

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

JOHN ELVIS BOSTIC,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000025

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
11-GS-26-01259

State of South Carolina,

vs.

John Elvis Bostic,
Defendant.

TRANSCRIPT OF RECORD

October 4-5, 2011
Conway, South Carolina

Before:

The Honorable, Benjamin H. Culbertson, Judge; and jury

Appearances:

BY: George H. DeBusk, Esq.
Attorney for State

BY: W. Edward Chrisco, Esq.
Attorney for John Elvis Bostic

Brenda R. Babb
Circuit Court Reporter

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Neal v. Biggers Hearing

6

1 The Court: This is case number 2011-GS-26-1259
2 State of South Carolina v. John Elvis Bostic. Mr. Bostic
3 has been charged and indicted by the grand jury on burglary
4 in the first degree. All right, present at the call of the
5 case George DeBusk representing the State. Mr. Chrisco is
6 attorney for the defendant in this case. I understand this
7 is a Neal v. Biggers hearing; is that correct?

8 Mr. DeBusk: Yes, Your Honor.

9 The Court: All right, anything before we get
10 started, Mr. DeBusk?

11 Mr. DeBusk: No, Your Honor.

12 The Court: All right, anything from the defense
13 before we get started?

14 Mr. Chrisco: No, Your Honor.

15 The Court: All right, Mr. DeBusk?

16 Mr. DeBusk: The State calls Catina Hood.

17 The Court: All right, Ms. Hood.

18 Catina Hood

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

20 Madam Clerk: Please state your full name and
21 spell your last name.

22 The Witness: It's Catina Murray Hood, h-o-o-d.

23 Direct Examination

24 By Mr. DeBusk:

25 Q Ms. Hood, where did you live in February

Ms. Hood - Dir. Exam. In Camera by Mr. DeBusk

7

1 25th of 2010?

2 A Highway 76 in Nichols.

3 Q What happened that evening, the late
4 afternoon evening that day?

5 A I had called my daughters to come to pick
6 me up from my sister's, it was probably a little before
7 dusk dark, and they went and picked up and we were gone
8 probably, they were gone probably about thirty, thirty five
9 minutes, we come straight back. I was, we were driving my
10 vehicle and another friend's truck taking a kennel to the
11 house cause we were moving in, and my baby girl walked in
12 when we got there and that's when she noticed that we had
13 been broken into.

14 Q Were you able to locate anybody, any
15 suspects on that?

16 A Yes, sir.

17 Q Where did you locate these individuals?

18 A I had left, me and another guy left and we
19 found them right before where 76 and 9 divides, probably
20 about a half a mile before you get to it going towards
21 Marion County.

22 Q What happened when you found these
23 individuals; what did you do?

24 A I pulled off the road, I got out; I
25 approached them and I asked them if they had seen anyone

Ms. Hood - Dir. Exam. In Camera by Mr. DeBusk

8

1 and that's when one of the gentlemen started walking
2 towards me, talking about, ma'am, this is my bag, and
3 that's when I looked, I noticed the bag because I had just
4 unpacked it the night before of it being my bag because we
5 had just purchased it like a few weeks before.

6 Q What did you do at that point?

7 A Just like I told him, no, that's my bag and
8 that ya'll were the ones that had to have been in there
9 because one of them had a duffel bag, one had a pillow
10 case.

11 Q Okay.

12 A And that's when I called dispatcher and I
13 told them there was no sense in them going to my address,
14 that two gentlemen with my duffel bag and a pillow case
15 that, you know, I just confronted them and I got back into
16 my Rodeo, me and another friend, and they walked past and
17 about that time one of them dropped the pillow case in the
18 ditch but they both jumped the ditch and ran into the woods
19 and I was on the phone with dispatcher when they done it.

20 Q Before they ran into the woods did you get
21 a good look at them; did you have a chance to ---

22 A Yes, sir, I did.

23 Q Did you have an opportunity to talk with
24 them?

25 A I talked with one of them like I said for a

Ms. Hood - Dir. Exam. In Camera by Mr. DeBusk

9

1 few minutes, confront him about that that was my duffel bag
2 and he kept insisting that it was not but he's the one that
3 called my attention did I want my duffel bag.

4 Q Was the lighting good enough to see their
5 faces?

6 A Yes, sir.

7 Q Did you get a good look at them?

8 A Yes, sir.

9 Q Did you give a description of them to the
10 police?

11 A Yes, sir, I did.

12 Q How far were you from them when you talked
13 to them?

14 A I would say probably within about three
15 feet.

16 Q Okay, how long approximately did you get to
17 talk to those individuals?

18 A I'd say from anywhere from five to seven
19 minutes.

20 Q Okay, did there come a time when you saw
21 those two individuals again?

22 A Yes, sir, several hours later.

23 Q Under what circumstances?

24 A Police officers I stayed where I had
25 confronted them and the police officers come back, one of

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

10

1 them picked me up and asked me if would go down the road,
2 which was just on the other side of the woods and identify,
3 if I could identify them and I told them yes I would go,
4 that's when I seen them again.

5 Q At that time was it dark?

6 A Yes, sir.

7 Q Were they lit in any way?

8 A Yes, sir, by headlights.

9 Q Okay, were you able to get a good look at
10 them at that point?

11 A Yes, sir, I did.

12 Q Did you ever get a chance to look at them
13 and see them?

14 A Yes, sir.

15 Q Did you examine their clothing?

16 A Yes, sir, I did.

17 Q Was the clothing similar to the one what
18 you saw on the side of the road earlier?

19 A Yes, sir.

20 Q Were they the same individuals?

21 A Yes, sir, it was.

22 Q How certain were you of that?

23 A A hundred percent.

24 Q How long do you think passed between when
25 you saw them run into the woods and when you saw them

1 again?

2 A It was a few, about a few hours, I mean
3 give or take, anywhere between two to three hours if ---

4 Q Okay, two to three hours?

5 A Yes, sir.

6 Q Okay, what did you do in the time between
7 when they ran off and when you went back to view them?

8 A I stayed right there.

9 Q With the police officers?

10 A Yes, sir, with the police officers.

11 Mr. DeBusk: Okay, please answer any questions
12 the defense might have.

13 Cross Examination

14 By Mr. Chrisco:

15 Q What time was it when you left your house
16 with your daughter?

17 A I was not home, I had been working and I
18 asked my children to come pick me up from my sister's house
19 so we could get the kennel and it was probably about 5:30,
20 give or take a little bit.

21 Q And what time did you arrive back at your
22 house?

23 A About thirty, thirty five minutes later.

24 Q So that would have been about six?

25 A About six.

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

12

1 Q And how long did you stay there?

2 A As soon as we got there my baby girl went
3 straight in while we were putting the kennel up and like I
4 said she got the baby and went straight into the house.
5 She come running back out and said that someone had been in
6 the home and probably about ten minutes later I left
7 driving after I had already called and had it reported.

8 Q So you had already called the police at
9 this time?

10 A Yes, sir...

11 Q And where did you go then?

12 A Me and a friend left and we went back
13 towards Number 9.

14 Q Friend, who was the friend?

15 A Sean, he was my oldest girl's ex-fiancé;
16 he was helping us move the kennel and we had passed the
17 two, the two gentlemen going to my home and that's why I
18 had left to see if we could locate them to see if they had
19 seen anything. It registered in my mind that they were the
20 ones and so I didn't, I just was wanting to, you know, see
21 if they knew anything and that's when we had already went
22 down to Number 9 and 76 and we didn't see them. I went
23 back up Number 9, went down another road and I called my
24 baby girl and I asked her about where was it that we, you
25 know, seen the guys, so that's what made me decide to go

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

13

1 back down 76 back towards 76 and 9, and that's when I
2 spotted them the second time I had went down that way.

3 Q About what time was this?

4 A Probably a little after six.

5 Q And did you see them?

6 A Yes, sir, the second time I went down, yes,
7 sir.

8 Q And where were they?

9 A They were heading towards Marion County
10 walking and it was probably less than a half mile from
11 where 9 and 76 divide.

12 Q And what kind of area were they in at that
13 time?

14 A It was the side that they were on it was an
15 open field with them woods, the other side was a fenced in
16 home and I mean it was just out in the open.

17 Q Any street lights?

18 A There was lights across at where the big
19 fence is.

20 Q And it was dark at this time?

21 A It was almost dark.

22 Q What day was this?

23 A February, I think it was the 24th.

24 Q February it gets dark 5:15?

25 A It gets dark somewhere between 5 and 6,

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

14

1 somewhere up in there.

2 Q This was at a little after 6?

3 A Cause it was still enough light you could
4 see the gentlemen.

5 Q How did you, how did you stop there?

6 A Well like I said we went to see if, cause
7 we noticed the two guys walking, hopefully they could see,
8 would be able to tell us something, that's the reason we
9 went looking for them, and when I pulled off the road I got
10 out and that's when I asked them if they, I stayed down the
11 road, if they had seen something and that's about when one
12 of the gentlemen started walk towards me slowly and talking
13 about, ma'am, this is my bag. That's when I noticed that
14 it was not his bag cause I had just unpacked that bag like
15 around midnight the night before and that was my bag and he
16 kept just walking towards me insisting that that was his
17 bag out of the blue when I didn't even ask him about the
18 bag.

19 Q Had you ever seen this person before?

20 A No, sir.

21 Q And there were how many people there?

22 A Walking?

23 Q Yes?

24 A Two.

25 Q And what were their descriptions?

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

15

1 A One was taller African American guy,
2 darker; one of them was shorter older gentleman than the
3 taller one. He had a beard and a mustache and he was
4 lighter skin.

5 Q And which one had your bag?

6 A The lighter skin, the shorter one.

7 Q And which one talked to you?

8 A The shorter light skinned one with the
9 beard and the mustache.

10 Q Were you shown any, between the time that
11 they had left you saw two people that the police wanted you
12 to identify did the police show you any type of photographs
13 or anything?

14 A No, sir.

15 Q You said they had dropped a bag?

16 A Yes, sir.

17 Q Which one dropped the bag?

18 A It was the taller skinnier one that had the
19 pillow case.

20 Q And what was in the pillow case?

21 A It was a big bottle of vodka and some
22 movies, dvd's.

23 Q Several hours later the people, describe
24 the people that the police brought to you?

25 A They come [sic] and got me from where I was

Ms. Hood - Cross Exam. In Camera by Mr. Chrisco

16

1 at, took me down there to just on the other side of the
2 woods and it was the same two gentlemen, the taller dark
3 skinned one, the other one was the shorter light skinned
4 beard mustache, same clothes.

5 Mr. Chrisco: The Court's indulgence just a
6 moment?

7 The Court: All right.

8 Mr. Chrisco: (Continuing)

9 Q When you were taken by the police were you
10 transported by the police?

11 A Yes, sir, because I never left the spot
12 from where I confronted the two gentlemen.

13 Q And when you went and seen the gentlemen
14 describe those circumstances?

15 A What you mean by describing the
16 circumstances?

17 Q When they drove you out there did you set
18 in the car or -

19 A Yes, sir, they transported me out there
20 because I didn't have my vehicle because Sean had took mine
21 back so that's why I went with them and I stayed in the
22 car. The gentleman asked me if those were the two that I
23 confronted. He told me to look good ---

24 Q When he said those are the two, where were
25 they?

Ms. Hood - Redir. Exam. In Camera by Mr. DeBusk

17

1 A They were standing in front of another
2 police car in the light, headlights.

3 Q So it was very dark as this point?

4 A Yes, sir.

5 Q A lot of shadows?

6 A But it's still a good look cause the light
7 was straight in their face where you couldn't mistaken it.

8 Q And you said the one that you talked with
9 there was lighter skinned and you said light skinned,
10 describe that?

11 A Medium tone and I mean like I said the
12 other one was taller skinnier. I mean he wasn't real
13 skinny but I mean he was skinnier than the other one and he
14 was darker and the one that was speaking to me was lighter
15 skinned than the other one and he had like I said a beard
16 and a mustache.

17 Q You stayed in the car?

18 A Yes, sir.

19 Q Did you see them out of the front
20 windshield, the side glass, or the back glass?

21 A Out the front windshield.

22 Mr. Chrisco: No questions.

23 The Court: All right, redirect?

24 Mr. DeBusk: Briefly, Your Honor.

25 Redirect Examination

Ms. Hood - Redir. Exam. In Camera by Mr. DeBusk

18

1 By Mr. DeBusk:

2 Q Ms. Hood, when you first saw them was there
3 enough light to discern their features?

4 A Oh, yes, sir.

5 Q Did you get a very good look at them?

6 A Yes, sir, I did.

7 Q And when you saw them again how far from
8 them were you?

9 A I would say probably from me to the seat at
10 the end of the row here.

11 Q Okay, the end of the jury box?

12 A Yes, sir.

13 Q Okay, and do you see either of those
14 individuals in the courtroom today?

15 A Yes, sir.

16 Q Who is that?

17 A The gentleman sitting at the table.

18 Q Which one would that be, the one that
19 talked to you or the other one?

20 A That's the one that spoke with me, he's the
21 one that had the duffel bag.

22 Mr. DeBusk: Thank you.

23 The Court: All right, you may step down, call
24 your next witness.

25 Mr. DeBusk: Your Honor, Craig Hutchinson.

Sargent Hutchinson - Dir. Ex. In Camera by Mr. DeBusk 19

1 Sargent Craig David Hutchinson

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

3 Madam Clerk: Please state your full name
4 and spell your last name.

5 The Witness: Craig David Hutchinson, h-u-t-c-h-
6 i-n-s-o-n.

7 Direct Examination

8 By Mr. DeBusk:

9 Q Sargent Hutchinson, what were your duties
10 in February of 2010?

11 A I was a canine handler and supervisor over
12 the canines assigned to special operation division of Horry
13 County Police Department.

14 Q What were your duties relative to tracking
15 dogs?

16 A Supervisor as well as a dog handler.

17 Q Now on February the 25th in the evening.
18 hours of 2010 did you make, respond to a call on Highway
19 76?

20 A Yes, sir, I did.

21 Q What did you do?

22 A We arrived on scene, myself and canine
23 handler Dwane Grainger. We were briefed shortly on what
24 had happened, given a last point scene and also an article
25 that was left in a ditch. Decision was made to use Officer

Sargent Hutchinson - Cross Ex. In Camera by Mr. Chrisco 20

1 Grainger's dog because mine had been deployed on a previous
2 call out. His dog was fresh so we decided to use it and --

3 Q What kind of dog do you have?

4 A German Shepherd; and basically we started a
5 track from there from the last point scene off the article
6 and ran a track from there and located two suspects.

7 Q Where did you locate them?

8 A It was in a kind of a swampy wooded area
9 approximately half maybe three quarters of a mile from
10 where the start point was.

11 Q Did you do anything to confirm whether
12 those were the individuals that you were tracking?

13 A As we were, as we started to track and as
14 we were continuing to track through kind of an open farm
15 area kept -- I was a support person, myself and Office Will
16 Duncan were there to support him -- as I was tracking along
17 or as he was tracking with his dog, I kept noticing a set
18 of footprints that we were seem to be following and as we
19 got in different places where the ground would allow I
20 still verified that we were tracking a similar boot print
21 during that time.

22 Q Now did you follow the dog's track and the
23 boot tracks?

24 A Yes, sir.

25 Q Once you got the suspects in custody did

Sargent Hutchinson - Cross Ex. In Camera by Mr. Chrisco 21

1 you do anything to assert and know you had the right
2 individuals?

3 A I took a brief look at the shoes ---

4 Q In terms of witnesses?

5 A I'm sorry?

6 Q Did you, did you show them to any witnesses
7 to make sure you had the right individuals?

8 A I made a recommendation that we bring the
9 victim up; I didn't actually participate in that other than
10 I was just standing in the general area.

11 Q Okay, and when, when the victim was brought
12 up were the suspects shown to her?

13 A Yes, sir.

14 Mr. DeBusk: Okay, thank you, please answer any
15 questions defense might have.

16 Cross Examination

17 By Mr. Chrisco:

18 Q How do you know that the victim saw the
19 suspect?

20 A I didn't speak with the victim; I was told
21 by other officers that that was it.

22 Q What you know not what somebody else said
23 now; what did you know? Did you see, did you see the
24 victim?

25 A At the start of the initial track, yes,

Corporal Hardee - Dir. Exam. In Camera By Mr. DeBusk 22

1 sir.

2 Q Did you see later on; did you see her there
3 at the vehicle?

4 A No, sir, I never saw her again.

5 Q You never saw the victim again?

6 A No, sir.

7 Q So you really don't know if she, of your
8 own personal knowledge that she ever came to the woods?

9 A No, sir; not personal, I didn't see her.

10 Mr. Chrisco: Thank you.

11 The Court: Anything on redirect?

12 Mr. DeBusk: No.

13 The Court: All right, you may step down.

14 A Thank you, Your Honor.

15 Mr. DeBusk: The State calls Officer Cole
16 Hardee.

17 Corporal Rodney Cole Hardee

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

19 Madam Clerk: Please state your full name and
20 spell your last name.

21 The Witness: Rodney Cole Hardee, last name h-a-
22 r-d-e-e.

23 Direct Examination

24 By Mr. DeBusk:

25 Q Officer Hardee, what were your duties on

Corporal Hardee - Dir. Exam. In Camera By Mr. DeBusk 23

1 February 25th of 2010?

2 A I was a supervisor at night for the (B)
3 squad Horry County Police Department.

4 Q Did you respond to the area of Highway 76
5 that evening?

6 A I did.

7 Q What did you do?

8 A I responded to the area reference to a
9 possible burglary suspects that they hit the woods. I
10 spoke with the victim; she showed me the pillow case that
11 was in the ditch and the direction of travel that the
12 suspects fled in.

13 Q Did there come a time when you transported
14 the victim to another location ---

15 A I did.

16 Q --- to the suspects?

17 A Once I received word that some individuals
18 were found over in a swampy area to bring the victim up so
19 I picked her up and transported her to the location.

20 Q And what happened there?

21 A That's where she stayed in the car, I told
22 her that we were going to bring the suspects up and if she
23 could identify them. I turned on my spot light and shined
24 them towards the vehicle that they were at. They were
25 brought out and she verified that that was the ones that

1 she had talked to earlier.

2 Mr. DeBusk: Thank you, please answer any
3 questions the defense might have.

4 A Okay.

5 Mr. Chrisco: No questions.

6 The Court: All right, you may step down.

7 Mr. DeBusk: That would be the State's showing.

8 The Court: All right, Mr. Chrisco, anything
9 from the defense?

10 Mr. Chrisco: No, Your Honor.

11 The Court: All right. All right, I'm going to
12 rule that the State has satisfied the requirements of Neal
13 v. Biggers and so I will allow the in court identification.
14 All right.

15 Mr. DeBusk: Thank you, Your Honor.

16 The Court: All right, anything else pretrial?

17 Mr. DeBusk: Other than the issue we were
18 speaking about earlier, Your Honor, about the priors. I
19 have not had a chance to redact the documents yet but I
20 will.

21 The Court: All right, let's go ahead, how much
22 time do we need?

23 Mr. DeBusk: I'm not sure, Your Honor.

24 The Court: Okay, well let's go ahead and redact
25 it, I'm going to go ahead and tell them let's go ahead and

25

1 bring the jury out. I need a list of potential witnesses.

2 Mr. DeBusk: I can redact them at lunch so I
3 don't, we can go --

4 The Court: Oh, okay, so we can go ahead with
5 the trial?

6 Mr. DeBusk: Yes, sir, Your Honor.

7 The Court: I'll need a list of witnesses for
8 voir dire, any special voir dire out of the ordinary,
9 anything before we begin the jury out for selection?

10 Mr. DeBusk: Well, Your Honor, just the witness
11 list.

12 The Court: Okay, anything from the defense
13 before we begin jury selection?

14 Mr. Chrisco: No, Your Honor.

15 The Court: Okay, now I want to make sure I got,
16 the alleged victim in this is Catrina -

17 Mr. DeBusk: Catina Hood, Your Honor, number 8.

18 The Court: Catina, okay. I apologize, and I see
19 several of those, are there any others, who are the victims
20 in this case?

21 Mr. DeBusk: Your Honor, the victims, excuse me,
22 would be Catina Hood, number 8, and Priscilla Hood, number
23 9, Ashley Hood, number 10. The only ones present in the
24 courtroom now are Catina and Priscilla, number 8 and 9.

25 The Court: Okay, all right, let's take a ten

1 minute break, get the jury up here and we'll start with the
2 jury selection; does that sound agreeable?

3 Mr. DeBusk: Yes, sir.

4 Mr. Chrisco: Yes, Your Honor.

5 (Whereupon, a recess was taken and the following
6 takes place on record after the recess.)

7 The Court: Ladies and Gentlemen, I appreciate
8 you being with us this morning. We are getting ready to
9 start the trial of the case of The State of South Carolina
10 v. John Elvis Bostic. Now Mr. Bostic has been charged with
11 burglary in the first degree and I have a series of
12 questions to go over with you. You've all been qualified
13 to serve as jurors for this term of General Sessions court,
14 however, I do have some questions to go over with you now
15 what's commonly referred to as voir dire questioning. This
16 is to determine whether or not you're qualified to serve as
17 jurors on this particular trial and it also gives the
18 attorneys some additional information to assist them in the
19 jury selection process.

20 As I told you yesterday before we started the
21 qualification process as jurors you're constantly taking
22 oaths and so I'll, please, need all members of the jury
23 panel to, please, stand and raise your right hand, please.

24 (Whereupon, the jury panel was sworn.)

25 The Court: All right, you may be seated and put

27

1 your hands down; is there any member of the jury panel who
2 did not respond to the oath by saying I do; if so please
3 stand?

4 All right, as I said this is the case of The
5 State of South Carolina v. John Elvis Bostic. Now Mr.
6 Bostic is charged with, according to the indictment that on
7 or about February 25th, 2010, he entered the dwelling of
8 Catina Hood. Now Catina Hood is the victim along with her
9 children, Priscilla Hood, and Ashley Hood.

10 The defendant in this case is John Elvis Bostic;
11 is there any member of the jury panel related by blood or
12 marriage, have a close personal relationship, business
13 relationship, social relationship, or any other type of
14 relationship with either the defendant John Elvis Bostic or
15 any of the victims, Catina Hood, Priscilla Hood, or Ashley
16 Hood; if so please stand?

17 (No response.)

18 All right, please listen carefully, these are the
19 potential witnesses who may testify in this case, they may
20 not but they may testify in this case.

21 We certainly have the alleged victims Catina Hood
22 Priscilla Hood

23 Ashley Hood.

24 We also have Sargent Craig Hutchinson

25 Robert Deal

1 Peter Cestare, c-e-s-t-a-r-e

2 Daniel Spencer

3 Randall Duncan

4 Cole Hardee

5 Dwane Grainger

6 Phillip Perritt.

7 Any additional other than the defendant from the
8 defense; any other potential witnesses?

9 Mr. Chrisco: No, Your Honor.

10 The Court: All right, is there any member of
11 the jury panel related by blood or marriage, have a close
12 personal relationship, business relationship, social
13 relationship, or any other type of relationship with any of
14 these potential witnesses; if so please stand?

15 All right, sir, your name and number?

16 Jury Panel Member: Dennis Johnson, 166.

17 The Court: All right, hold for one second, all
18 right, Mr. Johnson, which witness or witnesses do you know?

19 Jury Panel Member: Mr. Dwane Grainger, officer.

20 The Court: All right, now how do you know him;
21 is he a relative or friend or what?

22 Jury Panel Member: He's my brother's son in
23 law.

24 The Court: He is your brother's son ---

25 Jury Panel Member: Married my niece.

1 The Court: Okay, all right, Mr. Johnson, I am
2 going to excuse you from this particular case, okay, thank
3 you very much. If you'll stay with us right now, I'll give
4 you, but I'm just going to strike you from this particular
5 case. Thank you, Mr. Johnson, for bringing that to our
6 attention.

7 Anyone else related by blood or marriage, have a
8 close personal relationship, business relationship, social
9 relationship, or any other type of relationship with any of
10 these potential witnesses; if so please stand?

11 All right, the attorney for the State in this
12 case is George DeBusk of the Fifteenth Circuit Solicitor's
13 office. The attorney for the defendant in this case is
14 William Edward Chrisco of the Fifteenth Circuit Public
15 Defenders Office. Is there any member of the jury panel
16 related by blood or marriage, have a close personal
17 relationship, business relationship, social relationship,
18 or any other type of relationship with either of these
19 attorneys; if so please stand?

20 Has any member of the jury panel ever been
21 represented by either of these attorneys; if so please
22 stand?

23 (No response.)

24 Is there any member of the jury panel who has
25 ever been involved in any type of legal action in which

1 either of these attorneys represented another party to that
2 action; if so please stand?

3 (No response.)

4 Is there member of the jury panel who either
5 personally or has a close family member employed with the
6 Fifteenth Circuit Solicitor's Office or the Fifteenth
7 Circuit Public Defenders Office; if so please stand?

8 (No response.)

9 Has any member of the jury panel formed or
10 expressed an opinion about any issue or matter involved in
11 this case; if so please stand?

12 (No response.)

13 Is any member of the jury panel aware of any bias
14 or prejudice towards either the State of South Carolina or
15 the defendant in this case; if so please stand?

16 (No response.)

17 Is there any member of the jury panel that was a
18 member of the grand jury that issued the indictment in this
19 case; if so please stand?

20 (No response.)

21 Is there any member of the jury panel who is a
22 member of or a contributor to any group which has as its
23 primary concern the promotion of law enforcement or victims
24 rights? Some of these organizations include but not
25 limited to but they include MADD or Mothers Against Drunk

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1 Drivers, SADD, Students Against Drunk Drivers, Citizens
2 Against Violent Crime or what's commonly referred to as
3 CAVE, and Citizens Against Spousal Abuse or what's commonly
4 referred to as CASA. Is any member of the jury panel a
5 member of such organization or a contributor to any such
6 organization that has as its primary focus law enforcement
7 or victims rights; if so please stand?

8 (No response.)

9 All right, as I said from the indictment it
10 alleges that the defendant on or about February 25th, 2010,
11 entered the dwelling of Catina Hood; where is that
12 residence located, what area are we talking about?

13 Mr. DeBusk: On Highway 76, Your Honor, in the
14 Nichols section of the county.

15 The Court: All right, along Highway 76 in the
16 Nichols section of Horry County, is there any member of the
17 jury panel who has heard anything, read anything, seen
18 anything, or knows anything about this case; if so please
19 stand?

20 (No response.)

21 Does any member of the jury panel know of any
22 reason whatsoever why he or she should not serve as a juror
23 in this case with particular emphasis being placed on your
24 ability to be fair and impartial to both the State and the
25 defendant in this case; if so please stand?

1 (No response.)

2 Any additional questioning from the State?

3 Mr. DeBusk: No, Your Honor.

4 The Court: Any from the defense?

5 Mr. Chrisco: No, Your Honor.

6 The Court: All right, Ladies and Gentlemen,
7 what has happened is your names have been placed in the
8 computer and a list has been generated at random listing
9 you on that list in random order and your names will be
10 called out one at a time and as your names are called if
11 you would, please, come forward and stand here in front of
12 the attorneys in this case and face the attorneys; and the
13 State's attorney will look at you a little while and then
14 he's going to look at his notes a little while and then
15 he's going to look back at you a little while and then he's
16 going to look back at his notes a little while and then
17 he's going to decide whether or not he wants you as a juror
18 in this case and if he wants you as a juror in this case.
19 Then the defense attorney is going to look at you a little
20 while and then look at his notes for a little while and
21 then look back at you and we follow this process until we
22 select twelve jurors and once we select twelve jurors and
23 then, how many alternates do you think we need, two
24 alternates or one alternate will be sufficient?

25 Mr. DeBusk: I would think one, Your Honor.

1 The Court: All right, do you agree with that,
2 Mr. Chrisco, one alternate sufficient?

3 Mr. Chrisco: Yes, Your Honor.

4 The Court: Okay, all right, so we'll select
5 twelve jurors and one alternate in this case and so when
6 your name is called if you would, please, come forward and
7 bring with you any pocketbooks, any coats, books, or
8 anything that you might have in your possession and come
9 forward and if you're selected as a juror the bailiff will
10 direct you where to sit in the jury box.

11 If you are struck by the State or the defense
12 please do not take any offense to that striking. There's
13 no real rhyme or reason as to why certain jurors are
14 selected and certain jurors are rejected. I've often known
15 jurors to be selected in one case and then struck in the
16 next case. I've also known them to be struck in one case
17 and then selected in the following case so, please, don't
18 take offense if you are struck from this particular case.

19 All right, if you'd please listen up while the
20 clerk calls your name and if your name is called, please,
21 come forward one at the time.

22 Madam Clerk: Juror Number 37, Jay Burr.

23 The Court: Excuse me, before we get started
24 it's five and ten?

25 Mr. DeBusk: Yes, sir.

1 The Court: All right, excuse me, Mr. Burr, come
2 on forward.

3 Madam Clerk: What say the State?

4 Mr. DeBusk: Please present the juror.

5 Madam Clerk: Defense?

6 Mr. Chrisco: Seat the juror.

7 Madam Clerk: Please be seated in the jury box.

8 88, Eric Donaldson.

9 What say the State?

10 Mr. DeBusk: Please present the juror.

11 Madam Clerk: Defense?

12 Mr. Chrisco: Seat the juror.

13 Madam Clerk: Please be seated in the jury box.

14 152, Brenda Holmes.

15 Mr. Chrisco: What number?

16 Madam Clerk: 152.

17 What say the State?

18 Mr. DeBusk: Please present the juror.

19 Madam Clerk: Defense?

20 Mr. Chrisco: Seat the juror.

21 Madam Clerk: Please be seated in the jury box.

22 20, Wanda Bellamy.

23 What say the State?

24 Mr. DeBusk: Please present the juror.

25 Madam Clerk: Defense?

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1 Mr. Chrisco: Your Honor, may I inquire to where
2 she's employed?

3 The Court: All right, where do you work, ma'am?

4 Jury Panel Member: Horry County school
5 district.

6 Mr. Chrisco: Please excuse the juror from the
7 trial of this case.

8 Madam Clerk: You're excused from this
9 particular case.

10 204, Jennifer McCann.

11 What say the State?

12 Mr. DeBusk: Please present the juror.

13 Madam Clerk: Defense?

14 Mr. Chrisco: Please excuse the juror from the
15 trial of this case.

16 Madam Clerk: You're excused from this
17 particular case.

18 66, Laura Connelly.

19 What say the State?

20 Mr. DeBusk: Please present the juror.

21 Madam Clerk: Defense?

22 Mr. Chrisco: Please seat the juror.

23 Madam Clerk: Please be seated in the jury box.

24 341, Sharon Wilkes.

25 What say the State?

1 Mr. DeBusk: Please present the juror.

2 Madam Clerk: Defense?

3 Mr. Chrisco: Please excuse the juror from the
4 trial of this case.

5 Madam Clerk: You're excused from this
6 particular case.

7 278, Jon Shingledecker.

8 What say the State?

9 Mr. DeBusk: Please present the juror.

10 Madam Clerk: Defense?

11 Mr. Chrisco: Seat the juror.

12 Madam Clerk: Please be seated in the jury box.

13 239, Royce Parrish.

14 What say the State?

15 Mr. DeBusk: Please present the juror.

16 Madam Clerk: Defense?

17 Mr. Chrisco: Please excuse the juror from the
18 trial of this case.

19 Madam Clerk: You're excused from this
20 particular case.

21 172, Sherry Jones.

22 What say the State?

23 Mr. DeBusk: Please present the juror.

24 Madam Clerk: Defense?

25 Mr. Chrisco: Seat the juror.

1 Madam Clerk: Please be seated in the jury box.
2 224, Jacqueline Murray.
3 Mr. Chrisco: What's his number?
4 Madam Clerk: 224.
5 What say the State?
6 Mr. DeBusk: Please present the juror.
7 Madam Clerk: Defense?
8 Mr. Chrisco: Please excuse the juror from the
9 trial of this case.
10 Madam Clerk: You're excused from this
11 particular case.
12 323, Sharon Vereen.
13 What say the State?
14 Mr. DeBusk: Please present the juror.
15 Madam Clerk: Defense?
16 Mr. Chrisco: What was the number?
17 Madam Clerk: 323.
18 Mr. Chrisco: Seat the juror.
19 Madam Clerk: Please be seated in the jury box.
20 159, Amanda Hynes.
21 What say the State?
22 Mr. DeBusk: Please present the juror.
23 Madam Clerk: Defense?
24 Mr. Chrisco: Your Honor, may I inquire as to
25 what her occupation is?

1 The Court: Where do you work?

2 Jury Panel Member: The Boo Company in land and
3 real estate.

4 The Court: I'm sorry, say that again?

5 Jury Panel Member: Land and real estate.

6 The Court: Land and real estate.

7 Jury Panel Member: It's called The Boo Company
8 in land and real estate.

9 The Court: Okay, thank you.

10 Mr. Chrisco: Please excuse the juror from the
11 trial of this case.

12 Madam Clerk: You're excused from this
13 particular case.

14 292, Deborah Spires.

15 What say the State?

16 Mr. DeBusk: Please present the juror.

17 Madam Clerk: Defense?

18 Mr. Chrisco: Please excuse the juror from the
19 trial of this case.

20 Madam Clerk: You're excused from this
21 particular case.

22 193, Wallace Lunsford.

23 What say the State?

24 Mr. DeBusk: Please present the juror.

25 Madam Clerk: Defense?

1 Mr. Chrisco: What number?
2 Madam Clerk: 193.
3 Mr. Chrisco: Please excuse the juror from the
4 trial of this case.
5 Madam Clerk: You're excused from this
6 particular case.
7 110, Debra Floyd.
8 What say the State?
9 Mr. DeBusk: Please present the juror.
10 Madam Clerk: Defense?
11 Mr. Chrisco: What number was it?
12 Madam Clerk: 110.
13 Mr. Chrisco: Seat the juror.
14 Madam Clerk: Please be seated in the jury box.
15 68, Sondra Coombs.
16 What say the State?
17 Mr. DeBusk: Please present the juror.
18 Madam Clerk: Defense?
19 Mr. Chrisco: Seat the juror.
20 Madam Clerk: Please be seated in the jury box.
21 80, Antwann Davis.
22 What say the State?
23 Mr. DeBusk: Please excuse the juror.
24 Madam Clerk: You're excused from this
25 particular case.

1 3, Andrew Adkins.

2 What say the State?

3 Mr. DeBusk: Please present the juror.

4 Madam Clerk: Defense?

5 Mr. Chrisco: Please excuse the juror from the
6 trial of this case.

7 Madam Clerk: You're excused from this
8 particular case.

9 215, Tammy Miller.

10 What say the State?

11 Mr. DeBusk: Please present the juror.

12 Madam Clerk: Defense?

13 Mr. Chrisco: Your Honor, may we inquire, I know
14 she said she works for the North Myrtle Beach, what
15 department does she work for within the City of North
16 Myrtle Beach?

17 The Court: All right, where?

18 Jury Panel Member: Parks and Recreation.

19 The Court: Thank you.

20 Mr. Chrisco: Please excuse the juror from the
21 trial of this case.

22 Madam Clerk: You're excused from this
23 particular case.

24 161, Dorothy Inman.

25 What say the State?

1 Mr. DeBusk: Please present the juror.

2 Madam Clerk: Defense?

3 The Court: Any challenges from the defense?

4 Mr. Chrisco: No, Your Honor.

5 The Court: All right.

6 Mr. Chrisco: Seat the juror.

7 Madam Clerk: 331, Priscilla Ward.

8 What say the State?

9 Mr. DeBusk: Please present the juror.

10 Madam Clerk: Defense?

11 Mr. Chrisco: Seat the juror.

12 Madam Clerk: Please be seated in the jury box.

13 65, Diana Collins.

14 What say the State?

15 Mr. DeBusk: Please present the juror.

16 Madam Clerk: Defense?

17 Mr. Chrisco: Seat the juror.

18 The Court: All right, we'll now select an

19 alternate, the State will get one strike, the defense will
20 get two.

21 Madam Clerk: 52, Victoria Carter.

22 What say the State?

23 Mr. DeBusk: Please present the juror.

24 Madam Clerk: Defense?

25 Mr. Chrisco: Seat the juror.

1 Madam Clerk: Please be seated in the jury box.

2 The Court: All right, ladies and gentlemen, you
3 will be the jury that will preside over this case. I'm
4 going to excuse you back to the jury room for just a few
5 minutes before we bring you out with some preliminary
6 instructions and start the trial of this case. That will
7 give you an opportunity to view the jury room, see where
8 you'll be presiding during your deliberations and things
9 during the trial of this case, but while you're back in the
10 jury room it will give you an opportunity to stretch your
11 legs, but I'm also going to ask that you select a
12 foreperson, if you're able to do so. If you can't select a
13 foreperson don't worry about it I can choose someone to
14 serve as foreperson. Not many judges pick their own
15 foreperson. I like to give the jury the opportunity to
16 select one on their own if they've able to do so but if you
17 can't don't worry about it.

18 If you select a foreperson just write the
19 person's name on a sheet of paper, put the juror number and
20 give the sheet to the bailiff and we'll bring you back into
21 the court at that time.

22 Now the foreperson has absolutely no more
23 authority, no more importance, no more priority than any
24 other juror. The sole function of the foreperson is to act
25 as a liaison between the jury and the court. If the jury

1 has a question the foreperson let's the court know; if the
2 jury has a need the foreperson let's the court know. When
3 it's time to deliberate the foreperson will preside over
4 the deliberations, but other than that there is no more
5 authority, importance, or influence that a foreperson has
6 as to any other juror.

7 Now the only restriction is that Ms. Carter as
8 the alternate you are not a part of the regular jury at
9 this point in time, so you cannot serve as foreperson on
10 this jury. Everyone else is eligible to serve as
11 foreperson and if you will please, just select one.

12 Now when you come back into the courtroom the
13 foreperson will always occupy this first seat on the first
14 row that is closest to the witness. The alternate will
15 always occupy the seat where you now sit. The rest of you
16 are at liberty to sit in whichever sit you like. If you
17 want to sit in the same seat throughout the trial of the
18 case you can. If you want to alternate seats during the
19 trial of the case you can, whatever makes you feel more
20 comfortable you're allowed to do. The only restriction is
21 that we have the foreperson sit closest to the witness and
22 the alternate sit in the alternate seat unless and until
23 you're made a part of the jury.

24 Now I'm going to send you out to the jury room
25 for just a brief moment to see if you can select a

1 foreperson, don't discuss the case or anything of that
2 nature at this time. We'll bring you back in with some
3 preliminary instructions in just a moment, thank you very
4 much: Everyone else, please, remain seated while the jury
5 is excused.

6 (Whereupon, the jury retired to the jury room at
7 11:39 a.m.)

8 The Court: All right, any challenges to the
9 selection or composition of the jury by the State?

10 Mr. DeBusk: None, Your Honor.

11 The Court: Any by the defense?

12 Mr. Chrisco: No, Your Honor.

13 The Court: All right. All right, Ladies and
14 Gentlemen, those of you who remain in the jury panel we do
15 have our jury for this particular case so I am going to
16 excuse you for the remainder of the day. You should have
17 been given a phone number for the Clerk's office, you will
18 need to call that number after 6 p.m. today and that will
19 give you further direction as to when you need to return
20 back. For the remainder of the day you are at liberty to
21 go ahead and go about your business; I want to thank you
22 for being here.

23 As I told you during jury qualifications even if
24 you do not get selected as a juror this week, please, do
25 not leave thinking that you have not fulfilled your duty as

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1 jurors because you have. The fact that you are here ready
2 and willing to serve is immeasurable assistance to the
3 Court and I want to thank you for your service, but you're
4 free to go at this time. Please call that number after 6
5 p.m. today, thank you very much.

6 (Whereupon, jury venire was excused.)

7 The Court: All right, anything from the State
8 before we begin?

9 Mr. DeBusk: Your Honor, if it's possible to get
10 a few moments to pre-number a couple of exhibits.

11 The Court: All right, yeah, I'm going to take a
12 little break to give them an opportunity to select a
13 foreperson if they need to. Anything from the defense
14 before we start?

15 Mr. Chrisco: Yes, Your Honor, I would on behalf
16 of my client I would like to challenge the burglaries that
17 the State is going to be putting in. I don't know if this
18 is the proper time or not.

19 The Court: Yeah, let's go ahead and do that
20 now. Let me go ahead and hear your motion on that.

21 Mr. Chrisco: Your Honor, we, we talked in the,
22 in, in the judge's chamber this morning and I told the
23 Clerk that we had a novel motion to make in that the
24 burglaries that the State of South Carolina is relying on
25 are breaking and entering convictions from 1985 and 1994

1 from the State of North Carolina. The 1985 conviction was
2 of a building and not a residence. It is the defense's
3 contention they do not match up with the intent of the
4 legislature in that the legislature here stated that to
5 enhance it from burglary to a burglary first there must be
6 either a nighttime or two prior burglaries or housebreaking
7 or a combination of both; Your Honor.

8 We would ask the Court to not allow the breaking
9 and entering because in the State of North Carolina they
10 have their own separate burglary first and burglary second
11 statute there and this does not match up with those; it
12 matches up, they're saying that the breaking and enterings
13 are burglaries, Your Honor.

14 The Court: All right, Mr. DeBusk, let me hear
15 from you on that.

16 Mr. DeBusk: Thank you, Your Honor, in this case
17 both prior convictions were under Section 14-54 of the
18 North Carolina Code of Laws Section (a), specifically that
19 any person who breaks or enters a building with intent to
20 commit any felony or larceny therein shall be punished as a
21 felon.

22 Pursuant to North Carolina Supreme Court decision
23 in State of North Carolina v. William Boone there is a
24 element, an extra element added to that crime. The date of
25 that was 1979, Your Honor, so it predated both of these

1 convictions. The Supreme Court found that there must be a
2 lack of consent for the entry, that is the entry must be
3 made without consent. That makes the elements of the North
4 Carolina felony breaking and entering under 14-54(a)
5 entering a building without consent with intent to commit a
6 felony or larceny therein.

7 Under South Carolina state law the charge of
8 burglary in the third degree, that's Section 16-11-313 is
9 entering a building without consent and with the intent to
10 commit a crime therein. The elements are the same between
11 North Carolina's felony B&E and South Carolina's burglary
12 in the third degree.

13 The state, I'm sorry, the, in State v. Zulfer the
14 South Carolina Court of Appeals found that the test to
15 conclude a foreign conviction is that the elements must
16 follow the local law referring to the South Carolina law.

17 I have copies of State v. Zulfer here, Your
18 Honor, that I can provide for the Court if necessary.

19 Furthermore, on two different occasions and two
20 different cases federal appellate courts, specifically the
21 Fourth Circuit of Appeals and the Fifth Circuit of Appeals
22 have found that the North Carolina charge of breaking and
23 entering felony is in fact a generic burglary.

24 Specifically United States v. Glynn Bowden from 1992, that
25 being the Fourth Circuit case and United States v. Maness

1 from 1994, that being the Sixth Circuit case and both
2 decisions, Your Honor, the court concluded that in North
3 Carolina breaking and entering statute is in fact a generic
4 burglary.

5 Again because the state, the statute in North
6 Carolina the elements are exactly the same as the elements
7 for burglary in the third degree the State feels that these
8 are burglaries that can support enhancing a conviction to
9 burglary in the first degree.

10 The Court: All right, anything in reply?

11 Mr. Chrisco: Yes, Your Honor, looking at the
12 indictment the indictment adds language that is not in the
13 statute, Your Honor.

14 The Court: I don't see where you're saying?

15 Mr. Chrisco: The statute, Your Honor, in the,
16 in the indictment it states that two or more convictions
17 for burglary or housekeeping --

18 The Court: Or housebreaking, you talking about
19 or the equivalent charge in another state?

20 Mr. Chrisco: Exactly, Your Honor.

21 The Court: Okay, all right, all right, I note
22 your motion, I'm going to deny it. I'm going to allow it.
23 I think it satisfies the requirement and the indictment
24 satisfies the requirement, too, enhances to burglary in the
25 first degree, all right.

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1 Mr. Chrisco: Your Honor, I'm going to object on
2 it being prejudicial to my client the way that the verbiage
3 is in there or the equivalent charge in another state
4 because that's not what the statute says, Your Honor.

5 The Court: Okay..

6 Mr. Chrisco: It says a combination of, that the
7 equivalent charge in another state.

8 The Court: Yeah, and I'm going to, you know,
9 the preliminary charge is the ending bond charge of the
10 law, we instruct the jury that this indictment is simply a
11 notice requirement. It is what brings the case to court;
12 it does not constitute any evidence whatsoever. The crime
13 itself all it does it advise the defendant of the charge
14 against him and it is the means by which the case is
15 brought to trial, so I note your objection but I'm going to
16 overrule it, I'm going to allow it.

17 Mr. Chrisco: Thank you, Your Honor.

18 The Court: All right, anything further from the
19 State?

20 Mr. DeBusk: No, Your Honor.

21 The Court: Anything from the defense?

22 Mr. Chrisco: No, Your Honor.

23 The Court: All right, have they got a
24 foreperson yet? All right, let me see who they got.

25 Mr. Chrisco: Your Honor, can I have a couple of

1 minutes?

2 The Court: Yeah, let me put this on record and
3 then we'll go ahead and take us a short break.

4 All right, they have selected juror number 37,
5 Jay A. Burr, as the foreperson. They put Jay Burr number
6 37 on a sheet of paper and I'm going to mark that as
7 Court's Exhibit 1.

8 (Whereupon, Court's Exhibit Number 1 marked for
9 identification.)

10 The Court: All right, I think we're going to
11 take a little short break then we'll bring the jury in,
12 swear the jury, I'll give them some preliminary charges.
13 Well let me ask ya'll this, do we want to do preliminary
14 charges and opening arguments and then break for lunch or
15 do we want bring them in break for lunch, and then come
16 back and start at about 1 or 1:30; what do ya'll want to
17 do? It's about ten to twelve now and I don't know how long
18 your witnesses are, how we want to get going?

19 Mr. DeBusk: Your Honor, my preference would be
20 to get going quickly. I have one witness that can be
21 called fairly quickly and the second will be a little more
22 lengthy so perhaps we could break after the first witness.

23 The Court: Well I mean it depends on how long
24 ya'll take with opening arguments and things of that
25 nature, okay.

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1 Mr. Chrisco: About six hours I think.

2 The Court: Okay, well six hours we probably
3 won't get to that first witness then, but we'll go ahead
4 and we'll start with the preliminary charge and we'll do
5 opening statements and then I'll look and see what time it
6 is and get a break then, okay. All right, let's take about
7 a ten minute break, okay.

8 (Whereupon, a recess was taken and State's
9 Exhibits 1 through 9 marked for identification.)

10 The Court: Anything from the State before we
11 bring the jury in?

12 Mr. DeBusk: No, Your Honor, thank you.

13 The Court: Anything from the defense?

14 Mr. Chrisco: Yes, Your Honor, we'd like to
15 sequester the witnesses except for the victim and the lead
16 investigator, the first witness.

17 The Court: All right, any objection?

18 Mr. DeBusk: No, Your Honor, that includes just
19 the officers in the front row here.

20 The Court: All right, sequester, we'll
21 sequester all witnesses except for the victims, the victims
22 being Catina Hood, Priscilla Hood, Ashley Hood, and then
23 who's the lead officer?

24 Mr. DeBusk: Daniel Spencer, Your Honor.

25 The Court: All right, and then Officer Spencer,

1 everyone else will need to be sequestered, okay.

2 Mr. Chrisco: And, Your Honor, that means that
3 they can't talk to each other about what they're going to
4 testify to or what they testified to, Your Honor.

5 The Court: Exactly, no, no discussion of your
6 testimony among the witnesses, okay. All right, sounds
7 good, all right, we need the defendant. All right,
8 anything further from the defense before we bring the jury
9 in?

10 Mr. Chrisco: No, Your Honor.

11 The Court: All right, let's go ahead and bring
12 the jury in.

13 (Whereupon, the jury returns to the jury room at
14 12:06 p.m.)

15 The Court: All right, ladies and gentlemen,
16 welcome back. We're now ready to start the trial of the
17 case of The State of South Carolina v. John Elvis Bostic
18 but as I told you during jury qualifications jurors are
19 constantly taking oaths and this is no exception. I'll,
20 please, need everyone to stand and raise your right hand
21 while the Clerk administers the oath to us for you to
22 preside as jurors in this particular case.

23 (Whereupon, the jury was sworn.)

24 The Court: Is there any member of the jury who
25 did not respond to the oath by saying I do, if so please

1 stand?

2 All right, good. I understand, Mr. Burr, you
3 have been selected as foreperson so if you would always
4 occupy the seat where you now sit. Ms. Carter, if you
5 would always occupy the seat where you now sit. As I told
6 the rest of you you are at liberty to sit in whatever seat
7 you like, the same seat throughout the trial of the case,
8 alternate seats, whichever makes you feel more comfortable.
9 I also remind you if you have any cell phones, pager
10 devices, or other communication devices, if you'll either
11 turn them off completely or leave them outside of the
12 courtroom when you are in the jury box so as not to
13 interrupt the court.

14 All right, now before we begin the trial, I want
15 to instruct you as to why you are here. This trial will
16 probably be different from what you might expect. Many
17 people from watching television or movies or reading books
18 find trials full of a lot of suspense and action and high
19 anxiety and while that might be the case in this trial it
20 probably won't be. The primary function of this trial is a
21 search for the truth to determine what happened and that is
22 often a repetitive redundant type process, the exact
23 opposite of what you might be accustomed to when you're
24 watching movies or reading books or watching television,
25 however, I hope you find this trial to be educational and I

1 want to thank you in advance for your service as jurors in
2 this case.

3 Now the attorneys appearing before you are
4 advocates for the parties they represent but first and
5 foremost they are officers of the Court. They're sworn to
6 uphold the integrity and fairness of our judicial system
7 and to help you in the search for the truth in this case.
8 You should expect them to be professional, competent, and
9 ethical in the representation of their client's interest.

10 Now what I now say is intended to serve as in
11 introduction to the trial of this case. These remarks are
12 not a charge on the law in this case. I will instruct you
13 on the law applicable to this case at the end of the trial
14 before you retire to consider your verdict. These
15 instructions are merely an explanation of the procedure
16 that we will follow in the trial of this case so that you
17 can better understand what might be happening.

18 Now the defendant is charged by an indictment
19 filed with the Court with the crime of burglary in the
20 first degree, the elements of which I'll explain to you at
21 a later time. The indictment is simply the charge by which
22 the case is brought into court and it is not in any sense
23 evidence of any of the allegations contained in the
24 indictment.

25 The defendant has pled not guilty to this

1 indictment and therefore the State has the burden of
2 proving each of the elements of the indictment beyond a
3 reasonable doubt. It will be your duty, ladies and
4 gentlemen, to decide whether or not the State has met that
5 burden.

6 Your purpose as jurors is to find and determine
7 the facts of this case. You are the sole judge of the
8 facts of this case. If at any time I make any comment
9 regarding the facts you must disregard my comments. You
10 are to determine the facts from the testimony you hear and
11 the other evidence introduced in court. It is up to you to
12 determine the inferences which you feel may properly be
13 drawn from that evidence.

14 It is especially important that you perform your
15 duty of determining the facts diligently and
16 conscientiously because ordinarily there is no way to
17 correct an erroneous determination of the facts by a jury.

18 On the other hand and with equal emphasis the
19 same law that makes you the judge of the facts makes me the
20 judge of the law. The law as given by the court is the
21 only law you may consider. You must accept and follow the
22 law as I give it to you even though you may disagree with
23 it.

24 Just as I cannot tell you what the facts of this
25 case are you cannot disagree with me about the law to be

1 applied in this case. Your job is to take the law as I
2 give it to you and apply it to the facts as you find those
3 facts to be from the testimony of the witnesses and the
4 other evidence that is introduced. After doing that you
5 will render your verdict, a true and just verdict under the
6 solemn oath that you just took as jurors.

7 Now until I advise you to begin your
8 deliberations you must not discuss this case with anyone
9 including your fellow jurors, friends, family members, or
10 anyone involved in the case. After the case is submitted
11 to you you must discuss it only in the jury room with your
12 fellow jurors. The attorneys and the parties in this case
13 have been advised that they're not to talk to you at all so
14 if you see anyone involved in the case and they do not even
15 say hello they're not being unfriendly, they're just
16 following the instructions of the court.

17 During the trial do not read, listen to or watch
18 any news reports about this case. This includes anything
19 that may be in the newspapers or on the internet, the
20 radio, or television. You must not consider anything you
21 may have read or heard about the case outside of the
22 courtroom whether before or during the trial of this case.
23 It is important that you keep an open mind and not decide
24 any issue in this case until all of the evidence has been
25 presented to you, the parties have made their closing

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1 arguments, and I've instructed you on the law to be applied
2 in this case.

3 It is your solemn responsibility to determine the
4 guilt or innocence of the defendant and your verdict must
5 be based solely on the evidence as it is presented to you
6 in this trial and on the law as I instruct you during and
7 at the close of the trial.

8 In just a moment the Solicitor will make what is
9 called an opening statement in which the Solicitor will
10 explain to you the issues in this case or at least what the
11 Solicitor thinks the issues in this case are. The attorney
12 for the defendant may also make an opening statement,
13 although he is not required to do so.

14 What the attorneys tell you during their opening
15 statements is not evidence in this case. It is only their
16 contention as to what the issues are in this case.

17 The evidence in this case will be presented to
18 you by the testimony of sworn witnesses from the witness
19 stand and by other exhibits that may be introduced in court
20 at trial as evidence.

21 From time to time during the trial we may take
22 breaks and I'll instruct you on what you are to do when we
23 take those breaks and when you are to return. In
24 determining what the true facts are in this case you must
25 decide whether or not the testimony of the witnesses is

1 believable. It will be my responsibility to rule as a
2 matter of law as to whether certain testimony is admissible
3 at all or not but once testimony is admitted whether or not
4 you believe it is solely for you to determine.

5 In deciding whether to believe a witness you have
6 the right to consider the interest of any witness, the bias
7 of any witness, the prejudice of any witness, the
8 opportunity for the witness to have seen the matters and
9 things about which the witness may testify and the way the
10 witness acts on the witness stand.

11 You have the right to consider anything that is
12 in the record that will help you evaluate the testimony of
13 the witnesses. That means that it is your duty to pay
14 close attention to these witnesses, to observe the
15 witnesses, to listen to the witnesses, and to pay close
16 attention to the attorneys and to the Court. Don't let
17 your thoughts wander but give strict attention to the
18 testimony in this case so at the end of all of the
19 testimony, after the arguments of counsel, and the charge
20 on the law by the Court you will then be in a position to
21 determine what the true facts are and to apply the law to
22 those facts and thus render a just and true verdict.

23 All right, any additions or challenges to opening
24 charges or instructions by the State?

25 Mr. DeBusk: None, Your Honor.

1 The Court: Any challenges or additions by the
2 defense?

3 Mr. Chrisco: No, Your Honor.

4 The Court: All right, ladies and gentlemen, at
5 this time we begin the trial of this case with opening
6 statements by the State.

7 Mr. DeBusk: Thank you, Your Honor, may it
8 please the Court?

9 The Court: Yes, sir.

10 ~~Opening Statement~~

11 By Mr. DeBusk:

12 Ladies and gentlemen of the jury, on February
13 25th of 2010 Catina Hood and her family came home to their
14 house expecting to spend some time unpacking, getting ready
15 to just move into the house, but when they arrived there
16 they found that something had happened when they were gone,
17 somebody broke into their house, entered the house and
18 stole a number of items including some dvd's, pillow case,
19 some other items. They called the police, of course, right
20 away, but you're going to meet Catina Hood in a few
21 minutes, she's not the kind of person who would have left
22 it at that. She remembered she had seen two individuals
23 walking down the street not far from her house. She's like
24 well they might know something about who broke into my
25 house cause they hadn't been gone like, it couldn't have

1 happened long ago, so she gets into her car and she goes
2 and she finds those individuals. You'll hear testimony
3 that one of those individuals was the defendant John Bostic
4 and John Bostic was carrying a bag that had been stolen
5 from that house. He was walking down the road with another
6 individual was carrying a pillow case containing some dvd's
7 and a bottle of liquor that had been stolen from that
8 house.

9 You'll hear testimony that when Ms. Hood
10 approached him he became very defensive. Before she even
11 mentioned anything this is my bag and that's when she
12 realized, no, it isn't, that was my bag. She said I'm
13 calling the police and they ran into the woods.

14 It gets kind of exciting, you'll hear from some
15 police officers who got a dog and tracked them through the
16 woods and found them out in the swamp and how Ms. Hood came
17 back and confirmed their identity as the ones she had seen
18 on the side of the road with her things. You're also going
19 to hear about a footprint that was found near the trailer.

20 It will be a short case and an interesting one
21 and the Judge has told you that the State has the burden of
22 proof in this case, that's very important to me because in
23 this case I'm the State. My name is George DeBusk; I'm a
24 Senior Solicitor here in Horry County, and it's my burden
25 to prove that to you beyond a reasonable doubt. to prove

1 the elements of burglary in the first degree.

2 In this case those elements are entering a
3 dwelling, that's a place where someone lives, without
4 consent, with the intent to commit a crime therein, and
5 that that entry was done by someone with two or more prior
6 convictions for burglary. That's what I have to prove to
7 you. All the proof is going to come from right here from
8 the stand. You'll hear some testimony of several witnesses
9 about what they saw and what they heard and you'll find out
10 you get to determine the facts of this, that's your job,
11 you're the finders of facts, and I want to talk to you a
12 little bit because it's my burden about what my burden is,
13 that's proof beyond a reasonable doubt.

14 Now that's a difficult concept and the Judge will
15 give you some instructions at the end of the trial about
16 what constitutes reasonable doubt and he can't give you, he
17 can't draw you a picture of reasonable doubt. He can't
18 give you an exact formula because that's a standard that
19 comes from you.

20 Reasonable doubt means proof that would leave you
21 convinced enough to hold Mr. Bostic responsible for his
22 actions. So I ask you to listen to all the testimony and
23 at the end we'll come back and make our arguments and ask
24 you to go back and render a verdict. It will be a short
25 trial and all I ask for is your attention and your honest

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1 verdict at the end, thank you.

2 The Court: Mr. Chrisco, does the defense wish
3 to make an opening statement?

4 Mr. Chrisco: Yes, Your Honor.

5 The Court: All right, sir.

6 Mr. Chrisco: May it please the Court?

7 Opening Statement

8 By Mr. Chrisco:

9 My name is Ed Chrisco, Chief Public Defender here
10 in Horry County; that's my client Mr. Bostic. When you
11 listen to the evidence, listen to the witness how they say
12 it, listen to them, every single word and phrase, look at
13 their gestures, look at their movement, see if it sounds
14 exactly like someone else or not like someone else.

15 There's a lot of things that you have to listen to.

16 There's a lot of things that you have to look for.

17 You were picked because of your, the way you
18 presented yourself, that you would have an open mind, that
19 you would not close out anything and have a decision
20 already made before you heard the first word out of your
21 mouth. You heard the charges so, therefore, he must be
22 guilty. If you think that way then it's not the system
23 that we've had that worked for over two hundred and twenty
24 some years, called the Constitution.

25 No one can make you be fair but when the end of

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1 the day comes and you lay your head on that pillow you're
2 the one that knows. That's all the defense asks is that
3 you have an open mind and be willing to be fair and listen
4 to all of the evidence and listen to it very carefully
5 because when the trial is over the Solicitor is going to
6 come over and he's going to tell you what you heard. He's
7 already told you what you're going to hear then you're
8 going to hear it then he's going to tell you what you
9 heard.

10 The defense is going to come back and ask you
11 what you heard and it's from that that the Judge will give
12 you the law, say here is the law that you look at. Here is
13 the law that you've got to find of the elements and you've
14 got to attach the facts that you find to that because
15 you're the judge of the facts, this is the judge of the law
16 up here. It takes his instruction and your interpretation
17 of the facts and then put it together and that's what we
18 ask you to do is set here and have an open mind, thank you.

19 The Court: All right, Mr. DeBusk, you can call
20 your first witness.

21 Mr. DeBusk: Thank you, Your Honor, the State
22 calls Priscilla Hood.

23 The Court: All right.

24 Priscilla Hood

25 being first duly sworn, testified as follows:

Ms. Hood - Direct Examination by Mr. DeBusk

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1 Madam Clerk: Please state your full name and
2 spell your last name.

3 The Witness: My name is Priscilla Hood, h-o-o-
4 d.

5 Direct Examination

6 By Mr. DeBusk:

7 Q Ms. Hood, where do you live?

8 A In Dillon.

9 Q How about on February 25th of 2010, where
10 did you live at that time?

11 A Highway 76 Nichols.

12 Q Is that in Horry County?

13 A Yes, sir.

14 Q Okay, what kind of building was that at
15 that spot?

16 A It was our single wide trailer and we had a
17 building in the back.

18 Q Okay, and who lived there at that trailer?

19 A Me, my mother, my sister, and my two month
20 old daughter.

21 Q Okay, tell me about the evening of February
22 25th, were you at your home?

23 A No, sir, we had left to go get my mother.

24 Q When did, when did you leave?

25 A It was about 5:30 we left, my mother

Ms. Hood - Direct Examination by Mr. DeBusk

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1 called, she had been working, so we went to my aunt's. We
2 were gone maybe thirty minutes and we come back.

3 Q Okay, what happened when you came back?

4 A I took, got my daughter, we went in and I
5 went and turned the light on and that's when I seen that in
6 our dvd case right there at the hallway dvd's were out of
7 it.

8 Q Now when you had left there thirty minutes
9 before how were the dvd's then?

10 A They were all put up.

11 Q What did that indicate to you?

12 A That someone had been in our house.

13 Q Okay, was anything taken?

14 A Yes, sir, a lot of our dvd's, a big bottle
15 of vodka, and some beer.

16 Q Okay, and what did you do next?

17 A I ran out the back door with my daughter
18 and told my mom that someone had been in our house.

19 Q Did you yourself call the police?

20 A No, my mother did.

21 Q Okay, I want to show you what's been marked
22 as State's Exhibits 1, 2, 3, 4, and 5 and ask do you
23 recognize these?

24 Mr. Chrisco: Your Honor, may I see those?

25 The Court: All right.

Ms. Hood - Cross Examination by Mr. Chrisco

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1 Mr. Chrisco: No objection, Your Honor.

2 Mr. DeBusk: (Continuing)

3 Q Once again State's Exhibits 1 through 5 I'm
4 going to ask you if you recognize these?

5 A Yes, sir.

6 Q What are they?

7 A They are dvd's and the vodka and the pillow
8 case of my daughter that was took from the home.

9 Q Do you recognize those, how do you tell
10 those are your dvd's and not some other dvd's?

11 A On our dvd's on the back near the bar code
12 we take a permanent marker and we would put our initials or
13 either our names, that way we can know cause people borrow
14 our movies so --

15 Q So did you recognize those by their
16 initials?

17 A Yes, sir.

18 Q Okay, how about the pillow case; do you
19 recognize that?

20 A Yes, sir.

21 Q Where did that come from?

22 A It was my young'in, it come off my
23 young'in's pillow, it was her first pillow case, her first
24 pillow.

25 Q Okay, where was that located last time you

Ms. Hood - Cross Examination by Mr. Chrisco

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1 seen it?

2 A It was on the couch in the living room.

3 Q Okay, where were those dvd's located the
4 last time you seen them?

5 A In the living room against the wall going
6 into the hallway in a case.

7 Q Okay, did you ever recover any of those
8 items?

9 A We got some of the dvd's back and the
10 vodka.

11 Mr. DeBusk: Thank you, please answer any
12 questions the defense might have. Your Honor, at this time
13 the State would move State's Exhibits 1, 2, 3, 4, and 5
14 into evidence.

15 The Court: Any objection?

16 Mr. Chrisco: No, Your Honor.

17 The Court: All right, State's Exhibits 1, 2, 3,
18 4, and 5 are admitted into evidence without objection.

19 (Whereupon, State's Exhibits Numbers 1, 2, 3, 4,
20 and 5 entered into evidence.)

21 Cross Examination

22 By Mr. Chrisco:

23 Q Good morning.

24 A Good morning.

25 Q Did you see anyone in the house?

Ms. Hood - Cross Examination by Mr. Chrisco

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1 A No, sir.

2 Q Did, was a lot of stuff disturbed in the
3 house?

4 A Not really, it was just little odd and end
5 things like cause me and my sister had been cleaning up and
6 I had a bag of trash that was in my room and all of a
7 sudden it was in the hallway knocked over and then there
8 was a pile of dvd's in the hallway and it was like an art
9 thing that my sister had with her crafts in it, it was
10 knocked over. My medicine had been gone through and bags
11 in my mother's room were not where she had put them.

12 Q Things had been moved around?

13 A Yes, sir.

14 Q Was, you mentioned that some vodka and beer
15 was taken?

16 A Yes, sir.

17 Q Was all the vodka and beer taken?

18 A The whole thing of vodka was, I know some
19 beer, my mom said that some beer was gone.

20 Q Not all of it?

21 A No.

22 Q So you saw no one in the house?

23 A No, sir.

24 Mr. Chrisco: Thank you.

25 The Court: Anything on redirect?

Ms. Hood - Cross Examination by Mr. Chrisco

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1 Mr. DeBusk: No, Your Honor.

2 The Court: All right, you may step down. All
3 right, let me see the attorneys for a second.

4 (Whereupon, a bench conference was held off the
5 record in the presence of the jury, but out of the hearing
6 of the jury and the court reporter.)

7 The Court: All right, ladies and gentlemen,
8 we're just doing some scheduling. It's 12:30 so it's a
9 good time according to the attorneys for us to go ahead and
10 break for lunch so I'm going to go ahead and excuse you to
11 go to lunch on your own at this point in time. If you'd
12 please, be back in the jury room at let's say 2:00, that
13 will give you an hour and a half to eat lunch and to get
14 back and we'll try to get started right at 2:00.

15 Please do not conduct any independent
16 investigations into this case; do not discuss the case even
17 among yourselves at this point time. It's too early for
18 deliberations; I'll let you know when you can begin your
19 deliberations. I hope everyone has a good lunch and,
20 please, be back in the jury room at 2:00, thank you very
21 much. Everyone else, please, remain seated while the jury
22 is excused.

23 (Whereupon, the jury was excused for lunch at
24 12:30 p.m.)

25 The Court: All right, anything from the State

Ms. Hood - Cross Examination by Mr. Chrisco

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1 before we break for lunch?

2 Mr. DeBusk: Briefly, Your Honor, I will make
3 the redactions we talked about on these documents from
4 North Carolina at lunch time.

5 The Court: Okay.

6 Mr. DeBusk: But there are certified copies,
7 Your Honor, certified true copies, and the redactions will
8 be a xerox of that; will that still be admissible under the
9 rule for documents under seal?

10 The Court: Any objection, well let's do it this
11 way, go ahead and let you think about it because ---

12 Mr. Chrisco: Your Honor, this is my opinion the
13 redaction is needed for the jury.

14 The Court: That's right.

15 Mr. Chrisco: At the end of the State's case
16 then they can put in the certified copies of it but as far
17 as the ones that go back to the jury in the jury room they
18 have to be the redacted copies, Your Honor.

19 The Court: Okay, so what I'm going to do is go
20 ahead and redact your certified copies, make a copy of that
21 and then when we come back I'm going to let you decide
22 whether or not to send back the original certified copies
23 with the redaction on it or the copies of that, okay, and
24 we'll have it that way.

25 Mr. DeBusk: Either way, Your Honor, I will

Ms. Hood - Cross Examination by Mr. Chrisco

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1 provide a certified copy as a Court's exhibit.

2 The Court: Okay, sounds good.

3 Mr. DeBusk: Thank you, Your Honor.

4 The Court: All right, yeah, matter of fact
5 let's see, yeah, that might be the thing to do, okay. How
6 many certified copies do you have?

7 Mr. DeBusk: I have many, Your Honor, but I
8 don't think I would be putting them all in. I'll trim it
9 down as much as I can to maintain the --

10 The Court: Okay, all right, so you'll put one
11 in as a Court's Exhibit and then you will redact one to go
12 to the jury?

13 Mr. DeBusk: Yes, Your Honor.

14 The Court: Okay.

15 Mr. DeBusk: That's what I'm going to try to do.

16 The Court: And then we'll take a look, and then
17 make a copy of the one that you're to send to the jury and
18 I'll let you decide whether or not you need the certified
19 copy or whether or not you'll agree with the copy of the
20 certified copy, okay.

21 Mr. Chrisco: Yes, Your Honor.

22 The Court: Okay, sounds good, all right, let's
23 take a break, the jury is coming back at 2. Let's try to
24 get back about five or ten minutes before that in case we
25 have something come up, okay.

Ms. Hood - Cross Examination by Mr. Chrisco

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1 Mr. DeBusk: Yes, Your Honor.

2 The Court: All right.

3 (Whereupon, court was recessed for lunch and the
4 following takes place on the record after the lunch break.)

5 The Court: Anything from the State before we
6 bring the jury in?

7 Mr. DeBusk: Yes, Your Honor, after our previous
8 discussions I've prepared a redacted version and the
9 original certified version of the documents from North
10 Carolina retracting the prior convictions. I'll submit
11 them to the Court for consideration at this time.

12 The Court: All right; let me see. Mr. Chrisco,
13 come on up and let's take a look at these.

14 Mr. Chrisco: I've looked at them, Your Honor, I
15 don't think they've been doctored up much.

16 The Court: Okay, so this is the original?

17 Mr. DeBusk: Yes, Your Honor.

18 The Court: All right, so let's go ahead and
19 make this as Court's Exhibit, what would that be, 2?

20 Mr. DeBusk: It comes in two parts, Your Honor.

21 The Court: Okay, where they have the full
22 person.

23 Mr. DeBusk: We have 2 and 3.

24 The Court: All right, so that will be Court's
25 Exhibit 2 and Court's Exhibit 3.

Ms. Hood - Cross Examination by Mr. Chrisco

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1 Mr. DeBusk: And those are again the originals,
2 sealed versions from North Carolina.

3 The Court: Okay, and this is where we want to
4 to use as, all right, well let's go --

5 Mr. Chrisco: Your Honor, for the ones that's
6 going to the jury I'm going to staple each packet together.

7 The Court: Yeah, that will be good. Do we want
8 to go ahead and premark those?

9 Mr. DeBusk: Yes, Your Honor.

10 The Court: Or do we want to go ahead and put
11 them in now, how do we want to do it?

12 Mr. DeBusk: I'll go ahead and premark them and
13 we'll do it before the jury if that's acceptable, Your
14 Honor.

15 The Court: Any objection?

16 Mr. Chrisco: I just want to say, Your Honor,
17 they, they, they, the Solicitor did a good job in making
18 sure that they didn't stand out like a sore thumb.

19 The Court: All right, good.

20 Mr. DeBusk: I've also redacted the back of the
21 first page.

22 The Court: Okay, that's good.

23 Mr. Chrisco: Your Honor, if I could just have
24 just a second to explain.

25 The Court: All right, that will be good, that

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1 will be good.

2 (Whereupon, Court's Exhibits Numbers 2 and 3
3 marked for identification.)

4 (Whereupon, State's Exhibits Numbers 10 and 11
5 marked for identification.)

6 The Court: Anything from the State before we
7 bring the jury in?

8 Mr. DeBusk: No, Your Honor, thank you.

9 The Court: Anything from the defense?

10 Mr. Chrisco: No, Your Honor.

11 The Court: All right, let's bring the jury in.

12 (Whereupon, the jury returns to the courtroom at
13 12:16 p.m.)

14 The Court: All right, ladies and gentlemen,
15 welcome back, I hope everyone had a good lunch. We're now
16 ready to resume the trial of this case. I'll remind you if
17 you have any cell phones or pager devices or other
18 communication devices if you'd, please, turn those off at
19 this time.

20 All right, Mr. DeBusk, you can call your next
21 witness.

22 Mr. DeBusk: Thank you, Your Honor, at this time
23 the State would offer as evidence State's Exhibits 10 and
24 11 pursuant to rules of evidence 803-22-9021 and 9024 as
25 certified true copies of prior convictions of the defendant

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1 John Elvis Bostic from September 4th, 1985, for one count
2 of felony breaking and entering in Columbus County, North
3 Carolina, and from November 4th, 1994, for one count of
4 breaking and entering felony in Columbus County, North
5 Carolina.

6 The Court: All right, any objection by the
7 defense?

8 Mr. Chriscó: No, Your Honor.

9 The Court: All right, State's Exhibit Number 10
10 and State's Exhibit Number 11 is introduced into evidence
11 without objection.

12 Mr. DeBusk: Thank you, Your Honor.

13 (Whereupon, State's Exhibits Numbers 10 and 11
14 entered into evidence.)

15 Mr. DeBusk: Your Honor, the State calls Catina
16 Hood.

17 Catina Hood

18 being first duly sworn, testified as follows:

19 Madam Clerk: Please state your full name and
20 spell your last name.

21 The Witness: Catina Hood, h-o-o-d.

22 Direct Examination

23 By Mr. DeBusk:

24 Q Ms. Hood, where do you live?

25 A Dillon.

Ms. Hood - Direct Examination by Mr. DeBusk

76

1 Q And in February 25th of 2010 where did you
2 live?

3 A Highway 76 Nichols in Horry County.

4 Q And who lived there with you?

5 A Me, my two daughters and my granddaughter.

6 Q Is Priscilla Hood one of your daughters?

7 A Yes.

8 Q Okay, tell me about the evening of February
9 25th, 2010, were you at your house?

10 A No, sir, I had been working and I had
11 called my girls to come and meet me over at my sister's
12 house so we could get the kennel. I'd already had the
13 kennel knocked down by the time they got there.

14 Q Is that like a kennel for a dog?

15 A It's for the dogs, and my oldest daughter
16 Ashley's ex-fiance was helping us, so as soon as they got
17 there we loaded them up on the back of the truck, left, and
18 went back to the house.

19 Q What did you see along the way to the
20 house?

21 A Do what now?

22 Q Did you see anything along the way as you
23 were heading back to the house?

24 A I seen two gentlemen walking as we were
25 going to the house.

Ms. Hood - Direct Examination by Mr. DeBusk

77

1 Q Before we get too far I want to show you
2 what's been marked as State's Exhibit 9 and ask if you
3 recognize this?

4 A Yes, sir.

5 Q What is that?

6 A It's Highway 9 and 76 and over towards the
7 end is where I live.

8 Q And is that a fair and accurate
9 representation of that area?

10 A Yes, sir.

11 Q And you lived there for long are you
12 familiar with that area?

13 A Yes, sir.

14 Mr. DeBusk: Your Honor, we'd move this into
15 evidence.

16 The Court: Is that State's Exhibit --

17 Mr. DeBusk: Excuse me, Your Honor, 9.

18 The Court: Any objection?

19 Mr. Chrisco: No, Your Honor.

20 The Court: All right, State's Exhibit Number 9
21 admitted into evidence without objection.

22 (Whereupon, State's Exhibit Number 9 entered into
23 evidence.)

24 Mr. DeBusk: May I publish to the jury, Your
25 Honor?

Ms. Hood - Direct Examination by Mr. DeBusk

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1 The Court: All right.

2 Mr. DeBusk: Your Honor, may I ask the witness
3 to come down and indicate to the jury where on that her
4 house?

5 The Court: All right, she'll need to be near a
6 microphone so the court reporter can pick her up; it's best
7 to put her where you're standing now and have her speak
8 back towards the court reporter.

9 Mr. DeBusk: (Continuing)

10 Q Ms. Hood, where was your house?

11 A Let's see, we got Pleasant Hill, we're
12 right over here.

13 Q I'm going to ask you to put a arrow at the
14 location indicating where your house is?

15 A It's right there.

16 Q Now you said you just testified you saw two
17 individuals walking, did you pay any particular attention
18 to them?

19 A No, sir, cause I was more paying attention
20 to the truck in front of me to make sure the kennels didn't
21 fall off the panels and I just, I glanced them, I didn't
22 really pay them too much attention.

23 Q Do you remember where you saw them?

24 A Around, let me get my road, this is Sam
25 Plant, it was up around in this area here.

Ms. Hood - Direct Examination by Mr. DeBusk

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1 Q Let me ask you to put an arrow up in the
2 rough area where you saw them?

3 A Okay, right around in this, between these
4 two roads.

5 Q Okay, now you can return to the stand, if
6 you'd like. Thank you. Now did you return to your house?

7 A Yes, sir.

8 Q About what time do you think you got there?

9 A I'd say somewhere between 5, 5:30, I mean
10 it was starting to get a little bit dusk dark.

11 Q What did you find when you got there?

12 A Me, my oldest daughter Ashley and her ex-
13 fiance we were putting up the panels, my baby girl
14 Priscilla is the one ---

15 Q The panels is that part of the kennel?

16 A Yes, sir.

17 Q Okay, thank you?

18 A And Priscilla and my granddaughter is the
19 one that walked in. Soon as she walked in she come running
20 back out and said that someone had been in the home, that's
21 when I ran in and seen that someone had been into the
22 house.

23 Q What did you do?

24 A After I seen where the dvd's was all of
25 them was gone I went ahead and called the police.

Ms. Hood - Direct Examination by Mr. DeBusk

80

1 Q Okay, what happened next?

2 A I called them, they were sending someone
3 out and I can't remember if it was Shawn or Phillip had
4 mentioned something about, you know ---

5 Mr. Chrisco: Objection, Your Honor:

6 Mr. DeBusk: (Continuing)

7 Q Don't tell us what somebody else said, tell
8 us what you did? :

9 A I got it, well we ---

10 The Court: Sustained.

11 A --- me and Shawn left to see if we could
12 find the two gentlemen to see if they might have seen
13 something.

14 Q Let me back you up just a moment, did you
15 ultimately determine what was missing from your house?

16 A The only thing I really paid attention to
17 was the dvd's and that we went into the kitchen cause
18 that's where a jewelry box was cause we hadn't yet put it
19 in the bedroom, and ---

20 Q Why was your jewelry box not in the
21 bedroom?

22 A Cause we were in the process of moving in.

23 Q Thank you?

24 A And unpacking and everything so I just sort
25 of scanned real quick, didn't go into a lot of looking. I

Ms. Hood - Direct Examination by Mr. DeBusk

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1 asked Priscilla because Ashley had got hurt so we put
2 Ashley on the couch --

3 Q She got hurt as part of this burglary or --

4 A No, sir, what happened was when we were
5 putting up the panels the kennels when Priscilla came out
6 and hollered that someone had been in there we thought my
7 oldest daughter had enough time to move cause we were just
8 going to throw the panels down and because of her health
9 problems she weren't fast enough ---

10 Q Okay --

11 A -- and that's when we went in so Ashley
12 stayed on the couch. I asked Priscilla if she would go
13 through the house because they had been there all day, they
14 knew where they had put certain things, since I had been at
15 work, and I asked Shawn to ride with me to, you know, ride
16 down the road.

17 Q What was your property that you were
18 certain had been taken?

19 A At the time just the dvd's.

20 Q Did you go back later and figure out what
21 else?

22 A Yes, sir.

23 Q What else did you find out later?

24 A There was a bottle of liquor, big bottle of
25 liquor vodka that had been taken and dvd's and there was

Ms. Hood - Direct Examination by Mr. DeBusk

82

1 probably about five or six Bud Lights taken out the
2 refrigerator.

3 Q You said Bud Light, you mean beer in a can?

4 A Yes, sir, beer in a can.

5 Q Let me show you State's Exhibits 1 through
6 5 and ask if you recognize these?

7 A Okay.

8 Q These are in evidence?

9 A Yes, sir.

10 Q What are those?

11 A A bottle of vodka, dvd's that was taken
12 from my home.

13 Q How are you able to identify those dvd's?

14 A Because on the back of them we always put
15 our initials, that way if anyone borrows them we know or if
16 I know which ones are mine and which ones are my children.

17 Q Okay, let's go back to where you were
18 before I interrupted you?

19 A Okay.

20 Q You had just called the police, what did
21 you do next?

22 A Me and Shawn loaded up and we were going to
23 ride down the road see if we seen the gentlemen, see if
24 they might have seen something.

25 Q What did you expect to get from them?

Ms. Hood - Direct Examination by Mr. DeBusk

83

1 A I really I don't know, I was just, I knew
2 that they had come walking from towards where my mobile
3 home is and didn't really register to me because I didn't
4 really pay attention to if they had anything in their hands
5 or anything.

6 Q So the direction they were walking the road
7 indicated to you they had come from that area?

8 A Yes, sir.

9 Q Okay, did you find them?

10 A The first time we had rode down towards
11 where 9 and 76 divide, no, sir, so I made a circle real
12 quick and I decided to go back down 76 toward Number 9 and
13 76 towards Marion County and that's when I spotted them the
14 second time..

15 Q I'm going to ask you to come back to the
16 exhibit here and show the jury where you found them, if you
17 would?

18 A (The witness complies.) Got 9 this way and
19 76 this way, it was right here at this field.

20 Q Okay, put an arrow at that location?

21 A Around this area here.

22 Q Okay, thank you, you can return to the
23 stand.

24 A Okay.

25 Q About how long was it from the first you

Ms. Hoqd - Direct Examination by Mr. DeBusk

84

1 saw them riding by and when you found them again?

2 A I would say probably ten, about ten,
3 fifteen minutes, give or take.

4 Q Okay, what happened?

5 A I pulled up in front of them and I had got
6 out, Shawn hadn't gotten out yet because we still had one
7 of my dogs in the vehicle, and I got out and when I went to
8 speak to them I asked them, I said had ya'll seen anyone?
9 I said I've been broken into and before I could ever finish
10 it one of the gentlemen spoke up and started walking
11 towards me slowly talking about, ma'am, this is my bag.

12 Q Had you mentioned the bag at that point?

13 A No, sir, I had not.

14 Q Okay, what happened next?

15 A And that's when I noticed that that's the
16 bag I had unpacked probably about 12:00 that night before.

17 Q So you had seen that bag very recently?

18 A Yes, sir.

19 Q And you recognized that as what he was
20 carrying, how, how was the lighting there at that, that
21 point?

22 A It was not completely dark yet so there was
23 enough light that you could see what was going on and, you
24 know, who it was.

25 Q Okay, were you able to see his features?

Ms. Hood - Direct Examination by Mr. DeBusk

85

1 A Yes, sir.

2 Q Okay, were you able to see the details of
3 the bag?

4 A Yes, sir.

5 Q Okay, what happened next?

6 A I told him, I said, no, I said that's my
7 bag cause I just unpacked it cause I hadn't been too long
8 bought it, and he just kept on saying that, ma'am, this
9 ain't your bag, and it's like I told him, I said, you know,
10 I said, do whatever I said, the cops can figure it out.

11 Q And what did he say to you?

12 A And I was still had not got back into my
13 vehicle yet when I called dispatcher and I told them, I
14 said, there's no sense in sending one, no one down there, I
15 said because, I said I'm looking at the guys that's been in
16 my home, I said, cause they've got my bag.

17 Q Now you said there were two individuals
18 there; is that right?

19 A Yes, sir.

20 Q And which, the individual that approached
21 you was holding the bag, what about the other one was he
22 holding anything?

23 A He was holding a pillow case and I noticed
24 it as cause my granddaughter is the only one that's got a
25 white pillow case, so that's how I recognized of it being

Ms. Hood - Direct Examination by Mr. DeBusk

86

1 my granddaughter's pillow case.

2 Q Okay, did there come a time when you found
3 out what was in that pillow case?

4 A Yes, sir.

5 Q What was it?

6 A While I was on the phone still with
7 dispatcher I had got back into my vehicle and they had
8 walked past my vehicle and gotten sort of about probably,
9 distance from here to where the thing right there is, and
10 they jumped across the ditch and one of the gentlemen
11 dropped the, the pillow case.

12 Q Okay, who retrieved it?

13 A The officers.

14 Q Okay, what was in it?

15 A A bottle of vodka and the dvd's.

16 Q Call your attention specifically to State's
17 Exhibit 1 and ask you what that is?

18 A It's my granddaughter's pillow case, the
19 vodka and some of the dvd's.

20 Q And again you saw one of those individuals
21 drop that pillow case with the dvd's in it?

22 A Yes, sir, I did.

23 Mr. DeBusk: Your Honor, may I publish these to
24 the jury?

25 The Court: All right, any objection?

Ms. Hood - Direct Examination by Mr. DeBusk

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1 Mr. Chrisco: No objection, Your Honor.

2 The Court: All right, you may go ahead.

3 Mr. DeBusk: (Continuing)

4 Q Now what happened after they jumped the
5 ditch?

6 A I didn't see them no more till officer, I
7 don't remember which officer, come up and I showed them the
8 general area of the way they ran:

9 Q Did they run?

10 A Yes, sir.

11 Q Okay, they didn't walk off but they ran?

12 A They walked past my vehicle then that's
13 when they, as soon as they jumped they were gone.

14 Q Okay, did there come a time when you saw
15 those two individuals again?

16 A Yes, sir.

17 Q Under what circumstances?

18 A I stayed where I had confronted them, an
19 officer said that they had caught two guys if I could go
20 with them to identify them.

21 Q Did you?

22 A Yes, sir, I did.

23 Q How long after you had seen, talked to them
24 on the road side was that?

25 A Probably anywhere between two to three

Ms. Hood - Cross Examination by Mr. Chrisco

88

1 hours, somewhere up in that area.

2 Q Okay, where was it?

3 A Just on the other side of the woods sort of
4 in a little swampy area.

5 Q Okay, how did you see them, how were they
6 shown to you?

7 A I was in the back of the police car and
8 they pulled up and they threw the spot light on them, they
9 told me, you know, if those were the ones and I looked, and
10 they told me to look real good, you know, was the two that
11 I confronted.

12 Q Okay, were you certain of that?

13 A Yes, sir.

14 Q Do you see either of those individuals in
15 the courtroom today?

16 A Yes, sir.

17 Q Who is that?

18 A The gentleman over at the table.

19 Q Okay, you said that at the road side there
20 was an individual you talked to, an individual that you did
21 not talk to?

22 A Yes, sir.

23 Q Which one was the defendant?

24 A The defendant is the one that spoke to me.

25 Q Okay, so the one that was carrying the bag

Ms. Hood - Cross Examination by Mr. Chrisco

89

1 you recognized?

2 A He's the one who had the duffel bag.

3 Q Did the other individual say anything?

4 A No, sir, he mumbled but never nothing that
5 I could understand or nothing like that, he stayed back.

6 Q Now before February 25th, 2010, did you
7 know the defendant?

8 A No, sir.

9 Q Had you ever met the defendant before?

10 A No, sir.

11 Q How about the other individual that was
12 with him?

13 A No, sir.

14 Q Okay, had you ever given either of them
15 permission to enter your home and take any of your
16 property?

17 A No, sir.

18 Mr. DeBusk: Please answer any questions the
19 defense might have.

20 A Okay.

21 Cross Examination

22 By Mr. Chrisco:

23 Q You got home from your sister's house about
24 what time?

25 A Somewhere between I'd say probably somewhere

Ms. Hood - Cross Examination by Mr. Chrisco

90

1 around 5:30, give or take somewhere, it wasn't completely
2 dark yet. It was just starting to get dusk dark.

3 Q That's when you got home?

4 A Yes, sir.

5 Q So it was fairly light outside when you got
6 home?

7 A Yes, sir.

8 Q Daylight?

9 A The sun hadn't went completely down but
10 enough light to be able to put up a dog kennel and be able
11 to see.

12 Q Then about fifteen or twenty minutes later
13 is when you saw the two individuals beside the road?

14 A Yes, sir, somewhere up around.

15 Q A lot darker then?

16 A Sir?

17 Q Was it darker then?

18 A It was a little bit darker but still, you
19 know, enough light that you could see.

20 Q Did you go in the house?

21 A I walked in the house. I seen what my
22 daughter was speaking of and when I was walking back out I
23 was on the phone with 911.

24 Q Besides your daughters and your ex --

25 A My oldest daughter's ex-fiance.

Ms. Hood - Cross Examination by Mr. Chrisco

91

1 Q Anybody else in the house?

2 A No, sir.

3 Q So you saw no one else in the house?

4 A No, sir.

5 Q You seen no one else on the property?

6 A No, sir.

7 Q Now you said that after you had talked with

8 the two individuals beside the road they had left and went

9 in the woods and the next time you saw them was two to

10 three hours later?

11 A Yes, sir, somewhere up around there.

12 Q And I believe your testimony was it was the

13 two individuals had crossed the woods in some fashion; is

14 that correct?

15 A Yes, sir.

16 Q Can you show where?

17 A Yes, sir, they were found or when I, they

18 asked me to identify them they were up somewhere up around

19 in this area.

20 Q They were here?

21 A Yes, sir, somewhere up around in here.

22 Q So where did you go in the police car?

23 A Sir?

24 Q You said you went up there in the police

25 car?

Ms. Hood - Cross Examination by Mr. Chrisco

92

1 A Yes, sir, I had still stayed up around in
2 this area where I confronted the two gentlemen and I stayed
3 there because I had Shawn to take my vehicle and go back to
4 my house so the girls wouldn't be by theirself so I stayed
5 down there and then when they were got them asked me to
6 identify it was up around, somewhere up in around this
7 area.

8 Q So did you ride up there in the police car?

9 A Yes, sir.

10 Q Were you in the front seat or the back
11 seat?

12 A I was in the back seat.

13 Q Is there, you can take your seat, is there
14 a cage or something that divides the front seat and the
15 back seat?

16 A I, not a hundred percent, I believe there
17 was like a shield.

18 Q Like a plastic shield?

19 A Yes, sir.

20 Q Did you look outside the side window, back
21 window, front window, what window did you look out of the
22 vehicle?

23 A Front windshield.

24 Q So between you and them were a plastic
25 shield, a windshield and it was, was it, was it dark at

Ms. Hood - Cross Examination by Mr. Chrisco

93

1 that time?

2 A Yes, sir, it was.

3 Q And how far away were the individuals from
4 you?

5 A Probably from me to the table there.

6 Q From where?

7 A From about from where I am to about where
8 Mr., where he's sitting.

9 Q Mr. DeBusk?

10 A Yes, sir.

11 Q What were the lighting conditions?

12 A The headlights were on and the officer that
13 took me he also turned on his spot light?

14 Q And were they the same individuals?

15 A Yes, sir.

16 Q Did you see the individuals again after
17 that night?

18 A When we went up there to Green Sea when we
19 were leaving out they were bringing in one of the
20 gentlemen, I guess to talk to them or whatever, when I had
21 to identify the stolen stuff that was recovered but after
22 that, no, sir.

23 Q Hadn't seen them again since then?

24 A No, sir.

25 Q So didn't you see one this morning?

Ms. Hood - Cross Examination by Mr. Chrisco

94

1 A Well, yes, sir, the other, yes, sir.

2 Q And what was he doing when you saw him this
3 morning?

4 A He was over at that table.

5 Mr. DeBusk: Your Honor, I think I'm going to
6 object to that question, relevancy.

7 The Court: Overruled, I'll allow it.

8 Mr. Chrisco: (Continuing)

9 Q What was he doing?

10 A He was over with the other public defender.

11 Q Was he pleading guilty?

12 A Yes, sir.

13 Q Did he plead guilty to burglary first
14 degree?

15 A I'm not a hundred percent sure because I, I
16 tried not to even look his way and at the time that's when
17 I had started coughing and I had got a cough drop so I
18 really --

19 Q You attended a bond hearing in this matter,
20 didn't you, right after they were arrested some twenty
21 months ago; did you not?

22 A I was notified but I was not able to make
23 it.

24 Q You were informed and learned that they
25 were charged with burglary in the first degree?

Ms. Hood - Cross Examination by Mr. Chrisco

95

1 A Yes, sir.

2 Q And that it happened in the night time; is
3 that correct?

4 A I wouldn't necessarily call it night; I
5 mean it was still daylight but it was not, it was not dark
6 when they went into my mobile home.

7 Q Would you be surprised to learn that the
8 warrants for each individual were burglary in the first
9 degree stating they it happened within the night time?

10 A When it comes to that I honestly I don't
11 know; I don't know about the law and stuff.

12 Q You heard the Court this morning sentence
13 that person to 5 years, didn't you?

14 A Yes, sir.

15 Q For burglary second non violent; did you
16 not?

17 A Yes, sir.

18 Q Did you tell the officer detective and
19 whomever that it was at dark?

20 A I told, like I'm saying now it was not
21 daylight and it was not completely dark; it was dusk dark,
22 by law I don't know what ya'll -

23 Q Would you call it the night time?

24 A --- entitle it.

25 Q Would you call it the night time?

Ms. Hood - Cross Examination by Mr. Chrisco

96

1 A I've always referred it as dusk dark, I
2 mean I'm sorry telling you how I refer it.

3 Q You testified earlier that they had been
4 that's the stuff that they had taken from my house?

5 A The other defendant is the one that was
6 carrying that bag; I watched him drop it. I watched what
7 come out of there and that is what come out of my home.

8 Q But you said earlier that they took that
9 stuff out of your house; did you not?

10 A Yes, sir.

11 Q Did you ever see them in your house?

12 A No, sir.

13 Q You saw the stuff that was yours but you
14 didn't see who took it out of your house, did you?

15 A No, sir, I just know they were in
16 possession of my stuff.

17 Mr. Chrisco: The Court's indulgence?

18 The Court: All right.

19 Mr. Chrisco: (Continuing)

20 Q You said some Bud Light, the Solicitor said
21 cans and beer were taken?

22 A Bud Light in the can.

23 Q Were taken out of your refrigerator?

24 A Yes, sir.

25 Q Was there beer left in the refrigerator?

Ms. Hood - Redirect Examination by Mr. DeBusk

97

1 A Yes, sir, I had bought an eighteen-pack,
2 hadn't even drank none of them and there was six taken out
3 of there.

4 Mr. Chrisco: No further questions.

5 The Court: Redirect?

6 Mr. DeBusk: Yes, briefly, Your Honor.

7 Redirect Examination

8 By Mr. DeBusk:

9 Q Ms. Hood, is there any doubt in your mind
10 that you saw the defendant John Bostic carrying a bag that
11 was taken out of your house on the night of February 25th,
12 2010?

13 A I'm a hundred percent sure he's the one
14 that had possession of my bag.

15 Q And then how long was it after you got
16 home; you testified about fifteen minutes?

17 A Yes, sir.

18 Q Okay, Mr. Chrisco had you come up here and
19 show where it was that you viewed the defendants?

20 A Yes, sir.

21 Q And you indicated to the jury, could you
22 put in an arrow there, please?

23 A Where I I.D. them?

24 Q Yes?

25 A Up around in this area.

Officer Duncan - Cross Examination by Mr. Chrisco 98

1 Q Okay, thank you --

2 Mr. DeBusk: The Court's indulgence one moment?

3 The Court: All right.

4 Mr. DeBusk: No further questions, Your Honor.

5 The Court: All right, you may step down.

6 Mr. DeBusk: Your Honor, at this time we'd ask
7 that Ms. Hood, Catina Hood and Priscilla Hood be released
8 from their subpoenas. If they want to stay around I'm not
9 sure but I'd ask for them to be released.

10 The Court: Any objection?

11 Mr. Chrisco: No objection, Your Honor.

12 The Court: All right, they're free to go if
13 they wish to. All right, the State can call its next
14 witness.

15 Mr. DeBusk: The State calls Randall Duncan,
16 Your Honor.

17 The Court: All right.

18 Officer Randall Duncan
19 being first duly sworn, testified as follows:

20 Madam Clerk: Please state your full name and
21 spell your last name.

22 The Witness: Randall Will Duncan, d-u-n-c-a-n.

23 Direct Examination

24 By Mr. DeBusk:

25 Q Officer Duncan, who's your employer?

Officer Duncan - Cross Examination by Mr. Chrisco

99

1 A Sir?

2 Q Who is your employer?

3 A Horry County Police Department.

4 Q What are your duties?

5 A I'm a patrolman.

6 Q How about in February of 2010?

7 A I was a patrolman.

8 Q Okay, on the, how about in the early
9 evening of February 25th, 2010, were you on duty?

10 A Yes, sir.

11 Q Did you respond to the area of Highway 76
12 that night?

13 A I did.

14 Q Where did you go?

15 A Highway 76 it was in between, it was close
16 to where Highway 76 and Highway 9 meet, in between an old
17 store called Cooks Grocery there's an old stock yard in
18 between those two places.

19 Q And what did you do?

20 A I met with the victim in the case.

21 Q What, what did, after discussing with her
22 what did you do next?

23 A We located the pillow case in the ditch, my
24 Corporal Cole Hardee showed up, and we notified for the
25 canine to come out, made a track, waited on them, and when

Officer Duncan - Cross Examination by Mr. Chrisco

100

1 they showed up I went with them.

2 Q Where did you go?

3 A Through the woods over to, we left from
4 where we found the pillow case went through the woods,
5 paralleled Highway 76, turned away from it, went back in
6 the woods a bit behind the pond where we found --

7 Q Where were you going?

8 A Where the dogs were taking us they were
9 tracking.

10 Q Tell us about the dogs?

11 A They, they, they brought the dogs out and
12 put them down on the pillow case we found in the ditch.
13 They picked up a scent, went towards the woods following
14 footprints that led away. They just pretty much tracked
15 all the way down to where we found the two suspects we
16 arrested in the woods.

17 Q Is one of those suspects you arrested
18 present in the courtroom today?

19 A Yes, sir.

20 Q Okay, who is that?

21 A Sitting at the table over there, Mr.

22 Bostic.

23 Q Now who all was involved in this tracking?

24 A It, that went with the dog it was Patrolman
25 Grainger, Dwane Grainger, Sargent Craig Hutchinson, and

Officer Duncan - Cross Examination by Mr. Chrisco

101

1 myself.

2 Q Okay, and what did Cole Hardee do?

3 A He stayed roadside with the victim.

4 Q Did you have assistance from any other law
5 enforcement officers?

6 A Some officers from Marion County showed up,
7 I believe a Nichols police officer showed up to help with
8 the parameter.

9 Mr. DeBusk: Okay, thank you, please answer any
10 questions the defense might have.

11 The Court: Mr. Chrisco?

12 Mr. Chrisco: Thank you, Your Honor.

13 Cross Examination

14 By Mr. Chrisco:

15 Q What time did you show up?

16 A I'm not exactly sure, sir, it was, it was
17 dark, shortly after dark. If I could look at my report I
18 could tell you what time I've got on there.

19 Q Sure, go get it?

20 Mr. DeBusk: Your Honor, I have a copy, if he
21 can take this from me,

22 A I have on here that the incident occurred
23 between the hours of 6 p.m. and 7 p.m. on February 25th, so
24 it was sometime shortly after 6 p.m.

25 Q And did you take the initial report?

Officer Duncan - Cross Examination by Mr. Chrisco

102

1 A Yes, sir.

2 Q And when did the alleged burglary
3 supposedly take place?

4 A Sometime around 6 p.m., shortly before or
5 shortly after when we got the call.

6 Q If you had learned that it was somewhere
7 around 5:30, you have the, was it dark when you showed up?

8 A It was dark when I showed up, yes, sir.

9 Q It had just got dark?

10 A It had just gotten dark.

11 Q So the burglary had happened some thirty
12 minutes prior it would have been in the day time?

13 A Well it would have been right around dusk,
14 I would assume.

15 Q It would have been in the day time?

16 A If that's what dusk is, yes, sir.

17 Q Was it night time?

18 A Sir, I don't know exactly when the burglary
19 actually occurred; I know when we got the call and when I
20 responded out.

21 Q So if it would have been thirty minutes
22 prior would it have been in the night time?

23 A It would have been, it wasn't daylight but
24 it wasn't dark.

25 Q Would have been night time or daylight?

Corporal Hardee - Direct Examination by Mr. DeBusk 103

1 A If it was me I would have said it would
2 have been night time.

3 Mr. Chrisco: Okay, no further questions.

4 The Court: Redirect?

5 Mr. DeBusk: No, Your Honor, thank you, we'd ask
6 that the officer be released from the subpoena.

7 The Court: Any objection?

8 Mr. Chrisco: No objection, Your Honor.

9 The Court: All right, you're free to go, thank
10 you very much.

11 Mr. DeBusk: The State calls Cole Hardee.

12 Corporal Rodney Cole Hardee

13 being first duly sworn, testified as follows:

14 Madam Clerk: Please state your full name and
15 spell your last name.

16 The Witness: Rodney Cole Hardee, h-a-r-d-e-e.

17 Direct Examination

18 By Mr. DeBusk:

19 Q Officer Hardee, who's your employer?

20 A Horry County Police Department.

21 Q And what's your rank?

22 A Corporal.

23 Q How about back in February 2010?

24 A I was corporal.

25 Q Okay, how long have you been with the Horry

Corporal Hardee - Direct Examination by Mr. DeBusk

104

1 County Police Department?

2 A This is my fifteenth year.

3 Q Okay, on the evening of February 15th, I'm
4 sorry, February 25th, 2010, did you respond to the area of
5 Highway 76?

6 A I did.

7 Q What did you do when you got there?

8 A I met with the victim that stated her house
9 had been broken into.

10 Q Okay?

11 A And that she had made contact with them on
12 the side of the road.

13 Q Did you find any evidence in the area where
14 you contacted her?

15 A The victim pointed out a pillow case that
16 was down in the ditch had some dvd's in it.

17 Q Show you what's been marked as State's
18 Exhibit I and ask if you recognize?

19 A Yeah, that's it.

20 Q Okay, again where did you find that?

21 A It was in the ditch on the north side of
22 the road where we were at.

23 Q What did you do next?

24 A The victim pointed out the direction of
25 travel that the two suspects had entered in towards the

Corporal Hardee - Cross Examination by Mr. Chrisco 105

1 woods. I then called for Dwane Grainger with his canine
2 handler and also the supervisor for the canines, Craig
3 Hutchinson.

4 Q And what happened next?

5 A They responded and I briefed them on what
6 was going on and that's when they took over trailing the
7 suspects.

8 Q While they were doing that what did you do?

9 A I kind of stayed back a ways away from
10 them; they went on in the woods and I kind of kept around
11 in the wooded area around where we were at trying just in
12 case they may have went past something or along those
13 lines, didn't want nobody slip around in back of them.

14 Q Did you have contact with the victim again
15 that evening?

16 A I did.

17 Q What happened?

18 A Received a call that the canine had located
19 two individuals, I went back up and met with the victim, I
20 put her in the patrol car and we went to the location with
21 the individuals were found at.

22 Q What did she do?

23 A I turned on my spot light, shined it up to
24 the vehicle where the suspects were at and she identified
25 them as the two individuals that she met earlier on the

Corporal Hardee - Cross Examination by Mr. Chrisco 106

1 side of the road.

2 Q Thank you. The items in the exhibit that
3 you viewed what did you do with those?

4 A I took possession of them, put them in my ,
5 trunk and we went up to the west precinct with these items.

6 Q Who did you turn them over to?

7 A Detective that was on the case.

8 Mr. DeBusk: Thank you, please answer any
9 questions the defense might have.

10 Cross Examination

11 By Mr. Chrisco:

12 Q Who was that detective that was on the
13 case?

14 A That detective sitting right there.

15 Q This the detective?

16 A Yes, sir.

17 Q Didn't you go to the house to the trailer
18 that the --

19 A Yes, sir, later on.

20 Q And what was done there?

21 A Took some pictures of the house and the
22 disarray it was in and where it appeared that the suspects
23 may have pried open the door to get in the back door.

24 Q Did the people tell you that they were
25 moving into the house?

Corporal Hardee - Cross Examination by Mr. Chrisco

107

1 A I don't recall exact conversation.

2 Q If the house would have been somebody
3 moving into it it would have been in disarray to begin
4 with, wouldn't it, would it not?

5 A I wouldn't know how they, the fact I
6 wouldn't know.

7 Q Did you take fingerprints?

8 A I did not.

9 Q Take pictures of the pry marks?

10 A Yes, sir.

11 Q Take fingerprints from or did you observe
12 anybody taking fingerprints of anything?

13 A No, sir.

14 Q How long were you there on the scene?

15 A I don't recall actually how long I was on
16 the scene, it wasn't, wasn't too long.

17 Q How long was not too long?

18 A Thirty-five, forty-five, maybe fifty
19 minutes somewhere in there.

20 Q Did you see anybody taking fingerprints
21 while you were there?

22 A No, sir.

23 Q Anybody taking pictures besides you?

24 A I don't know if they did or not.

25 Q Any other activity going on as far as the

Corporal Hardee - Cross Examination by Mr. Chrisco 108

1 police was concerned?

2 A Crime scene investigator I believe was
3 called but I had to leave and I went to the west precinct
4 so what he done on scene I don't know.

5 Q What time did you arrive?

6 A Where at, the house or --

7 Q On the side of the road?

8 A I'm not sure, I'd have to check the
9 dispatch log or something along those lines.

10 Q It is very important so would you, please,
11 check?

12 Mr. DeBusk: Your Honor, I don't have dispatch
13 logs at this time; they're available from Horry County
14 Dispatch.

15 The Court: All right.

16 Mr. Chrisco: (Continuing)

17 Q Did you get a subpoena from the State
18 telling you to be here today?

19 A Yes, sir.

20 Q Told you what case it was in reference to?

21 A Yes, sir.

22 Q Did you look at your notes to refresh your
23 memory?

24 A I read over the ---

25 Q I know you're a busy man.

Corporal Hardee - Cross Examination by Mr. Chrisco

109

1 A Yes, sir.

2 Q Did you look at those notes?

3 A Looked over the report.

4 Q Do you know what time you got there?

5 A Not exactly, no, sir, my average response
6 time has been about fifteen minutes of receiving a call
7 shortly thereafter I should have arrived.

8 Q How far from where you first met the lady
9 to where, are you the one that took her to where they had
10 found the two individuals?

11 A Yes, I was.

12 Q What kind of car do you have?

13 A Crown Victoria.

14 Q Is that the, does it have the wire cage or
15 the plastic cage?

16 A We've got the plastic cage.

17 Q Is that that plexiglass stuff?

18 A Yes, sir.

19 Q Unbreakable?

20 A I don't know, I don't know the composition
21 of it and its strengths.

22 Q How far from that on the side of the road
23 when you met her to where they found the two individuals
24 was it?

25 A Less than a half mile.

Corporal Hardee - Cross Examination by Mr. Chrisco 110

1 Q Could you show us on the board here?

2 A Yes, sir, this is the area around the side
3 of the road and over here is the location that the
4 individuals was found at.

5 Q Is that wooded?

6 A Looks like a ponded area, wooded, swampy
7 area around here..

8 Q And you found them where in there?

9 A I didn't find them. I just pulled up to
10 the road here behind the vehicle they were at.

11 Q So how did you get in there?

12 A I drove on the road here and went in
13 through the driveway straight up.

14 Q And how far up the driveway did you go?

15 A About from here to here.

16 Q And how far away were the individuals from
17 where you are?

18 A The next car up.

19 Q They were standing in front of the next car
20 up?

21 A Right.

22 Q So you'd have to look through, the lady
23 would have to look through the plastic separator in the
24 car, the windshield and through another car, too?

25 A It's clear, it's clear plexiglass, it's

Corporal Hardee - Cross Examination by Mr. Chrisco

111

1 just as you look through a regular window.

2 Q Doesn't have a scratch with age thing on
3 it?

4 A No, I don't, I don't recall she was in the
5 back seat or the front seat at this time. She may have
6 been in the front seat, I'm not a hundred percent sure on
7 that part.

8 Q If she had been in the back seat it would
9 have been a little bit harder to see, would it not?

10 A No.

11 Q Have you ever sat in the back seat and
12 looked out?

13 A Yes, sir.

14 Q I hope you were just resting?

15 A We have to go to training every now and
16 then and have to get in the car.

17 Q So what time did you leave the home?

18 A Once again I'd have to check the dispatch
19 logs on what time I left the home.

20 Mr. Chrisco: The Court's indulgence?

21 The Court: All right.

22 Mr. Chrisco: (Continuing)

23 Q Did you collect any evidence?

24 A I got the pillow case.

25 Q What did you do with that?

Corporal Hardee - Cross Examination by Mr. Chrisco 112

1 A I carried it with me to west precinct.

2 Q How did you transport it?

3 A It was in my trunk.

4 Q Did you place it in a paper bag or did you
5 just put it in your trunk?

6 A The bag was wet, I think I took some
7 precautions to keep it from completely wetting everything I
8 had in my trunk.

9 Q Any other evidence that you turned over?

10 A Not that I recall.

11 Q Did you know who took some pictures?

12 A Yes, sir.

13 Q What did you do with those?

14 A I entered them into the RMS system we got
15 which is our reporting system, just downloaded it and
16 entered it into the computer.

17 Q Those were digital downloads?

18 A Yes, sir.

19 Q Now when you took the lady up there were
20 the two individuals together or were they apart?

21 A I'm not for sure, I mean Marion County's
22 vehicles were there with us so I'm not sure which, who was
23 where far as if they were together or separate in the cars.

24 Q I ask this again, were they inside the cars
25 or outside the cars?

Officer Grainger - Direct Examination by Mr. DeBusk 113

1 A The best of my recollection they were
2 inside and they were taken out of the car so she could make
3 an identification or not.

4 Q And they were not in the same car?

5 A I don't recall that part, I'm not sure. I
6 don't want to speculate and be wrong.

7 Mr. Chrisco: Thank you.

8 The Court: Redirect?

9 Mr. DeBusk: Nothing, Your Honor.

10 The Court: All right, you may step down, call
11 your next witness.

12 Mr. DeBusk: Call Dwane Grainger. Sorry, Your
13 Honor, I was going to ask that Corporal Hardee be released
14 from his subpoena.

15 The Court: Any objection?

16 Mr. Chrisco: No objection, Your Honor.

17 The Court: All right, he's free to go.

18 Officer Steven Dwane Grainger

19 being first duly sworn, testified as follows:

20 Madam Clerk: Please state your full name and
21 spell your last name.

22 The Witness: Steven Dwane Grainger, last name
23 spelled g-r-a-i-n-g-e-r.

24 Direct Examination

25 By Mr. DeBusk:

Officer Grainger - Direct Examination by Mr. DeBusk 114

1 Q Officer Grainger, who's your employer?

2 A Horry County Police Department.

3 A And what are your duties?

4 A I'm a canine handler with the special
5 operations division.

6 Q Okay, how about on February of 2010 were
7 your duties any different?

8 A No, sir, same, same job description.

9 Q On February 25th, 2010, on the early
10 evening hours did you respond to Highway 76?

11 A Yes, sir.

12 Q And what did you do when you got there?

13 A I ended up starting a canine track off of a
14 pillow case that was dropped by the ditch there and then
15 ended up tracking down through the woods there right off
16 the field into the wood line. We parcelled 76 and ended up
17 over by a pond where we ended up finding the two suspects.

18 Q What kind of, you say canine, you got a
19 dog?

20 A Yes, sir.

21 Q What kind of dog you got?

22 A It's a german shepherd.

23 Q Is he trained to track human scent?

24 A Yes, sir.

25 Q Okay, did he follow a scent?

Officer Grainger - Direct Examination by Mr. DeBusk 115

1 A Yes, sir, he did.

2 Q Was there any other indications of passage
3 of an individual?

4 A Yes, sir, while we were tracking through
5 the woods we came across one little area it was like an
6 access road in between a field and another wood line. Once
7 we went in there the dog followed, I was following the dog
8 through there, we ran across a shiny Bud Light, a brand new
9 Bud Light can which caught my eye out in the middle of a
10 field was ~~originally in the woods~~ I should say was kind of odd.

11 Q Was it empty or full?

12 A It was full.

13 Q Was it open?

14 A No, sir, and the officer noticed a bunch of
15 break which would be, you know, limbs and all of that where
16 somebody had just been through there looked like, you know,
17 maybe went through there quickly and broke a bunch of limbs
18 and all. We also found lots of track, once we got to the
19 soft ground around where the farm land was and the pond saw
20 a lot of shoe prints throughout there.

21 Q At the end of the track what did you find?

22 A I found the two suspects that were laying
23 inside, they were right in the edge of the swamp huddled up
24 together.

25 Q Okay, were they still moving at that point?

Officer Grainger - Cross Examination by Mr. Chrisco 116

1 A No, sir, they were, they were laying down.

2 Q Okay, here they hiding?

3 A It appeared they were.

4 Q And relative to the track you're following
5 and the footprints and everything where was that unopened
6 can of Bud Light beer?

7 A It was probably midway through the track
8 before we ever got towards the pond.

9 Q Was it right in the track?

10 A Sir?

11 Q Was it right in the track?

12 A Oh, yes, sir, yes, sir.

13 Mr. DeBusk: Okay, please answer any questions
14 the defense might have.

15 Cross Examination

16 By Mr. Chrisco:

17 Q The tracking dog, male or female?

18 A It's a male dog, yes, sir.

19 Q The other tracking dog out there that
20 night?

21 A Yes, sir, I think my sergeant had, I'm not
22 sure if he brought it with him or not. I know he came to
23 run the track with me, I'm not sure if he had his dog with
24 him or not to be honest with you.

25 Q And what kind of dog would he have?

Officer Grainger - Cross Examination by Mr. Chrisco

117

1 A He had a german shepherd.

2 Q Male or female?

3 A That was a female.

4 Q A beer can?

5 A Yes, sir.

6 Q Did you stop and pick it up?

7 A No, sir, not at that time, we came back and
8 got it.

9 Q Now when you said the dogs were on the
10 trail do you have them under harness or ---

11 A Yes, sir, they were harnessed.

12 Q --- or they free?

13 A Harnessed.

14 Q And you had to hold the harness?

15 A Yes, sir, by rope.

16 Q And hard to stop a german shepherd --

17 A No, sir, you can, he's trained where you
18 can stop them on track and continue from that track. You
19 have to do that from time to time if you get in a situation
20 where you can't get around an obstacle and it takes you a
21 little bit of time so you can stop or slow down the dog in
22 order to check things out so it's not a problem getting
23 them restarted right there.

24 Q You're being pulled a lot?

25 A Yes, sir.

Officer Grainger - Cross Examination by Mr. Chrisco 118

1 Q So did you go back and pick up the can?

2 A Yes, sir.

3 Q And how did you do that?

4 A I personally did not go back and pick that
5 can up; I went back and we were, I showed where exactly it
6 was. I don't know who collected it as evidence but it was
7 collected and I showed them where it was at.

8 Q How do you know it was collected?

9 A Well I don't recall who collected it.

10 Q Did your report indicate who collected it?

11 A No, sir, my report just indicated what the
12 dog did.

13 Q How far was it from where you started with
14 the pillow case to where you found the two individuals?

15 A I'd say approximately two hundred yards
16 maybe.

17 Q The length of two football fields?

18 A Yeah, roughly.

19 Q And how long did that take?

20 A To travel that ground?

21 Q Yes?

22 A A few minutes.

23 Q So from the time you got there to the time
24 that you found them was how long?

25 A It was probably, I was probably on track

Officer Grainger - Cross Examination by Mr. Chrisco 119

1 from the time I got started with the track or from the time
2 I showed up on scene?

3 Q From the time that you showed up on the
4 scene first, that will be the first question?

5 A Okay, that would probably be maybe about
6 forty to forty five minutes roughly.

7 Q And from the time that you got when you say
8 on track that's when you let them smell the pillow case?

9 A Yes, sir.

10 Q And they take off?

11 A Right.

12 Q How long?

13 A Maybe fifteen or twenty minutes that time
14 frame.

15 Q Okay, twenty five or thirty minutes that it
16 takes to get to that point what was happening there?

17 A We were swerving in and out, coming back in
18 and out, looked like he had paralleled 76 and there was a
19 bunch of parameter units out there, as we traveled in and
20 out of there it just took longer, we traveled long
21 distances. I kept slowing the dog down and waiting on back
22 up and all that until we finally got around to where the
23 suspects were at so it was probably about a fifteen minute,
24 twenty minute track at the most.

25 Q That because you veered in and out?

Officer Grainger - Cross Examination by Mr. Chrisco 120

1 A Yes, sir.

2 Q What were the individuals doing when you
3 found them?

4 A Whenever I, whenever we rounded the curve
5 there was a tree in my way and my dog was standing on them
6 basically before I could even get around to see them but
7 they were laying there, the best of my recollection they
8 were just laying there huddled together kind of on the
9 ground.

10 Q Cold that night?

11 A Sir?

12 Q Was it cold that night?

13 A Yes, sir, it was, very cold.

14 Q How were they dressed?

15 A Excuse me?

16 Q How were they dressed?

17 A I do not recall what they were wearing.

18 Q Do you recall the lady's house that was
19 burglarized where the pillow case came from?

20 A No, sir, I never went there.

21 Q Now do you remember seeing her?

22 A No, sir.

23 Q You never saw her?

24 A I never saw her.

25 Q Once you found the two individuals what did

Officer Grainger - Cross Examination by Mr. Chrisco 121

1 you do then?

2 A They were placed in detention at that time.
3 I ended up walking back with my dog while they were, they
4 were escorted out of the woods or the swamp area where we
5 were at back around to the patrol car.

6 Q And how far a walk was that?

7 A That's probably a good hundred yards maybe,
8 cause we had to go around a pond, from the swamp around the
9 pond back out to the patrol car.

10 Q Was that a long ways?

11 A No, sir.

12 Mr. Chrisco: Thank you.

13 Mr. DeBusk: Yes, sir.

14 The Court: Redirect?

15 Mr. DeBusk: The Court's indulgence one moment.

16 The Court: All right.

17 Mr. DeBusk: Nothing further, Your Honor.

18 The Court: All right, you may step down.

19 Mr. DeBusk: Your Honor, we'd ask that Officer
20 Grainger be excused from his subpoena?

21 The Court: Any objection?

22 Mr. Chrisco: No, Your Honor.

23 The Court: All right, you're free to go, thank
24 you very much. All right, let's go ahead and take a short
25 break at this time, okay.

Officer Grainger - Cross Examination by Mr. Chrisco 122

1 Mr. DeBusk: Yes, Your Honor.

2 The Court: All right, ladies and gentlemen,
3 we've been going at it for a little over an hour at this
4 time so I'm going to give you an opportunity to take a
5 break, stretch your legs, get something to drink. If you
6 have any phone calls you can check your messages, return
7 phone calls, but I caution you do not talk about this case
8 even among yourselves or with anyone else. Don't conduct
9 any independent investigations or anything of that nature.
10 We'll give you about a ten minute break and bring you back
11 in just a second, all right. If everyone else, please,
12 remain seated while the jury is excused.

13 (Whereupon, the jury retired to the jury room at
14 3:17 p.m.)

15 The Court: All right, anything from the State
16 before we take a break?

17 Mr. DeBusk: No, Your Honor.

18 The Court: Anything from the defense?

19 Mr. Chrisco: No, Your Honor.

20 The Court: All right, sit tight for one second
21 let me, I noticed I want to say the foreperson, I think I
22 saw taking some notes so I ---

23 Mr. DeBusk: Yes, Your Honor, he had a small
24 pen.

25 The Court: Okay, so what I'm going to need to

Officer Grainger - Cross Examination by Mr. Chrisco 123

1 is get, let's tell the bailiff to get pads and pencils for
2 everyone and I'm going to give them some preliminary
3 instructions on note taking since he's been taking some,
4 okay. All right, basically what I instruct them is they
5 can, you know, take notes if they want to but they're
6 personal. They're not to be shared with anybody; it's to
7 refresh your own individual memory and things of that
8 nature and then I instruct them, you know, just because
9 somebody takes a note doesn't mean it's any more reliable
10 than someone who doesn't take a note, okay.

11 Q Mr. Chrisco: Is it note taking, I mean is
12 notepads the answer, Your Honor? Maybe we could get some
13 ipads for everybody and us, too.

14 The Court: That would be nice, that would be
15 nice. All right, let's tell the bailiff to get some notes,
16 notepads and some pencils for everyone, all right.

17 Mr. DeBusk: Your Honor, may be approach for
18 scheduling purposes?

19 The Court: Yes, come on up.

20 (Whereupon, a bench conference was held off the
21 record out of the hearing of the court reporter.)

22 (Whereupon, a recess was taken and the following
23 takes place on the record after the recess.)

24 The Court: Anything from the State before we
25 bring the jury in?

Officer Grainger - Cross Examination by Mr. Chrisco 124

1 Mr. DeBusk: No, Your Honor.

2 The Court: Anything from the defense?

3 Mr. Chrisco: No, Your Honor.

4 The Court: All right, I did get word from the
5 bailiff, one of the jurors, she said one of the jurors
6 sitting on the back has a hearing aid and when you get away
7 from the microphones she said it's a little bit hard for
8 her to hear so make sure that we're near the microphones
9 when we're questioning or whatever the case may be, all
10 right.

11 Mr. Chrisco: Yes, Your Honor,

12 The Court: All right, thank you, now let's
13 bring the jury in.

14 (Whereupon, the jury returns to the courtroom at
15 3:34 p.m.)

16 The Court: All right, ladies and gentlemen,
17 welcome back, I hope everyone had a good break. We're
18 ready to resume the trial of this case. I'll remind you if
19 you have any cell phones or communication devices, pagers,
20 or anything of that nature if you'd, please, turn them off
21 at this point in time.

22 Also we have distributed to you some pads and
23 writing instruments, I don't know if it's pens or pencils
24 or whatever the case may be, so that you can take notes if
25 you wish to take notes. We noticed that some were taking

Sargent Hutchinson - Direct Examination by Mr. DeBusk 125

1 notes prior to this time but I do need to give you some
2 instructions on note taking.

3 In this trial you are given the opportunity to
4 take notes if you choose to do so. They are papers and
5 pens are provided to you and you may record whatever trial
6 information you wish. These notes will be collected by the
7 bailiff when we recess for the day so you'll need to leave
8 your note pads here and will not be allowed to take them
9 outside of the courtroom at this point in time. That is so
10 there's no premature deliberations or anything of that
11 nature.

12 Now do not feel that you're required to take
13 notes. Note taking is a privilege that you may or may not
14 decide to exercise. Not everyone finds it useful to take
15 notes. You're the best judge of whether taking notes
16 during the trial will help you to follow and remember the
17 evidence presented.

18 Now do not try to record everything if you decide
19 to take notes. To do so would require extensive training
20 and all that can be reasonably expected is that you record
21 the most important aspects of the trial that you want to
22 recall. The purpose of note taking is to refresh your
23 memory and these notes are personal to you. They're not to
24 be shared with anyone else; they're not to be shared with
25 any other juror and I will give you some instructions on

Sargent Hutchinson - Direct Examination by Mr. DeBusk 126

1 note taking before you begin your deliberations, so if you
2 wish to take notes you can but don't try to record
3 everything that is said, take down the most important
4 information just to refresh your memory and when we recess
5 you will be required to leave your notepads and pens here
6 in the courtroom. When you return make sure that you get
7 your notepad back so that you don't have anyone else's
8 notes, okay.

9 All right, Mr. DeBusk, the State can call its
10 next witness.

11 Mr. DeBusk: Thank you, Your Honor, the State
12 calls Detective Craig Hutchinson.

13 The Court: All right.

14 Craig David Hutchinson

15 being first duly sworn, testified as follows:

16 Madam Clerk: Please state your full name and
17 spell your last name.

18 The Witness: Craig David Hutchinson, h-u-t-c-h-
19 i-n-s-o-n.

20 The Court: Thank you, Mr. DeBusk?

21 Direct Examination

22 By Mr. DeBusk:

23 Q Sgt. Hutchinson, who is your employer?

24 A Horry County Police Department.

25 Q And how long have you been employed by the

Sargent Hutchinson - Direct Examination by Mr. DeBusk 127

1 Horry County Police Department?

2 A Total with the county is twenty years.

3 Q What's your rank and duties?

4 A Currently I'm assigned as a supervisor to
5 special operations; I'm a canine handler as well as a
6 supervisor in special operations.

7 Q How about in February of 2010?

8 A I am the same, I was the same then,

9 Q Now among the duties that you have with the
10 canine team does that include tracking suspects?

11 A Yes, sir.

12 Q Okay, and dogs trained to track suspects?

13 A Yes, sir.

14 Q Okay, on February 25th, 2010, did you
15 receive a call?

16 A Yes, sir.

17 Q Where did you respond to?

18 A There at Highway 76 close to the
19 intersection of Number 9 met with Officer Will Duncan and
20 Corporal Hardee there on the side of the road. They
21 briefed me on the situation about two suspects that had
22 allegedly fled and we started dog tracking there.

23 Q Okay, who was working with you in tracking?

24 A Dwane Grainger, I called him to the scene
25 because my own dog I had used her on a deployment earlier

Sargent Hutchinson - Direct Examination by Mr. DeBusk 128

1 so we decided to use a fresh dog, we brought Dwane's dog
2 in, and Officer Will Duncan was also utilized as a cover
3 person to roam with us.

4 Q What did you do?

5 A Basically we started off right there on the
6 side of the road. We had a last point seen and a, an
7 article that was left in a ditch. We deployed Dwane's dog
8 and he, he worked his dog on the article as well as the
9 last point seen and we started a track there. We traveled
10 somewhat through a wooded area and then into an open field
11 area onto a farm, total probably half to three quarters of
12 a mile, and ended up down in a swampy area near the Gapway
13 watershed canal towards the Nichols end of Marion, Horry
14 County.

15 Q Ask if you'd approached what's marked as
16 State's Exhibit 9 let me show it to you first; do you
17 recognize this?

18 A Yes, sir, it appears to be an area map of
19 the area where we worked at that night.

20 Q Could you come up and demonstrate for the
21 jury where you tracked and where your track ended?

22 A We started out in this field right here,
23 this is the intersection of 9 and Highway 76. Basically
24 started out right here closer to this end of the field
25 there's a rather deep ditch right there, entered the wood

Sargent Hutchinson - Direct Examination by Mr. DeBusk 129

1 line, worked through these woods right here, and then come
2 into this open field area, tracked along the open field
3 area down through here. There's a like a farm shed or farm
4 house right here we tracked down through this area down to
5 this pond right here and there's actually a pier out on
6 this pond. We made a turn after going out that on that
7 pier out there we made a turn come around behind it and
8 came down this in this wooded area down here. There's a
9 road, this was blown up a little bit better, it's an old
10 road back here behind the pond, it's kind of a swampy low
11 lying area in there and that's where we encountered two
12 suspects down in the wooded area there.

13 Q What were they doing?

14 A Basically laying down.

15 Q Okay, would you put an arrow approximately
16 where you found the individuals?

17 A It would have been, I put the arrow in the
18 wrong way I'm sorry, right about there, come around the end
19 of the pond right here and entered that roadway. The dog
20 tracked down into the edge of the tree line on that roadway
21 and probably right about where that bend is where we found
22 them.

23 Q Now let me ask you about something, you
24 said that the track went out on a pier?

25 A Yes, sir.

Sargent Hutchinson - Direct Examination by Mr. DeBusk 130

1 Q So the drive actually tracked out to the
2 pier and back up?

3 A Well actually the dog, it's dark back here,
4 I know this area cause I live up in this area, it's dark,
5 there's no street lights out here whatsoever, and the dog
6 actually ran off the end of the pier and then we had to
7 actually fish the dog up out of the pond and get him back
8 on the pier and he got back on track.

9 Q Okay, thank you?

10 A Yes, sir.

11 Q Now when you located these individuals what
12 did you do?

13 A We ordered them to show, show us their
14 hands, they complied. We took them into custody and
15 brought them back up, up on the road where, basically where
16 the pond was up there on that near that farm shed.

17 Q Now did you see any, while you were
18 tracking the dogs did you see any indication that somebody
19 passed that way?

20 A Yes, as we were tracking we generally look
21 for any type of sign. We're been trained and also attend
22 schools with State Law Enforcement on man tracking
23 ourselves so we're looking for broken limbs, grass,
24 footprints, anything like that along the way and, yes, sir,
25 I did encounter some, a particular boot print that the dogs

Sargent Hutchinson - Direct Examination by Mr. DeBusk 131

1 seemed to be following. At the start of the track we saw
2 one and then as we broke into the field area going onto
3 that farm area we, we started seeing it again.

4 Q Did you see similar footprints any other
5 time that night?

6 A Yes, sir, once we had encountered the two
7 guys down in the woods we brought them out I actually went
8 back to the original scene where the, the call originated
9 at and ---

10 Q Are you referring to the residence?

11 A The residence, yes, sir.

12 Q Broken into?

13 A Yes, sir, the residence out on Highway 76
14 and I saw what I believed to be a similar footprint up
15 there, a boot print up there around that residence.

16 Q What did you do in response to that?

17 A I called Pete Cestare with our crime scene
18 and advised him that we had such and I thought it would be
19 a good idea to at least send somebody out to maybe
20 photograph or if it was possible to cast or try to, you
21 know, retrieve that footprint.

22 Q Okay, where was that footprint relative to
23 the house?

24 A The best of my recollection there was one
25 good one right at the end of the residence, if you're

Sargent Hutchinson, - Direct Examination by Mr. DeBusk 132

1 facing the residence from the highway there was one right
2 at the end of the residence there and we photographed
3 another one I think out in front of the residence like just
4 a few feet off of the side of the mobile home and other
5 than that that's the only two that I can really remember
6 that we saw.

7 Q Based on your experience as a tracker did
8 they appear to be fresh?

9 A Yes, sir.

10 Q Did you, when you arrested the suspects how
11 many did you find?

12 A Two.

13 Q Do you see any of those suspects in the
14 courtroom today?

15 A Yes, sir.

16 Q Who is that?

17 A Mr. Bostic.

18 Q Okay, did you get a chance to look at his
19 foot or his shoes?

20 A We noticed that he had a similar boot print
21 or foot print, shoe print sort of what we were following
22 through that, that farm area.

23 Q Did you do any scientific tests or
24 anything?

25 A No, sir.

Sargent Hutchinson - Cross Examination by Mr. Chrisco 133

1 Q Okay, did you personally collect any
2 evidence during the course of your investigation?

3 A No, sir, I did not.

4 Q At any point did any witnesses come and
5 identify the individuals that you had detained?

6 A I made the suggestion that we bring the
7 victims up to where we had two suspects there at the farm.
8 I did not see them come; I was, I was told but I did not
9 visually see them come up there.

10 Q You said you were familiar with this area,
11 you went back to the house where the original burglary
12 occurred?

13 A Yes, sir.

14 Q Said you're familiar with this area, what
15 county is that in?

16 A It's in Horry County.

17 Mr. DeBusk: Okay, thank you, please answer any
18 questions the defense might have.

19 Mr. Chrisco: The Court's indulgence?

20 The Court: All right.

21 Cross Examination

22 By Mr. Chrisco:

23 Q What kind of soil over there around the
24 house?

25 A You talking about at the mobile home?

Sargent Hutchinson - Cross Examination by Mr. Chrisco 134

1 Q Uh-huh?

2 A Okay, kind of a sandy sort of darkish soil.

3 Q Sticky?

4 A No, sir.

5 Q You said that one of the footprints was out
6 at the front of the mobile home?

7 A Toward the front door right there along the
8 front wall of the mobile home.

9 Q Now was the, how is the mobile home
10 situated to the road?

11 A Perpendicular to the road.

12 Q And how far away from the road would the
13 mobile home be?

14 A From the edge of Highway 76 back to where
15 that mobile home sat at I believe was about, I would guess
16 it to be about a hundred and fifty feet maybe.

17 Q How much interaction did you have with Mr.
18 Bostic that night?

19 A Other than taking them into custody that
20 was it, I had no ---

21 Q When you say take them into custody,
22 explain that?

23 A Once they were located in the woods they
24 showed us their hands we detained them and took them back
25 around out of the woods up to where there was some other

Sargent Hutchinson - Cross Examination by Mr. Chrisco 135

1 patrol cars that had pulled down into the farm right there
2 near that little farm house that's up there. Once we got
3 them back up there then there was three of us so once we
4 got them back up there we were met by other officers and
5 that was pretty much the end of my encounter with them.

6 Q Well you were the one that asked the, that
7 took everything out of Mr. Bostic's pockets, were you not,
8 upon the back of one of the patrol cars?

9 A I could have, probably as I, as I probably
10 patted him down, I'm not --

11 Q When you said you could have, did you or
12 didn't you?

13 A I don't recall, Mr. Chrisco.

14 Q Have you got any notes from that night, I
15 mean this is a pretty serious charge, is it not?

16 A Yes, sir.

17 Q Carries a life in prison, does it not?

18 A Yes, sir.

19 Q Don't you think that bringing your notes
20 and file with you would so you could be absolutely sure?

21 A I don't recall searching his pockets, Mr.
22 Chrisco.

23 Mr. Chrisco: No further questions.

24 The Court: Anything on redirect?

25 Mr. DeBusk: No, Your Honor.

1 The Court: All right, you may step down, you
2 want to go ahead and break?

3 Mr. DeBusk: Yes, Your Honor.

4 The Court: All right, all right, ladies and
5 gentlemen, we've been doing some scheduling so we're going
6 to go ahead and break for today. I'm going to excuse you
7 for the remainder of the day; we'll resume this trial
8 tomorrow morning. Please be back in the jury room at 9:15
9 tomorrow morning. We'll try to get started at about 9:30
10 tomorrow morning. Usually they have some coffee and things
11 of that nature for you when you get here so, please, be
12 back in the jury room at 9:15 tomorrow morning.

13 Make sure you write your name or whatever on your
14 pads so that you get your same pads back tomorrow morning.
15 Make sure you leave your pads in your seats; we'll collect
16 them and give them back to you tomorrow morning. Leave
17 them in the seats in the jury box.

18 I remind you that you're not to discuss this case
19 with anyone even among yourselves at this point in time;
20 it's too early for deliberations. Don't conduct any
21 independent investigations; don't go on the internet to
22 look up anything; don't go looking through the newspapers
23 to try to find out anything about this case.

24 I hope everybody has a good evening and we'll see
25 you back tomorrow morning, thank you very much. Everyone

1 else, please, remain seated while the jury is excused.

2 (Whereupon, the jury was excused for the evening
3 at 3:50 p.m.)

4 The Court: All right, anything from the State
5 before we break?

6 Mr. DeBusk: No, Your Honor.

7 The Court: Anything from the defense?

8 Mr. Chrisco: No, Your Honor.

9 The Court: All right, I'll probably try to take
10 the bench at 9:30 tomorrow morning, okay, I'll be here
11 substantially before that if ya'll need anything I'll be
12 here, okay.

13 Mr. DeBusk: Yes, Your Honor.

14 The Court: All right, we'll stand in recess
15 until then.

16 (Whereupon, court was adjourned for the evening.)

17 (Whereupon, court resumes at 9:30 a.m.)

18 The Court: Anything from the State before we
19 bring the jury in?

20 Mr. DeBusk: A couple of brief items.

21 The Court: Wait a minute let her get ready.

22 Madam Court Reporter: I'm ready, go ahead.

23 The Court: All right, go ahead.

24 Mr. DeBusk: In testimony yesterday one of the
25 officers said he had taken some photos at the trailer; I

1 had not heard of that before so I followed up on it and I
2 found out he had in fact taken some photos at the trailer
3 which I didn't know about I hadn't produced them to Mr.
4 Chrisco. I've produced them this morning and have a copy
5 for the Court. I was not aware of these until yesterday; I
6 don't know that they make any difference in the case but I
7 just wanted to be honest with the Court about --

8 The Court: All right, disclosure having a full
9 turning over the file, all right, Mr. Chrisco, you have any
10 position on it?

11 Mr. Chrisco: Well the State is not going to use
12 them, Your Honor. The thing that bothers me is that the
13 officers that did testify didn't even care to bring their
14 files or anything else with them so we really don't know
15 what else is missing out there.

16 The Court: Yeah.

17 Mr. Chrisco: That could help or hurt the
18 defendant, Your Honor. I'm just, I, I'm just very upset at
19 the nonchalant attitude of the Horry County Police
20 Department and I plan, I plan to turn their world upset
21 down.

22 The Court: Yeah, that's, as far as these
23 photographs the fact that the State is not going to use
24 them do you need anything inculpatory or exculpatory to
25 your client or anything prejudicial to your client by them

1 disclosing these late? I understand your concern but as
2 far as I'm just talking about these six photographs?

3 Mr. Chrisco: No, Your Honor.

4 The Court: Okay, let's do this, let's, well,
5 yeah, what do we want to do, what precipitated them to turn
6 these over to you?

7 Mr. DeBusk: Your Honor, Officer Cole Hardee
8 testified that he had taken some pictures, that was the
9 first time I had heard of that. I followed up and they
10 looked in the system at the Horry County Police Department
11 and found those pictures in there.

12 The Court: I see, okay.

13 Mr. DeBusk: Unbeknownst to me and the
14 detective.

15 The Court: All right, let's do this, let's
16 contact anybody involved in this case with the Horry County
17 Police Department tell them that since this issue has
18 arisen it's clear that not everything was disclosed to the
19 defendant prior to trial, let's check and see if there's
20 anything else that has not been -- I'm assuming you made a
21 Brady request?

22 Mr. Chrisco: Oh, yes, Your Honor ---

23 The Court: Okay.

24 Mr. Chrisco: --- on the day that I was
25 appointed to represent Mr. Bostic that is done.

1 The Court: Yeah, all right, let's contact them
2 and see if there's anything else out there.

3 Mr. DeBusk: We did a check yesterday, Your
4 Honor, there was a evidence sheet for the beer can that was
5 testified about that I hadn't produced, I found out about
6 that, and I think Mr. Chrisco knows about the rest of the
7 evidence which included some castings and, and other items
8 that were in evidence.

9 The Court: Okay, so you went ahead and made the
10 inquiry yesterday as to whether or not there is anything
11 contained in any law enforcement file or any information
12 they have that has not been disclosed?

13 Mr. DeBusk: I inquired at the items that came
14 up in testimony that I had not heard of, Your Honor.

15 The Court: Okay?

16 Mr. DeBusk: And I did look into those.

17 The Court: All right, well let's contact them
18 and say is there anything, whether it's come up in
19 testimony, whether it hasn't come up in testimony, the law
20 requires anything inculpatory or exculpatory be disclosed.
21 It also requires under discovery if a discovery request has
22 been made they need to, if there had been anything that has
23 not been produced that should have been produced?

24 Mr. DeBusk: Yes, Your Honor.

25 The Court: All right.

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1 Mr. Chrisco: Your Honor?

2 The Court: Yeah?

3 Mr. Chrisco: I asked the questions yesterday
4 about the Bud Light can, the beer can, the can of beer,
5 those questions were aimed at there was nothing in the
6 discovery that said that they had even collected that full
7 can of beer that they found out in the woods, then I find
8 out this morning that it was taken into custody.

9 The Court: I remember you asking about the beer
10 and I'm trying to recall what the answer was.

11 Mr. DeBusk: As I recall, Your Honor, neither
12 officer he asked about it remembered collecting beer can.

13 Mr. Chrisco: Officer, the last officer,
14 Grainger said that he retrieved it.

15 The Court: But he didn't know what happened to
16 it or something of that nature?

17 Mr. DeBusk: He said that he did not, he said --

18
19 The Court: One at a time.

20 Mr. Chrisco: He said he retrieved it and gave
21 it to the investigating officer, gave it to the other
22 officers. It's going to be one of my things that it was
23 never turned in because there was no ---

24 The Court: When you say it was never turned in
25 what do you mean?

1 Mr. Chrisco: Put into, picked up and put into
2 evidence. If there's not an evidence sheet then it was not
3 put into evidence so that was part of my contention of
4 getting them when he said that he had taken it, gave it to
5 someone else, that was an important part because
6 fingerprints surely could be gathered from that beer can
7 and now all of a sudden we find that it was taken into
8 evidence.

9 The Court: Okay.

10 Mr. Chrisco: It's just a lot of --

11 The Court: I understand, let's do this, I'm
12 going to because of this if you want to call any of these
13 officers back we'll put them under subpoena, we'll get them
14 back down here and you can cross examine them on that cause
15 that could be a credibility issue regarding their
16 testimony.

17 Mr. Chrisco: Well, Your Honor, not only do I
18 need the officers but they all seem to have forgotten their
19 notes and files and everything else and didn't know very
20 much about anything. I said do you want to look at your
21 file, oh, I didn't bring it with me.

22 The Court: Okay, well let's go ahead and
23 whatever officer you want back down here with their files
24 we'll get them back down here with their files.

25 Mr. Chrisco: Let me talk with my client for

1 just a minute, Your Honor, before I make the decision.

2 The Court: All right, well let's go ahead and
3 take about as long as you need to speak to your client
4 about it, okay.

5 Mr. Chrisco: Yes, Your Honor.

6 (Whereupon, a recess was taken.)

7 The Court: Do you need to put anything on the
8 record, Mr. Chrisco?

9 Mr. Chrisco: I have talked with my client,
10 explained all the legal ramifications, explained what the
11 Court has outlined that the defense could do. My client
12 has made a decision to move forward with the trial.

13 The Court: All right, all right, these six
14 photographs let's put them collectively as Court's Exhibit
15 Number 4, all right; so that it will be in the record,
16 Court's Exhibit Number 4 being photographs taken by law
17 enforcement that were not disclosed to the defendant prior
18 to trial.

19 (Whereupon, Court's Exhibit Number 4 marked for
20 identification.)

21 The Court: Anything else that we want in as a
22 Court's Exhibit? I know you had talked about an evidence
23 sheet?

24 Mr. Chrisco: Yes, Your Honor, the evidence
25 sheet where they took the Bud Light beer can unopened into

1 all I have is a copy, Your Honor.

2 The Court: Okay, I mean do you want that as a
3 Court's Exhibit or are you going to use it during -- I
4 assume the Court's Exhibit Number 4 that we just put in
5 that you were not going to introduce that into evidence?

6 Mr. Chrisco: No, Your Honor.

7 The Court: Okay, do you need that as part of
8 your defense?

9 Mr. Chrisco: I want this as part of the Court's
10 Exhibit, too, Your Honor.

11 The Court: All right, we'll put that as Court's
12 Exhibit 5.

13 (Whereupon, Court's Exhibit Number 5 marked for
14 identification.)

15 The Court: All right, anything else?

16 Mr. DeBusk: Your Honor, after discussing the
17 case with the detective we think that there's a possibility
18 there might be a report and some evidence sheets from crime
19 scene that are not accounted for and we would have to check
20 on that, Your Honor. We don't know for sure whether they
21 exist or not but we could not eliminate the possibility.

22 The Court: All right, let's check on it.

23 Mr. DeBusk: Yes, sir.

24 The Court: All right.

25 Mr. DeBusk: I'll go check on it, would you like

1 to --

2 The Court: Well we can do one or two things,
3 you can check on it and come back with me as, with an
4 answer ---

5 Mr. DeBusk: We'll do that, Your Honor.

6 The Court: --- or if you want to go ahead and
7 proceed and check on it later the only problem I've got is
8 if you check on it later and it turns out to be something
9 inculpatory or exculpatory or whatever you're looking at
10 the mistrial.

11 Mr. DeBusk: Yes, sir.

12 The Court: So I don't know how ya'll want to
13 proceed, it's --

14 Mr. Chrisco: Maybe we should move it to a
15 ravine that would be a better place for an ambush, wouldn't
16 it, Your Honor?

17 The Court: Well we don't know at this point,
18 we'll check and see.

19 Mr. DeBusk: Yeah, we can find out fairly
20 quickly, Your Honor.

21 The Court: All right, let's, let's take a break
22 and let you, let you check on that, okay.

23 Mr. DeBusk: Yes, sir, Your Honor.

24 The Court: All right, we'll stand in recess,
25 and if there is, if there is something there we need to get

1 it here so the defense can take a look at it.

2 Mr. DeBusk: Yes, Your Honor.

3 The Court: All right.

4 (Whereupon, a recess was taken and the following
5 takes place on the record after the recess.)

6 Mr. DeBusk: I have an instruction to the Court
7 just for review.

8 The Court: All right, have you shown it to --

9 Mr. DeBusk: I'm providing copies to Mr. Chrisco
10 at this time to review it.

11 The Court: All right, thank you.

12 Mr. DeBusk: Your Honor, just for the record we
13 discussed this in chambers but there was some after our
14 consultation with the people at crime scene over at Horry
15 County Police Department there was some other evidence that
16 appears not to have been turned over in complete and total.
17 We turned over a report that included several photos of
18 footprints and footwear that was done by Pete Cestare.
19 There were some twenty photos in that. There were actually
20 a total of fourteen photos taken at the scene and thirty-
21 nine taken at the lab and I don't think all of those were
22 turned over but some subset were.

23 Also there were evidence sheets for several items
24 that were put into evidence that I don't think we had
25 turned over, although we did inform about the items being

1 in evidence in that report by Mr. Cestare, and finally
2 there was the beer can that was placed into evidence that
3 was the subject of that evidence sheet that we put in
4 earlier turned out to have been processed and a latent
5 print was lifted off that was never identified, never
6 compared to anything but a latent print was lifted off of
7 that and I just learned about that this morning.

8 The Court: All right, Mr. Chrisco, any motions
9 or how does the defense want to proceed?

10 Mr. Chrisco: Your Honor, I have talked with my
11 client about all of the evidence that was not turned over
12 in a timely manner to the defense by the prosecutor. I
13 have told him that the police is an agent of the
14 prosecution and, therefore, they're part and partial one
15 and that because of the non disclosure of evidence that we
16 could ask for a mistrial.

17 The Court: And I'll tell you right now up front
18 I'll grant a mistrial if, if you want a motion for a
19 mistrial based upon their failure to disclose information.
20 I'll grant it and they'll disclose it to you, they'll turn
21 it over to you and we'll start a new trial from ground one.

22 Mr. Chrisco: I've also told him that if we
23 asked for a mistrial and one was granted that they would
24 probably try him at the next available time, could not try
25 him this week because the jury would be tainted in some

1 way, but could try him next week. I've explained also that
2 there's been some negotiation back and forth with the
3 Solicitor to allow him to plea to a lesser charge and what
4 his, what would be the maximum amount of time that he would
5 serve on each one of those that he could be sentenced to.

6 My client has advised me that he wants to
7 continue on with the trial. I have advised him that you
8 never know what twelve people will do and that plea
9 negotiations are sometimes better than what the unknown is
10 because the unknown can be your worse nightmare. He states
11 that he understands that but he wants to continue on with
12 the trial.

13 Earlier I discussed with him that he has an
14 opportunity to put up a defense, that he has an opportunity
15 to get on the stand and testify in this case. I've
16 informed him that once he gets on the stand that the
17 prosecutor can go into his criminal record. He has told me
18 that he does not wish to testify. He wants to waive that
19 right; he wants to remain silent. I've told him that if he
20 chose that then the Court would instruct the jury that they
21 couldn't hold that against him, Your Honor.

22 The Court: All right, now let me ask you, Mr.
23 Chrisco, even though a decision of whether or not to accept
24 a plea offer or plead guilty, don't plead guilty or
25 whatever is left entirely up to your client, whether or not

1 there's a request for a mistrial I will allow you to make a
2 motion for a mistrial over your client's objection if you
3 want to. You're the attorney in this case and you can
4 proceed how you think is best in your client's best
5 interest. I don't know that he can dictate that you
6 proceed with the trial when you want to make a motion.
7 Likewise I don't think he can compel you to make a motion
8 if you deem it in his best interest not to, so I want you,
9 you know, we do have an assistance of counsel that's why
10 you have an attorney.

11 Mr. Chrisco: Yes, Your Honor.

12 The Court: In other words -

13 Mr. Chrisco: I've explained to him that some
14 things can be taken out of his hands. He has urged me to
15 continue with the trial and that's what I'm going to do,
16 Your Honor, at his urging.

17 The Court: All right, Mr. Bostic, if you'd,
18 please, stand, let's place Mr. Bostic under oath, okay.

19 John Elvis Bostic

20 being first duly sworn, testified as follows:

21 The Court: Sir, your name is John Elvis Bostic?

22 Defendant Bostic: Yes, sir.

23 The Court: If you'd please stand for a minute
24 while I go over some questions with you, all right. In
25 this case you've been charged with burglary in the first

1 degree; you understand that?

2 Defendant Bostic: I understand that.

3 The Court: Do you understand that that crime if
4 convicted for that crime you could be sentenced to life in
5 prison?

6 Defendant Bostic: I understand.

7 The Court: For the rest of your life; do you
8 understand that?

9 Defendant Bostic: I understand that.

10 The Court: All right, you also understand that
11 by law the State is required to make disclosures to you.
12 They're required to turn over to you any and all evidence
13 they're going to use as well as any and inculpatory or
14 exculpatory evidence, everything that they have that they
15 have gotten during the course of this trial that is either
16 a benefit to you or that can be used against you they have
17 a duty to disclose it; do you understand that?

18 Defendant Bostic: I understand.

19 The Court: You also understand that under South
20 Carolina Rules of Criminal Procedure your client, your
21 attorney has requested and there are some other additional
22 information, photographs, beer cans, evidence and things
23 that they were supposed to turn over to you that was not
24 turned over to you; do you understand that?

25 Defendant Bostic: I understand.

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1 The Court: All right, now you understand that
2 because they have failed to do that then you are entitled
3 to have a mistrial where I will declare this a mistrial and
4 we'll come back at a later. They'll have to disclose all
5 that information to you. You'll have a chance to look at
6 that evidence, you'll have a chance to review all of the
7 pictures, the beer cans, every, whatever they've got and
8 then we'll come back for another trial; do you understand
9 that?

10 Defendant Bostic: No, I don't understand that.

11 The Court: Okay.

12 Defendant Bostic: Can I ask you something?

13 The Court: Yes.

14 Defendant Bostic: I'm not from the state of
15 South Carolina.

16 The Court: Okay.

17 Defendant Bostic: I'm from North Carolina.

18 The Court: All right.

19 Defendant Bostic: Where I'm from this would be
20 a case that, it would be, it would have been dismiss it on
21 lack of evidence.

22 The Court: Okay. well that's not the case here.

23 Defendant Bostic: I understand that.

24 The Court: Yeah, and that's why ---

25 Defendant Bostic: I understand what you saying,

1 too.

2 The Court: And that's why I'm explaining it to
3 you the case is not going to be dismissed ---

4 Defendant Bostic: I understand.

5 The Court: --- or thrown out at this point in
6 time.

7 Defendant Bostic: I understand that, yeah, I
8 understand that.

9 The Court: Okay?

10 Defendant Bostic: I understand that.

11 The Court: All right, we're going to do one or
12 two things, we're either going to proceed to trial or I'm
13 going to grant a mistrial and we're going to start the
14 whole trial over at a later date after you have had the
15 opportunity and your attorney has had the opportunity to
16 review everything that the police and that the State have
17 accumulated in the course of their investigation, all
18 right, cause there's a lot of stuff ya'll haven't even
19 looked at. It may help your case; it may hurt your case, I
20 don't know, but you're entitled to look at it and you're
21 entitled to investigate it and then you're entitled to
22 prepare your case around what they have because the burden
23 of proof is on them, okay?

24 Now you haven't had an opportunity to review that
25 material so what I will do is grant a mistrial that will

1 give you the opportunity to review that material, okay?

2 All right, now having said that if you waive that
3 right and you want to go forward I will allow the attorney
4 to make a motion if he wants to. He says he's going to
5 follow your direction. Do you realize that if you want to
6 go forward then you are waiving your right to review that
7 information, you're waiving your right to review those
8 pictures, you're waiving your right to have any testing
9 done on the fingerprint on the beer can, you're waiving
10 your right to discover anything that might help you in this
11 case. You're giving that right up. ---

12 Defendant Bostic: I'm giving it up. ---

13 The Court: --- you understand that?

14 Defendant Bostic: Yeah, I understand it.

15 The Court: All right, you also understand that
16 there is a procedure if you are convicted in this case
17 where you can bring a civil lawsuit for ineffective
18 assistance of counsel saying that your attorney should have
19 done something that he didn't do or that he failed to do
20 something that he should have done or by following you in
21 your direction you realize that you're giving up your right
22 to challenge what your attorney did at a later time? You
23 can't come back at a later time and say ---

24 Defendant Bostic: I'm satisfied with Mr.
25 Chrisco.

1 The Court: Huh?

2 Defendant Bostic: I'm satisfied with him.

3 The Court: Well what I'm saying is ---

4 Defendant Bostic: I understand what you're
5 saying, I understand clearly what you're saying.

6 The Court: Okay, yeah, what I'm saying is he's
7 saying you should get a mistrial; you're saying no.

8 Defendant Bostic: I'm saying no.

9 The Court: You can't come back at a later time
10 and say we should have gotten a mistrial.

11 Defendant Bostic: Yeah, I understand that.

12 The Court: I mean if you get convicted and you
13 go to jail for the rest of your life you can't come back at
14 that time and say we should have taken the mistrial because
15 I'm giving you the opportunity to do that now; you
16 understand that?

17 Defendant Bostic: I understand that.

18 The Court: Okay, and you don't want to ---

19 Defendant Bostic: No, I don't want to.

20 The Court: --- get a mistrial?

21 Defendant Bostic: No.

22 The Court: All right, now you understand that
23 the State has made certain offers to you, a plea bargain in
24 this case to get you to plead guilty to lesser. I don't
25 know what the terms of the plea bargain are or what it is

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1 but I understand they made certain offers to you; now that
2 is within your discretion? In other words I can't force
3 you to plead guilty to something unless you want to plead
4 guilty to it; do you understand that?

5 Defendant Bostic: I understand.

6 The Court: In other words I can't make you
7 accept their plea bargain; that is, and your attorney can't
8 make you do that; that is exclusive up to you; do you
9 understand that?

10 Defendant Bostic: Yes I understand that.

11 The Court: And do you want to accept their plea
12 offer?

13 Defendant Bostic: No.

14 The Court: Okay; so you want to go forward on
15 your trial for burglary in the first degree?

16 Defendant Bostic: Yes.

17 The Court: All right, and you want to waive
18 your right to review any and all other evidence that the
19 police has withheld from you?

20 Defendant Bostic: Yes.

21 The Court: Okay, now you understand that by
22 waiving your right to review that you can't come back at a
23 later time and make a motion for a dismissal of these
24 charges based upon their failure to turn that over to you -

25 --

1 Defendant Bostic: I understand.

2 The Court: --- you understand that?

3 Defendant Bostic: I understand.

4 The Court: All right, all right, anything else
5 that the State wants to put on the record?

6 Mr. DeBusk: Just a matter of jury charges, Your
7 Honor, when we get to that point.

8 The Court: Okay, when we get to that. Anything
9 else that the defense wants to put on the record with
10 regard to my questions of Mr. Bostic:

11 Mr. Chrisco: No, Your Honor.

12 The Court: All right, does the State have any
13 more witnesses or are you closing the State's case?

14 Mr. DeBusk: No, Your Honor, we will rest at
15 this time.

16 The Court: Okay, all right, let me go over and
17 question the defendant on his right to testify.

18 The Court: All right, Mr. Bostic, at this time
19 I'm going to explain to you certain rights that you have
20 and if you do not understand anything I say, please, let me
21 know. If you want me to explain anything in more detail,
22 please, let me know; do you understand that?

23 Defendant Bostic: Yes.

24 The Court: All right. Now we've now reached
25 the stage of the trial where you may present your defense.

1 You have the right to claim the protections given to you by
2 the Fifth Amendment to the United States Constitution.
3 This amendment states in part that no person shall be
4 compelled in any criminal case to be a witness against
5 himself.

6 This means that you cannot be required to testify
7 in this case. You have the right to testify on your own
8 behalf; however, no one can make you testify. This is a
9 personal right and no one can waive this right except for
10 you.

11 If you decide to testify you will be subject to
12 the same rules that govern other witnesses and you may be
13 examined and cross examined on any relevant issue in this
14 case. In addition if you have any convictions involving
15 dishonesty or false statements or for crimes punishable by
16 imprisonment for more than one year and this Court
17 determines that the probative value of admitting the
18 evidence outweighs its prejudicial affect to you the
19 Solicitor will be able to introduce your record to attack
20 your credibility.

21 If you decide to testify this decision on your
22 part must be freely, voluntarily, and intelligently made,
23 with knowledge of the protections given to you by the Fifth
24 Amendment and the consequences of your decision to testify.

25 Before we proceed is there any prior criminal

1 record that the State will be introducing or be asking that
2 the Court allow in?

3 Mr. DeBusk: Yes, Your Honor. well primarily
4 it's already on the record with the which are the breaking
5 and enterings.

6 The Court: Okay, yeah, but I've got
7 instructions on that that that can only be considered as
8 elements of whether or not they've satisfied the first
9 degree burglary charge. It's not admitted and I'll
10 instruct them that it's not admitted for purposes of
11 attacking his credibility.

12 Mr. DeBusk: Yes, Your Honor, there are a number
13 of crimes of falsehood including several convictions for
14 larceny, some seven convictions for larceny, shoplifting
15 from the State of Georgia, shoplifting from the State of
16 North Carolina. Those are the primarily those crimes of
17 falsehood, Your Honor, that the State would be seeking to
18 admit as --

19 The Court: All right.

20 Mr. DeBusk: Do you want me to specify which
21 ones exactly, from 1993 ---

22 The Court: Well I mean I want him fully aware
23 of what would be used against him if he decided to testify.

24 Mr. DeBusk: From 1994, Your Honor, there were
25 seven counts of larceny and from Georgia 1992 there was a

1 count of theft by shoplifting, and there was one other
2 shoplifting, Your Honor, the Court's indulgence one moment,
3 from North Carolina 1994.

4 The Court: All right, all right, so if you
5 decide to testify and if I find that the probative value of
6 admitting that evidence outweighs its prejudicial affect to
7 you then they will be allowed to introduce those prior
8 convictions against you; do you understand that?

9 Defendant Bostic: Yes, sir.

10 The Court: Ah, right, so as I stated earlier if
11 you decide to testify the decision on your part must be
12 freely, voluntarily, and intelligently made, with knowledge
13 of the protections given to you by the Fifth Amendment of
14 the United State Constitution and the consequences of your
15 decision to testify.

16 If you decide not to testify I will instruct the
17 jurors that they cannot give the fact that you did not
18 testify any consideration whatsoever and that there is to
19 be absolutely no prejudice to you because you did not
20 testify. It is left entirely up to you whether or not to
21 testify.

22 You may talk with your attorney, your family and
23 friends, or anyone else, but the final decision is left
24 entirely up to you; do you understand that?

25 Defendant Bostic: Yes, sir.

1 The Court: All right, do you understand
2 everything that I've explained to you?

3 Defendant Bostic: Yes, sir.

4 The Court: Do you have any questions about what
5 I've explained to you?

6 Defendant Bostic: No.

7 The Court: All right, I'm going to take a short
8 break give you an opportunity to discuss it further with
9 your attorney. I'm going to come back and I'm going to ask
10 you whether or not you wish to testify in this case. I'll
11 likewise take any motions that the defense, since the State
12 has rested, taken any motions that you've got at that time,
13 okay.

14 Also I need to explain to you even though you may
15 not testify you still have the right to present a defense,
16 okay. In other words you can cross examine law enforcement
17 or anybody you want to about the beer can that was obtained
18 or your attorney can, you know, the failure to run
19 fingerprint analysis, their failure to turn over evidence
20 or whatever. You can call anybody you want and I'll give
21 you the opportunity to get them here to cross examine them
22 if you want to call them so just because you do not testify
23 doesn't mean that you don't have to present a defense. You
24 can still choose to present a defense if you choose to but
25 I will instruct the jury that you're not required to prove

1 your innocence, that the State has to prove your guilt; do
2 you understand that?

3 Defendant Bostic: Yes, sir.

4 The Court: All right, let's take about ten
5 minutes, let him discuss this with Mr. Chrisco then we'll
6 come back and I'll decide, number one, whether you wish to
7 testify, number two, if there's any motions by the defense,
8 number three, if you wish to present any defense at all,
9 okay. All right, let's take about a ten minute break.

10 (Whereupon, a recess was taken and the following
11 takes place on the record after the recess.)

12 The Court: All right, we're back on the record.
13 I think before we go into your client's right to testify;
14 do you have any motions, Mr. Chrisco:

15 Mr. Chrisco: Your Honor, make a motion to
16 dismiss based upon the State has not proved that this
17 defendant entered the house. There's no evidence of any
18 fingerprints inside the house. There's no testimony of
19 anyone seeing this defendant inside the house. There is no
20 testimony from any other, that the only thing that he had
21 in his possessions were items from the house and that was
22 some distance away. No evidence that as I said of anything
23 that connects him to the inside of the house.

24 There was testimony that a screwdriver mark was
25 made on a door but the picture that I saw this morning that

1 I did not get until this morning it looks like it's, was
2 old stuff. There's no implement found along the path and
3 the track where they tracked them. They found a beer can,
4 didn't know they took it into evidence until this morning,
5 but there's nothing that ties this defendant to the
6 burglary of the house trailer in question here, Your Honor.

7 The Court: All right, Mr. DeBusk?

8 Mr. DeBusk: Thank you, Your Honor, we have
9 testimony that the victims were gone from the house only
10 thirty minutes, when they came back they found, saw the
11 defendants walking down the street, and that when they were
12 found they had items taken from the house. There's a very
13 short period of time there that they could have possibly
14 gotten, gotten that evidence that had to come from the
15 house because it was items that had been in the house when
16 the victims left some thirty minutes before.

17 Further when they were encountered on the side of
18 the street and the defendant, the victim said that she was
19 calling the police they fled, indication of guilt. They
20 ran through the woods and hid, further indication of guilt
21 and they had on their person and recovered from them items
22 that were taken from the house, namely the pillow case that
23 included dvd's and other items taken from inside the
24 residence, Your Honor --

25 The Court: All right.

1 Mr. DeBusk: -- the dwelling.

2 The Court: All right, Mr. Chrisco?

3 Mr. Chrisco: May I respond to the flight? If
4 the items, I think it's undisputed that the items came from
5 the mobile home. The question is who broke into the mobile
6 home, that's what the charge is. The charge is not larceny
7 or possession of stolen goods. Had my client got the items
8 from another party and had nothing to do with the burglary
9 itself he would think that he had stolen goods based upon
10 what the victim said when he was stopped so, therefore,
11 that's the reason for the flight. The flight was because
12 of a crime not that he's charged with. Your Honor.

13 The Court: I understand, all right. I'm going
14 to deny your motion. I think that there is enough evidence
15 to make it a jury question so it is up to the jury to
16 decide. All right, anything else?

17 Mr. Chrisco: Your Honor, I've read -- as far as
18 motions for the defense, no, Your Honor, as far as jury
19 charges I have read the Solicitor's proposed charge and ---

20 The Court: Well I'll get into that in just a
21 minute, okay. All right, Mr. Bostic, if you'd please
22 stand, you're still under oath.

23 Have you had an opportunity to discuss with your
24 attorney and with whomever you wish to discuss your right
25 to testify?

1 Defendant Bostic: Yes.

2 The Court: All right, do you have any questions
3 about your right to testify?

4 Defendant Bostic: No.

5 The Court: All right, do you wish to testify in
6 this case?

7 Defendant Bostic: No.

8 The Court: All right, thank you very much, you
9 may be seated. All right, Mr. Chrisco, does the defense
10 have a defense you wish to present in this case?

11 Mr. Chrisco: No, Your Honor.

12 The Court: Okay, all right.

13 Mr. Chrisco: We rest.

14 The Court: All right, all right, let me, I
15 understand, I know what Mr. DeBusk is wanting on the charge
16 of his North Carolina conviction and this is what I'm going
17 to charge the jury.

18 As to the applicable part on the prior
19 convictions I'm going to charge the jury, I'm going to say,
20 finally the State must prove beyond a reasonable doubt that
21 the defendant has a prior record of two or more convictions
22 for burglary and/or housebreaking. Evidence of prior
23 offenses committed by the defendant is not evidence that
24 the defendant has a bad character and is not evidence that
25 the defendant entered a dwelling without consent and with

1 the intent to commit a crime in this case.

2 The prior convictions may be considered by you
3 only for the purpose of determining whether or not the
4 element of having two prior convictions for burglary and/or
5 housebreaking necessary that a crime of first degree
6 burglary has been satisfied.

7 Before you can even consider the evidence of the
8 defendant's prior burglary and/or housebreaking convictions
9 you must first find that the State has proved beyond a
10 reasonable doubt that a burglary was committed by the
11 defendant in this case. If you find beyond a reasonable
12 doubt that the burglary was committed then you may consider
13 the evidence of the prior convictions as evidence of one of
14 the circumstances which would make the burglary first
15 degree, which would make the burglary first degree
16 burglary. If you do not find beyond a reasonable doubt
17 that the defendant committed these alleged prior offenses
18 then you cannot return a verdict of guilty for first degree
19 burglary.

20 The North Carolina crime of breaking and entering
21 is defined as the breaking or entering of a building with
22 the intent to commit any felony or larceny therein. Under
23 South Carolina law third degree burglary is defined as the
24 entering of a building without consent and with the intent
25 to commit a crime therein, therefore, if you find that the

1 State has proved beyond a reasonable doubt that the
2 defendant has a prior conviction in North Carolina for
3 breaking and entering then that conviction would constitute
4 a prior conviction for burglary as contemplated in the
5 South Carolina crime of first degree burglary.

6 Mr. Chrisco: No objection.

7 The Court: Okay.

8 Mr. DeBusk: Your Honor, we just ask that under
9 the North Carolina Supreme Court decision in North Carolina
10 v. Boone it's required that they also provide proof that
11 the entry was made without consent, I'm referring to the in
12 the printed opinion I've provided for you page six in one
13 form or another it has been a crime in North Carolina to
14 enter a building with intent to commit a felony and the
15 statute has consistently been held to mean entry without
16 the owner's consent. This usage has been adopted by our
17 trial judges in their pattern jury instructions which
18 require among other things a finder of the jury that a
19 breaking or entry was without the consent of the owner of a
20 building or to sustain a conviction under 14-54(a), so I
21 would ask that ----

22 The Court: All right.

23 Mr. DeBusk: --- element be added.

24 The Court: All right, so I'll put that the
25 North Carolina crime of breaking and entering is defined as

1 the breaking or entering of a building without the owners
2 consent and with the intent to commit any felony or larceny
3 therein.

4 Under South Carolina law third degree burglary is
5 defined as the entering of a building without consent and
6 with the intent to commit a crime therein, therefore, if
7 you find that the State has proved beyond a reasonable
8 doubt that the defendant has a prior conviction in North
9 Carolina for breaking and entering then that conviction
10 would constitute a prior conviction for burglary as
11 contemplated in the South Carolina crime of first degree
12 burglary.

13 Mr. DeBusk: Thank you, Your Honor.

14 The Court: All right.

15 Mr. Chrisco: The Court's indulgence just one
16 moment.

17 The Court: All right.

18 Mr. Chrisco: Your Honor, the statute in North
19 Carolina they're talking about is 14-54 and it states here
20 in the statute, I'll pass this up to the Court.

21 The Court: All right.

22 Mr. Chrisco: If the South Carolina Court is
23 going to get involved in interpreting North Carolina law,
24 Your Honor, we'd like for the statute to be read as the
25 statute exists in North Carolina.

1 The Court: Well I thought that's what I was
2 saying, any person who breaks or enters any building with
3 intent to commit a felony or larceny therein shall be
4 punished as a class (h) felony, that's breaking and
5 entering, and what I'm saying is North Carolina crime of
6 breaking and entering is defined as the breaking or
7 entering of a building without the owners consent and with
8 the intent to commit any felony or larceny therein.

9 Mr. Chrisco: And it should just end right
10 there, Your Honor.

11 The Court: Without stating what the South
12 Carolina law, I mean that's the whole thing is I need to
13 advise them that breaking and entering, a conviction for
14 breaking and entering in North Carolina is basically the
15 same as a conviction for burglary in South Carolina, same
16 element, but I don't want them to get hung up on the
17 requirement that you have two prior convictions for
18 burglary and housebreaking with them saying well there's no
19 burglary here because it says breaking and entering and
20 breaking and entering in North Carolina is not burglary.
21 Well, North Carolina Supreme Court has held that it is.

22 Mr. Chrisco: The defense has got no objection
23 with the adding what the South Carolina is. The Solicitor
24 is wanting you to add the intent to the North Carolina
25 statute.

1 The Court: Well the intent is in the North
2 Carolina, he was wanting me to add without the owners
3 consent as cause North Carolina Supreme Court has said
4 implied in this statute is that they enter a building
5 without the owners consent and with the intent to commit a
6 felony or larceny therein.

7 Mr. Chrisco: Is it, that's what a burglary is?

8 The Court: Well that's, the statute doesn't say
9 that but the North Carolina Appellate Court has said that
10 so that if you enter it, enter a building with the owners
11 consent, it's not a burglary even though the statute doesn't
12 say it has to be without the owners consent. They're
13 saying as a matter of law it has to be without the owners
14 consent.

15 Mr. Chrisco: If Your Honor wants to use that
16 the defense would ask that that portion of it be attributed
17 to the North Carolina Court of Appeals not the North
18 Carolina Supreme Court but the North Carolina Court of
19 Appeals.

20 Mr. DeBusk: Your Honor, it was the North
21 Carolina Supreme Court.

22 The Court: Well I note your objection, I'm
23 still going to leave the charge as it is because I think
24 that is the North Carolina crime of breaking and entering.
25 It's the breaking or entering without the owners consent

1 with the intent to commit a felony or larceny therein, all
2 right, but I'll note your objection.

3 All right, anything else?

4 Mr. DeBusk: Your Honor, the State would ask for
5 a hand of one hand of all charge.

6 The Court: Yeah, I'm going to charge the hand
7 of one is the hand of all. As a matter of fact it's 12:00,
8 I'm saying let's call the jury in, just tell them we've
9 gone over some legal matters, the State has rested, the
10 defense has rested, all that we have now is the closing
11 arguments and the charge. We're going to break for lunch,
12 we'll come back at 1:30 do closing arguments, charges, and
13 deliberations.

14 Mr. Chrisco: Yes, Your Honor, Your Honor, the
15 defense has got one, well a couple of questions.

16 The Court: All right.

17 Mr. Chrisco: The, is the Court going to charge
18 burglary second?

19 The Court: Yes.

20 Mr. Chrisco: The defense would ask the Court to
21 also charge burglary third, here's the reasoning. The
22 testimony from the stand from the daughter and from the
23 mother stated that, the mother stated that she was
24 unpacking, she said I was over there unpacking at midnight,
25 then they were moving in. In South Carolina as the Court

1 well knows that the definition is where any person lodges
2 or lives, never said that she was sleeping there, living
3 there. It was moving in so it's an unoccupied dwelling,
4 still a burglary but it's a burglary third, Your Honor.

5 The Court: All right, what's the State's
6 position?

7 Mr. DeBusk: Your Honor, I believe Priscilla
8 Hood clearly testified that the people that lived there
9 were herself, her sister, her mother, and her child; that's
10 on the record that they all lived there. That makes it a
11 residence.

12 The Court: I thought they said they were moving
13 in.

14 Mr. DeBusk: They did say they were moving but
15 they also said they lived there. They're still in the
16 process of unpacking and she testified that her child's
17 bedding was already in place in the, in the ---

18 The Court: Had they spent the night there?

19 Mr. DeBusk: Yes, Your Honor.

20 The Court: I'm going to charge burglary third.

21 Mr. Chrisco: Thank you, Your Honor.

22 The Court: I'm going to, all right, anything
23 else?

24 Mr. DeBusk: Nothing from the State, Your Honor.

25 The Court: All right, anything from the

1 defense?

2 Mr. Chrisco: No, Your Honor.

3 The Court: Okay, I'll get ya'll a copy of my
4 charges before I charge the jury so you'll have them before
5 your closing arguments, if ya'll want to wait around just a
6 little while. Let's go ahead and bring the jury in and I'm
7 going to cut them loose for lunch and then we'll come back
8 at 1:30 do closing arguments, jury charges, and
9 deliberations, okay.

10 Mr. Chrisco: Yes, Your Honor.

11 (Whereupon, the jury returns to the courtroom at
12 12:04 p.m.)

13 The Court: All right, ladies and gentlemen,
14 welcome back, I appreciate everybody being on time this
15 morning. I hope everyone had a restful evening and I want
16 to apologize for keeping you back in the jury room for so
17 long; I'll let you know why you were back there. We were
18 addressing some matters of law and it's not that we're
19 trying to hide anything from you or inconvenience you more
20 than, than we already have but the fact of the matter is
21 when we address these legal issues that requires the
22 attorneys and me as the judge to discuss some factual
23 issues and some testimony and things of that nature.

24 Well as I told you at the outset of the trial you
25 and you alone decide the facts of this case. What we say

1 in deciding these legal issues is not evidence and so we
2 don't you to be influenced by anything that the attorneys
3 might say or anything that I might say in deciding these
4 legal issues to influence your decision when you determine
5 factually what happened in this case because you determine
6 the facts based exclusively on the testimony and evidence
7 presented at trial and so that's the reason we have kept
8 you back in the jury room for so long while we address
9 these other matters.

10 Now in addressing these other matters we have
11 streamlined the process a great deal. As I understand the
12 State has rested; is that correct?

13 Mr. DeBusk: Yes, Your Honor, the State rests.

14 The Court: All right, and the defense likewise
15 rests?

16 Mr. Chrisco: Yes, Your Honor.

17 The Court: All right, so the State and the
18 defense have both rested in this case, therefore, the only
19 thing left in this trial is for the attorneys to make their
20 closing arguments to you and for me to charge you with the
21 law applicable in this case but given the time of day, it's
22 12:00, I'm going to go ahead and excuse you to go to lunch.
23 Please be back in the jury room at 1:30 and then we will
24 proceed with the closing arguments, the jury charges, and
25 you can begin your deliberations at that time.

1 Please do not discuss the case even among
2 yourselves at this point in time; it's still too early for
3 deliberations. You're not to deliberate until after the
4 closing arguments and a charge on the law. Don't conduct
5 any independent investigations or anything of that nature.
6 I hope everybody has a good lunch and, please, be back at
7 1:30 and we'll see you then, thank you very much.

8 (Whereupon, the jury was excused for lunch at
9 12:06 p.m.)

10 The Court: All right, anything from the State
11 before we break for lunch?

12 Mr. DeBusk: No, Your Honor.

13 The Court: Anything from the defense?

14 Mr. Chrisco: No, Your Honor.

15 The Court: All right, I'm going to go back and
16 finish up these jury charges, all I've got, I've got
17 everything in there that I want. The only thing I need to
18 do is add the burglary third degree as a lesser included
19 offense to my charge and then, and then add that as a
20 possible verdict in this case as well. If ya'll want to
21 wait around for a copy of the charges it will probably take
22 me about ten or fifteen minutes or I'll have them ready,
23 you know, if you want to come back a little bit earlier
24 from lunch, whatever you want to do I'll have them out here
25 on the desk for you, okay. All right, we'll stand in

1 recess until 1:30.

2 (Whereupon, court was recessed for lunch and the
3 following takes place on the record after the recess.)

4 The Court: Anything before we bring the jury
5 in? Anything from the State?

6 Mr. DeBusk: Nothing from the State, Your Honor.

7 The Court: Anything from the defense?

8 Mr. Chrisco: The defense would renew its
9 motions that it made at the end of the State's case, Your
10 Honor.

11 The Court: All right, let's go ahead and get
12 the defendant in here. All right, the defense has renewed
13 their motion to dismiss which is basically a motion for a
14 directed verdict as made at the close of the plaintiff's
15 case, for the same reason I'm going to go ahead and deny
16 that motion as well.

17 Are we ready to go into closing arguments and
18 then a charge on the law?

19 Mr. DeBusk: Yes, Your Honor.

20 The Court: Anything else?

21 Mr. Chrisco: The defense is ready, Your Honor.

22 The Court: All right, let's go ahead and bring
23 the jury in. The defense gets to go last ---

24 Mr. DeBusk: Yes, Your Honor.

25 The Court: --- since they didn't put anything

1 up.

2 (Whereupon, the jury returns to the courtroom at
3 2:06 p.m.)

4 The Court: All right, ladies and gentlemen,
5 welcome back, I hope everyone had a good lunch. We're now
6 ready to resume the trial of this case of The State of
7 South Carolina v. John Elvis Bostic. We've reached the
8 point in the trial where the attorneys will now make their
9 closing arguments to you.

10 Now just like their opening statements these
11 closing arguments are not evidence. Their closing
12 arguments are simply the attorneys contention as to what
13 the facts in this case are and what the law is to be
14 applied in this case and what they think they have proved
15 in their case.

16 If at any time an attorney makes a statement of
17 fact that is different from the facts as you find those
18 facts to be or makes a reference as to law that is
19 different from the law as I will charge you on that law at
20 the close of their arguments then you're to disregard their
21 arguments because as I said these closing arguments are not
22 evidence. It is just the attorneys opinion or contention
23 as to what the facts and law are in this case.

24 All right, Mr. DeBusk?

25 Mr. DeBusk: Thank you, Your Honor, may the

1 please the Court?

2 The Court: Yes, sir.

3 Closing Argument

4 By Mr. DeBusk:

5 Ladies and gentlemen, as I promised at the
6 beginning of this this was an interesting case, I hope, at
7 least a part yesterday, but it's unusual that a large part
8 of the investigation of this case was done by the victim
9 and by a dog and together they traced out a path, a path of
10 sightings, a path of evidence and some time line. I want
11 to talk to you a little bit about that.

12 Now as you recall the, Priscilla Hood, the
13 victim, one of the victims, young lady who testified first,
14 said that they went to pick up her mother and they were
15 gone from their residence out here on Highway 76 for thirty
16 to thirty-five minutes to pick up mama. Toward the end of
17 that thirty to thirty five minutes they came back and they
18 noticed someone walking down the road, down Highway 76.
19 You might wonder why would somebody notice somebody walking
20 down the road, well this is out in the country. Out in the
21 country there aren't any sidewalks or anything. Those
22 people were probably walking in the road or right off to
23 the side and if you're driving that's quite a distraction,
24 you could see them, somebody noticed that.

25 They got back to the trailer after they had gone

1 a mere thirty to thirty-five minutes they found someone had
2 broken in, somebody had been in there and stolen some
3 things. They had gone through their personal property and
4 had taken some items and their thoughts immediately went
5 back to the people they couldn't help but notice walking
6 down the road and she looked and after about a mile,
7 probably walked about fifteen minutes, they probably, you
8 know, we were only gone thirty, thirty-five minutes, if
9 they were walking by fifteen minutes ago they might know
10 something.

11 And Catina Hood, you met her, she was the mother,
12 she testified. She's a irrepressible individual, she's not
13 going to sit still, she went out to find those guys. She
14 calls the police and then she goes out on her own
15 investigation. She drives down here; she said she drove
16 fifteen to twenty minutes and after fifteen, twenty minutes
17 she finds them right here at the edge of this field and she
18 approached them and asked them, have you seen anything, see
19 who broke into my house.

20 When she walks up there before she can ask them
21 John Bostic, the person she identified individually,
22 approaches her and he says this is my bag. She wasn't even
23 looking at that bag but when he draws her attention to it
24 he looks, she looks at it, and lo and behold that ain't his
25 bag, that's her bag. She knows it because she just

1 unloaded it the night before. They had just moved into
2 that trailer and she had unpacked the night before and she
3 recognized that bag. She said that ain't your bag that's
4 my bag; and then the trail continued because those two
5 individuals they jumped the ditch and they ran and she
6 called the police again, said I have these two people by
7 the road here now, they've run off in the woods.

8 So they bring the tracking dog. The tracking dog
9 tracks them along the trail to the road down here by the
10 pond and they find those two individuals hiding out in the
11 swamp, bring them out there and they show them to Catina
12 then she says, yeah, those are the two, that's the ones I
13 saw hauling my stuff, but before they went off into the
14 woods they dropped something, State's Exhibit 1, pillow
15 case. That was the pillow case that Catina's grandchild,
16 Priscilla's child, was sleeping on, and inside the pillow
17 case dvd's with the victims initials on them so they could
18 identify them individually and a bottle of vodka all taken
19 from inside that trailer.

20 So that begins, you have a trail of sightings and
21 you have a trail of evidence beginning right there. Right
22 there you have the bag, the things stolen from inside the
23 trailer, and as the police are tracking along following the
24 dog right in the middle of the trail a Bud Light can
25 unopened and what kind of beer had been taken from the

1 trailer, Bud Light, another mark of the trail.

2 They go on down and then something funny happened
3 to the dog. While he was tracking he went to a pier on one
4 of these two ponds, these two little ponds right here if
5 you look real close you'll see what appears to be a little
6 pier there. The dog ran right off the end of the pier into
7 the water where they had to fish him out. Why did the
8 scent travel right down that pier, well I suggest to you
9 that's probably where they dumped that duffel bag and then
10 they ran out in the woods and they hid. That was the trail
11 that sort of the beginning of the story of this case.

12 There's more to it. Detective Craig Hutchinson,
13 he's the sergeant that was supervising the dog team. He
14 tells you about the footprints he saw as he was tracking
15 with that dog and when he went back to the house he saw
16 those same footprints, experienced tracker, twenty years of
17 work down at the police department, saw the same footprints
18 in the dirt around the trailer. That takes the trail right
19 back to the beginning where it started.

20 The victims are gone, only thirty, thirty-five
21 minutes, they come back, they see the defendants about
22 fifteen minutes down the road, gone thirty, thirty five
23 minutes the defendants had walked about fifteen minutes
24 down the road. That leaves only twenty minutes or so,
25 fifteen or twenty minutes for them to break into that

1 trailer, go in there, pick out the dvd's they wanted cause
2 you heard them say they didn't take them all, pick out the
3 ones they wanted, find a bottle of vodka, find the bag, the
4 gray duffel bag, to go in the refrigerator take out some
5 beer, six beers unopened, six pack case, then they get out
6 of there and start walking down the road..

7 Now as to the identity of the defendants as the
8 ones that did this burglary that's clear cause they were
9 here and remember they stopped here. They had items taken
10 from inside that house in their possession, just minutes
11 after the victims had left that house, so close in time
12 there was only one explanation, they had broken into that
13 trailer and got them.

14 Another thing when they were here they acted
15 guilty, they acted like they had something on them. First
16 of all, John Bostic, the man in charge, he approached Catina
17 Hood and he laughed, why, to to cover a crime, he said this
18 is my bag. It weren't his bag and remember she said, okay,
19 let's call the police and have this sorted out, what did
20 they do next, they jumped that ditch and then they ran,
21 didn't walk they ran towards that wood line, flee, another
22 sign of guilt.

23 And then they ran on down here when they got in
24 the swamp what did they do, they hid. They lied, they ran
25 and they hid, they acted guilty.

1 Now Mr. Chrisco asked if anyone had seen the
2 burglary and well at the risk of sounding a little
3 sarcastic, that's not the way burglaries work. Burglaries
4 don't strike when somebody is home. They don't walk in
5 there and say I'm going to take a few cd's, go in the beer
6 and get your, go to the refrigerator and get a couple of
7 beers, you don't mind, do you, they wait until nobody is
8 home.

9 Remember there was only about fifteen or twenty
10 minutes they had as a time opportunity to break into that
11 trailer, such a short time they must have been watching
12 from somewhere to see when the victims left, make sure that
13 house is empty before they went in because they're not
14 going to let anybody see them committing a crime. That's
15 not how you commit a burglary you sneak in and you sneak
16 out, so you have to base it on the evidence you find after
17 the crime cause they're not going to do it when somebody is
18 home.

19 That's the story in sort of chronological
20 fashion, but the Judge will instruct you that this isn't
21 about a story, it's about the elements. The State is
22 supposed to prove the elements of the crime. The elements
23 of the crime of burglary in the first degree are entering a
24 dwelling without consent with the intent to commit a crime
25 therein and the person doing so has two or more prior

1 convictions for burglary for housebreaking.

2 Let's take some of the easy ones first, without
3 consent, you heard Catina Hood say she didn't know these
4 people. They never had permission to enter her house.
5 never had permission to take her stuff, entered without
6 consent.

7 Dwelling evidence, you heard both Priscilla Hood
8 and Catina Hood testify they lived there with Catina,
9 Priscilla, Priscilla's little daughter, and Priscilla's
10 sister, her older sister, three people living there. Then
11 you have the pillow case for that little baby to sleep on,
12 Priscilla's daughter slept on it, that pillow case right
13 there in the house. They were sleeping there and they were
14 living there. They moved there, they were still unpacking
15 but they were living there.

16 Now attempt to commit a crime, that one is easy,
17 too, because what did they do when they got in there, they
18 stole stuff, stealing is a crime, crime called larceny, so
19 again attempt to commit a crime, clear.

20 That leaves us with two elements, first entry. I
21 want to be very clear to you what exactly we have to prove
22 with entry cause there were two people involved here.
23 There's a concept the Judge will charge you about called
24 hand of one is hand of all. That means when two people are
25 working together that if one person stays outside and acts

1 as a look out and the other person goes in they're both
2 equally guilty because they're working together in concert,
3 the hand of one is the hand of all.

4 If Detective Spencer and I were to decide to turn
5 to a life of crime and I stood outside and was a look out
6 and he went inside and picks things up he would be just
7 like my hand grabbing it because I am held responsible for
8 what he did, we're working together.

9 Now you have two individuals here, you have Mr.
10 Bostic and another individual, the one that dropped the
11 pillow case. Mr. Bostic is the one with the gray duffel
12 bag. Now who entered, I'll ask you, it doesn't matter, as
13 long as one of them entered, and clearly one did because
14 they both had items taken from inside that house, they're
15 both guilty of burglary, exactly, one exactly as guilty as
16 the other, the hand of one is the hand of all.

17 Now were they together, they were clearly
18 together. They were together when they were first seen
19 walking down the road here. They were together when Catina
20 Hood found them again walking down the road here, while
21 John Bostic confronted Catina they stayed together. The
22 other individual stood right there by him when they said,
23 when Catina said she was calling the police they jumped the
24 ditch together. They ran into the woods together; they ran
25 through the woods together. They hid in the swamp

1 together. They both were carrying things taken from inside
2 that house; they were working together. Through the whole
3 criminal enterprise they were working together, clearly
4 they they are the hand of one is the hand of all.

5 And so really all we have to prove is that one or
6 the other or both entered that house, any one of those is
7 enough to make John Bostic guilty of burglary. Either he
8 went in, his codefendant went in or they both went in.

9 I'm going to go a little further, I'm going to
10 argue to you that it was John Bostic that went in. I'm
11 going to argue that on three little basis. First there are
12 two containers of things stolen from the house. One was a
13 duffel bag, duffel bag has a strap and it's easy to carry.
14 One was a pillow case stuffed with swag from the house,
15 that's hard to carry cause have to hold it your hands. If
16 one person goes in the house and comes out carrying the
17 stuff they're not going to put the pillow case down and
18 then take the, the bag off their shoulder and hand it away,
19 they're going to hand the one that's in their hand to the
20 other person, easier to carry. The look out man will be
21 the carrier, would be carrying that pillow case.

22 And also who approached Catina to talk who was in
23 charge there? Catina Hood pulled over here and tried to
24 question those guys if they saw anything about her burglary
25 when she realized they were the burglars when she saw the

1 property in their possession. Who approached Catina Hood
2 and talked, John Bostic, the same man that ran off into the
3 woods here, same man found hiding in the swamp here, the
4 same man she saw in the headlights of the police vehicle
5 and identified as the person she saw carrying her goods.
6 He was the one that approached; he was the one in charge.

7 Then when they jumped that ditch what happened,
8 well the other man that was carrying the pillow case he
9 dropped that stuff and ran but John Bostic he held onto his
10 bag. He was clearly more committed in this. He was the
11 one in charge; he was the one that held onto the items
12 taken a bit longer. I'd argue that he was the one that
13 entered that trailer but the fact is we don't have to prove
14 who entered the trailer as long as one of them did and one
15 of them had to get all the items from inside that trailer.

16 And the final element is two or more convictions,
17 prior convictions for burglary or housebreaking. The Judge
18 is going to charge you on the law of breaking and entering
19 felony in North Carolina. Here you have State's Exhibit 10
20 and 11 that show in 1985 one conviction that occurred on
21 January 2nd, 1985, for breaking and entering felony and
22 this one from November 3rd, 1993, incident date, conviction
23 in 1994 breaking and entering felony, both for John Elvis
24 Bostic from the State of North Carolina Columbus County,
25 two different dates, two different convictions for breaking

1 and entering felony. The Judge will charge you that the
2 elements of breaking and entering felony are the same as
3 the elements of burglary in the third degree in South
4 Carolina. They're the same charge, same activity. The
5 only thing that's different is the name but it's the
6 elements that make the crime. . . .

7 The same crime you have here in South Carolina
8 called DUI, driving under the influence, in North Carolina
9 it's called driving while intoxicated, it's got a different
10 name, but it's the same crime. When something is stolen in
11 South Carolina it's called larceny, if something is stolen
12 in Georgia it's called theft, different name same crime.

13 In this case breaking and entering felony from North
14 Carolina is a burglary and he has two of them, two prior
15 convictions of breaking and entering felony, two prior
16 convictions for burglary, so there you have entering and
17 we've proved that because they have the stuff from inside
18 of the house, and they were working together, without
19 consent. Catrina Hood told you she didn't know these
20 people, she didn't give them any consent to go up there and
21 take anything. A residence, both Catina and Priscilla told
22 you that they lived in that house with Priscilla's daughter
23 and Catina's other daughter. With the intent to commit a
24 crime therein, they went in and they stole things, larceny
25 is a crime, intent to commit a crime, and then the two

1 prior convictions.

2 You have to look at all the evidence that proves
3 these different elements, look at the time line, the fact
4 that they had better than fifteen or twenty minutes to do
5 everything before they had to start walking down the road
6 to end up here when they were first seen. You have to look
7 at the fact that they had the, also have the items stolen
8 from the house on their, in their possession when they were
9 found down here. You have to look at the fact that they
10 lied when they were confronted by Catina Hood, that they
11 ran when Catina said she was calling the police. Then when
12 the police came they hid in the swamp. They lied, they
13 ran, they hid, evidence of guilt.

14 And the fact that the defendant minutes of when
15 the victims left their house, within thirty to thirty-five
16 minutes they were seen with the items taken from that house
17 walking down the road out there in the middle of the
18 country where you hardly ever see anybody walking. There's
19 no sidewalks out there for a reason cause very few people
20 walk down country roads and they would draw your attention.

21 Now finally I want to say a word about the
22 standard of proof. This case standard of proof is beyond a
23 reasonable doubt and the Judge again he's going to give you
24 some information of what beyond a reasonable doubt means,
25 give you some guidance there. The fact is he can't draw

1 you a picture; he can't give you a number of what
2 reasonable doubt is because reasonable doubt is a standard
3 that comes from you.

4 He'll tell you things like it is evidence that
5 leaves you firmly convinced of a defendant's guilt, but
6 that standard again it comes from you, not argued to you,
7 but given all the evidence in this case, given the close in
8 time proximity when they were seen walking down the road
9 with the Hood family's property the only just verdict in
10 this case is guilty of burglary in the first degree. I
11 thank you for your attention.

12 The Court: Mr. Chrisco?

13 Mr. Chrisco: May it please the Court?

14 The Court: Yes, sir.

15 Closing Argument

16 By Mr. Chrisco:

17 A couple of things before we get started. The
18 Solicitor talked about the laws of North Carolina and the
19 different names and stuff, you also have burglary first and
20 burglary second in North Carolina also.

21 The second thing, he said when they were caught
22 in the woods they had the items with them. The Solicitor
23 said at the end of the pier that's where they threw the
24 duffel bag and that's probably where it ended up and the
25 reason they couldn't find it. You can't have it both ways.

1 They either were caught with the items or they were in the
2 bottom of the pond in a duffel bag, Common sense, common
3 sense, let's just go back go through it.

4 Duffel bag was not with them and they saw it
5 beside the road, talking about the lady, saw them with the
6 duffel bag and it's not there when they find them in the
7 woods and they think that it's at the end of the pier. Why
8 didn't they go and search the water there? It doesn't stay
9 dark forever not even out in Nichols, and then they're dark
10 that night, how do we know that? The tracker said it's
11 very dark in that area, maybe that's the reason the german
12 shepherd walked off the end of the pier because it's dark.

13 The beer can, heard about the Bud Light can of
14 beer that was found along the way, have you seen it? Is it
15 over here, no, seen any fingerprints from anything, no.
16 Did you hear from the detective that investigated the case,
17 no. You have no evidence of them being inside the house.
18 Now we know that somebody was inside the house because
19 items from the house was found in a pillow case.

20 I go back and forth so, please, bear with me.
21 The testimony, you heard the testimony right here; if you
22 heard it different than I heard it go with your version.
23 This is what I heard the mother say was over at the trailer
24 the night before until almost midnight unpacking. They
25 were moving. It's natural to say when one's moving and

1 they've moved and they've lived there now, yes, we were
2 living, never said they slept there, moving in.

3 The Court, the Judge will read you what the law
4 is. The law says that dwelling definition is the someone
5 sleep, that they sleep inside the house. They had been
6 moving there and they've not moved in then it cannot be a
7 burglary second, can only be a burglary third cause it's a
8 building, no one is sleeping. That's the law, tell you
9 want the law is, that's the law.

10 You heard the door was jimmied in the back, seen
11 any pictures, seen any instruments? Footprints similar,

12 it's a highly unusual boot, you see the boot up here.

13 We've got a free stand thing here, a big blown up picture
14 from google map but we don't have the boot. Don't you

15 think a boot and a picture of a track, a plaster of a
16 track, you could sit those down, you could take the boot,

17 then you would know for sure that it was Mr. Bostic. You
18 wouldn't have to guess and say, okay, they're down the

19 street. If they're down the street then, okay, it was

20 them, they got the stuff. You know if somebody else broke
21 into the place and gave them the stuff it would be

22 receiving stolen goods. There's a lot of holes here, lot
23 of holes. Not but one defendant pleads to burglary second

24 it only gets five years, they're seeking life in prison for

25 Mr. Bostic. It takes a lot more I hope in South Carolina

1 to put someone away forever.

2 You heard from this stand right here officers
3 that were setting here, I don't know, could you go get your
4 file to make sure, I don't have the file with me, no, I
5 don't, I don't have, no. What kind of police officer do we
6 have? It didn't happen once; it didn't happen twice; every
7 single time it was the same excuse. When you don't have
8 evidence against somebody you just tend to say I don't
9 know. It's just like with kids when they were young why
10 did you do that, I don't know, what are you talking about,
11 I don't know.

12 This is a trial, burglary in the first degree,
13 the reason the charge burglary in the first degree in the
14 nighttime, then indicted Mr. Bostic because he has a
15 burglary for a breaking and entering up in North Carolina
16 1986 over a quarter of a century ago. 1993 was the next
17 burglary convicted in '84, breaking and entering 18 years.

18 The Solicitor said that he was the man because he
19 confronted he had the duffel bag. You can surmise a lot of
20 stuff, today it's more high tech than it used to be though,
21 a lot of crimes and stuff where videos been taken from when
22 people had videos in their houses or businesses, even
23 businesses across the street sometimes video will gather
24 something that happened on a property that's adjacent or
25 across the street and here we don't have that. We have a

1 trailer house that was broken into and stuff was taken out
2 and we don't know who did it.

3 We don't know if there was a third party, fourth
4 party, or just two, we don't know, but what we do know, I'm
5 going to go across it again, the detective is trained in
6 footprints, also the dog he was trained in tracking, he's
7 not trained in the identification of footprints. He's not
8 an expert in that; he's just an expert in tracking. He
9 says they were similar; he also said that when asked about
10 the soil sticking to the boot, oh, no, sand is very loose,
11 sand is very loose. He says they were at the front of the
12 house, the front of the house. Now the door that he said
13 was pried was in the back of the house, no footprint at the
14 back.

15 The Judge is going to instruct you on intent.
16 You see he's going to instruct you on what the law is on
17 the various items that you could consider as a whole, and
18 you tie the facts to the law, it's up to you. There are
19 twelve of you that will go back to deliberate and each of
20 you twelve has your own decision that you must make. You
21 don't make a decision because she wants you to make it or
22 he wants you to make, you make a decision because that's
23 the decision that you want to make. If you believe in your
24 decision you make your decision; that's all Mr. Bostic
25 asks.

1 You think about every single thing that's been
2 presented, is it enough. No evidence, no fingerprints,
3 easy to take a fingerprint off of a beer that's found in
4 the woods, but that only ties the person back to the beer
5 that was dropped in the woods. It doesn't tie them back to
6 there, maybe fingerprints from the refrigerator or from the
7 door or from the case in which the dvd's and cd's were
8 located. Ya'll going to get all this stuff; this goes back
9 into the jury room with you. Everyone of those cd's, guess
10 what, they didn't jump from that shelf into a pillow case;
11 they had to be individually placed in there. The Solicitor
12 said they just took their time and got what they wanted.
13 Each one would have been a prime item to not only run
14 fingerprints what about dna, too.

15 They took a picture of the bottle; I would
16 surmise that this was the bottle that was taken. Did it
17 have any fingerprints on it? I didn't see any evidence,
18 don't see any laying over here. We know that it was the
19 lady's because she said this initials right on it. We know
20 it's hers.

21 These things are, these things are plastic;
22 they're not paper, they're not porous, they're plastic.
23 You notice the residue on your fingers, there's always some
24 kind of oil or whatever, that's what gets transmitted on
25 there and that's where you can take fingerprints.

195

1 Fingerprints are not infallible but it's a good start but
2 we don't even have the good start

3 You'll see that these other breaking and
4 enterings from '85 and from '94 where he pled guilty, then
5 you've got the picture here. This could be some other kind
6 of picture but I call it the google map, look at it, look
7 at it closely. That's not the country which I was raised,
8 there's a lot of houses out here, a lot of houses
9 everywhere, a lot of houses. From this point to this point
10 we know that from this point to this point it's, they give
11 you some kind of relation on distance is two football
12 fields. That's what the officer that did the tracking with
13 the male german shepherd, Alto, I think was the dogs name.
14 You'll have that back there with you. What good is that,
15 just shows you where they found them, where they tracked
16 them to.

17 Very little was brought up by the Solicitor about
18 the burglary, the evidence gleamed from there. One Officer
19 Grainger, tall red head, he said the house was in disarray,
20 just moving in it's totally in disarray. Sometimes it
21 takes a couple of months to sort out things. Sometimes you
22 don't get rid of junk until you move a couple of times,
23 flimsy evidence.

24 You're going to get a sheet, a verdict sheet,
25 it's going to have different choices on it. One is going

1 to be burglary first, one is going to be burglary second;
2 one is going to be burglary third. The Judge, when he
3 gives you the charge, he will tell you exactly what they
4 are. The last one is find him not guilty.

5 You've heard the State's case, you decide which
6 one of those places that you want your jury foreman to sign
7 because it must be signed and it must be a unanimous vote
8 and that means all twelve of you have to agree, all twelve,
9 not ten of twelve, not nine of twelve, twelve of twelve,
10 and if the police can do a shoddy job and the Solicitor can
11 convict people with the evidence that they've gone in here
12 then God help us all.

13 Jury Charge

14 By The Court:

15 Ladies and gentlemen, all of the evidence has
16 been presented to you in this case and now is the time of
17 the trial for me to charge you with the law to be applied
18 in this case. The indictment charges the defendant with
19 burglary in the first degree. I remind you that the fact
20 that the defendant was arrested, charged, and indicted in
21 this case is not evidence in this case and cannot be
22 considered by you as evidence of guilt in this case, nor
23 does the defendant's arrest, charge, or indictment create
24 any presumption or inference of guilt. The indictment is
25 simply the formal written instrument which contains the

1 charge made against the defendant. It is the formal
2 document by which this case is brought into this court.

3 The defendant has pled not guilty to this
4 indictment and that plea puts the burden on the State to
5 prove the defendant guilty.

6 A person charged with committing a criminal
7 offense in South Carolina is never required to prove his
8 innocence.

9 I charge you that an important rule of the law is
10 that the defendant in a criminal trial no matter what the
11 seriousness of the charge may be will always be presumed to
12 be innocent of the crime for which the indictment was
13 issued unless guilt has been proven by evidence satisfying
14 you of that guilt beyond a reasonable doubt.

15 This presumption of innocence does not end when
16 you begin your deliberations but it accompanies the
17 defendant throughout the trial until you reach a verdict of
18 guilt based on evidence satisfying you of that guilt beyond
19 a reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness placed about the shoulders of the defendant
22 which remains with the defendant until it has been stripped
23 from the defendant by evidence satisfying you of the
24 defendant's guilt beyond a reasonable doubt.

25 The presumption of innocence is not a mere legal

1 theory. It is not just a legal phrase. It is a
2 substantial right to which every defendant is entitled
3 unless you the jury are satisfied from the evidence of the
4 defendant's guilt beyond a reasonable doubt.

5 Now what is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. Proof beyond a
8 reasonable doubt is proof that leaves you firmly convinced
9 of the defendant's guilt.

10 We know very few things in this world with
11 absolute certainty and in criminal cases the law does not
12 require proof that overcomes every possible doubt. If
13 based on your consideration of the evidence you are firmly
14 convinced that the defendant is guilty of the crime with
15 which he is charged you must find the defendant guilty.

16 If on the other hand you think a real possibility
17 exists that the defendant is not guilty you must give the
18 defendant the benefit of that doubt and find him not
19 guilty.

20 I remind you that during this trial you and I
21 have certain duties to perform. As the trial judge my
22 responsibility is to preside over the trial of this case.
23 I also have the duty to rule on the admissibility of
24 evidence offered during this trial.

25 You are to consider only the competent evidence

1 before you. If any testimony was ordered stricken from the
2 record in this case during this trial you must disregard
3 that testimony. You are to consider only the testimony
4 which has been presented from the witness stand, any
5 exhibits which have been made a part of the record in this
6 case, and any stipulations of counsel.

7 I have the additional duty to charge you the law
8 applicable to this case. As the presiding judge I am the
9 sole judge of the law of this case. Your duty as jurors is
10 to accept and apply the law as I now state it to you. If
11 you already have any ideas to what the law is or what the
12 law ought to be and your idea is different from what I now
13 tell you the law is you must abandon your idea of what the
14 law is or ought to be because you are sworn to accept the
15 law and apply the law exactly as I state it to you.

16 In every case tried in this court before a jury
17 the jury is the sole and exclusive judge of the facts in a
18 case. A trial judge cannot intimate, state, comment on, or
19 make any statement to a trial jury about the facts in a
20 case. Since you the jury are the sole judge of the facts
21 in this case you are not to infer from what I have said
22 during the process of this trial in ruling upon the
23 admissibility of evidence or otherwise or anything that I
24 say now during the course of this instruction to you that I
25 have any opinion about the facts in this case. The law

1 does not allow me to have an opinion about the facts in
2 this case. This is a matter solely for you the jury to
3 determine. As jurors your duty is to determine the effect,
4 value, weight, and truth of the evidence presented during
5 this trial.

6 Two types of evidence are generally presented
7 during a trial, direct evidence and circumstantial
8 evidence.

9 Direct evidence is the testimony of a person who
10 claims to have actual knowledge of a fact such as an
11 eyewitness. It is evidence which immediately establishes
12 the main fact sought to be proved.

13 Circumstantial evidence is proof of a chain of
14 facts and circumstances indicating the existence of a fact.
15 It is evidence which immediately establishes collateral
16 facts from which the main fact may be inferred.
17 Circumstantial evidence is based on inference and not on
18 personal knowledge or information.

19 The law makes absolutely no distinction between
20 the weight or value to be given to either direct or
21 circumstantial evidence nor is a greater degree of
22 certainty required of circumstantial evidence than of
23 direct evidence.

24 You should weigh all of the evidence in the case.
25 After weighing all of the evidence if you are not convinced

1 of the guilt of the defendant beyond a reasonable doubt you
2 must find the defendant not guilty. Necessarily you must
3 determine the credibility of witnesses who have testified
4 in this case.

5 Credibility simply means believability. Your
6 duty as jurors is to analyze and to evaluate the evidence
7 and determine which evidence convinces you of its truth.
8 In determining the believability of witnesses who have
9 testified in this case you may believe one witness over
10 several witnesses or several witnesses over one witness.
11 You may believe a part of the testimony of a witness and
12 reject the remaining part of the testimony of that same
13 witness. You may believe the testimony of a witness in its
14 entirety or reject the testimony of a witness in its
15 entirety.

16 You may consider whether any witness has
17 exhibited to you any interest, bias, prejudice, or other
18 motive in this case. You may also consider the appearance
19 and manner of the witness while on the witness stand.

20 However, I instruct you and emphasize that the
21 fact that the defendant did not testify is not a factor to
22 be considered by you in any way in your deliberation and in
23 your consideration of the question of guilt or the
24 innocence of the defendant. You must not consider the
25 defendant's failure to testify in any manner whatsoever.

1 A defendant has the constitutional right to remain silent
2 and the assertion of this right must not be considered by
3 you in your deliberations. I repeat, under your oath you
4 are to draw no conclusion whatsoever from the fact that the
5 defendant in this case did not testify. The fact that this
6 defendant did not testify should not even be discussed in
7 the jury room.

8 The burden of proof as I have stated to you is on
9 the State. The defendant is not required to prove his
10 innocence. The burden of proof remains on the State to
11 prove guilt beyond a reasonable doubt.

12 Now if a crime is committed by two or more people
13 who are acting together in committing a crime the act of
14 one is the act of all. A person who joins with another to
15 commit an unlawful act is criminally responsible for
16 everything done by the other person which happens as a
17 probable or natural consequence of the acts done in
18 carrying out the common plan and purpose.

19 For example, two people can be guilty of killing
20 another person when only one of the two had a gun, there
21 was only one bullet, and only one of the two fired the shot
22 that caused the death. If two or more people are together,
23 acting together, assisting each other in committing the
24 offense the act of one is the act of all where as it is
25 sometimes said the hand of one is the hand of all. Prior

1 knowledge that a crime is going to be committed without
2 more is not sufficient to make a person guilty of that
3 crime. Mere knowledge that another person is going to
4 commit a crime even if the defendant is present when the
5 crime is committed is not sufficient to convict the
6 defendant as a principal..

7 Guilt as a principal is shown by actual or
8 constructive presence at the scene as a result of prior
9 arrangement, therefore, a finding of a prior arranged plan
10 or common scheme is necessary for a finding of guilt as a
11 principal. The State must prove beyond a reasonable doubt
12 by competent evidence the theory of the hand of one is the
13 hand of all.

14 A principal in a crime is one who either actually
15 commits the crime or is present aiding, abetting, or
16 assisting in committing the crime. When a person doesn't
17 act in the presence of and with the assistance of another
18 the act is done by both... Where two or more acting with a
19 common plan or intent are present at the commission of a
20 crime it does not matter who actually commits the crime,
21 all are guilty, the hand of one is the hand of all.

22 Present at the commission of a crime means to be
23 sufficiently near to aid, and abet, and assist in the
24 commission of the crime, however, mere presence at the
25 scene of the crime is not sufficient to convict one as a

1 principal on the theory of aiding and abetting.

2 Intent is also a necessary element where there
3 must have been a common design or intent to commit the
4 crime and the crime must have been committed pursuant
5 thereto with the person aiding and abetting by some overt
6 act.

7 Intent means intending the result which actually
8 occurs not accidentally or involuntarily. Intent may be
9 shown by acts and conduct of the defendant and other
10 circumstances from which you may naturally and reasonably
11 infer intent. The State must prove these elements beyond a
12 reasonable doubt.

13 An issue in this case is the identification of
14 the defendant as the person who committed the crime
15 charged. The State has the burden of proving identity
16 beyond a reasonable doubt. You must be satisfied beyond a
17 reasonable doubt of the accuracy of the identification of
18 the defendant before you may convict the defendant.

19 Identification testimony is an expression of
20 belief or impression by a witness. You must determine the
21 accuracy of the identification of the defendant. You must
22 consider the believability of each identification witness
23 in the same way as any other witness.

24 You may consider whether the witness had an
25 adequate opportunity to observe the offender at the time of

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1 the offense. This will be affected by things like how long
2 or short a time was available, how far or close the witness
3 was, the lighting conditions, and whether the witness had
4 the chance to see or know the person in the past.

5 Once again I instruct you the burden of proof is
6 on the State, and the State extends to every, and that
7 burden extends to every element of the crime charged and
8 this specifically includes the burden of proving beyond a
9 reasonable doubt the identity of the defendant as the
10 person who committed the crime.

11 If after examining the testimony you have a
12 reasonable doubt as to the accuracy of the identification
13 you must find the defendant not guilty.

14 In order to establish criminal liability criminal
15 intent is required. For example, the mental state required
16 to be proven by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness, or criminal
18 negligence. Criminal intent must be proven by the State
19 beyond a reasonable doubt.

20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation. There is no way to prove intent to a
23 mathematical certainty. There is no way medical science
24 can dissect a persons brain and determine what the person
25 had in mind so the law says that criminal intent may be

1 inferred from the circumstances shown to have existed.

2 This is how you make a determination of whether or not the
3 element requiring intent was present.

4 It is not necessary to establish intent by direct
5 and positive evidence but intent may be established by
6 inference in the same way as any other fact by taking into
7 consideration the acts of the parties and all the facts and
8 circumstances of the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances shown
12 to have existed. Criminal intent can arise from action or
13 a failure to act. It may arise from negligence,
14 recklessness, or an indifference to duty or to consequences
15 that is considered by the law to be the equivalent of
16 criminal intent.

17 A mere presence at the scene is not sufficient to
18 prove someone guilty of a crime. A defendant's presence
19 where a crime is being committed or mere association with a
20 person who commits a crime does not make a defendant an
21 accomplice or an aider and abettor of the person committing
22 the crime. The burden is on the State to prove every
23 element of the crime charged.

24 If you find after reviewing all of the evidence
25 that the State has proved that the defendant was only

1 present at the scene of a crime and that they have not
2 proved beyond a reasonable doubt any other participation in
3 the crime then you must find the defendant not guilty. The
4 law is that proof of one being at the scene of the crime is
5 not by itself sufficient to find someone guilty.

6 The defendant is charged with first degree
7 burglary. To convict the defendant of this crime the State
8 must first prove beyond a reasonable doubt that the
9 defendant entered a dwelling without consent.

10 A dwelling is any building or portion of a
11 building in which the person ordinarily sleeps. A building
12 constructed as a dwelling that has never been occupied
13 cannot be considered a dwelling for purposes of burglary,
14 but a building is a dwelling even if the residents are
15 temporarily absent from the building.

16 In order to prove that the defendant entered the
17 dwelling the State does not have to show that the
18 defendant's entire body entered the dwelling. The smallest
19 entry is sufficient. It may be any part of the body such
20 as a hand or foot or even an instrument such as a hook or
21 other instrument. In addition the State does not have to
22 prove that force was used to gain entry. If a person
23 enters a building by using deception, artifice, trick, or
24 misrepresentation to get consent to enter this is an entry
25 without consent.

1 Next the State must prove beyond a reasonable
2 doubt that the defendant intended to commit a crime either
3 a felony or a misdemeanor at the time of the entry. The
4 mere entry into a dwelling without consent is not burglary.
5 Also, it is not burglary if the intent to commit a crime was
6 formed after the entry.

7 ; On the other hand if the defendant intended to
8 commit a crime at the time of entry it is a burglary even
9 if the intent was abandoned after the entry. It does not
10 matter that the intended crime was not completed. Intent
11 may be shown by acts and conduct of the defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent.

14 Finally, the State must prove beyond a reasonable
15 doubt that the defendant had a prior record of two or more
16 convictions for burglary and/or housebreaking. Evidence of
17 prior offenses committed by the defendant is not evidence
18 that the defendant has a bad character and is not evidence
19 that the defendant entered a dwelling without consent and
20 with the intent to commit a crime in this case.

21 The prior convictions may be considered by you
22 only for the purpose of determining whether or not the
23 element of having two prior convictions for burglary and/or
24 housebreaking necessary for the crime of first degree
25 burglary has been satisfied.

1 Before you can even consider the evidence of the
2 defendant's prior burglary and/or housebreaking convictions
3 you must first find that the State has proved beyond a
4 reasonable doubt that a burglary was committed by the
5 defendant in this case. If you find beyond a reasonable
6 doubt that the burglary was committed then you may consider
7 the evidence of the prior convictions as evidence of one of
8 the circumstances which would make the burglary first
9 degree burglary. If you do not find beyond a reasonable
10 doubt that the defendant committed these alleged prior
11 offenses then you cannot return a verdict of guilty for
12 first degree burglary.

13 A North Carolina crime of breaking and entering
14 is defined as the breaking or entering of a building
15 without the owners consent and with the intent to commit
16 any felony or larceny therein.

17 Under South Carolina law third degree burglary is
18 defined as the entering of a building without consent and
19 with the intent to commit a crime therein, therefore, if
20 you find that the State has proved beyond a reasonable
21 doubt that the defendant has a prior conviction in North
22 Carolina for breaking and entering then that conviction
23 would constitute a prior conviction for burglary as
24 contemplated in the South Carolina crime of first degree
25 burglary.

1 Included within the offense of first degree
2 burglary is the lesser offense of second degree burglary,
3 therefore, if you find that the State has failed to prove
4 beyond a reasonable doubt that the defendant committed
5 first degree burglary you may consider whether the State
6 has proved beyond a reasonable doubt that the defendant
7 committed second degree burglary.

8 Second degree burglary includes all of the
9 elements of first degree burglary except that two prior
10 convictions for burglary and/or housebreaking is not
11 required for second degree burglary as it is in first
12 degree burglary. In other words to prove second degree
13 burglary the State must prove beyond a reasonable doubt
14 that the defendant entered a dwelling without consent and
15 with the intent to commit a crime at the time of the entry.

16 If you find the State has failed to prove beyond
17 a reasonable doubt that the defendant committed first
18 degree burglary or second degree burglary you may consider
19 whether the State has proved beyond a reasonable doubt that
20 the defendant committed third degree burglary. Third
21 degree burglary includes all of the elements of second
22 degree burglary except that the defendant's unlawful entry
23 need only be into a building rather than a residence or
24 dwelling. In other words to prove third degree burglary
25 the State must prove beyond a reasonable doubt that the

1 defendant entered a building without consent and with the
2 intent to commit a crime therein at the time of entry.

3 A building is any structure, vehicle, watercraft,
4 or aircraft where any person lodges or lives or where
5 people assemble for the purpose of business, government,
6 education, religion, entertainment, public transportation,
7 or public use, or where goods are stored.

8 You may find one of four possible verdicts in
9 this case. No significance is to be given to the order in
10 which I state these possible verdicts to you. I simply
11 must state one first, one second, one third, and one
12 fourth.

13 The possible verdicts in this case are, we the
14 jury find the defendant guilty of first degree burglary, or
15 we the jury find the defendant guilty of second degree
16 burglary, or we the jury find the defendant guilty of third
17 degree burglary, or we the jury find the defendant not
18 guilty.

19 Ladies and gentlemen, your verdict must be a
20 unanimous one.

21 Mr. Burr, as foreperson when the jury agrees on a
22 verdict you will check the appropriate verdict on the
23 verdict form, date the form, and sign your name, then knock
24 on the jury room door and inform the bailiff that you have
25 reached a verdict. At that time we'll receive you back

1 into the courtroom.

2 Now some of you have taken notes during the trial
3 of this case, however, please remember that some people are
4 better notetakers than others. Some people's recollections
5 are better without taking notes. A juror's notes should
6 not be given any greater weight than the recollection of
7 other jurors. The recollections of individual jurors
8 should be considered as reliable as notes taken by any
9 other juror.

10 Now at this time I'm going to ask that you return
11 to the jury room but, please, do not begin your
12 deliberations at this time. I have to check with the
13 attorneys to see if they have any challenges or additions
14 to my charges of the law to you. If they do have some and
15 I deem that they are appropriate I'll bring you back in and
16 either make the corrections or charge you further on the
17 law as I deem appropriate. If there are no additional
18 charges to be given to you we will send all of the exhibits
19 back to the jury room with you with a copy of the verdict
20 form, the original indictment, then you will be instructed
21 by the bailiff at that time that you can begin your
22 deliberations.

23 You can take your pads with you as you go back
24 but, please, do not begin your deliberations until you're
25 told to do by the bailiff. All right, everyone else,

1 please, remain seated while the jury is excused.

2 (Whereupon, the jury retired to the jury room at
3 3:05 p.m.)

4 The Court: All right, any corrections to the
5 jury charge by the State?

6 Mr. DeBusk: None from the State, Your Honor.

7 The Court: Any by the defense?

8 Mr. Chrisco: There's a couple of things but not
9 anything that the defense would object to as far as on page
10 six the Court said knowledge or information and it should
11 have been knowledge or observation and then when it
12 pertained to burglary and it was and/or housebreaking where
13 the statute only says burglary or housebreaking.

14 The Court: Okay.

15 Mr. Chrisco: Nothing that the defense would ask
16 for a recharge about.

17 The Court: All right. All right, let's make
18 sure that we've got, I ask that the attorneys come up and
19 make sure we've got all the exhibits in hand. Let me give
20 you, here's the indictment; here's the verdict form that
21 goes with the exhibits and we'll send them back to the jury
22 and you can tell the jury that they can begin their
23 deliberations. When you take the exhibits back would you
24 bring Ms. Carter out, alternate juror.

25 Mr. Chrisco: Your Honor, I would renew my

1 objection to the indictment because it doesn't follow what
2 the statute is or the equivalent charge in another state.
3 That statute says nothing about that.

4 The Court: All right, I note your objection,
5 I'm going to let it stand.

6 Mr. Chrisco: Thank you, Your Honor.

7 The Court: Thank you, all right.

8 (Whereupon, the verdict forms and exhibits were
9 delivered to the jury room at 3:07 p.m. with instructions
10 to commence deliberations.)

11 (Whereupon, the alternate entered the courtroom.)

12 The Court: All right, this is the time of the
13 trial that I always hate, as the alternate since we still
14 have our original twelve jurors you will not be allowed to
15 participate in the deliberation. I hate this part because
16 you have to sit through the whole trial; you have to be
17 ready to deliberate but since we still have the original
18 twelve jurors you cannot participate in the deliberation.
19 You are at liberty to stay here if you want to or if you
20 want to leave you can do that, whichever makes you feel
21 more comfortable. Have you got anything in the jury room?

22 The Alternate: No, I have all my belongings.

23 The Court: Okay, all right, well you're at
24 liberty to stay with us if you want to or if you want to go
25 ahead and leave for the remainder of the day you can.

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1 You'll need to call that number after 6 p.m. today if you
2 do leave and that will give you some further instructions
3 as to when you need to return, okay.

4 The Alternate: Okay.

5 The Court: All right, thank you very much.

6 (Whereupon, the alternate was excused.)

7 The Court: All right, we'll stand in recess
8 until we hear from them.

9 (Whereupon, the jury knocked with a question at
10 3:29 p.m.)

11 The Court: In The State v. Bostic I've received
12 a request from the jury, says may we have a list of the
13 points for first, second, and third degree burglary and it
14 was signed, oh, gosh, I'm sorry, we need to get him up
15 here.

16 (Whereupon, the defendant is escorted into the
17 courtroom.)

18 Mr. Bostic, we're back on the record in The State
19 v. Mr. Bostic in this case. We received a request from the
20 jury, it says may we have a list of the points for first,
21 second, and third degree burglary, and it's signed, I'm
22 assuming that's Jay Burr, the foreperson. It looks like
23 Jay Burr's signature.

24 I've just written on their request attached is
25 the entire charge of the law in this case. I've signed my

1 name; I've attached a copy of the charge of the law and
2 I'll just send the whole thing back to the jury and do it
3 that way. Let's mark that as Court's Exhibit 6 and we'll
4 send it all back.

5 Mr. Chrisco: No objection from the defense,
6 Your Honor.

7 Mr. DeBusk: None from the State, Your
8 Honor.

9 (Whereupon, Court's Exhibit Number 6 marked for
10 identification.)

11 The Court: All right. All right, and I'll
12 stand in recess until we get a verdict.

13 Mr. DeBusk: Thank you, Your Honor.

14 (Whereupon, Court's Exhibit Number 6 delivered to
15 the jury with instructions to continue deliberations.)

16 (Whereupon, the jury knocked with a verdict at
17 4:40 p.m.)

18 The Court: All right, I understand the jury has
19 reached a verdict, hold up, let's get Mr. Bostic in here.

20 (Whereupon, the defendant is escorted into the
21 courtroom.)

22 The Court: All right, I understand the jury has
23 reached a verdict in the case of The State v. Bostic, 2011-
24 GS-26-1259, anything from the State before we bring the
25 jury in?

1 Mr. DeBusk: No, Your Honor.

2 The Court: Anything from the defense?

3 Mr. Chrisco: No, Your Honor.

4 The Court: All right, let's go ahead and bring
5 the jury in.

6 (Whereupon, the jury entered the courtroom at
7 4:45 p.m. to deliver its verdict.)

8 The Court: All right, ladies and gentlemen,
9 welcome back, Mr. Burr, I understand the jury has reached a
10 verdict; is that correct?

11 Mr. Foreperson: Yes, sir, we have.

12 The Court: Have you filled out the verdict
13 form?

14 The Foreperson: Yes, we have.

15 The Court: If you'd, please, give it to the
16 bailiff, please?

17 I'll ask the Clerk if you'd, please, publish the
18 verdict.

19 Madam Clerk: Indictment number 2011-GS-26-1259,

20 The State of South Carolina County of Horry v. John Elvis

21 Bostic, we the jury find the defendant guilty of first
22 degree burglary, signed by the foreperson Jay Burr, juror
23 number 37, dated October 5th, 2011.

24 Ladies and gentlemen of the jury, if this is your
25 verdict so signify by raising your right hand.

1 (Whereupon, all jurors responded affirmatively.)

2 The Court: All right, let the record reflect
3 that all jurors raised their right hand. Any polling of
4 the jury by the defense?

5 Mr. Chrisco: No, Your Honor.

6 The Court: All right, all right, ladies and
7 gentlemen, that will conclude your services as jurors in
8 this particular case and I want to thank you for your
9 services in this case. I know it's not an easy job, but I
10 thank you for your service in this case. Unfortunately we
11 do have another trial. I hope you might be able to serve
12 on another trial this week; we don't know. We'll need to
13 pull another panel but if you would, please, be back in the
14 jury room at 9:15 tomorrow morning down in the large panel
15 room downstairs. We have another case that will be going
16 forward at that time, but I want to thank you for your
17 services. I'll excuse you at this point in time and I'll
18 see you tomorrow morning at 9:15, thank you very much. If
19 everyone else would, please, remain seated while the jury
20 is excused.

21 (Whereupon, the jury was excused for the evening
22 at 4:47 p.m.)

23 The Court: All right, anything post trial
24 motions by the defense at this time?

25 Mr. Chrisco: Your Honor, we'd make a motion for

1 a new trial based upon the verdict is inconsistent with
2 what evidence was presented.

3 The Court: All right, I'll note your motion;
4 I'm going to deny that. Anything else?

5 Mr. Chrisco: No, Your Honor.

6 The Court: All right, any reason as to why we
7 can't go forward with sentencing at this point in time?

8 Mr. Chrisco: No, Your Honor.

9 The Court: All right, we've got a sentencing
10 sheet?

11 Mr. DeBusk: Your Honor, Mr. Grimms is preparing
12 one for me in the rear and I'll have in just a moment.

13 The Court: All right. All right, let's, I
14 guess let's just stand down, what it will take about five
15 minutes?

16 Mr. DeBusk: Yeah, about five, Your Honor, yes,
17 sir.

18 The Court: Okay, all right, let's give me about
19 five minutes and then I'll be back and we'll impose
20 sentence at that time, okay, everybody just sit tight at
21 this time.

22 Mr. DeBusk: Thank you, Your Honor.

23 (Whereupon, a recess was taken at this time and
24 the following takes place on the record after the recess.)

25 The Court: All right, Mr. Chrisco, anything in

1 mitigation?

2 Mr. Chrisco: Yes, Your Honor, Your Honor set
3 here through this whole trial seeing how a so-called police
4 department investigated a, was called, they tracked two
5 people. You got the treasured travel of where evidence
6 could be located, they did the poorest job of anything that
7 I've heard of since I've been practicing law and that's
8 been for decades.

9 How officers can get on the stand and use the
10 ruse I don't have my file with me, that's how much they
11 think of their fellow man but they'll get their day grandly
12 I guarantee, but this man here, I would ask the court
13 knowing the confines that the Court is fifteen to life, I
14 would ask the Court to sentence Mr. Bostic to fifteen years
15 and suspend that cause there's nothing in that statute for
16 first degree burglary that says a judge cannot suspend,
17 just says a minimum of 15 years. It doesn't have that
18 qualifying language in there that says that a judge, that a
19 court can't, and suspend that to a sentence that would be
20 equivalent to what the codefendant got in this case with a
21 very similar record. He didn't have two instances of B&E
22 in two separate years but he had many instances of B&E
23 where the dates of the B&E's were more than two weeks apart
24 and even though he pled and is considered one pleading at
25 one time the court has held that you look at each case and

1 if they're separated in time then they're not connected and
2 they can be treated as such.

3 The Solicitor has got great leeway in there,
4 always ask for fairness and justice and we would ask the
5 court to suspend that sentence to something that's
6 comparable to the time that the other defendant would,
7 would be serving in prison because this is violent, no
8 parole, eighty-five percent and when it's all over he's
9 going to still have the community supervision that he's
10 going to have to go through for a period of two years.

11 Anything you want to say?

12 Defendant Bostic: Yes, Your Honor, I'm a
13 property owner in North Carolina, own my own house, own
14 land. I've got three, three kids. I've got property in
15 another county. I've been locked up for 19 months and this
16 charge, these laws I'm not used to these laws here but I'm
17 not guilty. They found me guilty, I'm satisfied with that.
18 I'm not mad with nobody, my attorney did a fine job. I'm
19 not guilty of no first degree burglary. I was guilty of a
20 third degree burglary. I just didn't take the stand
21 because of my record. That man brought me that stuff. I
22 couldn't say that, if got up there with my record I
23 probably would have got a life sentence but so far God in
24 Heaven know I did not do no first degree burglary or no
25 second degree burglary. I am guilty of that third degree

1 burglary. I stood at the corner of that house, I went in
2 the highway. That man reversed that story on me just like
3 that detective up there when he arrested me.

4 I said, you know I'm not guilty of a first degree
5 burglary. He said, I know you're not but I'm going to put
6 it on you, it's going to stick and you're going to go to
7 jail longer for you, longer than you did for the armed
8 robbery. I've been real ever since the first time, ever
9 since I've been in South Carolina.

10 I filed for a speedy trial, the first month
11 February. Mr. Chrisco did everything he could do to get me
12 in court on a speedy trial, I was denied that. April of
13 this year I was supposed, I forgot what judge it was, he
14 said well you'll go to trial on the speedy trial in April.
15 They wasn't ready, they had four or five, the State had
16 four or five extensions on me and they kept and when they
17 only was supposed to have two, two, and they took four
18 extra more, I don't understand.

19 Like today, this evidence, no evidence was
20 presented, but like I said I'm guilty of a third degree.
21 No evidence was presented on a third, on a first degree
22 burglary and I'm found guilty, I don't understand that.

23 The Court: Thank you, sir. All right, the
24 victims present or wish to say anything?

25 Mr. DeBusk: No, Your Honor, they did not come

1 today. They live in another county at this time.

2 The Court: All right, let me hear his prior
3 record.

4 Mr. DeBusk: Your Honor, from 1982 contributing
5 to delinquency of a minor, misdemeanor in North Carolina.

6 Also from North Carolina a 1982 unauthorized use
7 of conveyance, also I believe a misdemeanor.

8 From 1985 breaking and entering felony which is
9 one of the charges that was admitted as evidence in the
10 case today.

11 Also a larceny charge along with that.

12 1985 at the same time as that breaking and
13 entering felony was robbery with a dangerous weapon which,
14 I'm sorry, that was a common law robbery in North Carolina
15 not the robbery with dangerous weapon, common law robbery.

16 A 1992 unauthorized use of a motor vehicle,
17 misdemeanor.

18 1991 assaulting a female, misdemeanor.

19 1993 driving with license revoked, misdemeanor
20 and shoplifting, misdemeanor.

21 And then in 1994 the five counts of breaking and
22 entering and seven counts of larceny, that was part of the
23 evidence that was redacted for trial.

24 And then from 1994 also possession of stolen
25 property.

1 And then, I believe, from the State of Georgia,
2 theft by shoplifting 1992.

3 The Court: All right, what did he get for the
4 1994 charges?

5 Mr. DeBusk: According to the sentencing sheet,
6 Your Honor, from Columbus County, he got eight years.

7 The Court: All right. All right, Mr. Bostic,
8 the sentence of the Court is that you be confined to the
9 State Department of Corrections for a period of fifteen
10 years, you'll be given credit for any time served thusfar.

11 Mr. Chrisco: Thank you, Your Honor.

12 The Court: Thank you.

13 End of requested transcript - - - -
14
15
16
17
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25

CERTIFICATE OF REPORTER

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

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

December 19, 2011

Brenda R. Babb

Brenda R. Babb, CVR
OFFICIAL REPORTER

WITNESSES

Officer Roy Henry County Police Department

CERTIFIED COPY

2011 OCT 10 PM 2:23

Melanie Huggins
CLERK OF COURT
HORRY COUNTY

FILED State of South Carolina
HORRY COUNTY

2011 OCT 10 PM 2:12
George Debusk
CLERK OF COURT

10400828

COURT OF GENERAL SESSIONS

March, 2011 TERM

RF T WARRANT NUMBER

011GS2601259

DR: 0079 18-11-0311

OA: 2126/2010

THE STATE

VS.

ACTION OF GRAND JURY

TRUE BILL

Paula Lisa
son of Grand Jury
MAR 31 2011

INDICT

Indictment for

Burglary First Degree

ATTORNEY: Chrisco, William Edward

John Elvis Bostic
B/M
253 Gillard Road
Chadbourn, NC 28431
DOB:
SSN:

J. Gregory Hembree, Solicitor

ORIGINAL

Representative of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

CERTIFIED COPY
2011 OCT 10 PM 2:23
W. L. HARRIS, JR.
CLERK OF COURT
HORRY COUNTY

At a Court of General Sessions, convened on March 31, 2011, the Grand Jurors of Horry County present upon their oath:

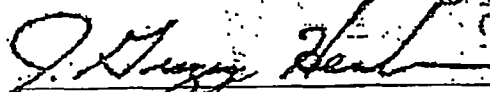
BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That John Elvis Bostic did in Horry County, on or about February 25, 2010 enter the dwelling of Catina Hood without consent and with the intent to commit a crime therein and he has a prior record of two or more convictions for burglary or housebreaking, or the equivalent charge in another state, in violation of Section 16-11-110 of the Code of Laws, 1976, as amended.

FILED
HORRY COUNTY
2011 OCT 10 PM 2:19
J. AME HIGGINS, JR.
CLERK OF COURT

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

John Elvis Bostic

AKA:

Race: BLACK

Sex: M

Age: 48

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2601259

A/W#: 2011GS2601259

Date of Offense: 2/25/2010

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC w/minor 1st or Lewd Act ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB16182

Debusk, George H.

SC Bar#

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 10 years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUT Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 183.90

PTUP _____ days/hours Public Service Employment

Obtain GED: ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 11/05/2020

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation.

Ammonut Peterson

STATE OF NORTH CAROLINA

Case No. 145-85-078-4942

County: Columbus County Whiteville Seat of Court

In The General Court of Justice
District: ☐ Superior Court Division: ☒

Note: This form is not to be used for multiple offenses unless they are consolidated for judgment.

STATE VERSUS

Defendant:
John Elvis Bostic

JUDGMENT AND COMMITMENT

Race: B Sex: M DOB: ☐ Pre-PSA
FelonAttorney for State: Tom Aldridge, Jr. ☐ Del. found not indigent ☐ Del. retained attorney Attorney for Defendant: J. B. Lee, III. ☒ Appointed ☐ Retained☒ Only Offense: ☐ Driver's License No. (DWI only): ☐ State (DWI only):The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

For Felony and Offense(s)	Date of Offense	G.S. No.	Penalty	Class	Min Term	Probation
85 cgs 145 B&E	1/2/85	14-54 (a) Fel. 14-72 (b) (2)	Fel.	H	10yrs.	3 yrs.
85 cgs 4942 Common Law Robbery	6/30/85	Common Law	Fel.	H	10 yrs.	3 yrs.

The above offenses are consolidated for the purpose of judgment.

The Court having considered evidence, arguments of counsel, and statement of the defendant ORDERS that the defendant be imprisoned

For a term of:

Four (4) years

In the custody of the:

☒ N.C. Dept. of Correction

Commitment is to issue at 5:00 p.m. on Wednesday,

September 4, 1985, and the defendant is ordered to

surrender himself to the Sheriff at or before such time for transportation to the

The defendant shall be given credit against this sentence for: 49 days spent in confinement prior to the date of this judgment.

Facilities of the NDOC.

NOTE: For Fair Sentencing Act felonies, Judge must impose a single prison term and may not impose a minimum and maximum prison term. In multiple felony cases, Judge must impose a minimum and a maximum prison term, and no credit may be given for the first 2 yrs. of confinement. G.S. 149-61(1).

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.

Case No. for case, county & court in which prior sentence imposed.

(check all that apply)

☐ The defendant shall serve as a committed youthful offender (C.O.P.) pursuant to G.S. Chapter 148, Article 3B.☐ The defendant should not receive the benefit of release under G.S. 148-49, 15.☐ The defendant shall pay the costs.☐ The defendant shall pay a fine of \$☐ Work release is recommended.☒ Immediate work release is recommended.☐ The Court does not recommend restitution or reparation as a condition of obtaining work release or parole.☐ The Court recommends that as a condition of obtaining work release or parole the defendant pay restitution to the Clerk of Superior Court for the approved party (parties) in the amount set out below☐ The Court recommends that if work release or parole is granted the defendant be required to pay to the Clerk of Superior Court from his earnings the amount and amounts set out below

Case	Contribution by Counsel fees and other expenses	Restitution	Total Amount Due
		\$ 260.00	\$ 260.00

Name and address(es) of approved party (parties) to receive restitution

Alice Buffkin, c/o Country Club Gas, Whiteville, NC

TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY
BY: [Signature]
[Signature]

and he pay into the Office of the Clerk of Superior Court a sum sufficient to reimburse the State of North Carolina for his counsel fees.

For Use With Fee Schedule for Attorneys Only

- ☐ The court has considered the opposing and supporting affidavits in G.S. 15A-1340.4(e) and has found that the State's position is correct and the prison term imposed does not require such findings.
- ☐ The court has found that the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S.
- ☐ The court has found that the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S.
- ☐ The court has found that the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S.

Award of Fee to Counsel for Defendant

- ☐ The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment

The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

- ☐ The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

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Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

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Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

Order of Commitment
 The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered. The court has found that the defendant is indigent and the defendant's appointed counsel or assigned public defender is entitled to a fee for services rendered.

or further recommendations:

that he pay into the Office of the Clerk of Superior Court a sum sufficient to reimburse the State of North Carolina for his counsel fees.

For Use With Fair Sentencing Act Felonies Only

The Court has considered the aggravating and mitigating factors in G.S. 15A-1343 4(a) and:

- ☐ makes no written findings because the prison term imposed does not require such findings.
- ☐ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 16 of G.S. Chapter 15A.
- ☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303)

Award of Fee to Counsel for Defendant

- ☐ A fee (including expenses) of \$ _____ was awarded the defendant's appointed counsel or assigned public defender at a hearing in open court at which the defendant was present.

Order of Commitment

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies of the judgment to the custody of the agency named on the request to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date: 9/3/85 Name of Presiding Judge: DONALD L. SMITH Signature of Presiding Judge: *Donald L. Smith*

Appeal Entries

- ☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current criminal release order shall remain in effect. ☐ except that:

- ☐ The defendant gives notice of appeal from the judgment of the Superior Court to the ☐ Court of Appeals ☐ Supreme Court. The defendant is allowed _____ days to serve a proposed record on appeal, and the State is allowed _____ days after such service to serve objections to a proposed alternative record on appeal.

Response of defendant is: ☐ denied. ☐ allowed upon the following conditions:

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

BY: *Walter B. Brink*
Solicitor General

Order of Commitment after Appeal

Date Forwarded To District Court: _____ Date Appeal Dismissed: _____ Date Withdrawal of Appeal Filed: _____ Date Appeal Taken to Court: _____

It is ORDERED that this judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and surrender the defendant to the custody of the official named in this judgment and furnish that official three certified copies of this judgment and this Commitment as authority for the commitment and detention of the defendant.

- ☐ During the pendency of the appeal, certain cases in the judgment have passed and therefore these cases are marked as follows:

Date: _____ Signature of Judge: _____ Signature of Clerk: _____ ☐ Deputy CCR ☐ Assistant CCR ☐ Clerk of Superior Court

Certification

I certify that this Judgment and Commitment with the attachments marked below, is a true and complete copy of the original which is on file in the court.

☐ Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303) ☐ Determination of Denial of Habeas Corpus (AOC-CR-304)

Form No. 1

File No. 136-2145

**WARRANT FOR ARREST
BREAKING, ENTERING
AND LARCENY**

Offense in Violation of G.S. 14-72(b) (2)

Date of Offense January 2, 1985

The State of North Carolina VS.

Defendant Name & Address
John Davis Bostic

Race B. Sex M Date of Birth 1

Defendant's Employer

Complainant Name, Address or Department, Phone (if any)
Sgt. Det. Sterling Cartwright (CCMS)

Witnesses (Names, Addresses, Phone No.s)

Curtis Dale High Rt 1, Box 252-A
Hallsboro, N.C.

Sgt. Dale Ward (CCMS) Keith Ward (CCMS)

Wilmington, N.C.

STATE OF NORTH CAROLINA
Columbus County

In the General Court of Justice
District Court Division

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense charged below:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense and in the county named above the defendant unlawfully, willfully and feloniously did break and building occupied by Curtis Dale High

used as a Mobile Home

located at on Rural Paved Road 1001 about 3 miles South of Hallsboro, N.C.
with the intent to commit a felony therein: larceny.

And, on or about the date of offense shown and in the county named above, the defendant did unlawfully and feloniously steal, take and carry away (1) 13 Inch RCA Portable TV Serial number 9374-7990(1) Homelite 330 Chainsaw serial number 57219-0273 (1) Echo 14 Inch (1) Radiant Karosene Heater (1) Martin Rifle and (1) Single Shot rifle 140721 the personal property of Curtis Dale High having a value of \$1,170.00 dollars, pursuant to the commission of felonious breaking entering described in the charge above.

In violation of the law referenced on this Warrant.
You are directed to arrest the defendant and bring him without unnecessary delay before a judge official to answer the charges above.

This warrant is issued upon information furnished under oath by the complainant or complainants listed.

BY *Arthur J. Hall*
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY
TRUE COP

Date January 2, 1985
Signature *Arthur J. Hall*
Judge Clerk
Deputy Clerk

94-33-5

STATE OF NORTH CAROLINA

File No.

94 crs 3416 etal

Columbus

County

Whiteville

Seat Of Court

In The General Court Of Justice

NOTE:

(This form is not to be used for multiple offenses unless they are consolidated for judgment.)

☐ District ☒ Superior Court Division

STATE VERSUS

Defendant

John Elvis Bostic

Race

B

Sex

M

C

2

Pre-FSA

☐ Felony

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State

Johnson Britt

Def. Found

☐ Not Indigent

Def. Waived

☐ Attorney

Attorney For Defendant

Scott Sessions

☒ Appointed ☐ Retained

DWI

Level Of Punishment (G.S. 20-179)

☐ Offense

Driver's License No. (DWI Only)

State (DWI Only)

The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
94 crs 3416 Breaking & Entering	4/22/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3416 Larceny	4/22/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3417 Breaking & Entering	3/25/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3417 Larceny	3/25/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3418 Breaking & Entering	4/7/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3418 Larceny	4/7/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3669 Breaking & Entering	3/19/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3669 Larceny	3/19/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3670 Breaking & Entering	11/3/93	14-54(a)	F	H	10 yrs.	3 yrs.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a term of

Eight (8) Years

in the custody of the ☒ N.C. Dept. of Correction☐ Sheriff of

County

The defendant shall be given credit for 61 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)

Sentence is to run concurrently with any sentence he is now serving.

(check all that apply)

- ☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.
- ☐ The defendant shall pay the costs.
- ☐ Immediate work release is recommended pursuant to G.S. 148-33.1.
- ☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order (applies to misdemeanors only).
- ☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.
- ☒ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the fees and amounts set out below.
- ☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.
- ☐ The defendant shall pay a fine of \$ _____.
- ☐ Work release is recommended. ☐ Work release is not recommended.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
\$	\$	\$	\$ 600.00	\$ 600.00

Names and address(es) of aggrieved party (parties) to receive restitution (specify amount if more than one aggrieved party)

COURT'S
EXHIBIT

3

94-33-4

STATE OF NORTH CAROLINA

File No.

94 crs 3416 etal.

Columbus County Whiteville

Seat Of Court

In The General Court Of Justice

OTE:

his form is not to be used for multiple offenses unless they are consolidated for judgment.)

☐ District ☒ Superior Court Division

STATE VERSUS

Defendant

John Elvis Bostic

Age

B

Sex

M

DOB

Pre-FSA

Felony

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Attorney For State

Johnson Britt

Def. Found

☐ Not Indigent

Def. Waived

☐ Attorney

Attorney For Defendant

Scott Sessions

☒ Appointed ☐ Retained☐ DWI

Level Of Punishment (G.S. 20-179)

Driver's License No. (DWI Only)

State (DWI Only)

☐ OffenseThe defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

File No.(s) And Offense(s)	Date Of Offense	G.S. No.	Fel./M.	Class	Max. Term	Presumptive
94 crs 3416 Breaking & Entering	4/22/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3416 Larceny	4/22/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3417 Breaking & Entering	3/25/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3417 Larceny	3/25/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3418 Breaking & Entering	4/7/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3418 Larceny	4/7/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3669 Breaking & Entering	3/19/94	14-54(a)	F	H	10 yrs.	3 yrs.
94 crs 3669 Larceny	3/19/94	14-72(b)(2)	F	H	10 yrs.	3 yrs.
94 crs 3670 Breaking & Entering	11/3/93	14-54(a)	F	H	10 yrs.	3 yrs.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a term of

Eight (8) Years

in the custody of the ☒ N.C. Dept. of Correction☐ Sheriff of _____ County

The defendant shall be given credit for 61 days spent in confinement prior to the date of this Judgment as a result of this charge.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently imprisoned to.☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.

(NOTE: List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

Sentence is to run concurrently with any sentence he is now serving.

(check all that apply)

☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.☐ The defendant shall pay the costs.☐ The defendant shall pay a fine of \$ _____.☐ Immediate work release is recommended pursuant to G.S. 148-33.1.☐ Work release is recommended.☐ Work release is not recommended.☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order (applies to misdemeanants only).☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.☒ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.

Fine	Costs	Restitution	Reimbursement For Counsel Fee(s) And Other Expenses	Total Amount Due
\$ _____	\$ _____	\$ _____	\$ 600.00	\$ 600.00

Names and address(es) of aggrieved party (parties) to receive restitution (specify amounts if more than one aggrieved party)

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

- ☐ makes no written findings because the prison term imposed does not require such findings.
☒ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

- ☒ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date: 10/17/94 Name Of Presiding Judge (Type Or Print): JACK A. THOMPSON Signature Of Presiding Judge: [Signature]

APPEAL ENTRIES

- ☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☒ except that:

- ☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Any conditions of post conviction release are set forth on Form AOC-CR-350.

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

[Signature]
Assistant Deputy Clerk

Date: Name Of Presiding Judge (Type Or Print): Signature Of Presiding Judge:

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court: Date Appeal Dismissed: Date Withdrawal Of Appeal Filed: Date Appellate Opinion Certified:

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date: Signature Of Clerk:

☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

- ☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
☒ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
☒ Appeal Entries (AOC-CR-350)

Date: November 4, 1994 Signature And Seal: [Signature]

Date Certified Copies Delivered To Sheriff: November 6, 1994 ☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

STATE OF NORTH CAROLINA

OFF 1451 85 ORS 494

In The General Court of Justice
☐ District ☒ Superior Court of

County Whiteville Seat of Court

STATE VERSUS

Defendant
John Elvis Bostic

Age 34 Sex M DOB 1/2/51 ☐ Pre-FSA Felony

Arrested For State ☐ Del. found not indigent ☐ Del. waived attorney J. B. Lee, III. ☒ Appointed ☐ Ret.

☒ Off. Offense 145 ORS 494 Level of Offense (G.S. 20-170) Class H Driver's License No. (DWI only) State (OWI only)

The defendant ☒ pled guilty to ☐ was found guilty by the Court of ☐ was found guilty by a jury of ☐ pled no contest to

For All Set and Offense(s) 85 ORS 145 P&P Date of Offense 1/2/85 B.I.N.S. 14-54 (a) Fel. Class H Max Term 10 yrs Probation 3 yr

The above offenses are consolidated for the purpose of judgment.
 The Court finds the evidence, arguments of counsel, and statement of the defendant ORGERS that the defendant be imprisoned

For (4) years in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of _____ County

Commitment is to issue at 5:00 p.m. on Wednesday September 4, 1985, and the defendant is ordered to surrender himself to the Sheriff at or before such time for transportation to

The defendant shall be given credit against this sentence for 45 days spent in confinement prior to the date of this judgment.

Facilities of the NCDO

NOTE: For Fair Sentencing Act: Felonies, Judge must impose a single prison term and may not impose a minimum and maximum prison term. In misdemeanor or infractions, Judge must impose a minimum and maximum prison term, and no credit may be given for time in confinement.

☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
☒ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.

Case number, date, county & court in which prior sentence imposed

(check all that apply)

☐ The defendant shall serve as a committed youthful offender (G.S. 148-49.15) ☐ The defendant should not serve in custody of the State under G.S. 148-49.15.

☐ The defendant shall pay the costs. ☐ The defendant shall pay a fine of \$_____

☐ Work release is recommended. ☒ Immediate work release is recommended.

☐ The Court does not recommend restitution or reparation as a condition of attaining work release or parole.

☐ The Court recommends that as a condition of attaining work release or parole the defendant pay restitution to the Clerk of Superior Court for the appropriate party (parties) in the amount set out below

☐ The Court recommends that if work release or parole is granted the defendant be required to pay to the Clerk of Superior Court from his earnings the terms and amounts set out below

Costs _____ Reimbursement of Counsel Fees and other expenses _____ Restitution 260.00 Total Amount Due 260.00

Amount or a portion (es) of approved party (parties) to receive restitution

Alice Buffkin, c/o Country Club Gas, Whiteville, NC

Let him pay into the Office of the Clerk of Superior Court a sum sufficient to reimburse the State of North Carolina for his counsel fees.

For Clerk With Fee Remitting All Penalties Only

- ☐ The defendant has been sentenced and the sentence is being remitted.
- ☐ The defendant has been sentenced and the sentence is being remitted.
- ☐ The defendant has been sentenced and the sentence is being remitted.

Amount of Fee to Counsel for Defendant

The defendant has been sentenced and the sentence is being remitted.

Order of Commitment

The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

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The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

The defendant has been sentenced and the sentence is being remitted.

For further recommendations:

That he pay into the Office of the Clerk of Superior Court a sum sufficient to reimburse the State of North Carolina for his counsel fees.

For Use With Fair Sentencing Act Felonies Only

The Court has considered the aggravating and mitigating factors in G.S. 15A-1343.4(a), and:

- ☐ makes no written findings because the prison term imposed does not require such findings.
- ☒ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 56 of G.S. Chapter 15A.
- ☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

Award of Fee to Counsel for Defendant

- ☐ A fee (including expenses) of \$ _____ was awarded the defendant's appointed counsel or assigned public defender at a hearing in open court at which the defendant was present.

Order of Commitment

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies of the judgment to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date: 9/3/85
Name of Presiding Judge: DONALD L. SMITH

Signature of Presiding Judge

Donald L. Smith

Appeal Election

- ☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

- ☐ The defendant gives notice of appeal from the judgment of the Superior Court to the ☐ Court of Appeals ☒ Supreme Court. The defendant is allowed _____ days to serve a proposed record on appeal, and the State is allowed _____ days after such notice to file objections to a proposed alternative record on appeal.

Release of defendant is: ☐ denied ☐ allowed upon the following conditions:

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

BY *Debbie Brice*

Order of Commitment after Appeal

Date Remanded to District Court: _____ Date Appeal Denied: _____ Date Withdrawal of Appeal Filed: _____ Date Appeal to Supreme Court: _____

It is ORDERED that this judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and maintain the defendant in the custody of the official named in this judgment and furnish that official three certified copies of this judgment and this ORDER as authority for the commitment and detention of the defendant.

- ☐ During the pendency of the appeal, certain dates in the judgment have passed and therefore these dates are omitted as follows:

Date: _____ Signature of Judge: _____ Signature of Clerk: _____
(Required only if dates omitted) ☐ Newly On ☐ Remanded On ☐ Clerk of Superior Court

Certification

- I certify that this Judgment and Commitment with the attachment marked below, is a true and complete copy of the original which was filed in the _____
☐ Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303) ☐ Determination of Sentencing Factors (AOC-CR-304)

WARRANT FOR ARREST
BREAKING, ENTERING
AND LARCENY

Offense in Violation of G.S.
14-72(b) (2)

Date of Offense
January 2, 1985

The State of North Carolina VS.

Defendant Name and Address
John E. Davis Boettig

Offense

Race
M

Sex
M

Offense
14-72(b) (2)

Complainant Name, Address & Department, Property
Set. Det. Sterling Cartwright (CCMS)

Address (Name, Address, Phone No.)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

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14-72(b) (2)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

Offense
14-72(b) (2)

STATE OF NORTH CAROLINA
Columbus County
In the General Court of Justice
District Court Division

To any officer with authority and jurisdiction to execute a warrant for arrest for the offense of below:

I, the undersigned, find that there is probable cause to believe that on or about the date of offense and in the county named above the defendant unlawfully, willfully and feloniously did break and building occupied by Curtis Dale High

used as a Mobile Home located at Mobile Home on Rural Road 1001 about 3 miles South of Hallsboro, N.C. with the intent to commit a felony therein: larceny.

And, on or about the date of offense shown and in the county named above the defendant did unlawfully and feloniously steal, take and carry away (1) 13 Inch RCA Portable TV Serial number 93-44-2990(1) Hewlett 330 Chairman serial number F219-0273 (1) Radio 14 Inch

(1) Radiant Kerosene Heater (1) Remington Rifle and (1) Single shot rifle with the personal property of Curtis Dale High

having a value of 1,170.00 dollars, pursuant to the commission of felonious breaking entering described in the charge above.

In violation of the law referenced on this Warrant. You are directed to arrest the defendant and bring him, without unnecessary delay before a judicial official to answer the charges above.

This warrant is issued upon information furnished under oath by the complainant or complainant listed.

BY Deputy Clerk
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY
A TRUE COPY

Date
January 2, 1985
Signature
Deputy Clerk
Clerk of Superior Court

STATE OF NORTH CAROLINA				File No. <u>94 cgs 3416 etal</u>	
<u>Columbus</u> County		<u>Whiteville</u>		Seat Of Court In The General Court Of Jus	
NOTE: (This form is not to be used for multiple offenses unless they are consolidated for judgment.)				☐ District ☒ Superior Court Dh	
STATE VERSUS				JUDGMENT AND COMMITME	
Defendant <u>John Elvis Bostic</u>				G.S. 15	
Race <u>B</u>	Sex <u>M</u>	DOB	☐ Pre-FSA Felony		
Attorney For State <u>Johnson Britt</u>		☐ Del. Found ☐ Not Indigent	☐ Del. Waived ☐ Attorney	Attorney For Defendant <u>Scott Sessions</u> ☒ Appointed ☐ Re	
☐ DWI ☐ Offense	Level Of Punishment (G.S. 20-179)			Driver's License No. (DWI Only) State (DWI Only)	
The defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest t					
File No.(s) And Offense(s)		Date Of Offense	G.S. No.	Fel/M	Class
<u>94 cgs 3670 Breaking & Entering</u>		<u>11/3/93</u>	<u>14-54(a)</u>	<u>F</u>	<u>H</u>
					<u>10 yrs.</u> <u>3</u>
The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be in for a term of <u>Eight (8) Years</u> in the custody of the ☒ N.C. Dept. of Correction ☐ Sheriff of					
The defendant shall be given credit for <u>61</u> days spent in confinement prior to the date of this Judgment as a result of this					
☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to se ☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the Case Number, Date, County And Court In Which Prior Sentence Imposed.) Sentence is to run concurrently with any sentence he is now serving.					
(check all that apply):					
☒ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 38.			☐ The defendant should not obtain the benefit of role pursuant to G.S. 148-49.15.		
☐ The defendant shall pay the costs.			☐ The defendant shall pay a fine of \$		
☐ Immediate work release is recommended pursuant to G.S. 148-33.1.			☐ Work release is recommended. ☐ Work release is not recomme		
☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order (applies to misdemeanants only).					
☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if p is granted, or from his earnings if work release is granted.					
☒ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earn if work release is granted, the terms and amounts set out below.					
Fine \$	Costs \$ <u>21.41</u>	Restitution \$	Reimbursement For Counsel Fee(s) And Other Expenses \$ <u>600.00</u>		Total Amount Due \$ <u>600.00</u>
Names and address(es) of aggrieved party (parties) to receive restitution (specify amount if more than one aggrieved party)					

 STATE'S
EXHIBIT

44-33-4

STATE OF NORTH CAROLINA

File No.

94 crs 3416 etal

Columbus County Whiteville

Seat Of Court

In The General Court Of Justice

OTE:

this form is not to be used for multiple offenses unless they are consolidated for judgment.)

☐ District ☒ Superior Court Division

STATE VERSUS

Defendant

John Elvis Bostic

JUDGMENT AND COMMITMENT

G.S. 15A-1301

Race

Sex

DOB

Pre-FSA

B

M

Def. Waived

Attorney For Defendant

Scott Sessions

☒ Appointed ☐ Retained

Johnson Britt

☐ Not Indigent☐ Attorney

DWI

Level Of Punishment (G.S. 20-179)

Driver's License No. (DWI Only)

State (DWI Only)

☐ OffenseIs defendant ☒ pled guilty to: ☐ was found guilty by the Court of: ☐ was found guilty by a jury of: ☐ pled no contest to:

Offense(s)

Date Of Offense

G.S. No.

PcL/M. Class

Max. Term

Presumptive

94 crs 3670 Breaking & Entering

11/3/93

14-54(a)

F

H

10 yrs.

3 yrs.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered; and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a term of

Eight (8) Years

In the custody of the: ☒ N.C. Dept. of Correction☐ Sheriff of

County

The defendant shall be given credit for 61 days spent in confinement prior to the date of this Judgment as a result of this charge.

- ☐ The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently imprisoned to.
- ☐ The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below.
- (NOTE: List the Case Number, Date, County And Court In Which Prior Sentence Imposed.)

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

Sentence is to run concurrently with any sentence he is now serving

BY Scott Sessions
Clerk of Court

(check all that apply)

- ☐ The defendant shall serve as a committed youthful offender pursuant to G.S. Chapter 148, Article 3B.
- ☐ The defendant shall pay the costs.
- ☐ Immediate work release is recommended pursuant to G.S. 148-33.1.
- ☐ With the consent of the defendant, work release is ordered under the conditions set forth in the attached order. (applies to misdemeanants only).
- ☐ The Court does not recommend that the defendant be required to pay restitution or reparation, as a condition of parole if parole is granted, or from his earnings if work release is granted.
- ☒ The Court recommends that the defendant be required to pay, as a condition of parole if parole is granted, or from his earnings if work release is granted, the items and amounts set out below.
- ☐ The defendant should not obtain the benefit of release pursuant to G.S. 148-49.15.
- ☐ The defendant shall pay a fine of \$
- ☐ Work release is recommended.
- ☐ Work release is not recommended.

Fine \$	Costs \$	Restitution \$	Reimbursement For Counsel Fee(s) And Other Expenses \$ 600.00	Total Amount Due \$ 600.00
---------	----------	----------------	---	----------------------------

Names and address(es) of aggrieved party (parties) to receive restitution (specify amounts if more than one aggrieved party)

The Court further recommends:

FOR USE WITH FAIR SENTENCING ACT FELONIES ONLY

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and

- ☐ makes no written findings because the prison term imposed does not require such findings.
- ☒ makes no written findings because the prison term imposed is pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- ☐ makes written findings set forth on the attached Findings of Factors in Aggravation and Mitigation of Punishment (AOC-CR-303).

AWARD OF FEE TO COUNSEL FOR DEFENDANT

- ☒ A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until he shall have complied with the conditions of release pending appeal.

Date 10/17/94	Name Of Presiding Judge (Type Or Print) JACK A. THOMPSON	Signature Of Presiding Judge <i>[Signature]</i>
------------------	---	--

APPEAL ENTRIES

- ☐ The defendant gives notice of appeal from the judgment of the District Court to the Superior Court. The current pretrial release order shall remain in effect. ☐ except that:

- ☐ The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Any conditions of post conviction release are set forth on Form AOC-CR-350.

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

[Signature]
Deputy Clerk

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
------	---	------------------------------

ORDER OF COMMITMENT AFTER APPEAL

Date Remanded To District Court	Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
---------------------------------	-----------------------	---------------------------------	----------------------------------

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the Sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official three certified copies of this Judgment and this Order as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

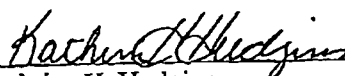
- ☐ Findings Of Factors In Aggravation And Mitigation Of Punishment (AOC-CR-303)
- ☐ Determination Of Sentencing Factors In DWI Cases (AOC-CR-311)
- ☒ Appeal Entries (AOC-CR-350)

Date November 4, 1994	Signature And Seal <i>[Signature]</i>
Date Certified Copies Delivered To Sheriff November 4, 1994	☒ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 22nd,


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HorryJohn Elvis Bostic 348144
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

12

7917

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Antonio Ras McCullum
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011 GS21601259
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 5, 2011 / 15 years
 - (b) _____

FILED
Horry COUNTY
2012 OCT 12 AM 9:08
KELAMIE HUGGINS-WARD
CLERK OF COURT

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes / Appealed judgement of the conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 2, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. None
- 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) Ineffective assistance of trial counsel
- (b) _____
- (c) _____

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

- (a) Attorney failed to act as my diligent conscientious advocate
- (b) counsel failed to investigate matters pertaining to my case
- (c) counsel failed to properly prepare for trial

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Appeal
- (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. Appeal filed in state court of appeals
- ii. _____
- iii. _____
- iv. _____

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

- i. South Carolina Court of Appeals / PO Box 11629, Columbia SC 29211
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. matter was withdrawn and dismissed
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. October 2, 2012

ii. _____

iii. _____

iv. _____

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

i. none

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) this is the first opportunity to argue this issues legally

(b) _____

(c) _____

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

- (a) your arraignment and plea? no
- (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? no

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. Ed Chrisco / P.O. Box 1666, Conway SC 29526
- ii. Katherine Huckins / P.O. Box 11589 Columbia SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial / sentencing
- ii. Appeal
- iii. _____

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

Conviction overturned and a new hearing granted

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

No

STATE OF SOUTH CAROLINA

County of _____

12

7917

VERIFICATION

I, _____, 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.

John E. Bostic

SWORN to and subscribed before me this 08
day of OCT, 2012.

J. C. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2015

FILED
CLERK OF COURT
2012 OCT 12 AM 9:09
JELANIE HUGGINS-WARD

12

7917

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

John E. Boster
Applicant

SWORN or affirmed to and subscribed before me this
08 day of October, 2012.

J. C. Franklin
Notary Public

My Commission Expires: 12/16/2019

FILED
CLERK OF COURT
2012 OCT 12 AM 9:09
JELANIE HUGGINS-WARD

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CASE NO: 2012-CP-26-079

JOHN E BOSTIC #348144

AMENDMENT TO PCR

VS.

APPLICATION

THE STATE OF SOUTH CAROLINA

FILED
HURRY COUNTY
2012 NOV -6 PM 2:12
MELANIE HUGGINS-WARD
CLERK OF COURT

Applicant's allegation of his attorney being ineffective is with merit under the two-prong test set out in STRICKLAND VS. WASHINGTON 466 U.S. 668, 104 S.Ct. 2052 (1984) First, Applicant must prove his attorney's performance was "deficient." And second, Applicant must show how that performance "prejudiced" him in violation of his Sixth and Fourteenth Amendment rights of the United States Constitution.

XXX 1, My defense attorney Failed to conscientiously discharge his professional responsibilities while he was handling my case.

XXX 2, My defense attorney Failed to act as my diligent conscientious advocate.

3, My defense attorney Failed to effectively challenge the arrest and seizure.

XXX 4, My defense attorney Failed to file ...

his complete loyalty

XXX • 5, My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case

XXX • 6, My defense attorney Failed to serve my cause in good Faith

XXX • 7, My defense attorney neglected the necessary investigations and the preparation of my case

XXX • 8, My defense attorney did not do the necessary Factual investigations on my behalf

XXX • 9, My defense attorney did not do the necessary legal research

10, My defense attorney did not conscientiously gather any information to protect my rights

XXX • 11, My defense attorney did not try to have my case settled in a matter that would have been to my best advantage

XXX • 12, My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect, preserve them; knowing that I was not versed in law

XXX • 13, My defense attorney, knowing I was

illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.

XXX 14, My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

15, My defense attorney never explained to me or discussed with me any elements of the crime charged.

XXX 16, my defense attorney never informed me of any of the defenses that were available to me.

XXX 17, my defense attorney never intended to offer any defense to the court on my behalf.

18, My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.

XXX 19, my defense attorney never explained to me or discussed with me any kind of defense strategy.

XXX 20, my defense attorney did not subject the prosecution's case to any adversarial

testing

- XXX 21, my defense attorney Failed to Function as the governments adversary in any sense of the word.
- XXX 22, The attorney that represented me on this charge in court Failed to Function as the Counsel that the constitutions Sixth Amendment Guarantees.
- 23, My defense attorney Failed to oppose the prosecutions case with any adversarial litigation
- 24, My defense attorney Failed to pursue any of the legal resources that were available to him

TATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-7917
	)	
John Elvis Bostic, 348144	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for post conviction relief (PCR) filed October 12, 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 March 2011 term of the Horry County Grand Jury for burglary first degree (2011-GS-26-644). Ed Chrisco, Esquire, represented Applicant.

On July 12, 2012, the Applicant was tried and convicted as indicted. The Honorable Benjamin Culbertson sentenced Applicant to fifteen years imprisonment.

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. "Attorney failed to act as my diligent conscientious advocate."
2. "counsel failed to investigated matters pertaining to my case."
3. "counsel failed to properly prepare for trial."

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

2/6, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

2012-CP-26-7917

JOHN ELVIS BOSTIC, #348144

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Paul Archer, Esquire
233 Muirfield Dr.
Pawleys Island, SC 29585

DATED this 6th day of February, 2013.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
John Elvis Bostic,)
S.C.D.C. No. 348144,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-26-7917

AMENDED RETURN

In response to the post-conviction relief application filed October 12, 2012 and an amendment filed November 6, 2012,¹ the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the March 2011 term of General Sessions for first-degree burglary (2011-GS-26-1259). Edward Chrisco, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 5, 2011, the Honorable Benjamin H. Culbertson sentenced the Applicant to fifteen (15) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders² brief. By order dated October 3, 2012, the Court of Appeals granted the

¹ The Respondent filed a return dated February 6, 2013.

² Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Applicant's motion to withdraw his appeal and dismissed the appeal with prejudice.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to act as a diligent and conscientious advocate.
 - c. Failed to effectively challenge the arrest and seizure.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.
 - l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
 - m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
 - n. Never properly consulted with me or kept me informed.
 - o. Never explained to me or discussed with me any of the elements.
 - p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charged.
 - q. Never informed me of any of the defenses that were available to me.
 - r. Never intended to offer any defense to the court on my behalf.
 - s. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made
 - t. Never explained to me or discussed with me any kind of defense strategy.
 - u. Did not subject the prosecution's case to any adversarial testing.
 - v. Failed to function as the government's adversary in any sense of the word.
 - w. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
 - x. Failed to oppose the prosecution's case with any adversarial litigation.
 - y. Failed to pursue any of the legal recourse that was available.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

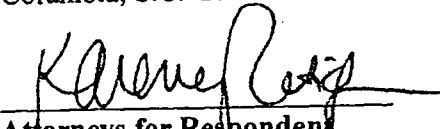
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 6, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26-7917

JOHN ELVIS BOSTIC, #348144)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Paul Archer, Esquire
233 Muirfield Dr.
Pawleys Island, SC 29585

DATED this 6th day of August, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

1 OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

2 COUNTY OF HORRY

) CASE NO.: 2012-CP-26-7917

3 PCR HEARING

4 -----
5 October 29, 2014

6 BEFORE: The Honorable John C. Hayes

7 -----
8 JOHN ELVIS BOSTIC,

9 Petitioner,

10 vs.

11 THE STATE OF SOUTH CAROLINA,

12 Respondent.
13 -----

14
15
16 APPEARANCES:

17
18 Joshua Thomas, Esq.
Attorneys for the Respondent.

19 Daniel Selwa, Esq.
20 Attorneys for the Petitioner.

21 Official Court Reporter
22 Natalie Dahl, RPR
23
24
25

 ORIGINAL

I N D E X

WITNESS

PAGE

JOHN ELVIS BOSTIC

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EDWARD CHRISCO

Direct Examination by Mr. Thomas..... 16
Cross-Examination by Mr. Thomas..... 20

E X H I B I T S

(No exhibits)

P R O C E E D I N G S

1
2 MR. THOMAS: John Bostic versus South Carolina,
3 2012-CP-26-7917. He was indicted March 2011 for first
4 degree burglary, represented by Edward Chrisco, went
5 to trial October 4th through 5th, 2011, convicted as
6 indicted. Judge Culbertson sentenced him to 15 years.
7 He did file an appeal, but that was eventually
8 withdrawn per his request, filed this PCR in October
9 of 2012 alleging various grounds of ineffective
10 assistance of counsel. He is present and represented
11 by Daniel Selwa, and the State is ready to proceed.

12 MR. SELWA: I would call Mr. Johnson Bostic to
13 the stand.

DIRECT-EXAMINATION

14
15 BY MR. SELWA:

16 Q How are you?

17 A All right.

18 Q You are here for a post-conviction relief?

19 A Yes.

20 Q And you're claiming that your counsel, trial
21 counsel, was ineffective?

22 A Yes.

23 Q And in your application for post-conviction
24 relief, you allege numerous reasons why Mr. Chrisco was
25 ineffective?

1 A Yes.

2 Q Just to briefly go through, are all the
3 allegations in your petition still issues which you
4 wish to proceed with today?

5 A Yes.

6 Q Can you tell the Court why Mr. Chrisco was
7 ineffective?

8 A First of all, okay, Mr. Chrisco should have done
9 his homework on my case. He should have made sure that
10 the evidence that the DA's office said they had on me
11 would be in court on my trial date. On my trial date,
12 there was no boot cast that the State said they had.
13 There was no evidence. That was withheld -- there was
14 evidence that was withheld that could have been in my
15 favor. There was a beer can with a fingerprint on it
16 that was not turned over, to my understanding.

17 There is no excuse for the DA's office not to
18 have known about the beer can. It was the DA's job to
19 check with the police department about all evidence
20 that they claimed they had on me. My lawyer's job was
21 to know for a fact what evidence they had on me, and
22 what evidence the State didn't have by staying in
23 contact with the DA's office. I believe strongly
24 there was a case of prosecution misconduct on behalf
25 of the DA's office.

1 There are cases of -- these are cases of
2 prosecutor misconduct, Kyle versus Whittle, S.C. 1567,
3 Ninth Circuit, 1995.

4 Also, Mr. Chrisco should have asked for a
5 mistrial on the grounds of withholding evidence and
6 because of my lack of knowledge about courtroom law.
7 On Page 157 of my transcript, I made it plain to the
8 judge that I did not understand about a mistrial when
9 he asked me did I understand what was going on.

10 Q One of the claims you brought forward was the
11 issue of a mistrial. Can you explain to the Court what
12 occurred with that mistrial situation during your
13 trial?

14 A During my trial, they came to me with a plea for
15 five years. With my experience in Horry County jail,
16 when they take them pleas, then it's not what they are
17 going to get, it is going to be more, so I didn't know
18 what was going on. So I said I don't want no plea, I
19 don't want a mistrial, but I didn't know what it was.
20 I thought it was a game being played.

21 Q Did Mr. Chrisco explain what a mistrial was?

22 A Briefly, he did.

23 Q But after the fact?

24 A Huh?

25 Q Was that after the fact? After or before he

1 needed to know that?

2 A That was after. After.

3 Q Do you think he should have explained that to you
4 before?

5 A Yeah.

6 Q Had you known that, would your actions have been
7 different?

8 A If I knew what was going on, yeah, it would be
9 different.

10 Q How?

11 A I would have known that they would give me the 15
12 years that I got.

13 Q So you are telling the Court you didn't have
14 enough information to make an informed decision as to
15 how you should proceed?

16 A Like I said, I don't -- they were telling me to
17 come back to court and it would be a later date, and I
18 already sat in jail 19 months, and I just wanted to get
19 it over with.

20 Q Okay.

21 THE COURT: I hate to interrupt. I look at 157
22 and I'm confused. I don't see anything about a
23 mistrial.

24 THE WITNESS: 151.

25 MR. CHRISCO: 147, Your Honor.

1 THE COURT: Thank you.

2 Q You are telling the Court that you would have
3 taken the plea at that point had you been explained
4 adequately what a mistrial was?

5 A Yeah, I would have taken the plea if my counsel
6 would have talked to me more about the case.

7 Q Did Mr. Chrisco bring the elements of the crime
8 you were charged with?

9 A Yes.

10 Q Did he explain that the State would have to prove
11 each element of the crime beyond a reasonable doubt?

12 A Yes. I have a question, because I asked during
13 trial. I asked -- I said a first degree burglary,
14 don't the elements of a firearm or weapon or victim
15 involved -- should be involved. He told me, Don't
16 worry about that. That was never brought up. Then,
17 during my trial, when the elements of first degree
18 burglary was read to the jury, I was -- I wasn't in the
19 courtroom. I was in another room, and the judge -- I
20 read the transcript -- oh, gosh, let's get him in here,
21 and I didn't hear it. But the gunshots and victim or
22 weapon was never brought up in my trial.

23 Q Okay. And had you been adequately explained
24 that, would that have changed the course of your
25 decision to either go to trial or to accept a plea?

1 A Yeah. Yeah, it would have.

2 Q What decision would that have been taken into
3 consideration had you known?

4 A I would have taken the plea, because like I said,
5 I'm from North Carolina and I thought when you didn't
6 have no evidence or nothing like that -- and I will
7 state if they would have dismissed it, but the judge
8 said not in this case here, this trial is going to go
9 on. You know, I just didn't know these laws.

10 Q All right. Just to go over a bunch of -- a
11 number of the claims that you make, and I'll read these
12 out, you are claiming that Mr. Chrisco failed to
13 conscientiously discharge professional
14 responsibilities, failed to act as a diligent conscious
15 advocate, failed to effectively challenge the arrest
16 and seizure, failed to give complete loyalty, did not
17 have applicant's interest in mind, failed to serve the
18 cause in good faith, neglected necessary investigations
19 and preparations, didn't do a factual investigation,
20 didn't do the necessary legal research, didn't gather
21 information to protect your rights, didn't work to
22 settle your case to your advantage, didn't advise you
23 of your rights or the actions that would be necessary
24 to protect them; is that correct?

25 A Yes.

1 Q You also state that he never actually asked you
2 if you understand what he explained to you. Did he --
3 when he was explaining these things, did you understand
4 them?

5 A No, I didn't understand them.

6 Q Did you tell him at any point that you didn't
7 understand a lot of what he was telling you?

8 A Yeah, at one point I did. I told him I didn't
9 understand, and then when he said -- what did he say --
10 he said something, Mr. Bostic, it is better to take the
11 plea because the unknown is something -- what he was
12 saying is it might not turn out the way I wanted it to,
13 but he allowed me to eventually take the plea.

14 Q Do you have any problems understanding
15 information?

16 A Yeah, when it comes to courtroom law. I didn't
17 go no farther than ninth grade.

18 Q So you have a ninth grade education, but is there
19 any disabilities that you would claim that would
20 explain you can't comprehend a certain aspect of an
21 issue?

22 A Yeah, my lack of education.

23 Q That's what I'm asking. You are stating that Mr.
24 Chrisco failed to do a lot of these things. What kind
25 of evidence do you have to back those claims up?

1 A First of all, before my trial started, it was
2 never discussed with me at the jailhouse a defense or
3 offense with me. I mean, let's say, bottom line, a
4 codefendant as a State witness, is what I was told, but
5 during my trial, I mean, he wasn't here.

6 Q And so what I'm hearing from you is that you both
7 were explained some aspects of the trial as Mr. Chrisco
8 anticipated it to be, but also that some of those
9 things that he explained to you were inaccurate; is
10 that right?

11 A Yes.

12 Q But previously you said that he didn't explain
13 the defense strategy to you?

14 A Yeah. None of that.

15 Q Did you inquire from him about the trial
16 strategy?

17 A Yes.

18 Q What was the response?

19 A Just sat there quiet, went over his notes.

20 Q At any point did he discuss what his theory was
21 going to be in defending you?

22 A No.

23 Q Could you explain what happened to the mistrial
24 issue?

25 A I mean, what are you saying?

1 Q Can you just summarize for the Court what
2 happened with the issue on the mistrial?

3 A When it came up about a mistrial, we went out
4 this door. I think it was another courtroom. We went
5 there and they took me in a room and he told me -- said
6 if you take the mistrial, what will happen is you go
7 back to the jailhouse and there will be a new trial,
8 but it won't be this week here because the jury has
9 been tainted and stuff, all right.

10 Q What did you have a hard time understanding in
11 regards to the mistrial?

12 A I thought I was going to be tricked. I thought
13 they would take me to the jailhouse, go back and make
14 up some kind of evidence because they didn't have none.
15 I thought they would make up evidence, and then bring
16 back the trial on me. That is why I didn't want to do
17 it. Then, it seemed like I was trying to be pressured
18 to do things I didn't want to do. He said, That jury
19 is going to find you guilty. How you going to know
20 that before my trial? That stuff had me messed up.

21 Q So you are testifying that you were confused
22 throughout the process?

23 A Yeah, I was confused.

24 Q Was there anything that Mr. Chrisco could have
25 done to alleviate that confusion for you?

1 A Would have? Like I said, lack of evidence. If
2 he would have spoke more. Where is the witness they
3 said they had, the guy that wrote the statement on me
4 that was supposed to -- he told me that Antonio was
5 supposed to testify against me, and like I said about
6 my fingerprint, and there was none of that present.

7 Q You are talking about a fingerprint --

8 A On a beer can. That could have proven my
9 innocence if they would have had that.

10 Q Was that presented at trial?

11 A It wasn't.

12 Q Was there any testimony of any fingerprint
13 analysis done of a beer can?

14 A They spoke on it.

15 THE COURT: I'm looking at 147. Is there more
16 than one beer can? They talk about a beer can,
17 lifting latent prints, but never identified; is that
18 what he is talking about?

19 MR. SELWA: Yes.

20 THE COURT: Okay. Go ahead.

21 Q Anything else you would like to inform the Court
22 of as far as Mr. Chrisco's ineffective representation
23 of you?

24 A Let me see.

25 (A brief pause in the proceedings.)

1 A No, that's it.

2 Q Have I covered everything for you?

3 A Yes.

4 MR. SELWA: No further questions.

5 THE COURT: I do have one. Mr. Thomas, I have
6 your amended return and the application. No. 2 has a
7 litany, looks like a whole application, a whole
8 alphabet of ineffective assistance of counsel charges,
9 and I don't see any of those in the application. Was
10 there an amended application?

11 MR. THOMAS: I think what happened there, this
12 was sort of in our transitional phase. I can pass up
13 a copy to you. While he was represented, he did file
14 a pro se amendment. Normally, we challenge those, but
15 in this case I don't think it was. If you would like
16 a copy.

17 THE COURT: I mean, I probably should because in
18 your return -- well, you don't sign the return,
19 Ms. Ratican did, but she sets forth the A through Y,
20 and Z is the only one missing. It is a litany of
21 complaints, so I guess that should be part of the
22 record. It is at least not part of my record. If I'm
23 going to address them, I have to have some reference.

24 MR. THOMAS: I apologize for that, Your Honor. I
25 generally don't even look at the return.

1 THE COURT: That kind of scares me, but okay.
2 Have you seen this, Mr. Selwa?

3 MR. SELWA: I went over it based on the return,
4 and I think this was filed before my involvement, so I
5 did not see the actual pro se.

6 MR. THOMAS: I'll pass up my copy. It was
7 highlighted, but no written --

8 THE COURT: We need a copy for Mr. Selwa and a
9 copy to go in the file.

10 MR. THOMAS: It was filed in the Clerk of Court's
11 Office, so it was in the clerk's file. I'll run a
12 copy for Mr. Selwa.

13 THE COURT: You can have yours back. Go ahead.

14 CROSS-EXAMINATION

15 BY MR. THOMAS:

16 Q How many times did you meet with Mr. Chrisco
17 before trial?

18 A It was two or three times.

19 Q And I know a lot of evidence you didn't get
20 beforehand, but did you get a chance to look over
21 basically everything he had?

22 A Nothing.

23 Q Did you tell him about what your explanation was
24 for what happened that night?

25 A Did I tell him my explanation? It wasn't no

1 night. It wasn't night.

2 Q Well, did you explain to Mr. Chrisco what
3 happened at the time you were accused of committing
4 burglary?

5 A Yeah.

6 Q I know you explained your reasons for declining
7 that plea at trial, but do you recall being given the
8 opportunity at trial to enter a plea?

9 A Yeah.

10 Q And you also recall being given an opportunity
11 for a mistrial?

12 A Yes.

13 MR. THOMAS: Thank you. That is all I have.

14 THE COURT: Any redirect?

15 MR. SELWA: No redirect.

16 THE WITNESS: At my trial, the reason why I
17 didn't take that plea, that was an oral plea. There
18 was nothing written out; it was an oral plea. They
19 were negotiating without me. I didn't see nothing in
20 writing, and that is another reason why I didn't take
21 that plea.

22 THE COURT: Okay. All right. Mr. Selwa, any
23 further witnesses?

24 MR. SELWA: Ed Chrisco.

25 (EDWARD CHRISCO, having been duly sworn,

1 testified as follows:)

2 THE CLERK: State your name and spell your last
3 Ed Chrisco, C-H-R-I-S-C-O.

4 DIRECT-EXAMINATION

5 BY MR. THOMAS:

6 Q Thank you for sticking around with us. Could you
7 give us your brief overview of practicing law?

8 A Law school in '89, worked for the Tenth Circuit,
9 Anderson and Ocone as a Solicitor. A year later, I
10 came back home to the 15th Circuit, Solicitor's Office.
11 In '99, I left the Solicitor's Office and went to the
12 Public Defender's Office as an assistant public
13 defender, and in 2009 became the chief public defender
14 of Horry County.

15 Q So you were appointed this case as a public
16 defender?

17 A Yes.

18 Q How many -- let me ask you this. Did you file a
19 Rule 5 Brady motion for this case?

20 A Same day I was appointed.

21 Q And there was some question at trial about
22 whether there was any compliance with that?

23 A There was a lot of problems at the trial. The
24 evidence that we got, as soon as we got the discovery,
25 our policy is that same day it is processed and taken

1 to jail, given to the client. When we got to trial, at
2 some point during the State's presentation they had --
3 they started to present evidence that we had not got.
4 I objected to it. Then it was during that objection
5 they said there was other stuff that they just became
6 aware of that morning. It was enough of a problem that
7 the judge took probably an hour-and-a-half recess to
8 allow the police officers to go back to the police
9 department and get everything that was involved with
10 the case and bring it back.

11 Q You made a motion for a mistrial?

12 A No, did not. I was going to make a motion for a
13 mistrial, was explaining to Mr. Bostic that is what was
14 going to happen. The judge -- I think it is even in
15 the transcript -- he says that if I made the motion, he
16 would grant the mistrial. Mr. Bostic said that the
17 police are lying enough now, why give them another
18 chance to get their story different and come back and
19 be worse at the second trial. I told him we would try
20 the case probably the next term, it wouldn't be that
21 week. I don't remember if it was the next week or next
22 month, but he said no, he wanted to go on.

23 Well, I told him what I had been telling him,
24 what little evidence they had, that we had gotten
25 notice in advance, was going to be enough, I believed,

1 for a jury. It didn't matter if it was daytime or
2 nighttime. It didn't matter about weapons, because
3 there was not any weapons involved in this. It
4 mattered because this was a burglary, and the fact
5 that he had been convicted twice before of burglary,
6 and that's part of the statute that he was indicted
7 on.

8 Q Did you explain all of that beforehand?

9 A I told him of the strategy to attack the former
10 burglaries, because in North Carolina it is called
11 something different, but there was a case out of, I
12 think, Cherokee County in which the Supreme Court
13 addressed that issue and said that they were exactly --
14 could be counted as a burglary. So we were out of luck
15 on that one.

16 Q In terms of the State's theory, you said the
17 evidence beforehand you thought was enough to get it to
18 a jury; what was that evidence?

19 A Yes. The victim in this case -- and I don't know
20 if it was a daughter or daughter-in-law -- came home
21 shortly after 5:00. This happened in February, if I
22 remember right. They came home right after 5 o'clock.
23 On the way home, they saw two black males walking away
24 about a quarter of a mile up the road from where they
25 live. One was carrying some type of pillow case. When

1 they got home and looked, they noticed that they had
2 been burglarized, and it dawned on them that the pillow
3 case had come off the bed. Beer was taken out of the
4 refrigerator, CD and DVDs.

5 So they called the police, go back up to try to
6 find them. At some point, they meet up with them with
7 the police and then they take off -- the two black
8 males take off, jump a ditch, run into the woods. The
9 pillow case is dropped. They identified Mr. Bostic
10 and the other person as being the ones that they saw
11 on the road with the items, and in the pillow case was
12 the items taken from the house.

13 Q Based on that, what possible defenses did you
14 discuss with Mr. Bostic?

15 A That was the thing. I told him two prior
16 burglaries, they put you at the scene. There was a
17 plea offer out there for burglary second, violent. I
18 want to say it was either 10 or 12 years. Then with
19 all the mess of not turning over the evidence, they
20 were able to get it down to a burglary third degree.
21 They were going to recommend burglary third degree,
22 second offense.

23 Q That was the plea offer referenced in the trial?

24 A Yes.

25 Q Did you actually explain that plea?

1 A I told him not only at the plea, but I think he
2 had a little over two years that he had been at the
3 jail, I said take this plea and six, seven months down
4 the road you'll be out. If you go in front of a jury
5 you're looking at a minimum of 15 years, which there is
6 no growth.

7 Q Whose decision was it to go forward with the
8 trial?

9 A Mr. Bostic's. We even put that on the record. I
10 told the Court that I advised what a mistrial was and
11 he wanted to continue. The Court told me I could ask
12 for the mistrial if I thought that was best, and I told
13 the Court that after talking with Mr. Bostic, he wanted
14 me to go forward with the trial against my wishes, and
15 I think I stated that on the record.

16 MR. THOMAS: Thank you very much.

17 CROSS-EXAMINATION

18 BY MR. SELWA:

19 Q Good afternoon. How are you doing today?

20 A Good afternoon.

21 Q If it was up to you, would you have taken the
22 mistrial?

23 A Yes.

24 Q Do you feel the trial was going so well at that
25 point that would have been a good decision to continue?

1 A At no point in that trial, even with all of the
2 evidence issues, did I think it was going well. In
3 fact, when all of that mess started, I told Mr. Bostic
4 we should search for a different solution, that they
5 didn't comply with discovery as leverage to get
6 something. He told me, There is a lawyer in North
7 Carolina that was a senator, he said you put him to
8 shame, you're doing good, and I said, You are not
9 watching the same trial as I'm watching.

10 Q Would you consider that decision should have been
11 made for him, or that you would rely on his wishes to
12 continue, being that you have a law license?

13 A I always have thought that the client -- what the
14 client wants is more important than what I want. I'll
15 explain to him why he shouldn't want it, but if he
16 still wants it, then I'm going to go that way.

17 Q What were some of the considerations in not
18 asking for the mistrial? What could -- what could it
19 have hurt?

20 A To me, it couldn't have hurt for anything to ask
21 for a mistrial. It was Mr. Bostic that said he didn't
22 want a mistrial. He didn't want to give the police
23 officers time enough to come up with another story. I
24 told him that we could use the transcript of the
25 testimony that was taken so far in the next trial.

1 Q But based on the situation to that point where
2 there was evidence, which may have cleared him, and
3 that evidence hadn't been produced to you, do you think
4 that was a good idea to continue on?

5 A Now, there is where we disagree. I don't think
6 there is any evidence in there that would clear him.
7 He keeps talking about a beer can with a fingerprint on
8 it and was it his or not. I mean, that is a question
9 that the jury would answer whether they thought that
10 that beer -- it was a full beer can, by the way, which
11 would have been odd in the woods.

12 Q Had he been granted a new trial on that,
13 hypothetically say that you accepted the mistrial or
14 asked to make a motion for a mistrial and had a new
15 trial, do you think the outcome would have been
16 different?

17 A No.

18 Q Do you think that you would have had more time to
19 maybe impress upon Mr. Bostic that maybe going to trial
20 would have been a bad idea?

21 A I would have had that opportunity, but then I
22 won't have the leverage that I had during the trial to
23 get them to go to a lesser -- way lesser than what they
24 originally offered.

25 Q The offer that was tendered during the trial?

1 A Right. Right.

2 Q Okay. But Mr. Bostic, he rejected that; is that
3 correct?

4 A Exactly.

5 Q Do you feel that the -- in the hypothetical that
6 I pose to you, do you feel that the additional time
7 would have given you more time with Mr. Bostic, to
8 explain that to him?

9 A Yes.

10 Q At any point in your representation, did you feel
11 that there was a comprehension problem with Mr. Bostic
12 as to your advice or opinions or theories on the case?

13 A I'm going to say this, and I hope there is no one
14 I can offend by saying this, but most of the clients
15 from North Carolina have got North Carolina law in
16 their head and they just don't want to hear South
17 Carolina law, that was one of the problems we were
18 having.

19 MR. SELWA: Nothing further.

20 MR. THOMAS: No redirect.

21 THE COURT: You can step down. Appreciate your
22 time. Anything further?

23 MR. THOMAS: Nothing from the State.

24 MR. SELWA: Nothing further.

25 THE COURT: I will take this under advertisement

1 and we'll stop the Horry County portion of this week
2 and move to Georgetown.

3 (Whereupon, the PCR hearing concluded.)
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1 CERTIFICATE OF REPORTER

2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the captioned case, relative to appeal,
11 for Horry County, South Carolina, on the 29th day of
12 October, 2014.13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.15
16 January 24, 201517
18 
19

20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

John Elvis Bostic,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2012-CP-26-7917

ORDER

This is a Post-Conviction Relief Proceeding

14 NOV 17 PM 12:59
CLERK OF COURT
HORRY COUNTY

This is an Application for post-conviction relief (PCR) filed October 12, 2012 and an amendment on November 6, 2012. The undersigned heard this case on October 29, 2014.

Daniel Selwa II, Esquire, represented the Applicant. The State was represented by Josh Thomas, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. The Horry County Grand Jury indicted the Applicant at the March 2011 term of General Sessions for first-degree burglary (2011-GS-26-1259). Edward Chrisco, Esquire, represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 5, 2011, the Honorable Benjamin H. Culbertson sentenced the Applicant to fifteen (15) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

[Handwritten signature]

*Anders*¹ brief. By order dated October 3, 2012, the Court of Appeals granted Applicant's motion to withdraw his appeal and dismissed the appeal with prejudice.

In his application for post-conviction relief and subsequent amendment, the Applicant alleges he is being held in custody unlawfully based on ineffective assistance of counsel. In his amended application, Applicant breaks this allegation down into 25 subsets. The court will not address all 25 grounds but as they are general, overlap and Applicant presented no evidence on most his complaint.

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,

¹ *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

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.E. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

Applicant alleges trial counsel was ineffective for failing to investigate. Applicant has not carried his burden of proof on this issue. Trial counsel's testimony establishes thorough investigation based on the discovery from the State. The issue below as to discoverable evidence not being provided to counsel cannot be laid at his doorstep.

Applicant alleges trial counsel did not adequately discuss the State's case against him or trial counsel's trial strategy. The evidence of record is that trial counsel met with Applicant three or four times prior to trial and was well versed in the evidence against Applicant.²

Trial counsel effectively worked a State error (discussed more below) into a very advantageous plea offer of charge reduction to burglary third, second offense for a sentence of five years which Applicant rejected.

During the trial, the State discovered evidence not previously disclosed by law enforcement. This existence of a report and series of photos of footwear and footprints and an unopened beer can apparently found in the loot from the burglary. A latent print found on the beer can was not identified as to any person. Applicant presented no evidence that the report or photos would have been exculpatory or beneficial to his defense.

² The evidence regarding the fingerprint on the beer can was inconclusive (TR p. 147 LL 1-7). As to the other mid-trial revealed evidence Applicant has not presented to the court any evidence that the report and photos of footwear and footprints would be exculpatory or have any value in Applicant's defense.

Because the beer can, photos, and reports had not been provided to defense counsel the trial judge stated on the record that if a mistrial was requested it would be granted. This situation was discussed with Applicant who. After trial counsel's full explanation of Applicant's options and counsel's belief that the State had at that time already introduced enough evidence to get the case to the jury, Applicant made a decision to proceed and not ask trial counsel to request a mistrial.

At this point in the trial, the State offered Applicant the very favorable plea deal mentioned above.

Armed with the plea deal, the effect of a mistrial, his options, and trial counsel's observation as to how the trial was progressing Applicant, as was his absolute right, advised trial counsel to not move for a mistrial. The decision, according to the testimony of Applicant, was based his lack of understanding as to what a mistrial meant, and on his belief he was going to be "tricked" by the State. He felt the State would, if given extra time, make up evidence. Trial counsel confirmed Applicant's reluctance to opt for a mistrial.

Trial counsel testified he, prior to making a decision regarding a mistrial motion, explained to Applicant the ramification of obtaining a mistrial. Trial counsel testified the Applicant said to him that the police were lying enough already and their testimony as to him would be worse at a second trial.

Trial counsel testified that he believed the better course of action would have been to move for a mistrial. He thought the trial was not going well for Applicant and that the threat of the mistrial had leveraged a very favorable plea offer, a leverage lost if a mistrial was granted. In the end, trial counsel testified it was Applicant's final decision and even though trial counsel

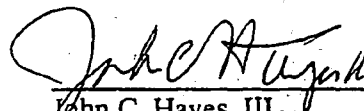
thought Applicant's best bet was to allow him to move for a mistrial the ultimate decision was for Applicant to make.

Again, Applicant set forth 25 allegations in support of his charge of ineffective assistance of counsel. At his hearing they were distilled down to 6. The issues addressed above were the only issues addressed by Applicant or covered by cross examination of trial counsel at the evidentiary hearing and therefore are the only issues the court can address. The burden of proof is on the Applicant.

The Court finds that trial counsel's representation of Applicant was effective. Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge

#5

November 16th, 2014
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26-7917

JOHN ELVIS BOSTIC, #348144)

vs)

AFFIDAVIT OF SERVICE BY MAIL

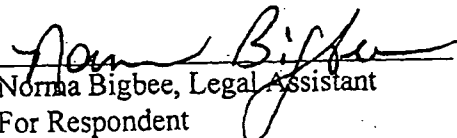
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a filed copy of the Order in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 3rd day of December, 2014.


Norma Bigbee, Legal Assistant
For Respondent

WITNESSES

Jeffrey Roy Horry County Police Department

DOCKET NO. 2011-GS-26-01259

The State of South Carolina

County of Horry

George Debusk

10H00826

COURT OF GENERAL SESSIONS

March, 2011 TERM

ARREST WARRANT NUMBER

2011GS2601259

CDR: 0079 16-11-0311

DOA: 2/26/2010

THE STATE

VS.

ACTION OF GRAND JURY

TRUE BILL

Blue Line
Foreperson of Grand Jury

MAR 31 2011

VERDICT

ATTORNEY: Chitsco, William Edward

Indictment for

Burglary First Degree

J. Gregory Hembree, Solicitor

ORIGINAL

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

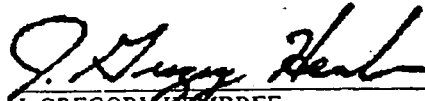
At a Court of General Sessions, convened on March 31, 2011, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That John Elvis Bostic did in Horry County, on or about February 25, 2010 enter the dwelling of Catina Hood without consent and with the intent to commit a crime therein and he has a prior record of two or more convictions for burglary or housebreaking, or the equivalent charge in another state, in violation of Section 16-11-0311(A), 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 PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

SUBCIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

John Elvis Bostic

AKA:

Race: BLACK Sex: M Age: 48

DOB: IS#:

Address: Gillard Road

City, State, Zip: Chadbourne, NC 28431

DL#: SID#:

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

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

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2601259

A/W#: 2011GS2601259

Date of Offense: 2/25/2010

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Debusk, George H.

SCB16182

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

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

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

\$

\$

\$

\$133.90

\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 95.00 beginning 2/25/2010

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins-Ward
Brenda Babb

Presiding Judge

Judge Code:

Sentence Date:

Miguel C. Culbertson
2148
Oct. 5, 2011