WARD: Yes, sir.

6 THE COURT: Very good. Under those conditions,
7 I'll allow you to stay on the bond. You can have a seat.
8 Thank you, sir.

9 All right, the Clerk is going to hand to y'all
10 gentlemen a proposed verdict form in this case, so if
11 y'all will just take a minute and look at it, please, and
12 see if you have any objections or problems to or problems
13 with the verdict form as provided.

14 MR. RICHARDSON: No objection from the State, Your
15 Honor.

16 THE COURT: From the Defense?

17 MR. FLOYD: No, sir.

18 THE COURT: All right, very good, so that will be
19 the verdict form that we will submit to the jury.

20 All right, as to the charge that I intended to give
21 to the jury, let me just give you my intentions, and then
22 y'all can tell me if you have anything else that you want
23 or other matters that you believe you would like added to
24 the charge, and obviously we'll talk to the jury about
25 what we always normally talk to them about, credibility

1 and believability, and their job in that regard, the
2 basic difference or in actuality there being no
3 distinction between direct and circumstantial evidence
4 and a greater degree of proof is not required of one over
5 the other.

6 I will charge them on the issue of identification,
7 again leaving it to them as to the reliability of the
8 identification, it ultimately being their job to judge
9 all the credibility and believability of the evidence
10 presented.

11 I will charge to the jury as I did when the two
12 housebreaking convictions from 1985 were entered in that
13 they are not to consider them as evidence that the
14 defendant committed the crime for which he is currently
15 on trial, nor can they consider it as character evidence
16 as to the defendant. It is simply as an element that the
17 State has to prove beyond a reasonable doubt in order to
18 make out a charge of first degree burglary.

19 I will charge them regarding attempt, in general
20 just telling them an attempt is an effort to accomplish a
21 crime which does not succeed. An attempt includes a
22 specific intent to do a particular criminal act along
23 with an act falling short of that what was intended.

24 I will charge them mere presence, that mere presence
25 at the scene of a crime is not sufficient to prove

1 someone guilty of a crime. I intend to charge them about
2 intent, in order to establish criminal liability,
3 criminal intent is required. Criminal intent must be
4 proven by the State beyond a reasonable doubt, and
5 explain that to them.

6 I will talk to them about the statement of the
7 defendant having been made, admitted into evidence, that
8 it's ultimately their decision, one, that it was
9 voluntarily made, and two, was made with the proper
10 constitutional safeguards being given.

11 Also, we would obviously talk to the jury about the
12 presumption of innocence, talk to them about reasonable
13 doubt, the kind of doubt that would cause a reasonable
14 person to hesitate to act, and then the elements or the
15 charge of the law on first degree burglary, so anything
16 else or any challenges to what I intend to charge, or
17 exceptions, additions, anything from the State?

18 MR. RICHARDSON: Your Honor, I would assume the
19 reasonable doubt charge, it also goes on into the firmly
20 convinced language?

21 THE COURT: Yes, sir, it does. I just didn't go
22 through all that, but yes, sir, it does.

23 MR. RICHARDSON: And, Your Honor, I believe there's
24 a charge, I believe, on the inconsistent statement, ---

25 THE COURT: Okay, inconsistent statements.

1 MR. RICHARDSON: --- or inconsistencies in the
2 statement, ---

3 THE COURT: Well, as far as inconsistent
4 statements, that is an argument on the facts. I would
5 not charge to the jury about inconsistent statements. I
6 mean, obviously that's something that y'all will be
7 welcome to argue if you intend to do so, but I believe
8 that would be a charge on the facts and I would not
9 intend to do that.

10 MR. RICHARDSON: Yes, sir, Your Honor.

11 THE COURT: Anything else from the State?

12 MR. RICHARDSON: None that I can envision at this
13 time, Your Honor.

14 THE COURT: All right, sir. Mr. Floyd?

15 MR. FLOYD: Nothing, Judge.

16 THE COURT: All right, gentlemen, nine o'clock in
17 the morning. If there is nothing further then, we'll go
18 straight into the closing arguments. Obviously the
19 defendant having testified, the Defense having introduced
20 evidence in this case, then the Defense will go forward
21 fully. The State will have its argument; then we'll go
22 into charge, and then submit it to the jury, all right?
23 Thank you very much.

24 MR. RICHARDSON: The State would not choose to open
25 on the law, Your Honor.

1 THE COURT: All right, so we'll see y'all tomorrow
2 morning then at nine o'clock. Thank you very much.

3 (OFF THE RECORD)

4 ON THE RECORD

5 APRIL 14, 2010

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
7 THE JURY.)

8 MR. FLOYD: Judge, I had mentioned yesterday the
9 possibility of another witness. That's not -- that's
10 not ---

11 THE COURT: So there aren't any other witnesses?

12 MR. FLOYD: No, sir, so my formal resting of
13 yesterday carries on into today.

14 THE COURT: Very good, sir.

15 Is there anything else from the State at this point
16 in time?

17 MR. RICHARDSON: No, sir, Your Honor.

18 THE COURT: It appears we have all the jurors now,
19 so is the State ready to proceed?

20 MR. RICHARDSON: Yes, sir, Your Honor.

21 THE COURT: Defense?

22 MR. FLOYD: Yes, sir.

23 THE COURT: Ask the jury to come in, please.

24 Thank you.

25 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE

1 JURY.)

2 THE COURT: Good morning, ladies and gentlemen. We
3 are going to go into the final portion of the trial, and
4 as I told you, we're going to have the closing arguments
5 of the attorneys and then the charge on the law, and then
6 I'm going to submit the case to you for your
7 deliberations and your unanimous decision in this matter.

8 Now, I will remind you that the closing arguments of
9 the attorneys are not evidence. You've heard all the
10 evidence in this case already, but even with those
11 closing arguments not being evidence, they are important.
12 They are each side's summation to you of what they
13 believe the evidence has shown to you during the course
14 of the trial. They are arguments to you, remembering, of
15 course, that you are the judges of the facts of this
16 particular matter.

17 I would like for you to give your attention to them,
18 and then we will go into the law that you are going to
19 use in this matter.

20 All right, Mr. Floyd.

21 MR. FLOYD: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. FLOYD: Good morning. I want to thank y'all
24 for being here this morning. I told you yesterday it
25 wasn't going to be a very long trial, but as you can tell

1 by the charge, it is a very important trial for the State
2 of South Carolina. It's also important to Mr. Ward.

3 I'm going to stand here today, and certainly in my
4 summation I'm going to forget some things. I may even
5 misstate some things. What I say to you is not evidence
6 in this case. You heard the evidence from the witness
7 stand. There are a few things, though, that I do want to
8 point out for you that I think are important in this
9 case.

10 The first one is something you hadn't heard a whole
11 lot about, but you're going to have it back in your jury
12 room and I want to go ahead and start telling you about
13 it. Back in 1985, and I'll tell you how long ago that
14 was, and if my history is correct, Ronald Reagan was
15 President of the United States. Back in 1985, Arnold did
16 a couple of stupid things. He walked into Court to plead
17 guilty to them. He was sentenced to them, and he did his
18 time.

19 Since then, you've heard in this courtroom he's
20 worked, worked himself up to where he makes a good living
21 as a sub-contractor, runs his own crew, pays his taxes,
22 has the utmost trust of Mr. Coleman who he does a lot of
23 work for, and moving on to this night in question, I told
24 you when we started this trial that what we're going to
25 be looking at is intent, because there's a lot of things

1 here that we can't argue about. They happened.

2 Arnold was at Mr. Holley's house. The french doors
3 came open. The french doors weren't locked. They were
4 held closed by a belt. Arnold has told y'all he went up
5 and knocked on the doors, "I didn't think they opened,
6 but they did sway back and forth," and he's also told
7 you, "Had it come open, had I realized it had come open,
8 I would have closed it."

9 If you look at the picture of the front of the
10 house, the french doors are right there. The front door,
11 solid wood, is right beside it, recessed a little bit.
12 Everybody is in agreement of whatever happened at the
13 front doors after that. Arnold went to the wood doors.

14 They're saying that the alarm was beeping, the
15 secondary alarm, not the primary. It hadn't gone off.
16 Arnold said, "I didn't hear an alarm." He goes over to
17 the door. Mr. Holley said he felt that he was pushing on
18 it. He wasn't standing at the door, didn't have his hand
19 on it, but he felt that he was pushing on it. Arnold
20 said, "I knocked on it."

21 When we're trying to judge intent, because there
22 isn't no question about that; Mr. Holley has testified to
23 it. Arnold has testified to it, so let's talk about the
24 intent. Let's start with the french doors, what I call
25 the glass doors. They open out onto the porch. A belt

1 has got them held together, and if Arnold was trying to
2 go in that house, then all he had to do was yank that
3 door, yank it good and hard and it would have come right
4 open.

5 Say the alarm went off and he's trying to break in
6 the house. What would he have done? What would I do? I
7 would have run. Plain and simple, I would have let out
8 of there. Nobody would have seen me. The lights
9 wouldn't have had a chance to come on, wouldn't have
10 stood there and looked back at the light. I would have
11 been out of there. I wouldn't have walked around to the
12 front door and hung around.

13 Arnold said, "I waited to see if somebody came. I
14 didn't see anybody." Mr. Holley said, "While I was down
15 there, I was up in the shadows back against" -- I believe
16 he said his refrigerator which was black or dark in
17 color. "He couldn't have seen me." Again, Arnold didn't
18 run. He walked, walks around the Halloween decorations,
19 walks out down the driveway. Lights come on. Arnold
20 turns and looks, stands there. Does it sound like
21 somebody trying to break in your house? If the alarm
22 didn't scare me off when the lights came on, I could tell
23 you one thing, oowie, I don't think so. I'd have took
24 off then, but he didn't.

25 Mr. Holley said he looked back at the lights and

1 walked on around the Suburban. Now, it gets a little bit
2 different on what path he took walking away at that
3 point. No question he walked away, so now looking at
4 intent, was he trying to break into a house? He's out in
5 the road. Here come the police. Does he jump in the
6 bushes? No. Does it sound like somebody that was trying
7 to break into a house? I don't think that's what the
8 evidence shows, so what did he tell the police when they
9 pull up to him? "I've lost my dog. Can y'all help?"
10 And they went and arrested him.

11 "Let's take him back to the house." He said, "I
12 didn't recognize the house. It's a subdivision. I've
13 never been in there. I don't know what the homes look
14 like, other than this is a picture," but he said, "I
15 didn't recognize the house until they was taking me away
16 from it, and I looked to see, and "Yeah, I was there."
17 That's what happened.

18 He gets interviewed by Detective Lewis, who doesn't
19 tape-record any of the interview. He says out at J.
20 Reuben Long, there's no tape recorders, and he comes in
21 here today, and he doesn't remember. If y'all watched
22 him testify, everything he was doing, he was reading from
23 his notes, so what was really said, because he talked
24 about the inconsistencies that were there. Let's talk
25 about the inconsistencies.

1 He said, "I was working a job for Mr. Coleman," so
2 he calls Mr. Coleman and he told him the job hadn't
3 started yet, but he was bidding on it, the bid has been
4 accepted, the house hadn't started, the lot has been
5 prepared, a lock box on the lot, blueprints might be in
6 the box.

7 "I told them I was going after my dog," and the
8 police follows it up, and Detective Lewis' testimony is
9 "His wife didn't want to tell me about the dog until I
10 asked her." It's ironic, I think, that for Detective
11 Lewis, the people answering his questions he doesn't view
12 as cooperation. I believe what happened when he
13 interviewed Arnold Ward was he didn't get a confession;
14 he got an explanation, and that weren't what he was there
15 for, but other inconsistencies were, "I don't remember
16 the guy's name, but he mentioned the guy's name, and that
17 guy wasn't with him that night," and Arnold said, "No, he
18 wasn't with me that night. He works for me. He was
19 working another job."

20 The Solicitor brought out, "Well, you didn't mention
21 this" -- I think his name was something Lavin, or
22 something like that. No, he didn't, but he did tell the
23 detective, "I gave the guy a ride back to the Budget
24 Inn." Inconsistencies? It sounded like there were
25 inconsistencies, and I can make a lot more sense of

1 telling what was being asked and answered to rather than
2 Detective Lewis' notes; which I submit to you again, he
3 went to the jail that day looking for a confession, not
4 an explanation.

5 What goes on after that? You heard it all. His
6 wife went back the following day. She didn't know
7 exactly where she was. She didn't know where Longbay
8 Estates was. She knew where the Harley shop was, and she
9 found the dog right there around the Harley shop. Well,
10 from being in here and listening to the testimony, we
11 know the Harley shop is -- I don't go over to the beach
12 that much anymore. The Harley shop is somewhere close to
13 Longbay Estates. We know that.

14 They made a big deal out of where Arnold parked his
15 truck. Arnold said, "I parked it there because I had
16 left a message for my daughter and didn't know if she
17 knew where Longbay Estates were, so I told her to look
18 for the Harley shop and look for my truck."

19 He had a cell phone on him. Arnold told you, "I did
20 have a cell phone on me. I had used it that night. It
21 had also gone dead on me." This comes back to something
22 that is -- this case is real difficult because it
23 requires you to determine what Arnold's intent was.
24 That's what it comes down to and how do you do that? How
25 do you get inside somebody's mind, what they do, how they

1 do it?

2 I told you when we started that you weren't here to
3 judge anybody, just the evidence. You've got to look at
4 that to determine whether he committed a crime or not,
5 and the Judge is getting ready to charge you on all that
6 law, so I'm not going to talk to you about it. He knows
7 it better than I do, so he's going to tell you about
8 intent. Does it sound like Arnold Ward was intending to
9 break into that house? I submit to you the evidence
10 doesn't show that. The evidence shows he made some bad
11 judgment on his part, did he make some mistakes on his
12 part, but the intent to do a crime on that night, it just
13 doesn't show that.

14 This act back in 2006, what's Arnold been doing with
15 his life since then? He got convicted for an assault.
16 He's been working, been working jobs, been working
17 houses. I don't remember; I think one of the figures was
18 a six thousand square foot condominium, he was doing the
19 work, and was completely trusted.

20 I would hate to be judged today based upon the
21 things I did as a twenty-something year old in 1985. I
22 would hate that, but I feel like that's what's going on
23 in this courtroom today. Don't do it. The Judge is
24 going to charge you on the law and is going to charge you
25 what you can consider these 1985 convictions for. He's

1 moved forward from that.

2 Arnold has led the life we expect he would live, a
3 wife, family, job, working, and in his line of work, even
4 in these difficult times, worked, did a good job. Did he
5 have a reason to be in that neighborhood that night?
6 Absolutely. They couldn't even really -- which they
7 tried to bring out the fact if the pylons had been laid
8 in the dirt. "No, they hadn't. We hadn't started
9 construction. We were doing that. The lot was cleared.
10 The lock box was there. Bids were in. We were ready to
11 go. They had decided what they wanted to do, went out
12 and got the building permits." They show you -- you're
13 going to have them back in the jury room. They even have
14 a building permit from two months before this happened to
15 these people.

16 He told you he walked around the neighborhood
17 because his dog got loose. No doubt, and if -- and I
18 tell you now I'm certain that the State of South Carolina
19 has a different opinion than me, but if he was intending
20 to break into that house, then his actions certainly did
21 not show it.

22 You're going to have pictures of the door back
23 there. You're going to have a lot of pictures of the
24 house, the door being held together with a belt, the
25 testimony the door was open. Did not at any point in

1 time the police
2 come to him and say, "This is what happened," this much
3 follow-up, and say, "That's what happened." I believe
4 the evidence is going to show that Arnold Ward is not
5 guilty of this crime, not because I say it, but because I
6 believe that's what the evidence shows. Thank you.

7 THE COURT: All right, Solicitor, the State's
8 closing argument.

9 MR. RICHARDSON: Folks, I told you in the beginning
10 that putting a case together is like putting a jigsaw
11 puzzle together. You've got pieces out there. You've
12 got to see where they fit and once they fit together,
13 what kind of picture they show. That's what we've done
14 here. We've put evidence up to you. Those are those
15 pieces to the puzzle.

16 I think you have a pretty good clear picture of what
17 happened that night. The Defense has thrown up some
18 extra pieces on the table, the actual terms, the building
19 permits, the undated contract. They don't seem to fit,
20 but of course they don't because they're not part of this
21 puzzle, folks, and this is just misleading to get you off
22 the track, to hope that you're so inundated with
23 information that you lose track of your common sense and
24 you don't see the picture, that on October 31st, shortly
25 after midnight, Arnold Ward was dressed in all navy blue,

1 dark hoodie, dark long-sleeve T-shirt, dark shoes, dark
2 pants, no sawdust on there, no grease, no paint, but he'd
3 been working all day in those because that's his work
4 uniform. I submit to you it is his work uniform, his
5 work uniform for committing burglary.

6 So, folks, when you put the pieces of the puzzle
7 together, when you see what pieces actually fit into this
8 puzzle, you have one picture, that the defendant is
9 guilty of attempted first degree burglary.

10 In a moment the Judge is going to talk to you. He's
11 going to tell you that you, from the beginning and on
12 through your deliberations, you, the jury, are the sole
13 and exclusive judges of the facts. You will take the
14 evidence that's been presented in Court and you will
15 weigh it, and he's going to tell you he's the judge of
16 the law. He's going to give you the law to apply to
17 those facts to help you, but, folks, in addition to that
18 law, you need to use your common sense, your common
19 sense, because that's what you came in here with, and
20 that's what we're depending on.

21 Now, the Judge is going to talk to you about several
22 things in the law. He's going to talk to you about
23 credibility of witnesses. The State put up two witnesses
24 because that's what we needed, two witnesses, two simple
25 witnesses. This is a simple case. Credibility, who has

1 got what to gain? Why are they testifying?

2 You've got Shane Holley. His house was broken into.
3 He doesn't know the defendant from Adam's house-cat.
4 He's got no friends to reward, no enemies to punish.
5 He's just here to tell you what he saw that night, what
6 happened that night.

7 You've got Detective John Lewis who works many
8 cases. Once again, he's trying to get to the bottom of
9 this, folks. He went and interviewed the defendant. He
10 got a little confused on the time, but this happened at
11 midnight, about twelve-thirty in the morning on October
12 31st. John Lewis goes to see him at noon on November
13 1st, just about thirty-six hours later. He took notes,
14 notes so that he could come in and tell you what he
15 observed. No, he didn't record it, but he took notes so
16 that he could tell you what he observed that day. That's
17 what he was reviewing because he wants to tell you what
18 he observed. He isn't here trying to make it up three
19 and a half years later.

20 On the other side, you've got -- you've got the
21 defendant. What's he got to gain? Folks, he doesn't
22 want to go to jail. He don't want to answer up for what
23 he did. You've got his wife. She told us she doesn't
24 want him to go to jail. She loves him.

25 And you've got contractors that hired him, doesn't

1 know what's going on, other than he had a building site
2 in there, a building site that has been demolished. He
3 did it himself he said. That was back in August, and
4 they're not due to start construction, no pylons or
5 anything else until the end of November, so judge the
6 credibility of these witnesses. What have they got to
7 gain?

8 The Judge will talk to you about -- about what an
9 attempt is, because what we've charged here is an
10 attempted first degree burglary. The Judge will tell you
11 that you can't just get into the planning of the burglary
12 or any other crime. You've got to make some further step
13 of it. In this case, you've got the defendant dressed in
14 all dark clothes, going and taking the enhanced step of
15 grabbing that door. Remember, that door opened to the
16 outside. That's what Mr. Holley testified, opens to the
17 outside, so it isn't opening when you knock on the door.
18 You've got to pull on that door, yank it, and but for
19 that belt, that door would have popped right open. Mr.
20 Holley told you he made sure that that belt -- he
21 couldn't get it to where the door couldn't open at all,
22 but where it would stop from opening. That's your
23 attempt, and the Judge will talk to you about first
24 degree burglary, because first we have to prove that
25 attempt, but you also have to look at first degree

1 burglary.

2 The Judge will tell you that first degree burglary
3 occurs when a dwelling, a house, is broken into, and here
4 we say attempted to be broken into, and that that break
5 -- or that burglary occurs during the nighttime hours.
6 You've got that here. That's one element, or the
7 defendant has two prior convictions for housebreaking or
8 burglary. We've proved that element, so you have the
9 burglary here. That's pretty simple. Those are elements
10 of burglary and attempt.

11 The Judge will talk to you about reasonable doubt.
12 That's a term we've all heard, be it on T.V., movies, or
13 books, but what is it? You're in luck. The Judge is
14 going to tell you exactly what it is. The Judge will
15 tell you to prove someone guilty beyond a reasonable
16 doubt the State must give you evidence that leaves you
17 firmly convinced of the defendant's guilt, not some
18 magical burden the State could never hope to reach, but
19 that I must leave you firmly convinced of the defendant's
20 guilt, and we do that through the presentation of
21 evidence, folks.

22 My job is to give you the clear, admissible,
23 relevant, competent evidence that will assist you in
24 rendering a true and just verdict. That's my only job,
25 to come in here and give you the relevant, competent, and

1 admissible evidence, nothing more, nothing less. I'm not
2 here to mislead you. I'm here to give you that evidence,
3 so let's take a look at the evidence.

4 You heard from Mr. Holley. He took the stand and
5 told you he went to bed on October 30th. His kids had
6 been put to sleep about nine o'clock. He would go
7 upstairs to the top level of the house. He and his wife
8 had watched some T.V., and they went to sleep. He heard
9 the pre-alarm go off, never had a false alarm before, and
10 it scared him. His kids were on the level where the
11 doors were, so he grabbed his pistol and he went
12 downstairs to check on it, turned the alarm off because
13 he didn't want that alarm blaring, didn't want his kids
14 hurt, wanted to make sure he could stop whatever was
15 going on.

16 He saw the monitor and it said the kitchen door is
17 the sensor that went off, so he goes over to his french
18 doors, the kitchen doors. The doors are obscured from
19 the street by these trees, the darkest area on that
20 porch. That's where the attempted break-in went on, and
21 he's concerned because he knows that door is secured, not
22 by a lock, but by a belt, and when he gets there, he
23 about ten or fifteen feet away, I believe he said, the
24 french doors, or the main doors, he feels pressure -- or
25 he hears pressure being put on the door, on the front

1 door, not a knock (Mr. Richardson indicates a knock) like
2 any sane person would do trying to get help. He hears
3 somebody trying to push in because the doors open in.

4 That door has got a deadbolt, he said. You ain't
5 pushing that thing in. Mr. Ward says he didn't hear the
6 pre-alarm. Maybe he didn't. Maybe he didn't hear Mr.
7 Holley coming down. Maybe he saw those lights coming on.
8 He knew the jig was up and he had to get lost.

9 Mr. Holley says he watched him as the defendant
10 steps back down the stairs and carefully gets over those
11 decorations. Folks, remember, I told you we didn't have
12 any forensic evidence, because he was careful in that
13 regard, and does he walk back to the street? No. Does
14 he walk down to the street lights? No. He goes back
15 behind the house, right here, over here, back down the
16 side of the house. Maybe he was looking for a back door.
17 I don't know. Maybe he was just trying to get lost.
18 He's not running, but he's getting back to the wooded
19 area, back where he could get lost. He's not getting out
20 in the street lights.

21 That's when Mr. Holley called -- he's got his wife
22 on the phone with 911. Officers in the area make an
23 immediate arrest. They don't find the defendant on
24 Woodlawn, on Mr. Holley's side. They found him over on
25 the street behind because he cut through that wooded lot

1 that's coming back around. Maybe he's trying to work his
2 way back to his truck. He's got to get lost, and the
3 police intercept him. Does he run? No. He told you
4 it's a dead-end back there, and he isn't going to outrun
5 a police car. They've got him in their sights and they
6 arrest him, and the police take him to Mr. Holley's
7 house.

8 They've got him in the back of the car, and they ask
9 Mr. Holley, "Is this the fellow?" He says, "Yeah."
10 What's the first thing out of his mouth? All the lights
11 are on now. All these decorations are in the yard, and
12 the defendant says, "Oh, I didn't recognize it was that
13 house, the house I just cut through the back yard on. I
14 ain't never been here, sir, never been here. I don't
15 know you. I've never been here." He didn't say, "Hey,
16 man, have you seen my dog? Can I use your phone? My
17 phone is dead. My dog is lost. Please help me find this
18 mystery dog." He says he's never been there, and he's
19 arrested, and he's taken to J. Reuben Long and he sits
20 there on through the next day, which is November 1st.

21 Now, the defendant took the stand. Let's see, he
22 told you -- wanted you to believe there's a job site out
23 there. Mr. Coleman told you there was a job site out
24 there. They were due to begin construction the end of
25 November, not on October 31st. The defendant said he

1 went out there to look at those pylons, but the pylons
2 weren't there. Mr. Coleman told you that. That building
3 permit tells you that. They can't put pylons in until
4 that building permit is ordered. That doesn't occur
5 until, I believe, November the 23rd, almost a month
6 later.

7 The defendant tells you, well, yeah he was wearing
8 all navy. That's his work gear, it was good to work in.
9 So when I held this up, this is his work gear. He's
10 working on, I think he said, they had two houses in the
11 morning and three in the afternoon. They're doing trim
12 work. You look at it, folks, no sawdust, no stains,
13 nothing that says a construction site, trim work.
14 Everything says that is a uniform. That's a uniform for
15 a burglar that doesn't want to be seen in the dark.

16 You look at State's -- he tells you now that he can
17 name that worker he was with, Scott Lavinski, and you
18 look at his written statement, he just says a worker. He
19 didn't have names then, I guess. He didn't give that
20 name to John Lewis.

21 He talks about his truck. He went down to that work
22 site, down near the beach. That's where his dog gets
23 out. He can't get him, that mystery dog, but instead of
24 just leaving the truck there, he gets back up the road
25 and says, "I'm going to park here at this strip mall so

1 my daughter can see where I am." He says he called her
2 on his cell phone. He never mentions it in his written
3 statement, never mentions it to Detective Lewis, but he's
4 had three and a half years to think now, three and a half
5 years to come up with a story to tell you.

6 So he says he parks right over here about where that
7 red truck is, because that is how his daughter is going
8 to be able to see where she needs to go in, you know,
9 from the road, right behind this big ol' tree here.
10 "Don't bother looking for that sign that says Longbay
11 Estates. That's not a clear marker or anything. Just
12 look for my truck," in the dark -- so he could get away.

13 You heard about the mystery dog. Mrs. Butler took
14 the stand, because I know it was on my mind, whatever
15 happened to the dog? They picked him up. What happened
16 to the dog? Well, we heard about this Eskimo Spitz.
17 He's a little thing, but he's named Bear, and she went
18 and got him the next day.

19 Detective Lewis told you that he tried to speak with
20 Mrs. Butler; he spoke with her on November 2nd. He had
21 to ask her about the dog, said, "Well, what about your
22 pup?" She said, "Yeah, we got the dog." "Well, did your
23 husband ever have the dog?" She said, "Oh, yeah, yeah,
24 yeah, he had the dog," doesn't tell -- "I went and got
25 him," doesn't tell Detective Lewis, got him the next day

1 over at the Harley shop. This dog has been able to cross
2 four lanes of traffic from Longbay Estates over to the
3 Harley shop, still over there, never getting hit on that
4 busy highway when she picks him up, and she's telling you
5 this story three and a half years later. She tells John
6 Lewis about the dog after she speaks to her husband while
7 he's in jail.

8 So this is the statement that he gave to Detective
9 Lewis out at the jail. Once again, Detective Lewis went
10 out there, and he told you, "I don't recall whether my
11 video -- or my audio recorder wasn't working. I didn't
12 have -- I didn't have any capability," but consider,
13 depending on his memory as to what happened, he took
14 notes so he could review them. He took notes so he could
15 stand here -- and testify here today so he could tell you
16 accurately what went on in that interview.

17 Remember, the statement never made a mention to
18 Detective Lewis or in his written statement about ever
19 calling his wife, calling his daughter at work looking
20 for this dog. He just said he was looking for the dog.
21 He's had a day and a half to think about it, so he said,
22 "Oh, yeah, I lost my dog."

23 So when he rides to go talk to Mr. Holley, he said,
24 "I've never been here." He knows he's been arrested, so
25 he decided to say, "Yeah, I've been there," and at first

1 Detective Lewis told him -- he said, "I never touched
2 that door," but when Detective Lewis asked him, he said,
3 "Well, what if we take your fingerprints?" He said,
4 "Well, I may have knocked on the door. I may have put my
5 hand on the door handle. I didn't grab it, though." Now
6 he tells you a different story.

7 Look at this map. He says he saw the light from the
8 street. Now he's changed his tune now. He said, "No,
9 no, no, no." He said, "I told Detective Lewis that's
10 where I got arrested."

11 Folks, you have all the pieces of the puzzle, so
12 let's put them together very simply. The defendant has
13 told three stories here. He made one statement whenever
14 he was arrested and he was taken back to Mr. Holley's
15 house for that identification. He made another statement
16 to John Lewis thirty-six hours later. Now he's dressed
17 it up again here in Court yesterday, three and a half
18 years later after he's had time to hear all the
19 testimony, because he wants you to believe him.

20 Folks, stories grow with time. My dad tells stories
21 where he's gone fishing, stories, stories from when he
22 was a little boy, but I've been hearing the same stories
23 for almost forty years now. The fish get bigger, the
24 trouble he was in gets bigger, and it grows every year,
25 because it's a good story. Folks, he's telling you a

1 pretty good story, but it's not accurate.

2 When he goes for help, he doesn't go up and knock on
3 the front doors that can be seen from the street. He
4 goes around those french doors, all glass; he yanks on
5 them because they're back behind those palmetto trees.
6 He can't get in, so he tries one more door. He does get
7 points for not completing the act, folks. If he'd opened
8 that door, the State would have proceeded on burglary
9 charges, not attempted, on burglary charges, because
10 burglary would have been plain at that point, so I'm not
11 asking you to find him guilty of burglary, but his
12 attempt was to commit a burglary, folks.

13 When you dress in midnight blue, you're yanking
14 doors open in the middle of the night for a man who you
15 don't know, there's only one intent you can infer from
16 that. He's there to do harm, there to commit some crime,
17 whether it's a snatch and grab or burglarizing the whole
18 house, but he's there committing that crime, and that's
19 what he's done. That's what the pieces tell you as they
20 fall into place, so go back, examine what you've heard,
21 review who's got what to gain, what statements are
22 consistent, what was he wearing, what makes sense. Use
23 your common sense and you'll come back with one verdict,
24 one picture.

25 On October 31st, shortly after midnight, the

1 defendant attempted to burglarize Mr. Holley's home with
2 his family in there, and but for the acts of Mr. Holley,
3 but for that belt, and but for the alarm, he may have
4 been successful. I'm thankful we're not here today on
5 that. We're here because he attempted to do that, and
6 that's what you should find him guilty of, attempted
7 first degree burglary.

8 THE COURT: All right, ladies and gentlemen, it's
9 my job and responsibility now to give you the law that
10 you're going to apply to the facts as you so find them to
11 be, and I told you at the very beginning that I would not
12 indicate to you at any point in time what I believe the
13 facts of this case were because that's not my job.
14 That's not my responsibility. That's your job and your
15 responsibility.

16 In that same vein, if you came into the courtroom
17 with any preconceived ideas of what the law is, what it
18 ought to be, what it should be, what you hope it would
19 be, you will disregard that. You will take the law as I
20 now give it to you and apply it to the facts as you so
21 find to be true in this particular case.

22 I told you at the very beginning, and I will remind
23 you again, one of your jobs and duties and responsibility
24 in this case was to judge the credibility, and that is
25 believability, of the witnesses that have testified in

1 this case. Now, you can believe one witness against
2 several. You can believe a portion of what a witness
3 says. You can disregard the remaining portion of it.
4 You could disregard in its entirety the testimony of a
5 particular witness if you've got a good and sound reason
6 for doing so.

7 When you're looking at the testimony of the
8 witnesses, you look at whether the witnesses exhibited to
9 you any kind of interest, motive, bias, prejudice that
10 they might have if they gave -- when they gave you their
11 testimony from the witness stand. You consider their
12 demeanor, their appearance, their manner. Obviously you
13 consider the opportunity for knowledge, how did they come
14 about that information that they gave you from the
15 witness stand, and your objective, ladies and gentlemen,
16 as I told you, is to find the truth. It doesn't matter
17 where that truth comes from, what portion of the evidence
18 it comes from.

19 Again, I'll remind you, you judge credibility and
20 believability the same way you do it every single day of
21 your life. You use your good common sense, your good
22 judgment. You apply it to the facts and evidence you
23 heard in this case and find that evidence which convinces
24 you of its truth. You don't have any friends to reward.
25 You don't have any enemies to punish. Your verdict can't

1 be the result of any kind of passion, prejudice, or
2 sympathy. It has to be an examination of the facts and
3 evidence in this case, find that evidence which convinces
4 you of its truth, and then you weigh that evidence
5 against the State's burden to prove the defendant guilty
6 beyond a reasonable doubt. We'll talk about that in just
7 a little bit.

8 There are two types of evidence presented in
9 virtually every case that's tried. It's called direct
10 and circumstantial evidence. Now direct evidence is the
11 testimony of a person who claims to have actual knowledge
12 of a fact, like an eye witness. Circumstantial evidence
13 is proof of a chain of facts indicating the existence of
14 a fact. The law doesn't make any distinctions between
15 the two. You weigh all the evidence the same. You look
16 at all the evidence the same, find that evidence which
17 convinces you of its truth, and after weighing all the
18 evidence, if you are not convinced of the guilt of the
19 defendant beyond a reasonable doubt, you must find the
20 defendant not guilty.

21 An issue in this case is the identification of the
22 defendant as the person who is alleged to have committed
23 the crime. The State has the burden of proving identity
24 to you beyond a reasonable doubt, and you must be
25 satisfied beyond a reasonable doubt of the accuracy of

1 the identification of the defendant before you may
2 convict the defendant, and identification testimony is an
3 expression, or belief, or impression of a witness, and
4 you have to determine the accuracy of that
5 identification.

6 You consider any number of things in looking at
7 that, but you can consider whether or not the person had
8 an adequate opportunity to observe the person, how short
9 or long a period of time it was, the lighting conditions,
10 whether the witness had a chance to know the person in
11 the past, was it a product of their recollection or was
12 it induced by the police. Any of these may be important
13 or unimportant to you, but you look at all matters and
14 find out whether the identification was accurate.

15 A statement was alleged to have been made by the
16 defendant, was admitted into evidence again. While it
17 was -- the Court determined it should be admissible in
18 evidence, you are the ultimate judges of the facts of the
19 case. You determine obviously whether or not the
20 defendant made the statement. You determine whether or
21 not the statement was made with any kind of pressure,
22 force, fear, threats, or coercion. The defendant being
23 in custody, was he granted and given his constitutional
24 Miranda rights. You consider all those matters when you
25 are looking at a statement made by a defendant.

1 I told you at the time these matters came into
2 evidence, and I'm going to remind you again, and it might
3 not be the last time I tell you, you are not to consider
4 the prior convictions of the defendant as evidence that
5 the defendant committed the crime for which he is
6 currently on trial. That is not proper. It is not what
7 that evidence was introduced for you to examine. You may
8 not consider that conviction as any kind of character
9 evidence of the defendant. You should not conclude that
10 because the defendant was convicted of housebreakings in
11 1985 that he is likely to have committed the offense for
12 which he is currently charged. You are asked to consider
13 it as to whether or not these prior convictions are part
14 of the elements that the State has to prove to you to
15 make out the charge of first degree burglary.

16 I told you at the beginning that the defendant pled
17 not guilty to the charge or the indictment brought
18 against him by the State of South Carolina, and that plea
19 put the burden of proof on the State of South Carolina to
20 prove the defendant guilty beyond a reasonable doubt.
21 Now, I tell you again a person charged with committing a
22 criminal offense in the State of South Carolina, the
23 United States, is never required to prove themselves
24 innocent. They don't have anything to prove to you.
25 They don't have anything to show to you.

1 A defendant need not testify. The State has to
2 bring all the evidence to you. The State has to prove to
3 you beyond a reasonable doubt the guilt of the crime
4 charged, that the defendant committed that crime, and
5 that they prove that to you through the evidence beyond a
6 reasonable doubt.

7 Now, this presumption of innocence that the
8 defendant has didn't end at the start of the trial. It
9 hadn't ended now. It does not end until you are firmly
10 convinced of the guilt of the defendant beyond a
11 reasonable doubt, and that presumption of innocence is
12 like unto a robe of righteousness. It's placed upon the
13 shoulders of the defendant and it stays upon the
14 shoulders of the defendant until and unless the State
15 rips that robe of righteousness from his shoulders by
16 evidence which convinces you of the guilt of the
17 defendant beyond a reasonable doubt.

18 This presumption of innocence isn't some legal
19 theory or legal phrase. It's a substantial right to
20 which every defendant, to which every American is
21 entitled until and unless you, the jury, are satisfied of
22 the guilt of the defendant beyond a reasonable doubt.

23 Now, what's reasonable doubt? Reasonable doubt is
24 the kind of doubt that would cause an ordinary reasonable
25 person to hesitate to act. Proof beyond a reasonable

1 doubt is proof that leaves you firmly convinced of the
2 defendant's guilt. Now, there's very few things we can
3 know with absolute certainty, and the law doesn't require
4 the State of South Carolina to give you that degree of
5 proof.

6 What is required is if based upon your consideration
7 of the evidence you are firmly convinced that the
8 defendant is guilty of the crime charged beyond a
9 reasonable doubt, you must find the defendant guilty. On
10 the other hand, if you, based upon your examination of
11 the evidence, are not firmly convinced that the defendant
12 is guilty of the crime charged, you must give the
13 defendant the benefit of the doubt and find him not
14 guilty.

15 Intent. In order to establish criminal liability,
16 the State has to prove to you beyond a reasonable doubt
17 criminal intent. Criminal intent is a matter that must
18 be determined by the jury from the circumstances
19 surrounding the situation. There's no way that it can be
20 proved to you to some kind of mathematical certainty.
21 The law says criminal intent must be inferred or may be
22 inferred from the circumstances that exist. It's not
23 necessary to establish intent by some direct evidence,
24 but intent can be established by inference in the same
25 way as all the other things. It's a mental state. It's

1 up to you to determine what the defendant intended to do
2 based on the circumstances that existed, but again
3 remembering the State has to prove that intent to you
4 beyond a reasonable doubt. The State has to prove
5 everything to you beyond a reasonable doubt.

6 Attempt. An attempt is an effort to accomplish a
7 crime which does not succeed. An attempt includes a
8 specific intent to do a particular criminal act along
9 with falling short of the act intended. The State has to
10 show more than mere preparation. There must be some
11 overt act committed, an effort to commit the crime.

12 Intent means intending the result which actually occurs,
13 not accidentally or involuntarily. Intent may be shown
14 by acts and conduct of the defendant and other
15 circumstances from which you may naturally and reasonably
16 infer, and again remember, all that has to be proved to
17 you by the State beyond a reasonable doubt.

18 The State has charged the defendant with attempted
19 first degree burglary. The defendant being charged with
20 that, the State has to prove beyond a reasonable doubt
21 that the defendant attempted to enter a dwelling without
22 consent. Now, a dwelling is any building or portion of a
23 building in which a person ordinarily sleeps. In order
24 to prove the defendant attempted to enter the dwelling,
25 the State does not have to show that the defendant's

1 entire body entered the dwelling. The smallest entry is
2 sufficient. It may be any part of the body, such as a
3 hand or a foot, or even an instrument. In addition, the
4 State does not have to prove that force was used to gain
5 entry.

6 The State has to prove to you beyond a reasonable
7 doubt the defendant intended to commit a crime, either a
8 felony or a misdemeanor, at the time of the entry. The
9 mere entry into a dwelling without consent is not
10 burglary, first degree. If the intent to commit a crime
11 is formed after the entry, it is not burglary, first
12 degree.

13 If the defendant intended to commit a crime at the
14 time of the entry, it is a burglary, even if the attempt
15 was abandoned after the entry. It does not matter that
16 the intended crime was not completed.

17 Intent may be shown by acts and conduct of the
18 defendant and other circumstances from which you could
19 infer intent, and also, the State then has to prove to
20 you beyond a reasonable doubt either that the defendant
21 had a prior record of two or more convictions for
22 burglary or housebreaking and again, the evidence of
23 those prior offenses committed by the defendant is
24 offered to prove and cannot -- cannot be offered to prove
25 the defendant has bad character or to prove the defendant

1 committed the burglary on this occasion. It's only as to
2 this particular element, or the State has to prove to you
3 beyond a reasonable doubt that the defendant entered or
4 remained in the dwelling in the nighttime. Nighttime is
5 the period between sunset and sunrise during which
6 there's not enough daylight to recognize a person's face
7 except by artificial light or moonlight.

8 Finally, mere presence at the scene of a crime is
9 not sufficient to prove someone guilty of the crime
10 charged. The burden is on the State of South Carolina to
11 prove every element of the crime charged. If you find
12 after reviewing all the evidence that the State has
13 proved that the defendant was only present at the scene
14 of the crime, they have not proved beyond a reasonable
15 doubt any other participation in the crime, so you must
16 find the defendant not guilty.

17 I have had prepared for you a verdict form in this
18 particular matter, very straightforward, has the caption
19 of the case, has on it "Burglary, first degree,
20 attempted. On the charge of burglary, first degree,
21 attempted, we, the jury, by unanimous consent, find the
22 defendant," and there's two choices. I put one before
23 the other. Obviously you don't assign anything to that,
24 "not guilty or guilty."

25 Mr. Foreman, when your jury has well and truly

1 deliberated and has unanimously decided their choice in
2 this particular matter, whether the defendant is guilty
3 or not guilty of the crime charged, you check the
4 appropriate block, you sign your name, put today's date,
5 knock on the door and let the bailiff know that your jury
6 has reached a unanimous verdict in this particular
7 matter.

8 Now, I have said unanimous I don't know how many
9 times. It means exactly what you think it means. It
10 means twelve/zero. It doesn't mean eleven/one, ten/two,
11 any combination thereof. It is a unanimous verdict.
12 Every single one of you agree "It is my verdict," and
13 only then, Mr. Foreman, do you check the block and sign
14 your name when everybody agrees, "Yes, this is my
15 verdict."

16 All right, ladies and gentlemen, I'm going to ask
17 that you go back to your jury room. Ms. Alternate, you
18 stay with us. Mr. Foreman, do not begin your
19 deliberations until the bailiff hands to you the verdict
20 form and the exhibits. When the bailiff hands to you the
21 verdict form and the exhibits, then you may begin your
22 deliberations.

23 Please take your jury to the jury room.

24 (THE JURY RETIRES TO THE JURY ROOM AT 10:00 A.M.)

25 THE COURT: All right, Ms. Britt, it appears that

1 the jury is ready, willing, and able to do what we expect
2 them to do and reach a verdict in this matter. They all
3 seem prepared to do so. You know, none of them called in
4 sick or anything like that, so at this point in time, I'm
5 able to excuse you from your service in this particular
6 case. Now, obviously you're welcome to stay if you want
7 to see the result, but you're also welcome to leave.
8 What I'm going to ask that you do is if you do leave,
9 call back that juror information line tonight after 6:00
10 P.M. and follow those instructions whatever they may be,
11 all right?

12 (After the Court's discussion with Ms. Britt, she is
13 excused from jury service for the remainder of the week.)

14 All right, exceptions, additions, deletions to the
15 charge from the State?

16 MR. RICHARDSON: Nothing from the State, Your
17 Honor.

18 THE COURT: From the Defense?

19 MR. FLOYD: No, sir.

20 THE COURT: All right, gentlemen. I appreciate --
21 first I want to tell you I appreciate the job that both
22 of you did for the State and for the Defense. You did
23 everything the Court expected of you regarding the trial
24 in this particular matter, and I appreciate that and
25 commend you for that.

1 If you could, please get with the Court Reporter and
2 make sure we've got all the exhibits here before we send
3 them in to the jury.

4 (The Exhibits are reviewed by Mr. Richardson and Mr.
5 Floyd and are taken to the jury room.)

6 THE COURT: All right, we'll be at ease. Just let
7 me know when we need anything.

8 (OFF THE RECORD)

9 ON THE RECORD

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
11 THE JURY.)

12 THE COURT: I understand the jury has reached a
13 verdict in this matter. Is the State ready to receive
14 it?

15 MR. RICHARDSON: Yes, sir, Your Honor.

16 THE COURT: Defense?

17 MR. FLOYD: Yes, sir.

18 THE COURT: All right, very good, and as I always
19 do, y'all understand that we've asked the jury to do a
20 very difficult task, and whatever their verdict is, I
21 don't know what it is, but whatever their verdict is, it
22 will be received with respect and silence.

23 Ask the jury to come in, please.

24 (THE JURY RETURNS TO THE COURTROOM AT 11:30 A.M.,
25 AND THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE

1 JURY.)

2 THE COURT: All right, Mr. Foreman, has your jury
3 reached a verdict in this particular matter?

4 THE FOREMAN: Yes, sir.

5 THE COURT: All right. Could you hand the verdict
6 form to the Clerk, please, sir.

7 Thank you, ma'am.

8 All right, Madam Clerk, you may publish the verdict.

9 THE CLERK: Indictment Number 2007-GS-26-418, State
10 of South Carolina, County of Horry, versus Arnold Ward.
11 "On the charge of burglary, first degree, attempted, we,
12 the jury, by unanimous consent, find the defendant
13 guilty." Dated April 14, 2010, signed by Foreperson,
14 Wayne Purdy.

15 Ladies and gentlemen of the jury, if this is your
16 verdict, so signify by raising your right hand. (All
17 jurors raise their right hand.) Thank you.

18 THE COURT: The jury having affirmed the verdict,
19 does the State wish the jury polled?

20 MR. RICHARDSON: No, sir, Your Honor. I will need
21 a moment prior to sentencing.

22 THE COURT: All right. Does the Defense wish the
23 jury polled?

24 MR. FLOYD: Yes, sir.

25 THE COURT: All right, Madam Clerk, if you would

VERDICT OF THE JURY

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1 poll the jury, please, ma'am.

2 THE CLERK: When I call your name, if you will
3 please stand.

4 Number 53, Kelly Canady. Is this your verdict?

5 MS. CANADY: Yes, it is.

6 THE CLERK: Is this still your verdict?

7 MS. CANADY: Yes, it is.

8 THE CLERK: Thank you.

9 409, Gregory Williams. Is this your verdict?

10 MR. WILLIAMS: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 MR. WILLIAMS: Yes, ma'am.

13 THE CLERK: Thank you.

14 36, Laurie Brown. Is this your verdict?

15 MS. BROWN: Yes, ma'am.

16 THE CLERK: Is this still your verdict?

17 MS. BROWN: Yes, ma'am.

18 THE CLERK: Thank you.

19 391, Donna Vanderwiele. Is this your verdict?

20 MS. VANDERWIELE: Yes, ma'am.

21 THE CLERK: Is this still your verdict?

22 MS. VANDERWIELE: Yes, ma'am.

23 THE CLERK: Thank you.

24 299, Wayne Purdy. Is this your verdict?

25 MR. PURDY: Yes, ma'am.

1 THE CLERK: Is this still your verdict?
2 MR. PURDY: Yes, ma'am.
3 THE CLERK: Thank you.
4 88, James Culp. Is this your verdict?
5 MR. CULP: Yes, ma'am.
6 THE CLERK: Is this still your verdict?
7 MR. CULP: Yes, ma'am.
8 THE CLERK: Thank you.
9 16, Leon Bell. Is this your verdict?
10 MR. BELL: Yes, ma'am.
11 THE CLERK: Is this still your verdict?
12 MR. BELL: Yes, ma'am.
13 THE CLERK: Thank you.
14 25, Lisa Bond. Is this your verdict?
15 MS. BOND: Yes, ma'am.
16 THE CLERK: Is this still your verdict?
17 MS. BOND: Yes, ma'am.
18 THE CLERK: Thank you.
19 135, Gerald Gibson. Is this your verdict?
20 MR. GIBSON: Yes, ma'am.
21 THE CLERK: Is this still your verdict?
22 MR. GIBSON: Yes, ma'am.
23 THE CLERK: Thank you.
24 177, Audrey Hosley. Is this your verdict?
25 MS. HOSLEY: Yes, ma'am.

1 THE CLERK: Is this still your verdict?

2 MS. HOSLEY: Yes, ma'am.

3 THE CLERK: Thank you.

4 168, Robert Hensley. Is this your verdict?

5 MR. HENSLEY: Yes, ma'am.

6 THE CLERK: Is this still your verdict?

7 MR. HENSLEY: Yes, ma'am.

8 THE CLERK: Thank you.

9 237, Michael Mahoney. Is this your verdict?

10 MR. MAHONEY: Yes, ma'am.

11 THE CLERK: Is this still your verdict?

12 MR. MAHONEY: Yes, ma'am.

13 THE CLERK: Thank you.

14 THE COURT: All right, the jury having affirmed the
15 verdict after polling, is there anything further as to
16 the jury from the State?

17 MR. RICHARDSON: Nothing from the State, Your
18 Honor.

19 THE COURT: Anything further from the -- as to the
20 jury from the Defense?

21 MR. FLOYD: No, sir.

22 THE COURT: All right, very good.

23 All right, ladies and gentlemen, I want to thank you
24 for your service in this particular case. I understand,
25 and everyone understands, we gave you a difficult task in

1 this particular matter, and you have rendered a true and
2 just verdict in this particular matter. I would like to
3 tell you that your service for this particular week has
4 ended. Unfortunately I can't do that. We do have other
5 cases that will come up for trial this particular week.

6 The best I can tell you is I'm going to ask that you
7 please call back that juror information line tonight
8 after 6:00 P.M., follow those instructions, whatever they
9 may be. I do believe that with a jury that was picked
10 this morning in civil court, all the civil cases have
11 been resolved, so I think you're done with that portion
12 of your service for this week, but there are still other
13 criminal trials that need to be called this week, so I
14 thank you for your service. You are now excused, and
15 call that number after six o'clock. Thank you very much.

16 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF**
17 **THE JURY.)**

18 THE COURT: All right, Mr. Floyd, motions on behalf
19 of the Defense?

20 MR. FLOYD: Yes, sir, Judge. We would renew all
21 motions that we made during the trial in respect to
22 evidence that was allowed in, the prior convictions that
23 were used, the fact that they were handled in one
24 sentencing, and we would move the Court for a mistrial or
25 a new trial, or in the alternative for an order in arrest

MOTIONS

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1 of judgment, verdict.

2 THE COURT: All right, sir. All right, the Court
3 would respectfully reaffirm the rulings I made previously
4 regarding the matters as to the housebreaking charges
5 that I allowed into evidence regarding those particular
6 priors, and as to a motion for a new trial, there
7 obviously being not -- not saying anything about the
8 motions you made -- I'm just reiterating for the record,
9 there's no judgment notwithstanding the verdict available
10 in a criminal trial. There's a motion as made by the
11 Defense for a new trial. With that, it is not available
12 to the Court that if -- I'm not saying that I do, but
13 even if I did disagree with the verdict of the jury, I'm
14 not allowed to change it if there is competent evidence
15 to sustain the jury's verdict.

16 In this particular matter, I do find that there is
17 competent evidence. If that evidence was so believed by
18 the jury, and it must have been believed by the jury, to
19 arrive at the verdict that they came to, to sustain their
20 verdict, and, therefore, not being able, even if I was
21 inclined, not saying that I would be inclined, but even
22 should I be inclined to substitute my judgment for that
23 of the jury, that is not possible in a criminal trial.
24 Therefore, I respectfully decline to grant your motion.

25 All right, is the State ready to proceed for

1 sentencing?

2 MR. RICHARDSON: Your Honor, I'm going to go check.
3 They're printing me a sentencing sheet right now.

4 THE COURT: All right, sir.

5 MR. RICHARDSON: If I may have one minute, Your
6 Honor.

7 THE COURT: All right, sir.

8 (Pause)

9 MR. RICHARDSON: Your Honor, if I may approach.

10 THE COURT: Yes, sir. (Mr. Richardson hands
11 document to the Court.) All right, Solicitor, I'll be
12 glad to hear from you, sir.

13 MR. RICHARDSON: Your Honor, I believe all the
14 facts and evidence are in the case. You're familiar with
15 the defendant's record, as was admitted. There were over
16 three burglaries he pled to at one time. Your Honor, it
17 speaks for itself. This was an attempt. Thankfully the
18 crime didn't go forward.

19 Mr. Holley, do you wish to address the Court at the
20 appropriate time, or are you fine with this?

21 THE COURT: Certainly as the victim in this matter,
22 sir, you have the right to address the Court if you so
23 choose to do so. It's your choice.

24 MR. RICHARDSON: Your Honor, Mr. Holley would like
25 to address the Court at the appropriate ---

1 THE COURT: I'll be glad for -- be glad for you to
2 do so. Yes, sir.

3 MR. RICHARDSON: State your name again for the
4 record.

5 MR. HOLLEY: My name is "Buddy" Shane Holley.

6 THE COURT: Yes, sir.

7 MR. HOLLEY: Your Honor, although Mr. Ward
8 attempted and was not successful in entering my premises
9 and my property, I'd like the Court to understand that
10 although he may not have stole any material goods from my
11 family or myself that night, he did steal a sense of
12 security especially from my wife and eight year old
13 daughter, a sense of security that's affected our day to
14 day activities, my ability to travel and do business due
15 to that fear, and just overall as a father and as a
16 husband, my sense of duty to protect my family, so he may
17 not have taken anything on that night, but he did steal
18 something that can't be given back, and that is what we
19 all should be able to live with and that is a sense of
20 peace and comfort in our own home, and that's just all
21 I'd like to state.

22 THE COURT: Thank you, sir.

23 MR. RICHARDSON: Your Honor, this defendant has
24 been arraigned twice now. He was arraigned before Judge
25 Cottingham last year, and just this past March, I

1 believe, he was called for arraignment again on these
2 current charges, being offered to plead to the lesser
3 included offense of attempted burglary, second degree,
4 violent. He denied that. That was an open-ended
5 sentence that carries zero to fifteen years, would have
6 allowed probation, Your Honor. He just refused to do
7 that, Your Honor, and the State would just ask for a
8 sentence appropriate, given the defendant's history and
9 the nature of the crime.

10 THE COURT: All right, sir. All right, Mr. Floyd,
11 I'll be glad to hear from you first, and just so the
12 record is clear, the fact that the defendant wished to
13 exercise his constitutional rights and ask for a jury
14 trial in this matter to be judged by a jury of his peers
15 is in no way affecting the Court's decision as to the
16 sentence in this matter. That is a constitutional right
17 granted to all Americans and certainly cannot be, and
18 this Court will not hold that against him in any way.

19 All right, Mr. Floyd.

20 MR. FLOYD: May it please the Court, Your Honor. A
21 lot about Arnold you've heard during the trial. He is
22 forty-eight years old. He is working construction,
23 married, has got a family. His children are eighteen and
24 fourteen years old. He's been living here for some
25 sixteen, seventeen years, working. He was in jail for a

1 little over three months. Since the burglaries that
2 you're aware of, his history is limited to an assault
3 charge and a couple of driving offenses. That's the only
4 trouble he's been in. He's worked entirely since that
5 time.

6 He stands here before you, and I've talked with him
7 about the sentencing range, and I understand the statute
8 provides for a sentence of fifteen to life. However, the
9 statute doesn't contain the language that no part of
10 which may be suspended. If Your Honor chooses to, I
11 believe you could suspend that fifteen year sentence.

12 Of course, while we stand before you, we don't agree
13 with the verdict, but we have to accept it, and as the
14 Solicitor said in looking at his record, he did some
15 twenty years ago have some trouble, but since then,
16 virtually nothing, since then virtually lived in the
17 community the way we expect him to, and I would ask Your
18 Honor for what mercy it can show in sentencing.

19 THE COURT: All right.

20 MR. FLOYD: This is an eighty-five percent crime.
21 Thank you.

22 THE COURT: Mr. Ward, is there anything that you'd
23 like to say to the Court?

24 MR. WARD: Yes, sir. I didn't go to commit any
25 crime that night. I had no probable cause to commit any

1 crime. Life was good to me. Me and my wife made very
2 good money. I do apologize to Mr. Shane and his family
3 for inconvenience I might have caused to him. I didn't
4 mean to bring any burdens on your family at all, sir, and
5 I am sorry deeply from my heart. I never meant to cause
6 any problems with the courts or anything. I apologize
7 from the bottom of my heart.

8 THE COURT: All right, sir.

9 MR. WARD: Thank you, sir. That's it.

10 THE COURT: All right, Mr. Floyd, and I wanted to
11 -- and I looked at the statute again just to make sure I
12 was correct in my understanding of the statute,
13 16-11-311, burglary, first degree, it goes through the
14 Section A through the different matters as to how a
15 person may be guilty of burglary in the first degree.
16 Sub-section B of that talks about the sentence, and Sub-
17 section B says, "Burglary in the first degree is a felony
18 punishable by life imprisonment. For the purposes of
19 this section, life means until death. The Court in its
20 discretion may sentence the defendant to a term of not
21 less than fifteen years," so with that, though you made a
22 plea otherwise, it is the Court's understanding and
23 ruling that the minimum sentence in this matter is
24 fifteen years, and, of course, this being a sentence that
25 is classified as violent and most serious by the State of

1 South Carolina, the defendant must serve at least eighty-
2 five percent of the sentence before he is eligible for
3 parole. That does not mean he'd be granted parole at
4 that point in time. It just means he must serve eighty-
5 five percent of the sentence before he would even be
6 eligible for parole.

7 All right, Mr. Ward, if you would please stand, sir.
8 2007-GS-26-418, the State of South Carolina, County of
9 Horry, versus Arnold Lea Ward, regarding burglary, first
10 degree. The jury having convicted you of this crime, the
11 sentence of the Court is the defendant is committed to
12 the State Department of Corrections, a determinate term,
13 fifteen years. The defendant is given credit for any
14 time he has already served.

15 Thank you very much.

16 MR. RICHARDSON: Thank you, Your Honor.

17 MR. FLOYD: Thank you, Your Honor.

18 (Conclusion of Transcript of Record.)
19
20
21
22
23
24
25

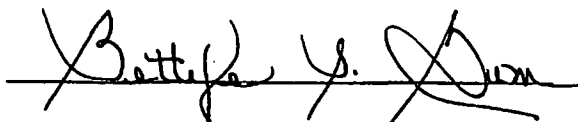
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S. Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank,
10 Official Reporter, and transcribed by me, relative to
11 appeal, in the Court of General Sessions for Horry
12 County, South Carolina.

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

15
16
17 August 27, 2010

18
19 
20 BETTYE S. GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires: 7/13/14
24

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)Arnold Lee Ward # 109169)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 12 CP 26 6621

APPLICATION FOR

POST-CONVICTION RELIEF

HORRY COUNTY
12 AUG 24 PM 3:09
JANEL HUGGINS-WARD
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible, 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 Lee Correction Institute
990 Wisacky Hwy. Bishopville S.C. 29010
2. Name and location of Court which imposed sentence Horry County Court
1301 2nd Avenue Conway S.C. 29526
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07-65-26-00418 (Attempt) Burglary 1st degree
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 14, 2010 — 15 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
(Yes) Applicant appealed Conviction and Sentencing.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appeals Courts
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 1, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not Known
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Excessive Sentencing
- (b) Subject matter Jurisdiction
- (c) - (0) Ineffective assistance of Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see: Attached Documents (10-A)-(11-A)
- (b) see: Attached Documents (10-b)-(11-b)
- (c) - (0) see: Attached Documents (10-c)-(11-c)
(10-d)-(11-d)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) First Collateral Attack
 (b) First Collateral Attack
 (c) (d) First Collateral Attack

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

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

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

(a) the name and address of each attorney who represented you:
 i. (b) Thomas Floyd Public Defenders office
203 Laurel St. Conway S.C. 29526
 ii. (c) Thomas Floyd Public Defenders office
203 Laurel St. Conway S.C. 29526
 iii. (d) Wanda H. Carter Division of Appellate defense
1330 Lady Street Suite 401 Columbia S.C. 29201
 (b) the proceedings at which each such attorney represented you:
 i. (b) Thomas Floyd - Trial
~~(c) Thomas Floyd -~~
 ii. (C) Thomas Floyd - Sentencing
 iii. (d) Wanda H. Carter - Appeals Court.

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

Applicant Seeks relief in Correction of Conviction
And Sentencing

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

No

20 12 CP26 6621

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, Arnold Lea Ward, 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.

Arnold Lea Ward

SWORN to and subscribed before me this 21
 day of Aug., 2012.

Debra Series (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

HORRY COUNTY
 12 AUG 24 PM 3:09
 MELANIE H. WARD
 CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Arnold Lea Ward, 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.

Arnold Lea Ward
Applicant

SWORN or affirmed to and subscribed before me this

21 day of Aug. 2012.

Debra Series
Notary Public

My Commission Expires: 11-4-2015

HORRY COUNTY
12 AUG 24 PM 3:09
MELANIE JOGGINS-WARD
CLERK OF COURT

10(A): Sentence exceeds maximum allowed by statute and is in violation of Applicants' Eighth and Fourteenth Amendment to the United States Constitution. Sentence also violates Article I, Section 3 and 15 of the South Carolina Constitution.

11(A): **Supporting Facts:** In review of the facts of the case, the record reflects that the indictment accused the Applicant of "Attempt Burglary First Degree." The jury returned a verdict of guilty on the charged offense of the indictment.

During the sentencing phase, the trial judge rendered judgment under the greater statute ... S.C. Code Ann. § 16-11-311(A); "Burglary First Degree." By doing so, this presented an illegal and incorrect application of law and exceeds the maximum sentencing allowed by statute.

More Supportive Facts are as follows:

- (1) In State v Puckett, 95 S.C. 114, 78 S.E. 737 (Ct. App.1913), this Court recognized that attempt burglary is an indictable offense. Generally, attempt felonies are considered misdemeanors. State v Redman, 121 S.C. 139, 113 S.E. 467 (1922); C.J.S. Title #22, Criminal Law, Section 11, 74; Whartons Criminal Law, Vol. 1, 12th Ed., Section 2696; S.C. Jury Inst., Criminal Law, Section VII(C)(2A)(2001).
- (2) When a particular grade of offense is charged courts also have jurisdiction of all lesser included offenses. However, courts will not have jurisdiction over a misdemeanor that is served from the felony. A statute permits the presiding judge in his discretion to punish a felony as for a misdemeanor, but the statute does not reduce the offense to a misdemeanor so as to grant courts jurisdiction over the offense. The limitations of punishment contained in a statute giving specific courts jurisdiction to try criminal and other crimes. The penalty for which does not exceed a specific amount or imprisonment beyond a certain time applies to the unnamed offense (attempt burglary). State v Fowler, 289 S.E.2d 412 (1982); C.J.S. Title #22, Criminal Law, Section 157-159; S.C. Code Ann. § 17-25-20.
- (3) In State v Surles, 52 S.E.2d 880 (Ct. App.1949), the Courts held that attempt burglary was an infamous misdemeanor.... In light of the statute that made infamous misdemeanors punishable as felonies the meaning of infamous must be determined with a reference to the degrading nature of the offense and not the measure of punishment. Since statute only applies where no other specific punishment is prescribed. See also, State v Spivey, 213 N.C. 45, 195 S.E. 1 (1938); State v Rippy, 127 N.C. 516, 37 S.E. 148 (1908); S.C. Code Ann. § 17-25-20.
- (4) In State v Storgee, 288 S.E.2d 397 (Ct. App.1982), the South Carolina Supreme Court ruled in this case, where defendant plead guilty to attempt burglary and was sentenced to thirteen (13) years imprisonment, that the sentence was excessive and did exceed statutory maximum in review of Surles supra and Puckett supra.

Therefore, the Court vacated and remanded the case for resentencing in accordance with S.C. Code Ann. § 17-25-20. See also, cases cited within both Surles supra; Puckett supra; as well as State v Hagman, 296 S.E.2d 433 (1982).

In Conclusion: The supportive facts (1), (2), and (3) of this document, in [conjunction] with the Supreme Court ruling in Storgee supra, are intrinsic to the arguments of the Applicants' case. Here, the Applicant argues that the judgment of fifteen (15) years rendered under the greater statute is invalid ... both in respect to the place of punishment designated and the extent of punishment assessed. See both, Surles supra and Storgee supra.

This thereby questions the judges authority in sentencing and fundamental fairness of the judgment rendered. Here Applicant contends, in review of supportive cases, the trial judge abused his discretion during sentencing. See, State v Johnson, 489 S.E.2d 228 (1997).

There is no statute stating in terms how a person convicted of attempt to commit burglary is to be punished. For this reason, recourse must be had where laws prevail. The maximum sentence which may be imposed in excess of courts' discretion where no other punishment is prescribed is controlled by provisions of the South Carolina statute. S.C. Code Ann. § 17-25-20 (Supp.1976) limiting maximum punishment for a felony or a misdemeanor falling within its provision to a period of not less than three (3) months and no more than ten (10) years. See also, cases cited within Hagman supra; Storgee supra; and Surles supra; as well as State v Hill, 254 S.C. 321, 175 S.E.2d 227 (1970).

Applicant argues the sentence imposed in his case exceeds the maximum allowed by statute and is in violation of the Eighth and Fourteenth Amendments of the United States Constitution in addition to violations of Article I, Sections 3 and 15 of the South Carolina Constitution.

Applicant would therefore request the sentence in his case be vacated and remanded to the lower courts for resentencing in conformity with the applicable statute, S.C. Code Ann. § 17-25-20, (1976).

Supporting Cases:

State v Johnson, 489 S.E.2d 288 (1997);

State v Storgee, 288 S.E.2d 397 (1982);

State v Fowler, 289 S.E.2d 412 (1982);

State v Hagman, 296 S.E.2d 433 (1982);

State v Hill, 175 S.E.2d 227 (1970);

State v Surles, 52 S.E.2d 880 (1949);

State v Spivey, 213 N.C. 45, 195 S.E. 1 (1938);

State v Redman, 121 S.C. 139, 113 S.E. 467 (1922);

State v Puckett, 95 S.C. 114, 78 S.E. 737 (1913); and

State v Ripply, 127 N.C. 516, 37 S.E. 148 (1908).

10(B): Courts lack subject matter jurisdiction in violation of Applicants' Fourteenth Amendment of the United States Constitution. As well, it is also in violation of Article I, Section 3 of the South Carolina Constitution.

11(B): **Supporting Facts:** Courts lack subject matter jurisdiction to convict and sentence Applicant of the charged offense of "Burglary First Degree" (attempt). For a indictment to confer jurisdiction the state is required to allege all the elements of both "attempt" and "burglary first degree." The state must also show proof of each and every element beyond a reasonable doubt. Here, the indictment is insufficient in its language to allege a "Burglary First Degree" (attempt). Therefore, the courts are in violation of Applicants' Fourteenth Amendment of the United States Constitution as well as in violation of Article I, Section 3 of the South Carolina Constitution.

More Supportive Facts are as follows:

- (1) Applicant argues, the courts lack subject matter jurisdiction to convict and sentence him of the charged offense because the indictment was insufficient on its face to allege a "Burglary First Degree" (attempt). The indictment fails to state within its language that the "entry or attempt entry 'accord' in the nighttime." "In the nighttime" is a aggravating circumstance that makes a burglary one in the "first degree". State v Stagers, 525 S.E.2d 260 (Ct. App.2000). Although it is only one element, it is the "essense" of the charged offense. Without the aggravating circumstance of the "nighttime" the nature of the offense is changed and the language of the indictment would only present a charge for "burglary second degree". See § 16-11-312(A) in comparison to § 16-11-311(A). See also, State v Browning, 465 S.E.2d 358 (1995).
- (2) South Carolina Code Ann. § 17-19-20 (1985) [provides] that an indictment passes legal muster if it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood. See also, State v Riddick, 560 S.E.2d 441 (Ct. App.2000).
- (3) The jurisdiction of a court over the subject matter of a proceeding is fundamental and the state is required to present proof of each and every element of the charged offense beyond a reasonable doubt. State v Brown, 540 S.E.2d 846 (2001).
- (4) The Circuit Court does not have subject matter jurisdiction to convict a defendant of an offense unless (1) there has been an indictment which sufficiently states the offense, (2) the defendant has waived presentment of the indictment, or (3) the offense is a lesser included offense of the crime charged in the indictment. State v Primus, 546 S.E.2d 103 (2002).

In Conclusion: Applicant argues that the aggravating circumstance of the "nighttime" is the foundation of charging burglary in the "first degree" and the aggravating circumstance on which his conviction was based has never been presented to a grand jury or the courts to be attested on. Therefore, the Circuit Courts lack subject matter jurisdiction to convict and sentence Applicant of the charged offense. State v Lynch, 545 S.E.2d 511 (2001); State v Riddle, 391 S.E.2d 253 (1990).

Here, Applicant is being deprived his constitutional right of due process and equal protection of law. For this reason, Applicants' conviction and sentence should be vacated and remanded to the lower courts for a new proceeding.

Supporting Cases:

State v Primus, 546 S.E.2d 103 (2002);

State v Brown, 540 S.E.2d 846 (2001);

State v Lynch, 545 S.E.2d 511 (2001);

State v Staggers, 525 S.E.2d 260 (2000);

State v Riddick, 560 S.E.2d 441 (2000);

State v Browning, 465 S.E.2d 358 (1995); and

State v Riddle, 391 S.E.2d 253 (1990).

10(C): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Carolina Constitution.

Counsel's ineffectiveness is in violation of Applicants' Fourteenth Amendment of the United States Constitution. As well, it is also in violation of Article I, Section 3 of the South Carolina Constitution.

11(C): **Supporting Facts:** Counsel was ineffective for failing to prepare Applicant for court proceedings by not informing Applicant or objecting in Applicants defense where he had a right and was entitled to instructions of a lesser offense of the charged offense. Counsels performance before, during, and after court proceedings and jury charge was both unreasonable and prejudiced Applicant. This also violated Applicants' Fourteenth Amendment of the United States Constitution and is also in violation of Article I, Section 3 of the South Carolina Constitution.

Counsel's Ineffectiveness is as follows:

- (1) Counsel was ineffective for failing to inform Applicant that he had the right if he went to trial to request a charge on a lesser offense. U.S. v Whitaker, 447 F.2d 314 (1971); State v McLean, 32 S.E.2d 227 (1944).
- (2) Applicant also must be advised of any lesser offenses or lesser included offense which the jury could be instructed on if he went to trial. State v Kerrigan, 406 S.E.2d 160 (1991). Counsels failure to inform Applicant of his right to request a lesser charge was prejudice to his defense in that it had a great impact over jurors verdict and affected the outcome of the trial. This raises a question as to the fundamental fairness of Applicants conviction. State v Jackson, 495 S.E.2d 768 (1998).
- (3) The record reflects that the testimony and evidence produced during the proceeding, [c]learly, only presents no more than an equal choice of probabilities and Applicant would have been entitled to instructions on a "lesser offense" and or a "lesser included offense" of the charge. McLean supra.

In Conclusion: Here, the Applicant argues he was deprived of a fair opportunity to present all his options in his defense. This also deprived jurors of critical information and alternative offenses that would have helped them more adequately attest over the issues in a different aspect. The jury being deprived of an opportunity to compare various offenses to the charge where testimony and evidence failed to satisfy the element of the crime questions the fairness of the juries verdict. State v Dunebar, 318 S.E.2d 16 (1984).

Counsels performance as prejudice to Applicants' defense in that it allowed the court, within its instructions, to entrap the opinion of the jurors and only allowed them one choice in their verdict as to guilty or innocence. Here, Applicant was deprived his constitutional right to due process and equal protection of law. For these reasons, Applicants' conviction and sentence should be vacated and remanded to the lower courts for a new proceeding.

Supporting Cases on next page.

Supporting Cases:

State v Jackson, 495 S.E.2d 768 (1998);
State v Kerrigan, 406 S.E.2d 160 (1991);
State v Dunebar, 318 S.E.2d 16 (1984);
U.S. v Whitaker, 447 F.2d 314 (1971); and
State v McLean, 32 S.E.2d 227 (1944).

10(D): Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Carolina Constitution.

Counsel's ineffectiveness is in violation of Applicants' Fourteenth Amendment of the United States Constitution. This is also in violation of Article I, Section 3 of the South Carolina Constitution.

11(D): **Supporting Facts:** Counsel failed to adequately investigate, develop, and present a sufficient argument to support a defense motion to have defective indictment squashed before trial. Counsel's performance was both unreasonable and prejudiced Applicant. This is also in violation of Applicants' Fourteenth Amendment of the United States Constitution. As well, is in violation of Article I, Section 3 of the South Carolina Constitution.

Counsel's Ineffectiveness is as follows:

- (1) Counsel was ineffective, during defense motion to squash indictment, for not arguing that indictment was insufficient on its face to allege a "burglary first degree" (§ 16-11-311(A)) because it does not state in its language the "entry" or "attempt entry" accord "in the night". Under § 16-11-311(A) "entry" or "attempt entry" ... "in the night" is a aggravating circumstance that makes a burglary one in the "first degree". State v Staggers, 525 S.E.2d 260 (2000).
- (2) Although (1) is only one element, it is the "essence" of the charged offense. Without the aggravating circumstance the nature of the offense as charged and the language would only present a charge for "burglary second degree". See § 16-11-312(A) in comparison to § 16-11-311(A); and State v Browning, 465 S.E.2d 358 (1995); State v Weihaure, 513 S.E.2d 842 (1991).
- (3) An indictment is sufficient to convey jurisdiction if it apprises the defendant of all the elements of the offense intended to be charged and informs the defendant of the circumstances s/he must be prepared to defend. State v Guthrie, 572 S.E.2d 309 (2002); State v Benton, 526 S.E.2d 228 (2000).
- (4) The jurisdiction of a court over subject matter of a proceeding is fundamental. State v Brown, 540 S.E.2d 846 (2001).

In Conclusion: Counsels failure to argue the issues of the insufficient indictment was prejudice to Applicants defense in that the aggravating circumstance on which his conviction was based has never been presented to a grand jury or the courts to be attested on. Therefore, the circuit courts lacked subject matter jurisdiction to convict and sentence Applicant of the charged offense. State v Lynch, 545 S.E.2d 511 (2001). State v Riddle, 391 S.E.2d 253 (1990).

Here, Applicant is being deprived his constitutional right of due process and equal protection of law. For this reason, Applicants' conviction and sentence should be vacated and remanded to the lower courts for a new proceeding.

Supporting Cases on next page.

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State v Browning, 465 S.E.2d 358 (1995);
State v Weihaure, 513 S.E.2d 842 (1991); and
State v Riddle, 391 S.E.2d 253 (1990).

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-6621
	)	
Arnold Lea Ward, 109169	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 24, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the 2007 term of the Horry County Grand Jury for burglary first (2007-GS-26-418). Thomas Floyd, Esquire, represented Applicant.

On April 14, 2010, the Applicant was tried and convicted as indicted. The Honorable Steven H. John sentenced Applicant to fifteen years imprisonment. Applicant filed timely notice of intent to appeal and his conviction was affirmed by order filed March 1, 2012.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the

transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Excessive Sentencing"
2. "Subject matter jurisdiction"
3. "Ineffective Assistance of counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

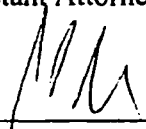
ALAN WILSON

Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

12/17, 2012.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	2012-CP-26-6621
Arnold Lea Ward,	)
	)
Plaintiff,	) Transcript of Record
	)
vs.	) June 19, 2014
	)
The State,	)
	)
Defendant.	)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Tristan M. Shaffer, Esquire
Attorney for Plaintiff

Joshua L. Thomas, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

Ward v. State

2

1	Arnold L. Ward	
2	Direct by Mr. Shaffer.	10
3	Cross by Mr. Thomas.	22
4	Redirect by Mr. Shaffer.	24
5	Thomas Floyd	
6	Direct by Mr. Shaffer.	26
7	Cross by Mr. Thomas.	32
8	Redirect by Mr. Shaffer.	36
9	Certificate.	40
10	(There were no exhibits marked during the hearing.)	
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1 (On the record, June 19, 2014.)

2 THE COURT: All right. This is case number 2012-CP-26-
3 6621, Arnold Lee Ward versus State of South Carolina. The
4 matter is before the Court pursuant to an application for
5 post-conviction relief. Please give the court reporter your
6 names and who you represent.

7 MR. SHAFFER: Your Honor, Tristan Shaffer. I represent
8 Mr. Ward. Is there any way, and I apologize for doing this
9 especially because I was in the clerk's office pulling an
10 exhibit, I need to actually talk to him about this exhibit for
11 a few moments. I know there's a couple of other cases. I was
12 going to see if something else could possibly get called first
13 so that I could just have a couple of minutes to discuss this
14 with him.

15 THE COURT: All right. Mr. Thomas, what's your position?

16 MR. THOMAS: We can do Mr. Bennett's case now if Mr.
17 Shaffer needs some time.

18 THE COURT: All right. Let's go ahead and do that then.
19 We'll stand this one down for just a few minutes. Okay?

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: All right.

22 ***** OFF THE RECORD *****

23 (On the record.)

24 THE COURT: All right. This is case number 2012-CP-26-
25 6621, Arnold Lee Ward versus State of South Carolina. All

Ward v. State

4

1 right. Please give the court reporter your name and who you
2 represent.

3 MR. SHAFFER: Tristan Shaffer. I represent Mr. Ward.

4 MR. THOMAS: Josh Thomas on behalf of the Respondent,
5 State of South Carolina.

6 THE COURT: All right. Hold for one second.

7 All right. Let's place Mr. Ward under oath, please.

8 (Whereupon, Arnold Lea Ward sworn by clerk.)

9 THE COURT: All right. Sir, your name is Arnold Lee
10 Ward?

11 MR. WARD: Yes, sir.

12 THE COURT: All right. Mr. Ward, you have filed a
13 petition seeking post-conviction relief from your conviction
14 and sentence for burglary in the first degree; is that
15 correct?

16 MR. WARD: Yes, sir.

17 THE COURT: All right. As I understand you went to
18 trial?

19 MR. WARD: Yes, sir.

20 THE COURT: And a jury convicted you of burglary in the
21 first degree?

22 MR. WARD: Yes, sir.

23 THE COURT: And you received a 15-year sentence from
24 Judge John; is that correct?

25 MR. WARD: That's correct.

1 THE COURT: All right. All right. Before we can go
2 forward -- further in this case I've got to go over some
3 questions with you to be sure that you understand what you're
4 doing in his case, that you understand the procedures and that
5 you understand the consequences; okay?

6 MR. WARD: Yes, sir.

7 THE COURT: All right. At this time are you under the
8 influence of alcohol, drugs or any other undue influence that
9 might affect your ability to know why you're here?

10 MR. WARD: No, sir.

11 THE COURT: Do you understand why you're here today?

12 MR. WARD: Yes, sir. I do.

13 THE COURT: Is there anything about this hearing that you
14 want to ask your lawyer or ask me before we proceed?

15 MR. WARD: No, sir.

16 THE COURT: Okay. All right. Now, if you go forward
17 with this post-conviction relief hearing one of two things can
18 happen. Number one is if I deny your request for post-
19 conviction relief, then you'll simply return to the Department
20 of Corrections and finish serving out the sentence that was
21 imposed by Judge John. You understand that?

22 MR. WARD: Yes, sir.

23 THE COURT: All right. However, if I grant your relief,
24 then I will set aside the conviction and you would be granted
25 a new trial in this case.

1 MR. WARD: Yes, sir.

2 THE COURT: Please keep in mind, however, that if you do
3 go to trial again on this charge and if you're convicted
4 again, then you're going to be subject to being sentenced
5 again, and for burglary in the first degree it carries up to
6 life in prison.

7 MR. WARD: Yes, sir.

8 THE COURT: So even though you might prevail at this
9 hearing, and even though you might get a new trial, the end
10 result is you could wind up spending longer in prison than
11 you're now sentenced to. Do you understand that?

12 MR. WARD: Yes, sir. I do.

13 THE COURT: Okay. In other words, the absolute best
14 thing that could happen to you is for me to grant the relief
15 you're requesting here today, give you a new trial, and at the
16 new trial you're found not guilty and you would go home.

17 MR. WARD: Exactly. Yes, sir.

18 THE COURT: The absolute worst thing that could happen
19 would be for me to grant you the relief you're requesting here
20 today, you go for a new trial, you're convicted and the
21 sentencing judge sentences you to life in prison. You
22 understand that?

23 MR. WARD: Yes, sir. I do.

24 THE COURT: All right. Do you understand those options?

25 MR. WARD: Yes, sir. I do.

1 THE COURT: All right. Do you have any questions
2 regarding the consequences of going forward with this post-
3 conviction relief hearing?

4 MR. WARD: No, sir. I don't.

5 THE COURT: All right. Do you wish to go forward with
6 your petition seeking post-conviction relief?

7 MR. WARD: Yes, sir. I do.

8 THE COURT: Okay. Mr. Shaffer, anything further you want
9 placed on the record?

10 MR. SHAFFER: No, Your Honor.

11 THE COURT: All right. Anything further the State wants
12 placed on the record?

13 MR. THOMAS: No, Your Honor.

14 THE COURT: All right. Anything preliminary before we
15 get started?

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. SHAFFER: I'm going to hand up State v. Bailey or
19 Bailey v. State.

20 THE COURT: All right.

21 MR. SHAFFER: Opposing counsel already has a copy. This
22 is allegation or this is related to allegation -- essentially
23 the indictment in this case was particular. It was an
24 attempted first degree burglary, and it specifically listed
25 the aggravating circumstances being not at night but

1 specifically listed the prior burglary charges on the
2 indictment. I would take the position that the State would be
3 limited to proof on that issue in order to find him guilty of
4 it. I think State v. Bailey supports that, that contention.
5 The, the Judge in this case -- actually Judge John actually
6 charged both areas on this case, both, both nighttime and the
7 prior criminal charge. So, essentially, he expanded the
8 indictment and allowed them to convict off of something that
9 he was not indicted for or not specifically indicted for.

10 THE COURT: Okay. Was that issue addressed on appeal?

11 MR. SHAFFER: No, Your Honor.

12 THE COURT: Okay. Was an objection to that raised? I
13 mean, are you -- what is the allegation, ineffective
14 assistance?

15 MR. SHAFFER: Ineffective assistance of counsel related
16 to that.

17 THE COURT: Okay. So you're saying that counsel was
18 ineffective for not objecting to that charge?

19 MR. SHAFFER: The jury charge, yes, Your Honor.

20 THE COURT: Okay.

21 MR. SHAFFER: And he addresses a really similar issue in
22 the, in the application for post-conviction relief.
23 Basically, he alleges something related to how the indictments
24 read and whether or not -- I guess whether or not there -- it
25 confers jurisdiction to the Court. I, I would like to make

1 that a little bit more specific on how it's raised as an
2 ineffective assistance of counsel claim.

3 THE COURT: All right.

4 MR. SHAFFER: And I'm not sure if -- I guess I'm moving,
5 moving to amend to include that.

6 THE COURT: Well, I mean, what is -- what are you asking?

7 MR. SHAFFER: I'm asking that the Court consider that as
8 an allegation in this case as an allegation of ineffective
9 assistance of counsel for the post-conviction relief case.

10 THE COURT: Oh, so that was not ---

11 MR. SHAFFER: It was not specifically addressed by him,
12 no, Your Honor.

13 THE COURT: In his application?

14 MR. SHAFFER: That, that is correct.

15 MR. THOMAS: And Your Honor, I, I think it was close
16 enough. This is -- obviously, I'm not surprised by those
17 allegations. So I have no objection to the amendment.

18 THE COURT: All right. All right. Sounds good. I'll
19 allow it.

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: All right. Call your first witness, or
22 excuse me, anything else preliminary before we get started?

23 MR. SHAFFER: No, Your Honor. That's all.

24 THE COURT: All right. You can call your first witness.

25 MR. SHAFFER: The Applicant calls Mr. Ward to the stand.

Arnold Ward - Direct by Mr. Shaffer

10

1 THE COURT: All right.

2 Whereupon, Arnold Lea Ward was called to the stand, duly
3 sworn by the clerk and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q Good afternoon, Mr. Ward. Could you please state your
7 full name?

8 A My name is Arnold Lea Ward.

9 Q All right. And how old are you, Mr. Ward?

10 A I am 52.

11 Q Okay. Where are you from?

12 A Originally from Clarendon County, but I kind of grew up
13 around the beach as well.

14 Q Okay. When did you, when did you move to the beach?

15 A In '95 is when I finally settled here.

16 Q Okay. And just to get this out of the way to begin with,
17 well, you're, you're in -- you're in prison right now for
18 burglary -- attempted burglary first; correct?

19 A Yes.

20 Q Okay. You have a criminal record on top of that;
21 correct?

22 A Yes.

23 Q All right. What is that criminal record?

24 A Thirty some years ago I had a couple of burglaries that I
25 done back in my juvenile years.

- 1 Q Okay. Any other felony charges?
- 2 A No, sir.
- 3 Q Okay. And you got arrested on the charge you're
- 4 currently in in what year?
- 5 A 2006 is when I got arrested.
- 6 Q Okay.
- 7 A November the 31st.
- 8 Q So it was about 21 years after your --
- 9 A Yes, sir.
- 10 Q Okay. What'd you do whenever -- prior to getting locked
- 11 up?
- 12 A I was a contractor down here. I run my own business for
- 13 21 years.
- 14 Q Okay. What was the name of the business?
- 15 A BB&R, Basic Builders and Remodeling.
- 16 Q Okay. Were you married?
- 17 A Yes. I was.
- 18 Q Who were you married to?
- 19 A Tracy Butler.
- 20 Q Okay. And what did she do?
- 21 A She worked in the Murrells Inlet post office for the past
- 22 22 years.
- 23 Q Was your business profitable?
- 24 A Yes. It was, very.
- 25 Q About how much did you make a year?

Arnold Ward - Direct by Mr. Shaffer

12

1 MR. THOMAS: Objection, Your Honor, relevance.

2 THE COURT: What's the relevance?

3 MR. SHAFFER: Your Honor, I think it goes into some of
4 the stuff that he, he talked about and we made a general
5 ineffective assistance of counsel claim. I'm going to connect
6 this up later on because essentially what he's -- I guess part
7 of the ineffective assistance of counsel was trial counsel
8 never, never properly pointed out the fact that it's highly
9 unlikely that a profitable businessman would be robbing a home
10 for a TV after spending 21 years with no felony record. I
11 think that that wasn't brought up in front of the jury
12 properly. It also goes into whether ---

13 THE COURT: All right. Overruled. I'll allow it. Go
14 ahead.

15 MR. SHAFFER: Thank you.

16 A It, it fluctuated, but usually I made between 50 and
17 100,000 a year.

18 Q Okay. And your wife was doing well?

19 A Yeah. She done real well. She ---

20 Q About how much did she make around that time?

21 A Between 50 and 70,000 a year.

22 Q Okay. And were you originally appointed a public
23 defender?

24 A No. I originally had a lawyer myself, Paul Rahn [spelled
25 phonetically], but at the last moment I was appointed Mr.

1 Floyd.

2 Q Okay. And how did you -- how much did you pay that
3 lawyer?

4 A I think I retained him for I think \$7,000 or something
5 like that.

6 Q Okay. When did you get appointed the public defender,
7 about how far prior to trial?

8 A It wasn't very -- it was probably within six to eight
9 months before I went to trial maybe, if not -- even if that
10 much, maybe five months before I went to trial.

11 Q Okay. And why'd you get appointed a public defender?

12 A I lost contact with Paul Rahn [spelled phonetically] for
13 a little while. He, he left and went down south and I lost
14 contact with him.

15 Q Okay. Were you out on bond?

16 A Yes. I was. I actually got out the very next day.

17 Q Did you -- who appointed you the public defender?

18 A I think it was the trial judge or Mr. West, Mrs. West I
19 think it was.

20 Q Okay.

21 A When I had trouble, I came to court a couple of times
22 before and had trouble with Paul coming to court, never could
23 get in contact with him, find him, and finally they gave me a
24 lawyer and told me that I would be going to trial.

25 Q Okay. Was there a plea offer in your case?

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14

1 A Yeah. We had a little problem with the plea offer. We
2 never could really -- I never really could understand it. So
3 I denied it and went through trial.

4 Q Okay. What do you mean you never could understand it?

5 A It kept offering me burglary second degree as a lesser
6 included of an attempted burglary first degree.

7 Q Okay.

8 A Which I would have -- I wouldn't have took it anyway
9 because I'm not, I'm not guilty of the charge that I'm in here
10 for. So I, I wouldn't have took the plea anyway.

11 Q You wouldn't have taken it anyway. Okay. How many times
12 did you get to meet with Mr. Floyd?

13 A I think maybe a couple of times before we went to trial.

14 Q What do you mean by a couple? Could you estimate?

15 A Brief, brief talks inside the little room there before we
16 went to trial.

17 Q Okay. Did he talk to you about strategy?

18 A At that point, no, not much, because the way we seen it
19 there wasn't really much of a case to, you know, to fight, and
20 you know.

21 Q What do you mean by that, there wasn't much of a case to
22 fight?

23 A I knocked on someone's impaired doors and walked away.

24 Q So the allegation is you knocked on someone's doors?

25 A Yeah. The allegations was that, that I attempted to

1 enter a home, but I knocked on a set of doors was testified
2 that they broke two to three weeks prior to me being at the
3 home and the doors moved and they said that was an attempt to
4 enter them so.

5 Q Okay. And what time was it?

6 A I believe it was between 11 and 12 o'clock that night.

7 Q Why were you knocking on their door?

8 A I have a job in that area. I had stopped. I had a
9 contractor that came and testified in that behalf that I had
10 stopped by and picked up some blueprints and checked on some
11 materials in that area, and during the time I was there I had
12 an animal that escaped on me and I was trying to get some
13 help. I asked -- walked over to the door. I seen the lights
14 there. I walked over there and knocked on the door to try to
15 get someone to call to get me some help to help catch the
16 animal, and that's how it, that's how it all came about. It's
17 the story in behind that we were in the process of moving
18 homes at the time. I had a vicious dog. I went over there
19 and picked up the dog earlier that day from my wife and my
20 children and had it in the truck with me and he got away, and
21 I was just trying to get him back before he, he slipped and
22 bit, bit another child in the area or whatever.

23 Q Okay.

24 A The house where -- the house that I was looking at was
25 located right there at the house that I knocked on the door

1 at.

2 Q Okay. The house you were looking at to work on?

3 A Yeah. The house that I was working on was right there in
4 the same location to where the house that I knocked on the
5 door at.

6 Q Okay. Now, did Mr. Floyd tell you what his strategy was
7 going to be if you went to trial?

8 A I can't really remember. I know he talked with me about
9 a few things, but I really can't remember what they were that
10 much. One of the strategies that we were, we were going
11 against was the testimony of the, the -- testimony of the
12 homeowner. We as well at the beginning of the trial argued
13 over the issue of the indictment. We argued over the issue of
14 them using my prior records as separate convictions. My prior
15 records were consolidated into one conviction. We argued that
16 issue. I think there was a couple of more, but I can't really
17 remember them that well.

18 Q Okay. Now, did you ever tell him about the layout of the
19 house?

20 A Yes, sir. I did. One of the issues was I was, I was
21 charged with the attempted entry, but there was two front
22 doors on the house, and it was a double solid door. One was a
23 double glass door. The double glass door that I knocked on is
24 the one that was impaired, that moved. I moved from that door
25 to the double solid door where I re-knocked again. That's

1 where the homeowner said that he heard me squeeze and compress
2 the door and saw me back away and walk away from the door, but
3 I was charged with attempted entry for that door, not the
4 impaired door.

5 Q Okay. And on the impaired door did you -- was that
6 fenced in, was that in the back of the house?

7 A No, sir. That was both of them was on the front, on the
8 front. Yeah. What --

9 Q Both of them were on the front of the house?

10 A Yes, sir.

11 Q Okay. Was there any sort of walkway up to them?

12 A Yes. There was. There was a sidewalk up, you know, all
13 the houses there are up on silts.

14 Q Uh-huh.

15 A So it was two-story really. I had to go on -- up the
16 stairs to get to it.

17 Q How far away from each other were these two doors?

18 A No more than probably about 10 feet.

19 Q Okay.

20 A You could actually see both of them on the front porch.

21 Q Okay. So it wasn't like you went around to the back of
22 the house?

23 A No, sir. Both of them was on the same front, front area.

24 Q Why'd you knock on both of them?

25 A When I first walked up to the first door, to the initial

1 doors, the front doors, they are solid. They have no glass or
2 nothing in them. I noticed there was no lights under the
3 porch, but there was lights shining through the double glass
4 doors. So at that time I walked over there, you know, figured
5 that dark a night, I knocked on those because I could be
6 easily seen through those doors, would less scare people in
7 that area because that is a bad area for house invasions and
8 stuff in that nature. Once the doors moved it scared me, and
9 I moved away and went back and re-knocked on the other doors
10 instead of stand there. I didn't hear or see anyone. So I
11 walked away.

12 Q Okay. Did they turn the light on behind you?

13 A Actually, when I went down the stairs and on the sidewalk
14 back to in front of the guy's car, the lights did come on
15 outside. I did turn and look back at the house, but I didn't
16 see anyone. Nobody said anything or hollered out anything,
17 and my reaction to that was that I thought I walked in front
18 of a motion sensor. So I turned and walked away, and when I
19 got to the road, the lights actually went on.

20 Q Okay.

21 A So to, to my thought that was what there was, a motion
22 sensor.

23 Q And then you were picked up walking down the road?

24 A No, sir. Actually I wasn't picked up.

25 Q Okay.

1 A Actually I had walked back to where my vehicle was
2 sitting and I seen the officers and I actually flagged the
3 officers down.

4 Q Okay. Why were you flagging them down?

5 A For help.

6 Q With the dog?

7 A Yeah. I was flagging them down to get some help. That's
8 the reason for me going up there to knock on the door to start
9 with to --

10 Q Okay.

11 A -- get animal control or something out there to help me
12 capture the animal.

13 Q After they handcuffed you, did they take you back to the
14 house?

15 A Yes. They did. They went around the other way and took
16 me back to the house, actually took me everywhere I'd been. I
17 showed them where my job was, showed them, you know, where my
18 pup got loose and then they took me back to the house.

19 Q Okay. And did they show you -- did you see the homeowner
20 then?

21 A Yes. I did.

22 Q Okay. And did he identify you as being the person on the
23 porch?

24 A Yes. He did.

25 Q Okay. Were you in any sort of lineup?

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1 A No, sir. I wasn't.

2 Q Were you handcuffed at that point?

3 A Yes. I was.

4 Q Okay. Did the police say anything prior to that?

5 A No, sir. Not that I can remember.

6 Q Okay. Now, I know you've done quite a good bit of work
7 on this case. You've, you've since being locked up, you have
8 done legal research; is that right?

9 A Yes, sir.

10 Q Okay. What, what allegations did you want me to present?

11 A Actually quite a few. The one was, was basically the
12 allegations we have now. The other was about the separation
13 of the priors. I argued, actually, the direct verdict within
14 my case. I argued it as well. I argued the issues of the
15 closing arguments of the, the State.

16 Q And was that, was that where -- what part of the closing
17 argument from the State did you object to?

18 A Actually I objected to the demeanor -- to his statements
19 against my demeanor and stating that I did commit the crimes
20 and I was there to commit the crimes. I argued the fact that
21 him stating that my attire that I was wearing was burglary
22 clothes. It's quite a few issues in that area that he said
23 that was more or less leading the jury in that form.

24 Q Do you recall him saying that as a Prosecutor his only
25 job is to present relevant evidence?

1 A Yes.

2 Q Okay. And reliable evidence? Did you, did you think
3 that that was objectionable?

4 A I thought it was. I thought it was. Yes. As, as well,
5 I thought my lawyer should have objected to the investigator's
6 testimony where he, he made a statement that I had checked,
7 touched the door to the house. I had spoke with him before
8 about the statements wrote by the arresting officers stating
9 that they had took fingerprints and there were no fingerprints
10 or anything on the doors. So that statement couldn't have
11 been true. I also thought it was ineffective for him not to
12 have the arresting officers present during my trial since they
13 were knowledgeable of the impaired doors and the situation at
14 hand that was there that night. I believe they would have
15 been helpful on both parties in solving the issue.

16 Q Do you think that the -- that your attorney adequately
17 addressed what -- how close the doors were together?

18 A No. I don't think he did, and in a way, no, in a way,
19 yeah.

20 Q Okay. Do you think that your attorney went to the scene?
21 Did he ever inform you that he went to the scene?

22 A No, sir. I don't think he did.

23 Q Okay. Do you, do you know if he ever took pictures of
24 how close the doors were?

25 A No. I don't think he ever did.

1 Q Did you see those pictures in discovery of how close the
2 doors were?

3 A Yes. The investigator actually took those pictures.

4 Q Okay. Did they get presented to the jury?

5 A Yes.

6 Q Okay. Now, I'm going to ask you this. Are there any
7 other allegations that you wanted me to bring that I haven't
8 addressed with you?

9 A Not that I can remember right now, no.

10 Q Okay. No further questions.

11 THE COURT: All right. Cross examination.

12 MR. THOMAS: May it please the Court?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION

15 BY MR. THOMAS:

16 Q Mr. Ward, you -- did you have an opportunity to go over
17 the State's evidence with your attorney before your trial?

18 A Just, just a few minutes before we went to trial.

19 Q But you had discussed with him before that your version
20 of events that night?

21 A Just a few minutes before we went to trial.

22 Q And the account you've given us here today, that's almost
23 entirely consistent, if not verbatim, the account you gave to
24 the jury at your own -- at your trial?

25 A Basically. Close to it. Yes.

1 Q So you got to tell the jury exactly what happened that
2 night from your point of view?

3 A When I testified I, I answered the questions they asked.

4 Q And your strategy through this whole thing was to admit
5 -- you've, you've never denied that you were there. So your
6 strategy was to admit that you were there, but you didn't have
7 any intent to commit a burglary.

8 A No. I wasn't there to commit a burglary.

9 Q But you never denied that you were at the house that
10 night?

11 A No. I never denied I was at, at -- I was there.

12 Q And you knew that was the strategy going into this was to
13 admit that you were there but deny that you were there to rob
14 the place?

15 A I didn't see it as a strategy, but yeah, I, I admitted my
16 presence.

17 Q Mr. Floyd explained to you the elements of attempted
18 burglary?

19 A Basics. Yeah.

20 Q He explained to you that they were going to use those two
21 prior convictions to enhance your burglary?

22 A Actually, he did, and that was one of our arguments is
23 that I actually didn't have two priors. I had three under one
24 conviction. We considered that one conviction, not three
25 convictions. That's one of our main arguments is that they

1 didn't have two priors.

2 Q And he made those arguments to the Judge?

3 A Yes. We did. That was a motion we put in before trial.

4 Q You said you never wanted to plea to this? That it was
5 your decision to go to trial?

6 A I never pled. They, they offered me a plea for five
7 years probation. I turned it down because I'm not guilty of
8 anything. I knocked on someone's door for help.

9 Q And Mr. Floyd called some witnesses on your behalf? He
10 called your wife to testify about the dog?

11 A Yeah. Yes.

12 Q He called your supervisor or your, I guess, your co-
13 worker.

14 A He was a contractor.

15 Q Your subcontractor?

16 A Contractor, yes.

17 Q Called your contractor. They testified ---

18 A Yes.

19 Q --- consistent with your -- their -- your theory of the
20 case?

21 A He called the contractor to verify that I did have a job
22 in that area during the time. He called my wife to verify
23 that I did have the dog during that time.

24 Q Thank you, Mr. Ward. That's all I have.

25 THE COURT: Redirect.

1 MR. SHAFFER: Yes, sir. One question or a few
2 questions.

3 REDIRECT EXAMINATION

4 BY MR. SHAFFER:

5 Q Did -- you, you said he, he discussed the facts of the
6 case a few minutes before it went to trial?

7 A Yes, sir.

8 Q Did you -- had you all not discussed some prior to that?

9 A No. We hadn't, sir. We -- I only seen him twice before
10 we went to trial. He actually gave me the elements of

11 burglary, but I really never even knew the elements of attempt

12 or what I had to face on that until I actually I studied it
13 myself and I still don't really understand it much, but --

14 Q Okay. And when you mean you studied it yourself, was
15 that when you went to prison?

16 A Yes, sir. After I was incarcerated.

17 Q Okay. And you said that you all argued that -- you, you
18 said you argued that all of your three convictions should
19 count as one; right?

20 A Yes, sir. We, we actually argued that the elements
21 weren't in the indictment to support the indictment, and they
22 didn't, they didn't give any of the elements of the
23 indictment, and we, we felt that there wasn't two priors, it
24 was only one prior of three convictions.

25 Q Okay. And was that raised on appeal?

1 A No. It wasn't.

2 Q Okay. Who was your appellate attorney?

3 A Wanda Carter.

4 MR. THOMAS: I'm going to object to this line of
5 questioning, Your Honor. I've seen no allegations of
6 ineffective appellate counsel.

7 THE COURT: Sustained.

8 MR. SHAFFER: Thank you, Your Honor. No further
9 questions.

10 THE COURT: All right, sir. You may step down.

11 You can call your next witness.

12 MR. SHAFFER: The Applicant calls Mr. Tom Floyd, Thomas
13 Floyd.

14 THE COURT: All right.

15 Whereupon, Thomas Floyd was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SHAFFER:

19 Q Good afternoon, Mr. Floyd. You represented Arnold Lea
20 Ward; is that correct?

21 A Yes, sir.

22 Q Where were you working at the time?

23 A The Public Defender's Office.

24 Q Okay. How long have you been a Public Defender?

25 A Been with the Public Defender's Office since 1991, I

1 believe.

2 Q Okay. Did you -- tell us what you did to investigate the
3 facts of this case.

4 A Well, I met with Arnold, and I don't remember how many
5 times we met. Several, I've got notes of at least three
6 meetings we had. I talked with Arnold about it. We went over
7 the discovery. I, I don't know exactly --

8 Q Did you --

9 A -- what all --

10 Q -- did you hire any investigator?

11 A No. I did not.

12 Q Okay. Did you take pictures of the scene?

13 A No. I did not. There were pictures taken of the scene.

14 Q Okay.

15 A But I did not take any.

16 Q Did you find anything in those pictures that were
17 inconsistent with the, the State's theory of the case?

18 A The only thing inconsistent with the State's theory of
19 the case was the State thought that Arnold intended to
20 burglarize the house and I didn't.

21 Q Okay.

22 A And Arnold didn't.

23 Q So you thought he was innocent going into this?

24 A I did.

25 Q Okay. And he, he never mentioned anything about pleading

1 guilty?

2 A We discussed it at one point and I think we had actually
3 -- I want to think we had actually maybe signed that we were
4 going to plea. The plea offer was sent out and Arnold decided
5 he didn't want to. I don't think he ever really wanted to.

6 Q Okay.

7 A I think that was something he did when he just was a
8 little bit scared.

9 Q Okay. And what was that plea offer for? Was it a
10 probation offer?

11 A I thought -- no. It was not a probation offer.

12 Q Okay.

13 A I was under the impression it was burglary second degree
14 for about a -- for seven years, but in reviewing the file it
15 looks like it would have been an open-ended plea on burglary
16 second degree.

17 Q Okay. Okay. Now, do you have a copy of the transcript?

18 A Yes.

19 Q Okay. Well, before we begin, you -- pretrial you made a
20 motion to treat all of the, the charges as one; right, all of
21 the prior convictions as one?

22 A Well, that it wouldn't qualify because it was one
23 conviction.

24 Q Okay.

25 A Even though it was more than one charge.

1 Q Okay.

2 A And I believe I took the argument even further than that.
3 I think I took it as far as offering to stipulate that if he
4 was convicted that there was -- would be two priors after I
5 got overruled on the first one.

6 Q And with the -- did the State ever move to amend the
7 indictment?

8 A Not that I recall.

9 Q Okay. So the indictment in the court file should be the
10 right indictment; correct?

11 A Yes, sir.

12 Q Okay. Now, if I could get you to open up to page 117.

13 A Yes, sir.

14 Q And that's the testimony, direct testimony of Shane
15 Holly.

16 A Yes, sir.

17 Q Okay. Shane Holly was the primary State's witness;
18 right?

19 A I believe so.

20 Q Okay.

21 A I believe he was the homeowner.

22 Q He was the homeowner, okay. Now, on that page you allow
23 State's Exhibit Number Two to enter into evidence; correct?

24 A That's correct.

25 Q Okay. State's Exhibit Number Two was the statement from

1 the homeowner that night; correct?

2 A Yes, sir.

3 Q Okay. Why didn't you object to that statement?

4 A Because he was testifying.

5 Q Okay. This was primarily a credibility case; right?

6 A Yes, sir.

7 Q Okay. And do you think that his identification and his,
8 his statement that he made there helped bolster his testimony
9 introducing that prior consistent statement?

10 A It may, it may have.

11 Q And had you ever made any allegation that he forgot who
12 he was prior to that, that he forgot the description of him?

13 A I do not believe so.

14 Q Okay. Now, if I could direct you to page 240, and if you
15 could review line 22 through 241, line 3.

16 A Excuse me.

17 Q Okay. Oh, it's okay.

18 A Go through my numbers again. What page?

19 Q Oh, I'm sorry. Page 240.

20 A 240.

21 Q Yeah. And if you could, sir, please read line 22 through
22 line 3 of the next page.

23 A 22. (As read), "My job is to give you the clear,
24 admissible, relevant, competent evidence that will assist you
25 in rendering a true and just verdict. That's my only job, to

1 come in here and give you the relevant, competent and
2 admissible evidence, nothing more, nothing less. I'm not here
3 to mislead you. I'm here to give you that evidence. So let's
4 take a look at the evidence."

5 Q Okay. And that was the State's closing argument;
6 correct?

7 A Yes, sir.

8 Q Do you believe that in making that statement he was
9 attempting to lend credibility to his, the evidence that he
10 had?

11 A It could be interpreted that way. Yes, sir.

12 Q Okay. And you did not object to that?

13 A I did not object to that.

14 Q Okay. And if I could get you to page, turn to page 256.

15 A Yes, sir.

16 Q And if you could review line 18, and you don't have to
17 read it, but line 18, review that, the next page, and all the
18 way to 258, actually, yeah, all the way to 258, line 7.

19 A Okay. Yes, sir.

20 Q Okay. And in that jury charge that gives the jury the
21 ability to find him guilty by finding reasonable -- beyond a
22 reasonable doubt that the attempted burglary occurred at night
23 or the attempted burglary occurred whenever he had prior
24 burglary convictions; correct?

25 A Yes, sir.

1 Q Okay. Was that broader than the indictment in this case?

2 A Yes, sir.

3 Q Okay. Do you recall objecting to that?

4 A I did not. As a matter of a fact, I just realized it in
5 reading back over the indictment that the nighttime language
6 wasn't in it. As a matter of a fact when I was arguing about
7 the two prior convictions being used I even made a statement
8 to the Court, "It happened at night, Judge. That -- they've
9 got the element that they need if the jury believes it's a
10 burglary."

11 Q Okay.

12 MR. SHAFFER: The Court's indulgence.

13 THE COURT: All right.

14 MR. SHAFFER: No further questions.

15 THE COURT: All right. Cross examination.

16 MR. THOMAS: May it please the Court?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. THOMAS:

20 Q Mr. Floyd, I believe you said you had an opportunity to
21 review the State's discovery response --

22 A Yes.

23 Q -- with Mr., Mr. Ward?

24 A Yes.

25 Q So I'm assuming that means you actually filed some Rule 5

1 Brady motions --

2 A Yes, sir.

3 Q -- or the prior attorney did?

4 A Yes, sir.

5 Q And you also had a chance to discuss with him the
6 elements to first degree burglary, at least as far as you
7 understood them at the time?

8 A Yes, sir. I'm sure we did. Do I specifically recall
9 sitting down and going, "This is element one, two, three," I,
10 I don't, but I'm sure we did go over what the elements were.

11 Q But you all definitely discussed the two prior
12 burglaries? I think that's pretty obvious?

13 A Yes, sir. That was my big concern in the case was how
14 the jury would view those.

15 Q And you -- so what was the -- what did you tell him
16 specifically about the two prior burglaries?

17 A That if that came out in front of the jury that that
18 would not look good.

19 Q And I know you said you made a motion to exclude them
20 based upon or to try to get them merged into one conviction.

21 A Yes, sir.

22 Q You also made a motion to try and get them held -- kept
23 out as past the ten years.

24 A Yes, sir.

25 Q You had a Neil v. Biggers hearing in this case as well on

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1 the identification?

2 A I believe we did.

3 Q And I can refer you to the transcript, page 42, if
4 that'll help refresh your memory.

5 A Yes, sir.

6 Q But is it safe to say that your defense to this was never
7 that there was a misidentification?

8 A No. I mean, it was pretty clear what went on went on.
9 There was a picture that we had into evidence. The door that
10 became ajar was actually held closed by a belt.

11 Q So is it fair to say your entire strategy was to
12 basically try and negate the intent element of the burglary?

13 A Yes, sir.

14 Q And you did that by allowing Mr. Ward to testify or ---

15 A Mr. Ward, his wife, the contractor, tried to establish he
16 was in that area, he was in that area for a reason. His dog
17 got lost. He was going through a neighborhood. A door came
18 open that was a broken door. He never ran. I believe we even
19 brought out the fact that I think Mr. Holly, the homeowner,
20 had gotten up and cut a light on or something like that and we
21 brought out the fact that Arnold didn't run. He stopped right
22 where he was and turned and looked, looked around.

23 Q And you also just, and I'll refer you to page 235 of the
24 transcript.

25 A Yes, sir.

1 Q Could you start at line two and read that paragraph and
2 then I'll have a question when you're finished. Just read it
3 to yourself.

4 A Start at line two and read the whole paragraph?

5 Q Two through or, you know, two through six probably.

6 A Okay. (As read), "Arnold has led the life we expect he
7 would lead -- live, a wife, family, job, working, and in his
8 line of work even in these difficult times, worked, did a good
9 job. Did he have a reason to be in that neighborhood that
10 night? Absolutely."

11 Q So you argued to the jury that he was a successful
12 businessman who didn't have any reason to go burglarizing
13 people's houses?

14 A Yes, sir.

15 Q Did you feel any need to visit, to go visit the crime
16 scene when you had all these pictures and all this in
17 evidence?

18 A At the time I did not feel I needed to go to the crime
19 scene.

20 Q And as far as the Solicitor's closing arguments go, I
21 mean, isn't -- what about the parts that Mr. Shaffer
22 highlighted to you, what part about that do you think is
23 objectionable?

24 A I --

25 Q I mean, what would your objection have been if you were

1 to try to make an objection to that?

2 A I'd have to read over it again. It just looked like he
3 was tooting his own horn a little bit. "I'm the knight in
4 shining armor," and that's probably what my objection would
5 have been had I made one.

6 Q But sort of your -- and especially in your closing
7 argument, the whole point of the closing argument is to
8 convince the jury to believe your version of the evidence
9 instead of the other side's?

10 A Correct.

11 Q Regarding the Judge's charge on these, the indictment
12 said two priors? I think that's what we established --

13 A Yes, sir.

14 Q -- for the elements. But there was also evidence
15 presented that this happened at nighttime; correct?

16 A Yes, sir.

17 Q But there was definitely evidence at trial about the two
18 prior burglaries, those definitely came in?

19 A Yes, sir.

20 Q I think that's all I have. Thank you.

21 THE COURT: All right. Redirect?

22 MR. SHAFFER: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SHAFFER:

25 Q You tried to keep out the prior burglary convictions?

1 A Yes, sir.

2 Q Why did you try to keep them out?

3 A Because I thought that would be extremely damaging for a
4 jury when you're on trial for burglary to hear that you've
5 been convicted twice before of it.

6 Q Do you still think that?

7 A Yes.

8 Q Do you think he would have been found not guilty
9 otherwise?

10 MR. THOMAS: Objection. Calls for speculation.

11 THE COURT: Sustained.

12 A I think the Defense's case would have been much stronger.

13 Q Thank you.

14 THE COURT: All right. You may step down.

15 MR. SHAFFER: We have no further witnesses.

16 THE COURT: All right. Mr. Thomas, anything from the
17 State?

18 MR. THOMAS: The State would just rest on the record,
19 Your Honor.

20 THE COURT: All right. All right. Mr. Shaffer, anything
21 further from the Applicant?

22 MR. SHAFFER: No, Your Honor. The only thing I would say
23 is that I think that it's pretty clear that the indictment was
24 expanded through the jury charge. That coupled with the other
25 allegations, we believe that a new trial should be granted.

1 THE COURT: All right. All right. I'm going to deny his
2 request for post-conviction relief. Mr. Thomas, if I could
3 get you to prepare an order. I understand your argument
4 regarding the indictment. He was indicted on burglary in the
5 first degree, the allegations being that he committed a
6 burglary and that he had two prior convictions. No mention
7 was made of it being at nighttime on the indictment. However,
8 his attorney argued that the priors shouldn't come in, that
9 with it happening at the nighttime, in other words, from what
10 I understand basically the whole trial strategy was, "Don't
11 let them find out about the prior burglary convictions, let's
12 go straight on whether or not he actually tried to break into
13 a house. If they find that he tried to break into a house
14 with it being at nighttime, that's a burglary first degree.
15 They've got it. So they don't need to even bring up the prior
16 convictions for burglary." Notwithstanding that argument, the
17 Court ruled that the State could present the prior convictions
18 in support of its case. They did present the prior
19 convictions in support of its case. The Judge charged them
20 under both statutes, but the fact of the matter is is you do
21 have evidence of a burglary in this case, with the two prior
22 convictions, that charge being made to the jury and the jury
23 finding, finding him guilty on that. So I don't think --
24 it's, it's almost, you know, if the jury had come back and
25 said, "We don't believe he's got two prior convictions, but we

1 believe it happened at nighttime," that would be one thing,
2 but you don't have that in this case. You have them
3 presenting evidence of two prior convictions and burglary in
4 this case. So even if an objection was made to it, had Mr.
5 Floyd made an objection to anything coming out about this
6 occurring at night, the record clearly indicates there's
7 sufficient evidence to support this conviction, and I don't
8 know that it was ineffective assistance of counsel. I can
9 understand the argument, and I'm not so sure, but is -- that
10 it wouldn't be better to say, "We didn't do this," rather than
11 having two prior convictions come into the record.

12 All right, anything further?

13 MR. SHAFFER: Nothing, Your Honor.

14 THE COURT: All right. Thank you very much.

15 MR. THOMAS: Thank you, Your Honor.

16 (Adjourned.)

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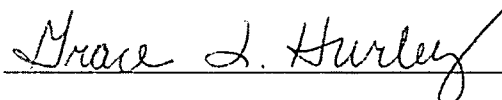
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the PCR Hearing held in the case of Arnold L. Ward v. State, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on June 19, 2014.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

October 29, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Arnold L. Ward, #109169,)
Case No. 2012-CP-26-6621

Applicant,)

v.)

State of South Carolina,)

Respondent.)
_____)

ORDER OF DISMISSAL

HORRY COUNTY
14 AUG 13 PM 2:20
MELANIE HUBBINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 12, 2012. Respondent made a timely Return on or about December 17, 2012. The Court convened an evidentiary hearing into the matter on June 19, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, William Thomas Floyd, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In January 2007, the Horry County Grand Jury indicted Applicant for attempted first degree burglary (2007-GS-26-418).

/s/ [Signature]

William Thomas Floyd, Esquire ("trial counsel"), represented Applicant. On April 13, 2010, Applicant proceeded to trial before the Honorable Steven H. John and a jury. On April 14, 2010, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to fifteen (15) years imprisonment.

Applicant filed a timely notice of appeal, and Wanda H. Carter, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on February 29, 2012. State v. Ward, Op. No. 2012-UP-123 (S.C. Ct. App. filed February 29, 2012). The Court of Appeals returned the remittitur to the circuit court on March 16, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Excessive sentencing"
2. "Subject Matter Jurisdiction"
3. "Ineffective assistance of counsel"
4. "Ineffective assistance of counsel"

At the evidentiary hearing, Applicant proceeded on only the allegations of ineffective assistance of trial counsel for failure to object to Judge John's charge to the jury regarding the elements of first degree burglary.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact

and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he did have a prior criminal record for housebreaking. However, he testified at the time of his arrest he was self-employed as a contractor and had a substantial income. Applicant testified he never understood the terms of the initial plea offer and decided to decline it. However, he admitted he would not have taken a plea because he wanted to go to trial. Applicant testified he met with trial counsel a couple of times before trial. He stated he did not discuss much trial strategy with trial counsel because there was not much of a case to fight. Applicant then testified to his version of events the night of his arrest and admitted he relayed this information to trial counsel. He recalled trial counsel attempting to keep his three (3) prior housebreaking charges from being presented to the jury.

Trial counsel testified he has been a public defender since 1991. He testified he met with Applicant at least three (3) times. During these meetings, they discussed the State's evidence and Applicant's version of events. Trial counsel recalled discussing pleas, but Applicant never intended to plea. Trial counsel testified his trial strategy was to attempt to negate the intent element of the crime. In that regard, he called as witnesses Applicant's business associate and wife to corroborate Applicant's version of events.

Trial counsel testified he explained to Applicant how damaging his prior record would be if presented to the jury. He recalled explaining to Applicant the fact his three (3) prior housebreaking convictions were used to enhance this charge. Trial counsel also candidly admitted he believed the State also had indicted Applicant for attempted first degree burglary because the incident occurred at night. He testified the State never moved to amend the

indictment to include the nighttime element. Trial counsel recalled he did not object to Judge John charging the jury as to the nighttime element because he did not realize that was not alleged in the indictment. Trial counsel also testified he argued to exclude the prior housebreaking convictions because they were more than ten (10) years old and because Applicant pled to all of them on the same day.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance

/s/ [signature]

was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective. The Court finds trial counsel's testimony credible and Applicant's not credible. The Court further finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Court finds Applicant's allegation trial counsel was ineffective for failure to object to Judge John's charge to the jury regarding the elements of first degree burglary is without merit. Applicant alleges trial counsel should have objected to Judge John charging the jury that the State may prove attempted first degree burglary¹ by proving Applicant attempted to enter the victim's house at night. (Trial Tr. 258:2-7). Applicant argues the inclusion of this charge enlarged the scope of the indictment and allowed the jury to convict Applicant of a crime for which he was not indicted.² However, the State did present evidence Applicant had two prior

¹ S.C. Code Ann. § 16-11-311(A) provides in pertinent part:

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either [...] (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or (3) the entering or remaining occurs in the nighttime."

² The indictment specifically charges that Applicant "did in Horry County on or about October 31, 2006, willfully and unlawfully attempt to enter the dwelling of Shane Holley, [...] without consent and with the intent to commit a crime therein, and the defendant had two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311[.]"

convictions for housebreaking. (Trial Tr. 124:10-12). Therefore, the Court finds the evidence presented at trial supports a conviction for the indicted offense.

The Court further finds this case is distinguishable from Bailey v. State, 392 S.C. 422, 709 S.E. 671 (2011). There, the defendant was indicted for homicide by child abuse and the indictment specifically indicated the defendant physically abused the victim. Bailey, 392 S.C. at 429 n.4, 709 S.E.2d at 674 n.4. The trial judge gave a supplemental jury instruction that allowed the jury to convict the defendant of homicide by child abuse for neglecting the victim. Id. at 430, 709 S.E.2d at 675. The South Carolina Supreme Court held this supplemental jury instruction allowed the jury to convict the defendant of a crime alternative to the one alleged in the indictment. Id. at 436, 709 S.E.2d at 678. However, the supplemental instruction came after the jury informed the trial judge it did not find evidence the defendant physically abused the victim. Id. at 429, 709 S.E.2d at 675.

In Applicant's case, there is no evidence the jury based its verdict on the fact the crime occurred at night. Unlike the jury in Bailey, Applicant's jury did not indicate they found no evidence Applicant had two prior housebreaking convictions. Such a finding would have been unreasonable in light of the certainty of the two prior convictions entered into evidence. Therefore, this is not a situation where "the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." Bailey, 392 S.C. at 433, 709 S.E.2d at 677 (quoting Thomason v. State, 892 S.W.2d 8 (Tex. Crim. App. 1994)). Rather, the State presented evidence directly supporting the alleged theory. Accordingly, the Court finds there is no material variance between the State's evidence and the allegations in the indictment. Because there was no material variance, Judge John's charge did

not allow the jury to convict Applicant for an unindicted crime and trial counsel was not ineffective in failing to object to the charge.³

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

³ The Court also notes trial counsel's strategy was to attempt to exclude the prior convictions. Had he been successful in this attempt, there is a reasonable probability the State would have attempted to proceed on the theory the crime occurred in the night time. Because trial counsel was well aware the crime occurred in the night time, he would have had no grounds to object to an amendment to the indictment to include the nighttime element. See State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005) ("The indictment is a notice document."). Accordingly, even if trial counsel was deficient for failing to realize the indictment did not contain the nighttime element, Applicant cannot show he was prejudiced by this oversight.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of August, 2014.



THE HONORABLE BENJAMIN H. CULBERTSON
Resident Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

LEWIS/HCPD

WITNESSES

DOCKET NO. 2006-GS-26-418

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR

83437

COURT OF GENERAL SESSIONS

JANUARY

TERM

2007

THE STATE

VS

ARNOLD WARD

W/M



DOB:

SS#:

ARREST WARRANT NO. J316250

CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

DOA: 11-01-06

ACTION OF GRAND JURY

TRUE BILL

JAN 25 2007

Foreman of Grand Jury

VERDICT

ATTORNEY: THOMAS FLOYD

INDICTMENT FOR:

BURGLARY 1ST DEGREE (ATTEMPTED)

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

BURGLARY 1ST DEGREE (ATTEMPTED)

At a Court of General Sessions, convened on January 25, 2007, the Grand Jurors of Horry County present upon their oath:

BURGLARY 1ST DEGREE (ATTEMPTED)

CDR: 0079 C/L 16-11-311, 16-1-80, 16-1-60

That ARNOLD WARD did in Horry County on or about October 31, 2006, willfully and unlawfully attempt to enter the dwelling of Shane Holley, located at [REDACTED] in the Myrtle Beach section of Horry County, without consent and with the intent to commit a crime therein, and the defendant had two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. 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.

J. Gregory Hertz

SOLICITOR