

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

HENRY J. GALLOWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001537 8

APPENDIX

BENJAMIN JOHN TRIPP
Appellate Defender

ALAN WILSON
Attorney General

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

PATRICK SCHMECKPEPER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina

County of Anderson

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Henry J. Galloway,

Defendant.

2010-GS-04-2543/2544

March 12, 2012

Jury Voir Dire

Transcript of Record

BEFORE:

The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

Joshua Allen, Esquire
Catherine T. Huey, Esquire
Assistant Solicitors for 10th Judicial Circuit
Attorneys for the State

Aaron Angel, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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Certificate of Reporter

EXHIBITS

No

DESCRIPTION

ID

EV

No exhibits were presented during this portion of the trial.

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1 March 12, 2012

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 10:47 a.m.)

5 THE COURT: All right. Ladies and gentlemen,
6 we're about to select a jury in the case of the State of
7 South Carolina versus Henry Junior Galloway.

8 Solicitor, I'm going to ask you first to call your
9 case and hand up the indictment, and then we'll go
10 forward from there.

11 MR. ALLEN: Your Honor, the State calls the
12 case of the State versus Henry Junior Galloway,
13 indictment number 2010-GS-04-2543 for burglary second
14 degree and indictment number 2010-GS-04-2544 for safe
15 cracking.

16 THE COURT: All right. And may I see the
17 attorneys up here, please?

18 (WHEREUPON, a bench conference was held off the
19 record.)

20 THE COURT: All right. Ladies and gentlemen, I
21 have a few more more particularized questions I need to
22 go over with you before we begin the jury selection. I
23 remind you that you're still under oath. The first
24 question I have is has anyone ever been related by blood
25 or marriage to Henry Junior Galloway, Lester Brock or

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1 Randall Moon? If so, would you please stand? Has anyone
2 ever had a close personal or social relationship with
3 Henry Junior Galloway, Lester Brock or Randall Moon? If
4 so, would you please stand?

5 Okay. Sir, would you give me your juror number?

6 THE JUROR: 109.

7 THE COURT: 9?

8 THE JUROR: 109.

9 THE COURT: 109. Thank you. You're Mr.
10 McConnell?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. Which one of those?

13 THE JUROR: Randall Moon.

14 THE COURT: Randall Moon? And how do you know
15 Mr. Moon?

16 THE JUROR: We used to live close to each
17 other.

18 THE COURT: And how long ago has that been?

19 THE JUROR: A good long time.

20 THE COURT: A long time?

21 THE JUROR: (Nodded head up and down in the
22 affirmative)

23 THE COURT: Do y'all socialize now?

24 THE JUROR: Occasionally.

25 THE COURT: Do you? Now, how often do you see

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1 each other?

2 THE JUROR: A few times a year maybe. Deer
3 season.

4 THE COURT: So y'all hunt together?

5 THE JUROR: We have, yes, sir.

6 THE COURT: Okay. Would the fact that you know
7 Mr. Moon by being a former neighbor and that you still
8 hunt together on occasion, would that prevent you from
9 being fair and impartial to both the State of South
10 Carolina in this matter and to the Defendant in this
11 matter, listening to the evidence and making your
12 decision only on that evidence without any favoritism to
13 Mr. Moon?

14 THE JUROR: I don't know.

15 THE COURT: Well, that kind of answers that
16 question. All right. I'm going to strike you from the
17 jury list on this case. You're not excused because we
18 have other cases coming, and I'm going to excuse you from
19 the trial of this case. Okay, sir? Thank you.

20 Anyone else?

21 (No response)

22 THE COURT: All right. Ladies and gentlemen,
23 this is a list of possible witnesses who may testify in
24 this matter. I'm going to read all of them. Listen
25 closely. And again, if you cannot hear me, raise your

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1 hand. If you don't understand a name, raise your hand.
2 A possible witness list is this. Roger Morgan, Deputy
3 Michael Hunnicutt, Anderson County Sheriff's Office,
4 Investigator Chris Pridmore, Anderson County Sheriff's
5 Office, Deputy Daniel Bannister, Anderson County
6 Sheriff's Office. Has anyone ever been related by blood
7 or marriage to any of the folks I just read to you? If
8 so, would you please stand?

9 (No response)

10 THE COURT: Does any member of the jury panel
11 have a close personal or social relationship with of the
12 persons I've just read to you? If so, would you please
13 stand?

14 (No response)

15 THE COURT: All right. Mr. Angel, would you
16 stand up and introduce yourself, please, sir?

17 MR. ANGEL: Yes, sir. Good morning. My name
18 is Aaron Angel. I represent the Defendant in this case,
19 Mr. Henry Galloway. I look forward to working with you.

20 MR. ALLEN: My name is Josh Allen. This is
21 Catherine Huey. And we'll be representing the State
22 during this trial.

23 THE COURT: All right. Mr. Angel, do you have
24 any other attorneys in your firm?

25 MR. ANGEL: No, Your Honor.

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1 THE COURT: Okay. Thank you, sir.

2 Has any member of the jury panel ever been
3 represented by any of the attorneys involved in this case
4 or any members of their firms? If so, would you please
5 stand?

6 (No response)

7 THE COURT: Has any member of the jury panel
8 ever been related by blood or marriage or had a close
9 personal or social relationship with any of the attorneys
10 involved in this case or any members of their firm? If
11 so, would you please stand?

12 (No response)

13 THE COURT: Has any member of the jury panel
14 formed or expressed an opinion about any issue in the
15 case of the State of South Carolina versus Henry Junior
16 Galloway? If so, would you please stand?

17 (No response)

18 THE COURT: Is any member of the jury panel
19 aware of any bias or prejudice that they may have towards
20 either the State of South Carolina or towards the
21 Defendant in this matter? If so, would you please stand?

22 (No response)

23 THE COURT: Is there any member of the jury
24 panel that was a member of the Grand Jury that issued the
25 indictments in this matter? If so, would you please

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1 stand?

2 (No response)

3 THE COURT: Is there any member of the jury
4 panel who is a member of or a contributor to any group,
5 which has as its primary concern the promotion of law
6 enforcement or victims' rights? Those groups would
7 include but not be limited to MADD, SADD, or CAVE. If
8 you are a member of or contributor to these groups or any
9 other group which has as its primary concern the
10 promotion of law enforcement or victim's rights, would
11 you please stand?

12 (No response)

13 THE COURT: Does any member of the jury panel
14 know of any reason whatsoever why he or she should not be
15 called upon to serve as a juror in the trial of this case
16 with particular emphasis being placed upon your ability
17 to be fair and impartial to both the State of South
18 Carolina and to the Defendant in this matter? If you
19 know any reason whatsoever, would you please stand?

20 THE COURT: Okay. You and I spoke. I'm going
21 to ask ---

22 THE JUROR: Yes, sir, Your Honor.

23 THE COURT: Give me your juror number again?

24 THE JUROR: 84.

25 THE COURT: Sir?

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1 THE JUROR: 84.

2 THE COURT: 84? I'm going to excuse you from
3 this case, but I'm going to ask you to stick around for
4 the other cases, Mr. Holcombe.

5 THE JUROR: Okay.

6 THE COURT: Okay. And where's the gentleman I
7 spoke to earlier? I'll come back to you in a second.
8 Please stand. Was it you -- yes, sir, didn't you come up
9 and speak with me earlier?

10 THE JUROR: Yes, sir. Juror number 61.

11 THE COURT: What is it?

12 THE JUROR: 61, sir.

13 THE COURT: 61? Okay. I'm going to excuse Mr.
14 Glover from the trial of this case, but I'm going to ask
15 you to stick around, okay?

16 Ms. Emanuel, number 54?

17 THE JUROR: It just occurred to me, I think my
18 friend's father and Mr. Allen worked together. And I
19 know his sister, I think.

20 THE COURT: Okay.

21 THE JUROR: I haven't seen them in a long time,
22 but I thought I should tell you that.

23 THE COURT: Right. Well, let me ask you this,
24 Ms. Emanuel, juror number 54. Would it present you with
25 any problem listening to the facts of this case presented

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1 by, you know, either side and making your decision based
2 solely on the facts presented uninfluenced by any
3 relationship you might have had with Mr. Allen's family?

4 THE JUROR: I don't believe so. I just wanted
5 you to at this point to ---

6 THE COURT: All right. So is it fair to say
7 you can be fair and impartial to both the State and to
8 the Defendant in this matter?

9 THE JUROR: Yes.

10 THE COURT: Okay. Thank you very much.

11 Anyone else?

12 (No response)

13 THE COURT: Has any member of the jury panel or
14 a member of their family been a victim of burglary? If
15 so, would you please stand? All right. We've got a
16 couple. We're going to start here with Ms. Emanuel.

17 THE JUROR: We were burglarized a few summers
18 ago while we were on vacation here in Anderson. And then
19 when my husband and I were first in the military, we were
20 burglarized.

21 THE COURT: How long has that been?

22 THE JUROR: The one in Anderson was two summers
23 ago in June, so 2010. And the one in San Antonio was
24 1994.

25 THE COURT: Okay. Would the fact that you were

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1 previously burglarized, I think 2010 and some years
2 before, would that prevent you from listening to the
3 evidence presented in this case and being fair and
4 impartial to both the State's case and the Defendant's?

5 THE JUROR: It might.

6 THE COURT: It might? All right. Ms. Emanuel,
7 I'm going to excuse from the trial of this case. I'm
8 going to ask you to stick around for the civil side,
9 please. That's juror number 54.

10 All right. Ma'am, in the pink?

11 THE JUROR: Brenda Brown, juror 22. Our home
12 was broken into in 2001.

13 THE COURT: Okay. Would that prevent you from
14 being able to listen to the evidence presented in this
15 case and being fair and impartial?

16 THE JUROR: No, sir.

17 THE COURT: Are you sure?

18 THE JUROR: I'm positive.

19 THE COURT: So you can give both parties a fair
20 and impartial trial?

21 THE JUROR: Yes.

22 THE COURT: Thank you very much for speaking,
23 Ms. Brown. That's juror number 22.

24 All right. Yes, ma'am, in the white?

25 THE JUROR: I'm juror number 100. I have ---

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1 THE COURT: Just one second, ma'am. Let me
2 check this. You're Ms. Lowe?

3 THE JUROR: Yes.

4 THE COURT: Okay. Ms. Lowe?

5 THE JUROR: Okay. I had my home and my son's
6 home and several of our neighbor's homes were broken into
7 four years ago.

8 THE COURT: Okay. And would that fact prevent
9 you from making a fair and impartial decision in this
10 case based only on the evidence, uninfluenced by those
11 events?

12 THE JUROR: No.

13 THE COURT: You could be fair and impartial?

14 THE JUROR: Yes, sir.

15 THE COURT: Okay. Thank you, ma'am.

16 All right. Yes, ma'am, what is your ---

17 THE JUROR: Juror number 139.

18 THE COURT: 139?

19 THE JUROR: 139. Judy Robinson.

20 THE COURT: Okay. Ms. Robinson?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay.

23 THE JUROR: I've had several members in the
24 past decades and in recent years that have had burglaries
25 in my family.

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1 THE COURT: When you say several members, you
2 mean members of your family?

3 THE JUROR: I have an aunt and uncle whose home
4 was literally destroyed by vandals thirty years ago.

5 THE COURT: Okay.

6 THE JUROR: And I have a nephew whose home was
7 vandalized. His shed was vandalized. I've had my shed
8 vandalized. I still don't know who -- I mean, these are
9 tools. But as far as being impartial, I would be
10 impartial.

11 THE COURT: So I'm just going to follow up and
12 make sure that I understood what you said. You were
13 telling me that you could listen to the evidence in this
14 case and be fair and impartial to both the State and the
15 Defendant. Is that correct?

16 THE JUROR: Yes, sir.

17 THE COURT: Okay. Thank you for standing up.
18 Yes, sir?

19 THE JUROR: Juror 37, William R. Clinkscales.

20 THE COURT: Okay. Mr. Clinkscales?

21 THE JUROR: I was the victim of a burglary back
22 when I lived in Atlanta. I think it was like 2007 or
23 2008, somewhere in that time frame.

24 THE COURT: Okay. Would the fact that you had
25 that experience in Atlanta prevent you from being fair

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1 and impartial to both the State and the Defendant in this
2 matter and make your decision uninfluenced by that event?

3 THE JUROR: No, sir, I won't be influenced at
4 all.

5 THE COURT: Say that again, please, sir.

6 THE JUROR: I won't be influenced by ---

7 THE COURT: So you can be fair and impartial;
8 is that correct?

9 THE JUROR: Yes, sir.

10 THE COURT: Okay. Thank you, Mr. Clinkscales.
11 Yes, ma'am?

12 THE JUROR: Cheryl Pitt, number 127. My
13 apartment was burglarized in 1994.

14 THE COURT: Okay. You're Ms. Pitt?

15 THE JUROR: Yes, sir.

16 THE COURT: In 1994?

17 THE JUROR: Yes, sir.

18 THE COURT: And the same question applies to
19 each and every one of you. Would that prevent you from
20 listening to the evidence presented in this case and
21 making your decision based only on that evidence
22 uninfluenced by that prior event?

23 THE JUROR: No, sir.

24 THE COURT: Can you be fair and impartial to
25 both sides?

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1 THE JUROR: Yes, sir.

2 THE COURT: Thank you very much, Ms. Pitt.

3 Yes, sir. Way in the back?

4 THE JUROR: Juror number 110, Kenneth McDowell.

5 I was burglarized in '08 when I was in Atlanta.

6 THE COURT: Okay. And Mr. McDowell, again, can
7 you listen to the evidence in this case and make your
8 decision based only on that evidence, uninfluenced by
9 that event?

10 THE JUROR: Yes, sir.

11 THE COURT: And so you can give both parties a
12 fair and impartial trial?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you, Mr. McDowell.

15 Yes, ma'am?

16 THE JUROR: Annie Hatton, Juror 76.

17 THE COURT: All right, Ms. Hatton?

18 THE JUROR: I was burglarized in 2011.

19 THE COURT: 2011?

20 THE JUROR: Yeah.

21 THE COURT: Okay. Is that case still pending?

22 THE JUROR: Sir?

23 THE COURT: Is that case still pending?

24 THE JUROR: No, uh-uh (negative). Well, yes.

25 Yes, it is. It's still pending.

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1 THE COURT: Okay. And is it being prosecuted
2 by the Solicitor's office?

3 THE JUROR: I'm not sure.

4 THE COURT: Okay. Well, let me ask you this.
5 Would the fact that you have a burglary in 2011 and
6 potentially still pending out there, would that make you
7 unable to listen to the evidence and be fair and
8 impartial to both sides?

9 THE JUROR: Yes.

10 THE COURT: You think so?

11 THE JUROR: Uh-huh (affirmative).

12 THE COURT: All right. Ms. Hatton, I'm going
13 to excuse you from the trial of this case, but I'm going
14 to ask you to stick around for the trial of the civil
15 case, okay?

16 THE JUROR: Okay.

17 THE COURT: You in the blue or purple or
18 whatever that is?

19 THE JUROR: Yes, sir, juror number 82.

20 THE COURT: 82? You're Mr. Hildreth?

21 THE JUROR: Yes, sir.

22 THE COURT: Okay. Mr. Hildreth?

23 THE JUROR: I was burglarized about two years
24 ago.

25 THE COURT: Say that again, please.

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1 THE JUROR: I was burglarized about two years
2 ago here in Anderson.

3 THE COURT: Okay.

4 THE JUROR: I think I could be impartial.

5 THE COURT: Well, you're going to have to know
6 you can be fair and impartial in order to participate.

7 THE JUROR: I don't think I can be fair and
8 impartial.

9 THE COURT: Okay. I'm going to ask you to
10 stick around. I'm going to excuse you from this criminal
11 trial, but you might be selected in the civil trial.
12 Okay?

13 Yes, sir?

14 THE JUROR: I'm number 146.

15 THE COURT: 146?

16 THE JUROR: Yes, sir.

17 THE COURT: Okay. Mr. Sims?

18 THE JUROR: Yeah. I was burglarized in 2000 by
19 a family member, but I handled it myself. I made him
20 work, work it off.

21 THE COURT: All right. Let me ask you this,
22 Mr. Sims. Would the fact that you were burglarized by a
23 family member prevent you from being fair and impartial
24 to both the State and the Defendant in this case?

25 THE JUROR: I'll be fair about it.

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1 THE COURT: Okay. Can you be fair and
2 impartial to both parties?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay. Thank you, Mr. Sims.

5 All right. Ladies and gentlemen, that will conclude
6 the questions I have. Is there any additional questions
7 from the State?

8 MR. ALLEN: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. ANGEL: No, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,
12 you'll see two different processes this week. If you're
13 being called upon to potentially serve as a juror in
14 criminal court, they will call your name. You'll be
15 asked to come forward and stand between our clerk and my
16 court reporter right here and face both these attorneys,
17 and they'll make a decision as to whether or not you're
18 picked or not on the case, in this case. In the civil
19 side of things, what they'll do is they have a strike
20 sheet and they'll call out numbers. You'll never know
21 whether or not you're selected -- I mean, excused from a
22 civil case because the numbers that are being called out
23 will not correspond with your particular juror number.
24 So you'll only know if you are selected to serve on a
25 jury case. Unfortunately, in criminal cases, they're a

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1 little bit different.

2 With that being said, Mr. Clerk, do you need to do a
3 sheet for us.

4 THE CLERK: Yes, sir.

5 THE COURT: If your name is called in just a
6 minute, I'm going to ask that if you have any personal
7 belongings out in the courtroom with you to bring them
8 with you up here in case you are selected.

9 How many alternates, Counsel, if any?

10 MR. ALLEN: Excuse me, Your Honor. I'm sorry?

11 THE COURT: How many alternates, if any?

12 MR. ALLEN: Two's fine. Two.

13 THE COURT: Let's do one. Is that all right?

14 MR. ALLEN: Sure.

15 THE COURT: And while you're waiting, let me
16 just tell you what our clerk is doing. Back when I
17 didn't have grey hair, the way we used to pick juries up
18 here is they had a big spindle. And they'd roll it
19 around and somebody would reach in and not look and pull
20 out a name. And that name would be put on -- they'd be
21 called forward and summoned forward, and they'd go
22 through the process until we had twelve jurors and as
23 many alternates. In this case, we're going to have one.
24 Now we have a computer that randomly selects your name.
25 The attorneys don't have the list. I'm given a list; the

1 clerk has it. And we'll look at it. But it's just a
2 different manner of doing the same process. But it will
3 take him just one second, and then we'll go through the
4 selection process of this case.

5 Let me see y'all while they're doing that. Mr.
6 Allen?

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: All right. Gentlemen, ten and
10 five; is that correct?

11 MR. ALLEN: Yes, Your Honor.

12 THE COURT: Okay.

13 THE CLERK: May it please the Court.

14 THE COURT: Yes, sir.

15 THE CLERK: As I call your name, if you will
16 come forward and stand here, facing back towards the
17 audience, please.

18 Our first juror is number 49, Shawn D. Duncan.

19 Right here, please, sir. Thank you.

20 What say you for the Prosecution?

21 MR. ALLEN: Present this juror.

22 THE CLERK: What say you for the Defense?

23 MR. ANGEL: Please seat the juror.

24 THE CLERK: This way. Right this way.

25 Juror 161, Amanda M. Wardlaw. Right here, please,

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1 ma'am.

2 What say you for the Prosecution?

3 MR. ALLEN: Please present the juror.

4 THE CLERK: What say you for the Defense?

5 MR. ANGEL: Please seat the juror.

6 THE CLERK: That way, Ms. Wardlaw.

7 Juror 126, Norma J. Phillips. Stand right here, Ms.

8 Phillips.

9 What say you for the Prosecution?

10 MR. ALLEN: Please present this juror.

11 THE CLERK: What say you for the Defense?

12 MR. ANGEL: Please seat the juror.

13 THE CLERK: That way Ms. Phillips.

14 Juror 78, Trina W. Hayworth. Right here, please,

15 ma'am.

16 What say you for the Prosecution?

17 MR. ALLEN: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. ANGEL: Please excuse the juror.

20 THE CLERK: Have a seat back in the audience,

21 please.

22 Juror 159, Daleine F. Wade. Right here, please

23 ma'am.

24 What say you for the Prosecution?

25 MR. ALLEN: Please present the juror.

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1 THE CLERK: What say you for the Defense?
2 MR. ANGEL: Please excuse the juror.
3 THE CLERK: Juror 73, Leon Harris, III.
4 What say you for the Prosecution?
5 MR. ALLEN: Please present the juror.
6 THE CLERK: What say you for the Defense?
7 MR. ANGEL: Please remove the juror.
8 THE CLERK: Juror number 79, Michael R. Heard.
9 Right here, please, sir.
10 What say you for the Prosecution?
11 MR. ALLEN: Please present the juror.
12 THE CLERK: What say you for the Defense?
13 MR. ANGEL: Please seat the juror.
14 THE CLERK: That way, Mr. Heard.
15 Juror 121 Nancy M. Nichols.
16 What say you for the Prosecution?
17 MR. ALLEN: Please excuse the juror.
18 THE CLERK: Have a seat, Ms. Nichols.
19 Juror 170, Priscilla C. Williams. Right here,
20 please, ma'am. Thank you.
21 What say you for the Prosecution?
22 MR. ALLEN: Please present this juror.
23 THE CLERK: What say you for the Defense?
24 MR. ANGEL: Please excuse the juror.
25 THE COURT: Have a seat.

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1 Juror number 53, Linda R. Edwards. Right here,
2 please, ma'am.

3 What say you for the Prosecution?

4 MR. ALLEN: Please present this juror.

5 THE CLERK: What say you for the Defense?

6 MR. ANGEL: Please seat this juror.

7 THE CLERK: That way, Ms. Edwards. Thank you.

8 The next juror is number 16, Christopher S. Bledsoe.
9 Right there, please, sir.

10 What say you for the Prosecution?

11 MR. ALLEN: Please present the juror.

12 THE CLERK: What say you for the Defense?

13 MR. ANGEL: Please excuse the juror.

14 THE CLERK: Juror number 69, Denaphreo M.
15 Hagood. Right there, please, sir. Thank you.

16 What say you for the Prosecution?

17 MR. ALLEN: Please present the juror.

18 THE CLERK: What say you for the Defense?

19 MR. ANGEL: Please seat the juror.

20 THE CLERK: That way, Mr. Hagood.

21 Juror 135, Hugh R. Robbins, III.

22 What say you for the Prosecution?

23 MR. ALLEN: Please present the juror.

24 THE CLERK: What say you for the Defense?

25 MR. ANGEL: Please excuse the juror.

1 THE CLERK: Have a seat.

2 Juror number 151, Rodney D. Steadman. Stand right
3 here, Mr. Steadman. Thank you.

4 What say you for the Prosecution?

5 MR. ALLEN: Please present the juror.

6 THE CLERK: What say you for the Defense?

7 MR. ANGEL: Please seat the juror.

8 THE CLERK: That way, Mr. Steadman. Thank you.

9 Juror number 41, Marlene M. Craft. Right here.
10 Thank you, ma'am.

11 What say you for the Prosecution.

12 MR. ALLEN: Please present this juror.

13 THE CLERK: What say you for the Defense?

14 MR. ANGEL: Please seat this juror.

15 THE CLERK: That way, Ms. Craft. Thank you.

16 Juror number 13, Lindy D. Berg.

17 What say you for the Prosecution?

18 MR. ALLEN: Please present this juror.

19 THE CLERK: What say you for the Defense?

20 MR. ANGEL: Please seat the juror.

21 THE CLERK: That way, Ms. Berg.

22 Juror number 1, Erik V. Acker. Right here, Mr.
23 Acker, please, sir.

24 What say you for the Prosecution?

25 MR. ALLEN: Please present the juror.

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25

1 THE CLERK: What say you for the Defense?

2 MR. ANGEL: Please seat the juror.

3 THE CLERK: That way, Mr. Acker.

4 Juror number 88, Henri Jennette. Right there, Mr.

5 Jennette.

6 What say you for the Prosecution?

7 MR. ALLEN: Please present this juror.

8 THE CLERK: What say you for the Defense?

9 MR. ANGEL: Please excuse this juror.

10 THE CLERK: Have a seat, please, sir.

11 Juror number 138, Damion D. Robbins. Right there,

12 Mr. Robbins.

13 What say you for the Prosecution?

14 MR. ALLEN: Please excuse this juror.

15 THE CLERK: Have a seat, Mr. Robbins. Thank

16 you.

17 Juror number 140, Ann M. Romano Fuller.

18 What say you for the Prosecution?

19 MR. ALLEN: Please present the juror.

20 THE CLERK: What say you for the Defense?

21 MR. ANGEL: Please remove the juror.

22 THE CLERK: Have a seat, Ms. Fuller. Thank

23 you.

24 Juror number 25, Timmy R. Brown.

25 What say you for the Prosecution?

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1 MR. ALLEN: Please present this juror.

2 THE CLERK: What say you for the Defense?

3 MR. ANGEL: Please seat the juror.

4 THE CLERK: No. This way, Mr. Brown. Good
5 try.

6 (Laughter)

7 THE CLERK: Juror number 45, Patriqious D.
8 Dennis. Right there, please, sir.

9 What say you for the Prosecution?

10 MR. ALLEN: Please present this juror.

11 THE CLERK: What say you for the Defense?

12 MR. ANGEL: Please seat the juror.

13 THE CLERK: That way, Mr. Dennis.

14 Your Honor, I believe that is twelve jurors.

15 THE COURT: All right. We need one alternate.
16 The Defense gets two; the State gets one.

17 THE CLERK: You want me to just keep going?

18 THE COURT: Keep going.

19 THE CLERK: Juror 114, Andrew S. McLay. Right
20 here, please, sir.

21 What say you for the Prosecution?

22 MR. ALLEN: Please present the juror.

23 THE CLERK: What say you for the Defense?

24 MR. ANGEL: Please seat the juror.

25 THE CLERK: That way, Mr. McLay.

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1 Your Honor, that's thirteen jurors.

2 THE COURT: All right. Mr. McLay, you are the
3 alternate. And if you would, during all times -- we very
4 well may be down on the third floor when we start the
5 trial. We may be up here. But you have a specific
6 location I need you to sit in during the trial since you
7 are the alternate. So each time you come in and out, I'm
8 going to ask you to sit, if we're up here, in that chair.
9 If not, the bailiff will tell you where downstairs, okay,
10 sir?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Ladies and gentlemen,
13 what I want you to do is now I'm going to ask you to
14 follow Buck in just a minute down to the jury room. I
15 want you to select a foreperson. The foreperson is
16 someone who communicates with the Court anytime there
17 needs to be any communications done. They also preside
18 over jury deliberations. So find someone that would be a
19 good spokesperson for you.

20 Mr. McLay, you may not serve as a foreperson since
21 you're the alternate, but you certainly have a right to
22 vote on that. It's a simple majority.

23 Once y'all determine who you want to be your
24 foreperson, I'm going to ask that you write that down,
25 their name and jury number, on a sheet of paper that the

1 bailiff will give you. Then the foreperson, once you are
2 selected, I want you to poll your jury to determine who,
3 if anyone, would like to use notepads during the course
4 of this trial to take notes. You're not required to, but
5 I will allow any of you to take notes if you do want to.

6 So if you would, at this time, go back and select a
7 foreperson and let us know who wants to take notes.

8 (WHEREUPON, the jury exited the open court at
9 approximately 11:21 a.m.)

10 THE COURT: Okay. Any motions from the State
11 with regard to jury selection?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. ANGEL: None, Your Honor.

15 THE COURT: All right. Very good.

16 All right. Ladies and gentlemen, I am going to give
17 you a fifteen-minute recess. Then Judge Maddox is going
18 to come in here, and he is going to pick a jury on a
19 civil case that's going on. So if you'd go out and take
20 about a fifteen-minute break and come back in here, Judge
21 Maddox will then pick the next case on the case on the
22 roster on the civil cases. Thank you.

23 (WHEREUPON, the jury panel exited the open courtroom
24 after which court stood at recess in this case.)

25 THE COURT: All right. Ladies and gentlemen,

State v. Henry Junior Galloway 2010-GS-04-2543/2544
Jury Voir Dire

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1 what's going on is Judge Maddox is checking on the roster
2 in the civil cases, and they're determining whether
3 there's any cases up for trial. Normally, the court
4 coordinator will select around twenty-five cases. And
5 once that happens in the civil cases, a lot of times, the
6 threat of the jury coming in here makes a lot of people
7 sit down and start being reasonable, and cases will
8 settle with each other. That may be what's happening. I
9 don't know. We'll be back with you in just one second.
10 I'm going to bring this other jury in. I'm going to
11 excuse them. And I'm going to ask that you stay here
12 until Judge Maddox excuses you, okay?

13 If you would you bring them in.

14 (WHEREUPON, the jury entered the open court at
15 approximately 11:45 a.m.)

16 THE COURT: Now, who is Norma Phillips? All
17 right. Ms. Phillips, I'm going to ask you and this
18 gentleman to swap places for me, if you would. And I'm
19 just going to use your numbers from now on out, okay?
20 You're in the right place.

21 All right. Ladies and gentlemen, we're going to
22 take care of some pre-trial matters. I'm going to move
23 this trial down to the third floor, but we're going to
24 excuse you now for a lunch break and ask that you be back
25 in your jury room on the third floor.

1 And would you show them where that is before they
2 go, please?

3 And if you'll be back in your jury room at 1:25.
4 Let me remind you that right now you're not -- you don't
5 know anything about the case other than the charges and
6 names. But do not speak amongst yourselves about the
7 case. Do not speak with anyone else about the case. We
8 want you to wait until all of the testimony and the
9 charge on the law before you begin any type of
10 deliberations.

11 But if you would take a break now for lunch and come
12 back and be in your jury room, Madam Forelady, at 1:25,
13 okay? If you would follow Mr. Buck.

14 (WHEREUPON, the jury exited the open court at
15 approximately 11:46 a.m. after which court stood at
16 recess in this case for a lunch break.)

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

State v. Henry Junior Galloway 2010-GS-04-2543/2544
Jury Voir Dire

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1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 12th day of March 2012.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 June 28, 2012

15

16

A handwritten signature in cursive script that reads "Renee Tollison". The signature is written in dark ink and is positioned above a horizontal line.

17

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF GENERAL SESSIONS
	)	2010-GS-04-02543,02544
STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
HENRY JUNIOR GALLOWAY,	)	
	)	DATE: MARCH 12-13, 2012
DEFENDANT.	)	ANDERSON, SOUTH CAROLINA

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

JOSHUA CHUCK BRONSON ALLEN, ESQUIRE
ATTORNEY FOR THE STATE

AARON J. ANGELL, ESQUIRE
ATTORNEY FOR THE DEFENSE

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE
JRICE@SCCOURTS.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

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P R O C E E D I N G S

1
2 THE COURT: Mr. Solicitor, there was a question of a
3 Jackson/Denno hearing. At this point, the State has said
4 they are not going to introduce the Defendant's statement.
5 Is that correct?

6 MR. ALLEN: Yes, Your Honor.

7 THE COURT: All right. Mr. Angell, if you feel you
8 need a Jackson v Denno hearing, just bring it to my
9 attention and we'll go forward with it from there, but at
10 this stage, I believe that you are satisfied without going
11 forward with a Jackson/Denno hearing since the State has
12 made that stipulation. Is that correct?

13 MR. ANGELL: Yes, sir, Your Honor, at this stage.
14 We're prepared to argue it, if needed.

15 THE COURT: Is there anything further from the State
16 before we proceed, Mr. Allen?

17 MR. ALLEN: No, Your Honor. Once I get the video set
18 up, it may take a minute for it to warm up and get started,
19 but I am ready to proceed.

20 THE COURT: But you got down here and got that worked
21 out. Right?

22 MR. ALLEN: Yes, sir. We've got 18 photos, that
23 typically, on the fourth floor we would have a projector.
24 So, I guess I will have to just show them to the jury as
25 the witness goes through them.

1 THE COURT: Just like we used to do in the old days.
2 All right. Are y'all ready to proceed?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

5 THE COURT: Will you bring the jury in, please.

6 (Jury in at 1:39 p.m.)

7 THE COURT: Let me see the attorneys.

8 (Brief bench conference off the record)

9 THE COURT: I hope you had time to have a good lunch
10 and relax. We are about to start with the trial of The
11 State versus Henry Junior Galloway, charged with burglary,
12 second degree, and safe cracking. Before we get started, I
13 need the clerk to swear you in. You may proceed, Madam
14 Clerk, please.

15 (Oath duly administered to the jury by the Clerk of Court)

16 INTRODUCTORY INSTRUCTIONS

17 THE COURT: Ladies and Gentlemen of the jury, before
18 we get started, let me just tell you this: The fact that
19 the defendant has been charged, arrested and indicted is
20 not evidence of guilt. It does not raise an inference or
21 any presumption of guilt. That is simply the charging
22 mechanism by which the State brings defendants before
23 juries such as yourselves for a determination of guilt or
24 innocence.

25 Now, I don't know if any of you have ever been

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1 involved in the judicial system before, either as a
2 litigant or as a witness or in some other capacity. I
3 would suspect that each and every one of you, however, have
4 watched what purports to be a T.V. dramatization of what
5 goes on in a courtroom, such as Law and Order or something
6 along those lines. Let me just tell you this: I want to
7 dispel you of any notion you may have. This is not
8 entertainment. Trials are often very slow, very
9 deliberate, they are very methodical. They are a
10 fundamental part of our democracy and they are a search for
11 the truth to see that justice is done. Sometimes it's
12 going to be maddening for you. I suspect sometimes you
13 will feel like you are cattle being herded in and out of
14 this courtroom, but that is a necessary part of engaging in
15 this process and making sure that the rights are protected
16 for everyone, both sides.

17 Now, these attorneys, they are advocates for their
18 clients. They have an ethical duty to zealously represent
19 their client's interests in this case. At the same time,
20 they are also officers of this court. What that means is,
21 you can expect them to be ethical, prepared and competent
22 in their dealings with one another, with the witnesses, and
23 with this court. Likewise, you have just taken an oath to
24 be fair and impartial in this matter. This court, these
25 attorneys and these parties have a right to expect from

1 you, that you will be fair, impartial and ethical in your
2 dealings in this matter.

3 Now, before we get started, I want to make sure that
4 each and every one of you who wants and desires to have
5 notes, has a pad and pen with them. Do you? Okay. Let me
6 say just a word of caution about note taking in the
7 courtroom. There are some judges who won't allow it. I
8 think that it is fine, but in doing so, understand this:
9 Some of the critical parts of being finders of fact, which
10 I will tell you about, means that you need to observe
11 people's demeanor in the courtroom. So, sometimes, if you
12 are engaged in writing a note, you may miss a nuance of
13 somebody's reaction or their demeanor while they are here
14 on the stand. So, be careful about that.

15 Also, at the point in time of this trial when I tell
16 you that it is okay to begin your deliberations, the fact
17 that somebody has something written down in their notes
18 doesn't mean it trumps somebody else's memory. Somebody's
19 memory is just as good as written down notes. Okay? Some
20 people are better note takers than others and others are
21 better listeners. So, you do what you want to do, but I
22 caution you in that regard as to missing testimony or
23 giving one preference over the other.

24 Now, in this case, the defendant has pled not guilty
25 to both these charges. What that simply means is, he has

1 now placed the burden on the State of South Carolina to
2 prove each and every element of the charges against him
3 guilty beyond a reasonable doubt. They have to prove each
4 and every element beyond a reasonable doubt in order for
5 him to be found guilty. It will be your duty at the end of
6 this case to decide whether or not the State has met that
7 burden of proof.

8 I want to give you a brief, general idea of what
9 reasonable doubt is. I will tell you now that this is not
10 a charge on the law. I will give you that at the end of
11 this case, but I want you, as you listen to the testimony,
12 to understand what reasonable doubt is. A reasonable doubt
13 is the kind of doubt that would cause a reasonable person
14 to hesitate to act.

15 Now, the State has the burden of proving the defendant
16 guilty beyond a reasonable doubt. Some of you may have
17 served as jurors in civil cases where you were told that it
18 is only necessary to prove a fact is more likely than not
19 true, such as, by the greater weight or preponderance of
20 the evidence. In criminal cases, the burden of proof is
21 more powerful than that. It is beyond a reasonable doubt.
22 Proof beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt.

24 Now, on the other hand, there are very few things in
25 this world that we know with absolute certainty and in

1 criminal cases, the law does not require proof that
2 overcomes every possible doubt.

3 Now, Ladies and Gentlemen, your purpose as jurors is
4 to be the fact finders in this case. In other words, in
5 the vernacular of lawyers, we call you the sole judges of
6 the facts. I cannot do anything, nor can anyone in this
7 courtroom, do anything to invade your province of being
8 finders of fact. Therefore, if at any time during the
9 course of this trial you think I am indicating to you which
10 way you are supposed to find facts, I'm going to ask you
11 and I'm also going to instruct you to disregard that. I
12 have no feeling one way or the other about what the facts
13 should be. That is solely your job. My job is to instruct
14 you on the law and to make sure that both parties receive a
15 fair and balanced trial, and that is my job.

16 Now, you will determine what the facts are from what
17 you hear in this courtroom from this witness stand right
18 here. That is where you will make your determination of
19 what the facts are. You're not to be influenced by
20 anything from outside this courtroom that you may hear. It
21 will be up to you at the end of this case to determine what
22 inference that you want to give to any evidence I allow to
23 come into this trial or any testimony that we allow in this
24 case, but ultimately, the findings of fact will be up to
25 you to make in this case and no other person or group.

1 On the same hand, the law that makes you the finders
2 of fact makes me the instructor of the law. What that
3 simply means is, you must accept the law as I give it to
4 you at the end of this case. You may think it should be
5 something else, you may wish it were, or you may think it's
6 a good thing to get back there and change the law. It
7 would be improper for you as a juror to apply the law in
8 any manner other than as I give it to you in this case and
9 apply that to the facts as you find them to be in this
10 case.

11 Now, an important part of every single case, whether
12 criminal or civil, is that you are not to begin your
13 deliberations until such time at the end of the case as I
14 tell you. What that simply means is, that during breaks in
15 this case, if I send you out for evidentiary matters during
16 lunch breaks or overnight breaks, you don't need to speak
17 to each other about this case, nor do you need to speak to
18 anyone else. I'm sure several of you are married and if I
19 came home from sitting on a jury, my wife would say, "Well,
20 tell me about it." Just do me a favor and wait until the
21 end of this case and you can talk to them or anybody you
22 want to about this case as much as you want to, but while
23 it is going on, do not speak with anyone about this case.
24 That means, not only face to face communications, but any
25 other type of communications: telephone, emails, twitters

1 or whatever those things are, but just don't talk about the
2 case.

3 In addition, our Chief Justice has told each trial
4 judge to instruct juries that they should not and shall not
5 engage in what is called jury research. What that means
6 is, if you hear about a person or an issue that you think
7 is interesting, you might want to look them up on the
8 internet. If you think of an issue that might be helpful
9 but is not being talked about in the case, you may want to
10 look it up on the internet or you may want to look up one
11 of the officials on the internet. Don't do that. We want
12 you to make your decision based solely on what you hear in
13 this courtroom uninfluenced by anything else. If you go
14 out and look up something that people have not had a chance
15 to respond to, you might make a decision on the wrong
16 basis. So, therefore, you are instructed not to get into
17 any kind of third-party research until after the case is
18 over with.

19 Now, in each and every case that I've ever been
20 involved with, the attorneys have to make objections. That
21 is their job. Sometimes you may be sitting down in your
22 seat and another objection comes up and you have to run
23 right back out. The only reason that is, we only want you
24 to hear things that would be appropriate for you to hear
25 and it's their job to make these objections and is

1 necessary for them to do so. You're not to consider the
2 fact that an attorney has raised an objection, or to the
3 extent I let you hear my response to it, you are not to
4 consider that. It would be improper during your
5 deliberations to even speak about the fact that there was
6 an objection and my ruling on it. Those are just matters
7 of proper procedure for everyone to follow.

8 Now, finally, Ladies and Gentlemen, I don't know
9 necessarily that this will be an issue in this matter, but
10 if you happen to see or hear or listen to any kind of
11 newscast about this case, I am going to ask that you not
12 listen to it, read it, or watch it. I want you to have
13 unbiased ears and unbiased minds about this matter until
14 the end of this case and then your deliberations will be
15 held and they will be valid. With that being done, I'm
16 going to send you back to your jury room now. I may have
17 neglected to tell you something or said something
18 improperly. After that, we will begin with opening
19 statements in this matter.

20 (Jury out at 1:52 p.m.)

21 THE COURT: Any additions or exceptions from the
22 State?

23 MR. ALLEN: No, Your Honor.

24 THE COURT: From the defense?

25 MR. ANGELL: None, Your Honor.

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1 THE COURT: Do you need a quick break before we get
2 started or are you ready to go?

3 MR. ANGELL: A two minute break, Your Honor?

4 THE COURT: Sure. Go ahead. A two minute break.

5 (Brief break)

6 THE COURT: Are you still on bond, Mr. Galloway?

7 MR. GALLOWAY: Yes, sir.

8 THE COURT: Then your bond will still be in place
9 during this trial.

10 MR. GALLOWAY: Yes, sir.

11 THE COURT: Bring the jury, please.

12 (Jury in at 1:55 p.m.)

13 THE COURT: All right. Ladies and Gentlemen, Madam
14 Forelady, if any time the jury feels like they need
15 anything, just write a note and let us know. Okay? This
16 is not an endurance contest. You are free to bring water
17 or a drink in here if you would like.

18 MS. PHILLIPS: Your Honor, when we were back there, we
19 were discussing that.

20 THE COURT: Yes, ma'am. In fact, if you would like to
21 have one now, I will let you go back and retrieve your
22 water. I will have one here and there's no sense in my
23 having something and you not having anything. Check with
24 the jury and see if anyone would like to have water or
25 something with them in the courtroom. If anybody would,

1 you can go back to the jury room and get it right now.

2 MS. PHILLIPS: No, I brought one in my purse.

3 THE COURT: You're smuggling it in here. Okay. All
4 right. Are you ready to proceed, Mr. Allen?

5 MR. ALLEN: Yes, sir.

6 OPENING STATEMENT BY MR. ALLEN

7 Ladies and Gentlemen, I think we can all agree, there
8 is nothing worse than a thief, somebody that steals stuff
9 from us after we've worked so hard to get it and on
10 September 24, 2010, that's exactly what happened when this
11 man here(Indicating), Henry Galloway, and his co-defendant,
12 went to Moon's Tile out on . I know some of
13 you are familiar with it. It's going out towards the lake.
14 On that night, or the early morning hours of September
15 24th, around 2 a.m., the defendant, Mr. Galloway, and his
16 co-defendant, go to Moon's Tile right on and
17 the business is fenced in with a high fence which you'll
18 see later in some photos during the course of this trial.
19 They climb the fence, they go in through a locked door,
20 they pry open a locked door with a knife, with the clear
21 intention of breaking in and stealing what belongs to the
22 business because they have socks on their hands, they both
23 have knives and they both have an article of clothing to
24 cover their face as they enter. They go through the
25 outside locked door, they go through a second door, and

1 enter the office. Mr. Galloway here enters the office
2 while his co-defendant stands at that second door as a
3 lookout. Now, what they don't realize is, there are two
4 employees of the business that were inside the business
5 that very night at that very moment and the reason was --
6 and you'll hear from Randal Moon and Lester Brock --
7 because they had a string of burglaries in the past at the
8 business and so they installed video surveillance both
9 outside and inside the business in order to try to catch
10 these people. So, they had several cameras going on for
11 surveillance and they decide on this very night, they are
12 going to stake-out, if you will, the business to try to
13 catch whoever this is because this has been going on so
14 much. It just so happens that they are inside the business
15 all night, during the night, when Mr. Galloway and his
16 co-defendant entered the business. So, Mr. Galloway and
17 his co-defendant enter the warehouse, which is the outside
18 door, they go through the second door which is actually to
19 an office, the showroom where they have the tile laid out
20 there and everything, and as they are making their way in,
21 Mr. Moon, who you'll hear from, is watching from one of the
22 offices through the surveillance camera. So, he sees the
23 two co-defendants entering the building and when he sees
24 them, he gets Lester Brock, the other employee that's up
25 there with him at that time, to position himself in the

1 showroom while Mr. Moon stands at the door, a door similar
2 to this, with the light switch right next to the door, and
3 stands there. Well, it's pitch black. They can't see
4 anything, and both defendants don't realize they are in the
5 building. So, Mr. Galloway's co-defendant is standing at
6 the door. Mr. Galloway makes his way into the showroom
7 into the second office -- and you will see all this
8 throughout the trial. We've got video surveillance, we've
9 got photos, we've got a diagram of the business, the floor
10 plan -- he goes into the office and about that time, Mr.
11 Moon, as you recall, standing next to the door, flips the
12 light on. Right when that happens, Mr. Galloway's
13 co-defendant, who's standing as a look-out, takes off and
14 runs out the office. At the same time, Mr. Galloway here
15 has made entry into the office, found the safe, has gotten
16 a key, and he is inside the safe when those lights go on
17 and Mr. Moon comes with a handgun drawn into the office to
18 confront Mr. Galloway. Mr. Galloway puts his hands up.
19 He's got a knife. As you'll recall, I told you they both
20 brought knives to pry the locked doors open. At the back
21 side of the office, Mr. Moon, right there at the desk, has
22 a stack of zip ties. He gets Mr. Galloway on the floor,
23 inside the business, ties him up. He's sitting on the
24 floor.

25 During this time, the other employee of the business,

1 Mr. Brock, has run out the back door to try to find the
2 other defendant. Well, just as he runs out the back door
3 to find the other defendant, he's made his way around a van
4 in a part of the warehouse and he's actually hiding inside
5 the warehouse while Mr. Galloway is tied up and the two
6 employees are sitting there, in the course of calling the
7 police, making sure he didn't go anywhere, and he's still
8 in the warehouse. They think he's left.

9 They call the police. Investigator Pridemore is first
10 on the scene. You will hear from him. He comes in the
11 business and he finds Mr. Galloway here, tied up, in the
12 floor of the business during closing hours, as I mentioned
13 earlier, it's roughly 2:00 a.m. He's tied up on the floor.
14 He goes into the warehouse and he knows he's secure, Mr.
15 Galloway is secure. He proceeds into the warehouse and
16 Investigator Pridemore just happens to look around and sees
17 the top of a black male's head in the warehouse behind a
18 stack of tile. He approaches Mr. Galloway's co-defendant
19 at gunpoint, gets him into custody and then soon
20 thereafter, other authorities from the Sheriff's department
21 arrive.

22 You are going to see, as I mentioned earlier, you are
23 going to see the video surveillance of the events that
24 happened that night. You are going to see photos of the
25 area in and around Moon's tile and you are also going to

1 see a sketch or a drawing of the layout of the building and
2 you'll be able to see doors, where the defendant was found,
3 et cetera.

4 So, what the State will ask you to do is to go back
5 there, study the evidence, deliberate carefully, come back
6 with a verdict that you are confident in that speaks the
7 truth. Thank you.

8 THE COURT: Mr. Angell, does the Defense wish to give
9 an opening statement?

10 MR. ANGELL: We do, Your Honor.

11 THE COURT: Okay, sir.

12 OPENING STATEMENT - MR. ANGELL

13 Good afternoon, Ladies and Gentlemen. As I spoke to
14 y'all earlier this morning, my name is Aaron Angell and I
15 represent the defendant, Mr. Galloway.

16 I'd like to remind you of what Judge Lawton McIntosh
17 told you a few minutes ago, that the burden is on the State
18 in this case, as in all cases, when they are trying to
19 prove my client guilty of burglary and safecracking.

20 What does that mean, the burden is on the State?
21 Well, it's a heavy burden and as Judge McIntosh explained,
22 it's not by the preponderance or the weight. The burden is
23 not something that is more likely than not that he did it.
24 You've got to be convinced beyond a reasonable doubt of
25 every single element of both safecracking and burglary

1 against my client.

2 I want to suggest the same thing that Mr. Allen did.
3 I want you to listen closely to the witnesses. I want you
4 to watch the video. I think you will see some video.
5 You're going to see some photos, but that, in itself,
6 doesn't mean that my client is guilty. I want y'all to
7 listen very closely, because at the end of this trial, I'm
8 going to explain and show you where the evidence is lacking
9 and what my client was doing that night. I ask that you
10 maintain an open mind. Listen closely and remember, the
11 burden is with the prosecution, always. Thank you.

12 THE COURT: Thank you. Call your first witness,
13 please, sir.

14 MR. ALLEN: Your Honor, the State calls Randall Moon.

15 (After being duly sworn by the Clerk of Court, Randall
16 Moon testified as follows:)

17 CLERK OF COURT: Please have a seat. If you would,
18 please state your full name for the record and spell your
19 last name.

20 MR. MOON: It's Randall Cleveland Moon. M-O-O-N.

21 DIRECT EXAMINATION OF RANDALL MOON BY MR. ALLEN

22 Q All right, Mr. Moon. Would you tell the jury, do you
23 live here in Anderson County?

24 A Yes, sir.

25 Q And where are you currently employed?

1 A Moon's Tile and Stone.

2 Q And how long, roughly, have you worked for Moon's
3 Tile?

4 A My whole life, pretty much.

5 Q And you are how old?

6 A Forty-one.

7 Q Okay. And so, pretty much your whole life.

8 A Yes.

9 Q Now, is Moon's Tile located here in Anderson County?

10 A Yes, sir.

11 Q And where is that?

12 A It's on . . .

13 Q Now, tell the jury -- so you, obviously, were working
14 on or about September 24, 2010?

15 A Yes, sir.

16 Q Now, explain to the jury why you were at the business
17 in the middle of the night on September 24th.

18 A Hoping to catch a thief, because we'd been broken into
19 about three times. Our money was getting stole out of
20 our filing cabinet. It's a locking filing cabinet we
21 use as our safe and we sometimes have rent money in it
22 and other times we would have petty cash for work and
23 it had been stole twice before then.

24 Q Okay. Now, on that night or early that morning when
25 you were there, were you there alone?

1 A No. Lester Brock was with me.

2 Q And who is Lester Brock? Is he...

3 A He does have some interest in the company as far as
4 money-wise.

5 Q Okay. And he does some work for you guys.

6 A Yeah, he works for us.

7 Q Now, when you were there that morning around 2:00
8 a.m., explain to the jury exactly what you were doing.

9 A I was in my brother's office where the security
10 cameras are. There are four cameras. I was in there
11 watching and I was actually talking on the phone at
12 the time trying to stay awake and Lester, he was on
13 the other side, he was on the other side of the
14 office, I believe, at the time, and I seen on the back
15 camera at the very back of the building, two suspects
16 come around by that camera and I hollered to Lester,
17 "Here they come," and they came through the side door.
18 They jimmied the side door and come through it.
19 Another camera picked them up and they come through
20 the warehouse to the main door leading to the office
21 area and they jimmied that door and come in. One guy
22 just stepped through the threshold and stood there.
23 At that time, I had went out to the front of our
24 office area next to our front door and I was standing
25 there in the dark and had my hand on the light and the

1 other guy came all the way in and went straight into
2 the office where the safe was. He was in there, I
3 don't know, maybe a minute, a minute-and-a-half, two
4 minutes, something like that. I flipped the light on
5 and I hollered at the other guy, you know, "Freeze,"
6 or whatever, and he took off out through the back and
7 we thought he had run out of the building. At that
8 time, Lester took off after him out the back and I
9 went in the office with the other fellow was and when
10 I went in there and I flipped the light on, he was
11 standing there with a knife in his hand and his back
12 was to me. I told him, "Drop the knife." I said,
13 "Turn and come out here and lay on the floor." He
14 turned around. He still had the knife in his hand and
15 I said, "Drop the knife or I'm going to kill you." He
16 dropped the knife and he said, "What do you want me to
17 do?" And I said, "Get out here and lay down on the
18 floor." He did, and we tied his wrists and hands
19 together with pull ties. And then I got to talking
20 with Lester about the other guy and Lester said,
21 "Well, I went to the outside side door and he was
22 already gone." But it's a long way down both sides
23 and I said, "Ain't no way he's that fast." And so we
24 got to looking around in the warehouse and found his,
25 he had a shirt that he used for like a mask and we

1 found that laying there and he had socks on his hands
2 and the socks were laying there. They were on the
3 other side of the van and so I knew he was probably
4 still in there and we looked around until we found him
5 and he was hiding behind some pallets of tile. We
6 didn't mess with him. We called the law and got them
7 coming and when the first lawman got there, we
8 explained everything and we took him back there to
9 where the guy was.

10 Q Okay.

11 A That law officer then put the handcuffs on him.

12 Q You might have alluded to this earlier, but tell the
13 jury, you're in the office watching the surveillance
14 video and you warned Mr. Brock, "Here they come," and
15 as they are making entry you then go, tell the jury
16 where you were standing in the office.

17 A Okay. I was in my brother's -- the two offices are on
18 the lefthand side. The one that's got the safe in it
19 is the first one. The second one is my brother's
20 office. That's where I was watching the cameras. I
21 went straight out of that office door and probably
22 went about ten feet and right there is where the front
23 door enters into our big showroom area and I stood
24 right there with my hand on the light switch, kind of
25 standing behind the tile display.

1 Q While you were there, Lester, Mr. Brock, was where?

2 A He was to my left, so when they came in the door, the
3 double doors, Lester was to the right over there near
4 some more tiles and displays. He was to the right.
5 The two offices are on the left where that guy went in
6 and I was like in the center in the front.

7 Q Okay. Now, you mentioned earlier that you were
8 watching the surveillance video. Was all this that
9 you just talked about, the events of that night, was
10 it recorded?

11 A Uh-huh.

12 Q Do you have experience, prior experience, with the
13 video surveillance video? When it was put in, were
14 you instructed as to how to use the equipment once it
15 was installed?

16 A No. I could flip it from one -- there was four
17 screens on one thing and I could flip it to one
18 screen, to see one full screen. As far as downloading
19 and recording, no.

20 Q But you know how to operate it as far as what's on the
21 video and where the cameras are and you're able to
22 testify that whatever is on that recording from that
23 night truly and accurately depicts the events of that
24 night?

25 A Oh, yes.

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

3 A Uh-huh.

4 Q And why do you recognize it?

5 A I put my initials on it and I've watched it and I know
6 this is what took place at our office that night.

7 Q So, as I asked before, this truly and accurately
8 depicts the events of September 24th?

9 A Yes. It's exactly what happened.

10 MR. ALLEN: Your Honor, at this time I would ask to be
11 able to put this CD into the computer and play it on the
12 projector.

13 THE COURT: Do you want to admit it into evidence?

14 MR. ALLEN: Yes. I would like to go ahead and put it
15 into evidence.

16 THE COURT: Any objections?

17 MR. ANGELL: No objections as to his recognizing the
18 CD, but certainly as to content. But I want to see the
19 contents. I want to see what's on that CD, because at the
20 moment, all I know is he recognized the outside of it.
21 So, no objection to putting it in.

22 THE COURT: Admitted, without objection.

23 (Whereupon, a CD is entered into evidence as State's
24 Exhibit 1, without objection)

25 MR. ALLEN: Your Honor, may Mr. Moon step down right

1 here while we play the video and let him kind of narrate as
2 it's being played?

3 Mr. Moon: It's pretty self-explanatory.

4 MR. ALLEN: Could we have the lights dimmed?

5 THE COURT: Do you mind dimming the lights, Mr.
6 Frazier? Mr. Moon, you might want to step over here so you
7 don't block the jury. Can everybody on the jury see the
8 screen? (The jury indicates they can)

9 (Video is projected on large screen)

10 MR. ALLEN: Your Honor, this is in three clips, so
11 I'll play one, stop it, and then play the second and third.

12 (Mr. Moon narrates)

13 A That's the first image I saw. I seen them when they
14 come around the back of the building.

15 Q And this is the very back, the back camera?

16 A Yeah. It's the back of the building and then they had
17 to turn that corner there and it's probably 50 yards
18 down the side of the building where the side door was.
19 The next time I see them, they were coming in that
20 side door to the warehouse part.

21 Q And did you recognize what they were wearing, what was
22 on their head...

23 A No. I kind of had -- I couldn't figure that out.
24 That's coming through that side door. Now, the door
25 they are going through here is the big office door.

1 It goes directly into the big showroom.

2 Q And both these doors, they first come through that
3 door you see directly behind them?

4 A Yes, that's where the side door is that leads to the
5 outside.

6 Q And then the second door they are about the go
7 through, both those doors were locked that night?

8 A Yeah. They lock together.

9 Q Oh, okay.

10 A And then they come through that door and you won't see
11 them again until where the guy in the white shirt, he
12 comes out and runs in around the van and that's where
13 he dumps all his stuff and hides back in the
14 warehouse. The guy in the white shirt, he steps
15 through the threshold of the door here and he just
16 stands there. He didn't come in, but the other one
17 comes on in to the office where the filing cabinet is.
18 You can still see the guy in the white. He's still
19 standing right there. He stays there the whole time.
20 When I flip the light on, I holler at the guy in the
21 white and you'll see him turn and take off and run
22 behind the van and you'll see Lester coming out behind
23 him. He takes off and he circles in behind the van.
24 He runs behind the van and Lester runs through this
25 door right here.

1 Q So, you turned the lights on, obviously, inside the
2 office.

3 A Yes, sir.

4 Q And the co-defendant who you pointed at, it appears to
5 be a refrigerator right there and he was standing
6 there behind that as the look-out, so to speak, and
7 when you flipped the light on, we just see the co-
8 defendant leave and Mr. Brock, the other employee with
9 you that night, is about to come out after him.

10 A Yes. He goes straight to the side door there. That's
11 where he had thought he ran out the door, but,
12 actually, he never left the building. When he stepped
13 out, it's such a long distance, when he stepped out,
14 there's a chain-linked fence over there and it's a
15 long distance to that back camera before he would
16 actually turn the building and get out of sight. Me
17 and Lester talked about it after we got this defendant
18 tied up and we talked about how he didn't have time to
19 turn that building and that's when we went around the
20 warehouse looking and found his stuff and knew he was
21 hiding.

22 Q And you mentioned earlier that you found the socks and
23 the headpiece or whatever he was wearing and that's
24 the van right there that you found him hiding behind.

25 (Indicating on paused video)

1 A Yes. On the other side of it.

2 MR. ALLEN: I'm going to pause it for a second.

3 Q Why don't you kind of tell the jury what we are
4 looking at here, where you are positioned.

5 A Okay. Out from the center of this screen, just to
6 your right, you can see my pants legs right there.
7 That's me standing right there and I've got my hand on
8 the light switch and I'm standing kind of behind a
9 sample board of tiles and then Lester was back to this
10 right-hand side. He's not in the screen.

11 Q So, this -- obviously the office is dark and when we
12 see the light flip on, we're seeing what we saw in the
13 previous clip as the light in the office turns on.
14 Let's just back up a second.

15 A That's the position I went to as soon as I saw him on
16 that very back camera. So, I had to stand there long
17 enough for him to enter the building and go through
18 that side door. It seemed like an eternity.

19 Q Now, right here -- you testified earlier that when you
20 had the defendant at gunpoint, he had an object in his
21 hand.

22 A Yeah. A knife.

23 Q You took the knife from him at that point?

24 A He dropped it in the floor. Lester comes back in
25 then. I was looking for the pull ties.

1 Q So, at this point, you've got the defendant, one of
2 the defendants tied up just below this counter, he's
3 out of sight of the camera. Had y'all called the
4 Sheriff's office at this point?

5 A Yeah.

6 Q So, right now, the Sheriff's office has been called,
7 you've got him tied up, you're aware that the other
8 defendant is out in the warehouse and at this point
9 you're just waiting on law enforcement to arrive?

10 A Well, no. I think at this point we still weren't sure
11 the other guy was in the warehouse. I think we talked
12 about it and then we went to -- we talked about the
13 fact that he didn't have enough time to run around the
14 building and then we went back there and found him.

15 Q Oh, okay.

16 A Which we never confronted him, whatsoever. We just
17 thought he was still hid.

18 Q All right. You can have a seat.

19 (Mr. Moon returns to the witness stand)

20 THE COURT: Mr. Frazier, would you cut those lights
21 back on, please? (Bailiff complies)

22 Q Mr. Moon, did you know either of these co-defendants
23 that broke into Moon's Tile that night?

24 A No.

25 Q Did they have any business being there?

1 A No.

2 Q Were you closed during that time?

3 A Yes.

4 MR. ALLEN: I have no further questions, Your Honor.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION OF RANDALL MOON BY MR. ANGELL

7 Q Mr. Moon, you stated earlier that you waited for the
8 defendant to walk into the office and it was around a
9 minute by the time you walked through those double
10 doors. Is that what you said? You sat there for
11 awhile and let him go into the office?

12 A I waited a minute and watched the other fellow.

13 Q So, was it a minute from the time you saw him on video
14 enter the premises over the fence or a minute from
15 when he walked through those double doors that you
16 stood there.

17 A I'm not positive of either one, because if you put a
18 heart monitor on me right there, you would know what I
19 was going through.

20 Q No doubt. Well, the reason I ask is because, did you
21 find any flashlights or anything else other than a
22 kitchen knife on the defendant?

23 A No.

24 Q And you said it was pitch black when he walked in and
25 you also said earlier that he walked into the side

1 office where the safe was. Correct?

2 A Uh-huh.

3 Q Okay. And are you trying to say that he was entering
4 into the safe or you had reason to believe he was
5 going into that safe without a flashlight?

6 A Well, I've been broke into twice, previously, you
7 know. I kind of had an idea that maybe that's what he
8 was looking for.

9 Q Let's talk about the safe for a minute. How do you
10 lock that thing?

11 A With just a lock, like a lock that goes to a drink
12 machine.

13 Q So, it has a key that turns into it?

14 A Yeah.

15 Q So, was the safe locked whenever you were waiting on
16 the defendants to enter and when they were on video?
17 Did you have a lock on it then?

18 A As far as I know.

19 Q So, you're not sure it was locked?

20 A Not positive.

21 Q Was it open?

22 A It was open after the fact.

23 Q Okay. So, it was closed before the fact?

24 A Yes.

25 Q Okay. Did you find anything else on him at that time?

1 I think I asked that earlier, but did you find
2 anything else? Other than the knife that you found,
3 did you find anything else?

4 A I think he had -- I can't remember if he had a thing
5 around his head or not.

6 Q Okay.

7 A But no, a pocket knife, no. It was a steak knife. It
8 had a black handle on it and it was a steak knife.

9 Q Okay. And you said earlier that you normally keep
10 cash in that safe?

11 A That's the only place we keep our cash.

12 Q Did you have any in the safe at that time?

13 A No.

14 Q Okay. So, it was empty?

15 A As far as I know. I don't remember if it had anything
16 in it.

17 Q Okay. Did you fire a pistol, a warning shot at this
18 defendant, my client?

19 A No.

20 Q You didn't? I'm curious, when I was looking at the
21 video ---

22 A He was in the office when the lights come on.

23 Q Okay. I'm a little curious. It looks like a paper
24 that flies off the desk. It looks like you had kind
25 of a little recoil from a warning shot towards that

1 office. I was curious, because I was under the
2 impression that you did fire, but you're telling me
3 you didn't.

4 A No. I'm figuring that was Lester's draft as he went
5 out the door.

6 Q Okay. All right. Well ---

7 A Because we actually talked about that.

8 Q Can you describe how the defendant was positioned when
9 you entered into that side room? Can you tell me, was
10 he on his knees, was he bent over?

11 A He was standing up, but his back was to me.

12 Q Okay. So, he was standing up like this?

13 (Demonstrating)

14 A Yes.

15 Q And was the knife in his left or right hand?

16 A Right hand.

17 Q Okay. And where was the safe in proximity to the
18 defendant?

19 A Probably three feet to his left on the floor.

20 Q So, that's -- when you walked in, that's where you saw
21 him?

22 A Yes.

23 Q You didn't see him down on his knees, going through
24 the safe messing with it in any way?

25 A No.

1 Q Okay.

2 MR. ANGELL: One minute, Your Honor, if you don't
3 mind.

4 THE COURT: Yes, sir.

5 Q Mr. Moon, you said that you were waiting on, waiting
6 on -- watching the surveillance video because you had
7 had previous break-ins in, what, over the past week or
8 month?

9 A A month or so.

10 Q Okay. And so, on those past break-ins, were you
11 waiting on the burglars to come in, the alleged
12 burglars to come in?

13 A No.

14 Q So, this was the first time you kind of sat up and
15 waited on them?

16 A Yes.

17 Q All right. And what time did y'all go in to wait on
18 them?

19 A It was still daylight, right close to dark. Nine
20 o'clock, nine-thirty, somewhere around there.

21 Q Okay. So, by the time this happened, it had been a
22 good, what, three hours or so, three-and-a-half?

23 A Yes. I think this happened around 2:00 in the morning
24 and so it probably had been about five hours.

25 Q Okay. If you could remind me, what day of the week

1 was this? Do you know?

2 A Thursday, I think.

3 Q Okay.

4 A I think. It should be on the video somewhere.

5 Q And I have a couple of questions about a statement
6 that you gave to the deputies that night. (Mr. Angell
7 shows document to Mr. Allen)

8 MR. ANGELL: Judge, do you mind if I approach to show
9 him this document?

10 THE COURT: No, sir.

11 Q This is your written statement that night. I wanted
12 to ask you, you told him to put down the knife and
13 when he was standing like this, (demonstrating) what
14 did he do?

15 A He turned around. I told him, I said, "Drop the
16 knife." He turned around and faced me.

17 Q And so he turned around like this? (Demonstrating)

18 A Yeah. He turned around and faced me.

19 Q Okay.

20 A He still had the knife in his hand and I said, "Drop
21 the knife or I'm going to shoot you."

22 Q Okay. And then what did he do?

23 A He dropped the knife and he said, "What do you want me
24 to do?"

25 Q Okay.

1 A And I said, "Come around here and lay down. I'm going
2 to tie you up."

3 Q Did you have any other problems with him moving or
4 scrambling or trying to run off at that point, once he
5 was kind of locked down?

6 A No. No. He was nice. He was easy to deal with and
7 we stood around and talked after the fact.

8 Q Did he tell you what he was doing there?

9 A Do what?

10 Q Did he tell you what he was coming for?

11 A No. No.

12 MR. ANGELL: I don't have any further questions, Your
13 Honor.

14 THE COURT: All right.

15 MR. ANGELL: I appreciate it. Thank you, Mr. Moon.

16 THE COURT: Redirect?

17 MR. ALLEN: Just a couple of quick ones.

18 REDIRECT EXAMINATION OF RANDALL MOON BY MR. ALLEN

19 Q Mr. Moon, when you went into -- when the defendant is
20 in the office, you have your gun drawn, you go into
21 the office, was the defendant inside the safe?

22 A The safe was open and he was standing there like this.
23 (Demonstrating) He wasn't in it. He didn't have his
24 hand in it, but he was standing in front of it. It
25 was closed prior to. When I come in, he was standing

1 like this (demonstrating) with his back to me and
2 holding his hands up.

3 Q Mr. Angell asked you if he gave you any trouble or
4 tried to run off. Did he try to run off?

5 A No.

6 Q And why is that?

7 A Well, he was hog-tied, ankles and feet.

8 MR. ALLEN: I have no further questions, Your Honor.

9 THE COURT: Re-cross?

10 MR. ANGELL: I would like to, Your Honor, if I may,
11 just to clarify.

12 RE-CROSS EXAMINATION OF RANDALL MOON BY MR. ANGELL

13 Q That safe requires a key to open the safe. Correct?

14 A Yes.

15 Q And you did not find a key on my client. Did you?

16 A No.

17 Q Was there ever a key found for the safe?

18 A Yes. It was laying on the desk or the floor or there
19 somewhere. It stays in the desk drawer.

20 Q Okay. So, do you keep the only set of keys in that
21 desk drawer in the office or do you have a set?

22 A Just in the office.

23 Q Only in that office. Okay. So, he would have had to
24 have known that.

25 A That's what I'm thinking.

1 Q Well, all right. I appreciate it. No further
2 questions.

3 THE COURT: May this witness be excused?

4 MR. ALLEN: Yes, Your Honor.

5 THE COURT: Thank you, sir. You may step down. Would
6 you call your next witness, Mr. Allen.

7 MR. ALLEN: Your Honor, at this time, the State calls
8 Lester Brock.

9 (After being duly sworn by the Clerk of Court, Lester
10 Brock testified as follows:)

11 CLERK OF COURT: Please have a seat. If you would
12 please, state your full name for the record and spell your
13 last name.

14 MR. BROCK: Lester L. Brock.

15 DIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

16 Q Good afternoon, Mr. Brock.

17 A Good afternoon.

18 Q Mr. Brock, do you live here in Anderson County?

19 A Yes, sir. I do.

20 Q And are you currently employed?

21 A I'm self-employed.

22 Q Okay. Do you have an occasion to do any work for
23 Moon's Tile?

24 A Yes, sir. I do.

25 Q And what kind of work is that?

1 A When they install tile in houses and all I go in and
2 put in the shoe molding and all that down for them. I
3 do the woodwork they want done.

4 Q Okay. And, roughly, how long have you been doing that
5 kind of work for Moon's Tile?

6 A Probably somewhere in the neighborhood for four, five,
7 six years.

8 Q Okay. So, were you doing work or associated with
9 Moon's Tile during the early morning hours of
10 September 24, 2010?

11 A Repeat that?

12 Q September 24, 2010, the morning of the incident?

13 A Yes, sir.

14 Q Okay. Can you tell the jury -- obviously, it was
15 early in the morning, around 2:00 a.m. on that day,
16 can you tell the jury why you were in Moon's Tile at
17 such an odd hour?

18 A Yes, sir. They had been broken into numerous times
19 and I had been asked if I would sit up there, you
20 know, with him and just wait and see if they were
21 going to be broke into again.

22 Q And when you say, "with him," who were you up there
23 with?

24 A Randall Moon.

25 Q All right, Mr. Brock, why don't you tell the jury --

1 You told me you were there that night with Mr. Moon.
2 Why don't you tell the jury the events that unfolded
3 once Mr. Moon recognized that two gentlemen were
4 trying to enter the business during closing hours.

5 A We had talked previously, earlier that night about,
6 you know, where each one would be in the building and
7 I -- when he was watching the cameras, he told me
8 there were two of them coming in. Then, I took the
9 position that we had agreed on in the building and
10 waited on them to enter the building.

11 Q Okay. Once they entered the building, explain to the
12 jury what unfolded once they entered the locked door.

13 A When they came in from the warehouse into the lobby,
14 one of them stopped at the door coming in from the
15 warehouse. The other one entered Randall's mother's
16 office where the safe is and opened her desk drawer
17 and ---

18 MR. ANGELL: Objection, Your Honor. I don't believe
19 he saw that.

20 THE COURT: Would you lay some foundation for his
21 testimony, please, sir?

22 MR. ALLEN: Yes, Your Honor.

23 Q When the defendant made entry into the office, which
24 you alluded to, would you tell the jury where you were
25 standing in relation to where he entered the office?

1 A I was standing, if you enter the front door of the
2 office, I was standing to the right of the counter.

3 Q So, when he comes in that door, roughly, how many feet
4 are you away?

5 A I'm four foot away from him.

6 Q So, I mean, you could almost touch him from ---

7 A Yes, sir.

8 Q Okay. So, once this gentleman enters the office as we
9 saw earlier on the surveillance video, the lights cut
10 on, and why don't you tell the jury what you do once
11 the lights are turned on.

12 A When the lights were turned on, I -- Randall started
13 hollering at the one in the office to drop his knife
14 and I left the showroom, went into the warehouse to
15 see where the other one was at and I actually went to
16 the back door and didn't see him. He had went around
17 the van that was parked in the warehouse and hid in
18 the warehouse.

19 Q Okay. And so, the jury saw the surveillance video
20 earlier and saw one of the defendants come out of the
21 office, go around the van into the warehouse and then
22 a gentleman with a shotgun comes out behind him and
23 that's yourself.

24 A That's me. Yes, sir.

25 Q So, what you are telling the jury is that at that

1 time, you thought he actually went straight out that
2 door back out into the yard back out behind the
3 business.

4 A Yes, sir. I thought that's where he had gone.

5 Q And you come back into the business thinking that he's
6 gone.

7 A Yes, sir.

8 Q Okay. Mr. Brock, I'm going to show you what's been
9 marked as State's Exhibit 2, A-R. These are some
10 photos and I'd have you look through those briefly.

11 MR. ANGELL: Your Honor, I would object. There has
12 been no foundation laid for the photos.

13 THE COURT: All right. Would you lay the foundation,
14 please, sir.

15 MR. ALLEN: Yes, Your Honor.

16 Q Mr. Brock, you mentioned earlier that you are, that
17 you had been employed with Moon's Tile for five or six
18 years. Correct?

19 A Yes, sir.

20 Q Do these photos that you're looking at now, which are
21 the area in and around the business of Moon's Tile, do
22 those truly and accurately depict the surrounding area
23 of the business, both outside and inside?

24 A Yes, sir. They do.

25 MR. ALLEN: Your Honor, at this time, the State would

1 move to enter State's Exhibit 2, A-R, into evidence.

2 THE COURT: Any objection?

3 MR. ANGELL: No objection, Your Honor. Thank you.

4 THE COURT: All right. Admitted, without objection.

5 (Whereupon, 18 photographs are entered into evidence
6 as State's Exhibit 2, A-R, without objection.

7 MR. ALLEN: Your Honor, may Mr. Brock step down in
8 front of the jury while we go over these?

9 THE COURT: Yes, sir. You may step down.

10 (Mr. Allen and Mr. Brock stand in front of the jury)

11 Q All right. This first photo, would you tell the jury
12 what that is showing, that angle?

13 A That is the front of the Moon Tile business. As
14 you're standing out towards looking
15 towards the front of the building.

16 Q Okay. Explain to the jury what that is.

17 A This is a picture of the lefthand side of Moon Tile
18 and all indications are that they came in that side of
19 the building.

20 Q And what is it that surrounds the business?

21 A It's a chain-link fence, about ten-foot tall.

22 Q And that surrounds the entire property?

23 A Yes, sir.

24 COURT REPORTER: Was that 2-B?

25 MR. ALLEN: Yes, ma'am. In fact, these are in order,

1 A through R.

2 Q This is State's Exhibit 2-C, which is another picture
3 from towards the business. Tell the jury
4 what that is, please.

5 A That is the right-hand side of the building. That's
6 where all the trucks enter for delivery and to pick up
7 material. It's also chain-linked fence and you have
8 to go through the gate and through the doors to the
9 back of the building.

10 Q And explain to the jury what is significant about this
11 picture and what it shows there in the middle.

12 A This is a drive-in door, where I'm holding my finger,
13 underneath it, where they drive the forklift and park
14 some of the vehicles at night to keep people from
15 breaking in it. This walk-through door, which is just
16 to the left of the roll-up door, is the door that the
17 two gentlemen entered that night at the break-in.

18 Q Was that door locked the night of the break-in?

19 A Yes, sir.

20 Q I'm showing Mr. Brock, State's Exhibit 2-E. Would you
21 explain to the jury what's in that photograph.

22 A This is the back-end of the building and if you'll
23 notice this little black spot on the side of the
24 building, that's the surveillance camera. That's the
25 first camera that picked the two guys up as they were

1 coming around the back of the building.

2 Q So, this camera view is what is depicted on the first
3 clip of the surveillance video ---

4 A Yes, sir.

5 Q --- as they come around the back. Okay. This is --
6 tell the jury what that shows.

7 A This is the walk-through door that I mentioned earlier
8 that they came through. It's just a close-up of that
9 door that they came through.

10 THE COURT: Excuse me. What exhibit number is that,
11 please?

12 MR. ALLEN: Exhibit 2-E, Your Honor. I apologize.

13 Q This is State's Exhibit 2-F. Explain to the jury what
14 they photo depicts.

15 A This photo is the inside of the warehouse when you
16 step just inside that roll-up door. This is the view
17 towards the office door going from the warehouse.
18 It's in this area right here on the end of this view
19 in this picture. That's the door, this is where they
20 came in and had to enter the showroom through another
21 set of doors that was locked.

22 Q All right. This is State's Exhibit 2-H. Explain to
23 the jury what is shown in that picture.

24 A This is the doors that go from the warehouse into the
25 showroom. That door was locked and that's where they

1 entered the showroom and one of them stopped just
2 inside that door.

3 Q That refrigerator there, that's what you can see on
4 the video.

5 A Yes, sir. This is, it's kind of hard to see, but
6 right under my finger is the camera that picked them
7 up as they were coming into the warehouse.

8 Q This is State's Exhibit 2-I. Explain to the jury the
9 view that this picture is showing. I believe it's in
10 the reverse of what we just looked at.

11 A This is the view that you would be looking at if you
12 were looking through the camera towards that big roll-
13 up door and the walk-through door is right here under
14 my finger. That's the walk-through door that they
15 came in from the outside into the warehouse.

16 Q Thank you. State's Exhibit 2-J.

17 A Exhibit 2-J is a picture of the showroom looking
18 toward the office where the safe is at. If you were
19 standing in that door, then you'd be right here and
20 the office where the safe is at and Keith's, Randall's
21 brother's office.

22 Q State's Exhibit 2-M.

23 A Exhibit 2-M is standing at the front door looking
24 toward the counter and into the warehouse.

25 Q And does that photo show where the camera is that

1 gives you the view from the surveillance video in the
2 third clip?

3 A It's in the ceiling and it's right under my finger
4 there. The camera as you see us in the showroom,
5 that's that camera.

6 Q State's Exhibit 2-N.

7 A Exhibit 2-N, that's Keith's office. That's the front
8 office up there and if you look right under my finger,
9 that screen there, that's a computer screen and that
10 is what Randall was watching when he seen the two guys
11 coming around the back of the building and up the
12 side. It shows all four cameras, that one screen. It
13 breaks it up into four sections and you're looking at
14 all four.

15 Q State's Exhibit 2-P.

16 A That's standing just inside the front door looking
17 towards the Ms. Moon's office where the safe is kept.

18 Q And is that office door, that's where the defendant
19 entered?

20 A Yes, sir. He was actually already in the office and
21 had the safe open.

22 Q All right. And lastly, State's Exhibit 2-Q. Explain
23 to the jury what's in that photograph.

24 A If you'll look right under my finger, that's the safe
25 that sits on the floor and he'd entered the office,

1 taken the key out of the desk drawer and ---

2 MR. ANGELL: Objection.

3 A --- had the safe open.

4 MR. ANGELL: Objection, Your Honor.

5 THE COURT: Just one second. Madam Forelady, would
6 you take your jury back to the jury room at this time and
7 this would probably be a good time to go ahead and have
8 your afternoon break. We'll take about a fifteen minute
9 break. Okay?

10 (Jury out at 2:51 p.m.)

11 THE COURT: Go ahead and state your objection. I want
12 some clarification. I thought I asked earlier if those
13 were admitted without objection and you said, "yes".

14 MR. ANGELL: I'm sorry, Your Honor, but his statement
15 regarding the photo. He was saying that he saw him open
16 the drawer to get the key and he's presuming and that's not
17 based on the photo. That's my objection, Your Honor,
18 specifically.

19 THE COURT: Gotcha. Mr. Allen.

20 MR. ALLEN: Your Honor, as I recall, it was my
21 understanding he didn't say he saw it. When he mentioned
22 the safe, he was saying that was the safe that Mr. Moon saw
23 him go into. I know that's splitting hairs a little bit.
24 I don't think he testified, "I visually saw him in the
25 safe."

1 MR. ANGELL: And that's fine. I'll clear it up on
2 cross.

3 THE COURT: Well, just make sure Mr. Brock, you are
4 limited to what you personally saw. You can't testify in
5 this case to what Mr. Moon told you he saw, okay? But what
6 you saw.

7 MR. BROCK: Yes, sir.

8 THE COURT: That being said, let's take about a
9 fifteen minute break and then we'll come back. Mr. Brock,
10 you're not allowed to speak to anybody about your testimony
11 during the break. Okay, sir?

12 MR. BROCK: Thank you, sir.

13 THE COURT: Okay.

14 (Brief Break)

15 THE COURT: Just for the record, I wasn't sure I made
16 clear my ruling, but I sustained Mr. Angell's objection to
17 Mr. Brock testifying to something he did not personally
18 see. Okay? All right. Is the State ready to proceed?

19 MR. ALLEN: Yes, Your Honor.

20 THE COURT: Mr. Angell?

21 MR. ANGELL: We're ready, Your Honor.

22 THE COURT: All right. Bring the jury in, please.

23 (Jury in at 3:14 p.m.)

24 THE COURT: Madam Forelady, did you have sufficient
25 time on your break this afternoon?

1 MS. PHILLIPS: Yes, sir. We did.

2 THE COURT: Did you find everything that you needed?
3 Were you able to get everything that you wanted?

4 MS. PHILLIPS: Yes, sir.

5 THE COURT: Very good. Is the State ready? Ma'am?

6 MS. PHILLIPS: We were just wondering if our candy box
7 is going to be re-filled tomorrow.

8 THE COURT: You know, it is an election year. Is the
9 State ready to proceed?

10 MR. ALLEN: Yes, Your Honor.

11 THE COURT: Is the Defense ready to proceed?

12 MR. ANGELL: We're ready, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. ALLEN: Thank you, Your Honor.

15 CONTINUED DIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

16 Q Mr. Brock, we just went through the photos with the
17 jury. You explained what each of those photos depict
18 so they will be able to view them once they get back
19 in the jury room, but just a couple more questions.
20 Were you familiar, did you know the two gentlemen that
21 broke into Moon's Tile the night or early morning of
22 September 24, 2010?

23 A No, sir.

24 Q Did they have any business being there at 2:00 in the
25 morning?

THE STATE OF SOUTH CAROLINA VERSUS HENRY J. GALLOWAY

1 A No, sir.

2 MR. ALLEN: I have no further questions, Your Honor.

3 THE COURT: Cross Exam?

4 CROSS EXAMINATION OF LESTER BROCK BY MR. ANGELL

5 Q Mr. Brock, I noticed you are wearing glasses this
6 afternoon.

7 A Yes, sir.

8 Q Have you always worn glasses?

9 A Not always.

10 Q How long have you been wearing them?

11 A About the past fifteen years.

12 Q Okay. Were they on that night?

13 A Yes, sir.

14 Q And when Mr. Moon turned on the light switch, as we
15 saw, and you went forward, did you look into the room
16 where my client was at?

17 A No, sir.

18 Q So, you didn't see him in there. Did you?

19 A Yes, sir. Well, he wasn't in the showroom.

20 Q Right.

21 A So, he had to be in that office.

22 Q Okay. That's fine. But you didn't personally see him
23 in there. Did you?

24 A No.

25 Q Because you were preoccupied chasing the other fellow.

1 A Yes, sir.

2 Q Okay. And as to these pictures, you were explaining
3 to the jury the location of the offices, the warehouse
4 and I don't have a problem with any of that. The
5 problem I have is, do you know when these pictures
6 were taken?

7 A Yes, sir.

8 Q Do you mind telling me when they were taken?

9 A Those pictures right there were taken about two weeks
10 ago.

11 Q Okay. So, these weren't, just to get it on the
12 record, these weren't from the night of September 24,
13 2010, or the early morning of September 24, 2010.
14 None of these pictures are of that scene.

15 A No.

16 Q They are after, two weeks ago. So, about a year and
17 two or three months after the scene, after the crime,
18 these were taken. Correct?

19 A Yes, sir.

20 Q Okay. Did you -- how is your hearing? Is it good?
21 Do you have good hearing?

22 A It's not perfect, but it's decent.

23 Q All right. Did you hear anything when you went
24 chasing through the warehouse, did you hear any noise
25 as you went into -- did you hear any loud noises or

1 banging as you went chasing the co-defendant?

2 A No, sir.

3 Q Okay. I'm curious about the doors. Let's move to
4 that. You said that my client came through the locked
5 doors. Actually, two locked doors. The one on the
6 side, you testified earlier, and also to the double
7 doors.

8 A Yes, sir.

9 Q Is there any picture here showing where those -- or do
10 you have any evidence showing where those doors had
11 been broken into as you testified? Were they jimmied?

12 A No, sir. There aren't any pictures indicating that.

13 Q Okay. But -- and did you see on video my client go
14 through the locked door?

15 A Yes, sir.

16 Q On video, you saw him?

17 A Yes, sir. Uh-huh. The doors were locked that night.

18 Q Okay. When you helped tie my client up, did he say
19 anything to you?

20 A Yes, sir. He was talking quite a bit.

21 Q But, as you said earlier, you weren't pursuing him
22 from the start. Your focus was on the co-defendant in
23 the warehouse.

24 A Yes, sir.

25 Q Okay. Had you ever seen my client before that night?

1 A No, sir.

2 Q Whenever you determined that they actually did break
3 or unlock the locked doors, did you go and inspect the
4 doors at all? Did you go look at the handles or the
5 locks that they had, according to your testimony,
6 pried open and gone through? Did you go and ever look
7 at those at any point after this night?

8 A Yes, sir.

9 Q Okay. And what did you see?

10 A Scratch marks. They were using a serrated steak
11 knife.

12 Q Okay. So, you saw scratch marks?

13 A Yes, sir.

14 Q On the handle or the lock?

15 A On the door latch itself.

16 Q Okay. Was that the outside door or on both ---

17 A On both doors.

18 Q Okay. It was on both doors.

19 A Yes, sir.

20 Q Do you have keys to the safe that Mr. Moon made
21 mention of earlier, or the filing cabinet?

22 A Do I have keys?

23 Q Yes, sir.

24 A No, sir.

25 Q But you know where the keys are. Right?

1 A No, sir.

2 Q So, you don't have any idea how to access that safe?

3 A No, sir.

4 Q Okay. Are you sure as to whether that safe was locked
5 or unlocked that night?

6 A It's always locked at night.

7 Q Okay. Well, the reason I ask is that, earlier, Mr.
8 Moon testified that he wasn't sure if it was locked.
9 I know the side door was locked, the double doors were
10 locked and you would think the safe would be locked,
11 but he wasn't sure, and so I wanted to hear your
12 perspective. So, you are sure it was locked?

13 A I did not go in and check it.

14 Q Okay. That's fine. Have you ever been in that safe
15 before, the filing cabinet before?

16 A No, sir. I had no reason to.

17 Q Okay.

18 MR. ANGELL: I have no further questions, Your Honor.

19 Thank you.

20 THE COURT: Yes, sir. Redirect?

21 MR. ALLEN: Briefly, Your Honor.

22 REDIRECT EXAMINATION OF LESTER BROCK BY MR. ALLEN

23 Q Mr. Brock, Mr. Angell just alluded to the pictures
24 taken of the business and you told him they were taken
25 a couple of weeks ago. Is there anything in that

1 business or floor plan where the offices are located,
2 where the cameras are located, the outside fences, et
3 cetera, is there anything that has changed at that
4 business between the early morning hours of September
5 24th and the day that these pictures were taken?

6 A No, sir.

7 Q It's the exact same?

8 A It's the exact same, even the tile racks are still
9 where they were, the carpet racks and everything.

10 Q Okay. And tell the jury, is there any way to gain
11 access into that business other than the doors they
12 came in, which you have testified were locked. Is
13 there any way to gain entry into that business?

14 A Other than the front door. No, sir.

15 Q Right. Did they come through the front door?

16 A No, sir.

17 Q Was the front door locked?

18 A Yes, sir.

19 MR. ALLEN: I have no further questions, Your Honor.

20 MR. ANGELL: I'd like to re-cross, Your Honor.

21 THE COURT: Yes, sir.

22 RE-CROSS EXAMINATION OF LESTER BROCK BY MR. ANGELL

23 Q Real quickly, you mean to tell me that over the course
24 of a year and three months nothing has changed in that
25 office? Is that your testimony?

1 A I'd say that in fifteen years, it hasn't.

2 Q Okay. But that safe's been opened. Hasn't it?

3 A It's been opened every day.

4 Q Okay. And then closed.

5 A Yes, sir.

6 Q Okay. But we don't have evidence, we don't have
7 pictures of the safe being open from that night.

8 Correct? These are not them. Correct?

9 A No, sir.

10 Q Thank you.

11 MR. ANGELL: No further questions.

12 THE COURT: Mr. Allen, would you go over those exhibit
13 numbers so it's clear on the record, please?

14 MR. ALLEN: Yes, Your Honor.

15 THE COURT: Just read off the numbers, please.

16 MR. ALLEN: They are identified by letters. You just
17 want me to go through the letters?

18 THE COURT: Yes, sir.

19 MR. ALLEN: This is State's Exhibit Nos. 2-A through
20 2-R.

21 THE COURT: Okay. May Mr. Brock be excused?

22 MR. ALLEN: Yes, Your Honor.

23 THE COURT: Thank you, sir.

24 MR. BROCK: Thank you.

25 THE COURT: Would you call your next witness, please?

1 MR. ALLEN: Your Honor, at this time, the State calls
2 Deputy Michael Hunnicutt to the stand.

3 (After being duly sworn by the Clerk of Court, Michael
4 Hunnicutt testified as follows:)

5 CLERK OF COURT: If you would, please, state your full
6 name for the record and spell your last name.

7 DEPUTY HUNNICUTT: Deputy Michael Hunnicutt.
8 H-U-N-N-I-C-U-T-T.

9 DIRECT EXAMINATION OF MICHAEL HUNNICUTT BY MR. ALLEN

10 Q Deputy Hunnicutt, where are you employed?

11 A Anderson County Sheriff's office.

12 Q And how long have you been employed there?

13 A Approximately, three-and-a-half years.

14 Q Okay. How many years have you worked in law
15 enforcement, total?

16 A Three-and-a-half years.

17 Q Okay. What is your title that you hold at the
18 Anderson County Sheriff's office?

19 A I'm a corporal, on the road patrol.

20 Q If you could, explain to the jury a little bit about
21 what your duties include as a corporal.

22 A I'm in charge of training new recruits, new deputies.
23 I answer calls for service, take reports for service.
24 Do pro-active enforcement with the community and
25 anything else that's asked of me.

1 Q Okay. Did you have the occasion to be working during
2 the early morning hours of September 24, 2010?

3 A Yes, sir.

4 Q And explain to the jury the events of that night and
5 why you are familiar with that night and what led you
6 to the incident location.

7 A I was on patrol and we received a call that the
8 complainants, the business owners at Moon's Tile were
9 at the business. They had had a couple of break-ins
10 and they had actually caught two individuals breaking
11 into the business. At that time, I was dispatched to
12 the incident location and that's how I got there.

13 Q Now, once you arrived on scene, tell the jury who was
14 present, other than the victims who were employees at
15 Moon's Tile. Who else was there?

16 A Forensic investigator Pridemore was there and also
17 there were two defendants.

18 Q Now, once you arrived on scene, what exactly did your
19 duties entail as far as any processing or anything
20 else, once you arrived at Moon's Tile?

21 A My main duties when I got there were the co-defendant
22 was being a little bit uncooperative and so we went
23 ahead and placed him in the back of my car until we
24 could figure things out and then I got Mr. Moon and
25 Mr. Brock's information, both suspect's information,

1 and just kind of got an overview of what had happened
2 and then I viewed the video. I attempted to get a
3 statement from the co-defendant, which he refused, and
4 that was pretty much everything I did.

5 Q Okay. So, from the time you arrived to the time you
6 left the scene that night, you just explained your
7 involvement?

8 A Yes, sir.

9 Q Okay. And when you arrived on scene, as you alluded
10 to earlier, both co-defendants that we've been talking
11 about today, were inside the business?

12 A Yes, sir.

13 Q And were in custody?

14 A Per se. The co-defendant was in handcuffs. The
15 defendant here was inside the business, but he was not
16 in custody at that time.

17 Q Okay.

18 MR. ALLEN: Court's indulgence at this time, Your
19 Honor.

20 Q Deputy Hunnicutt, you alluded to, earlier, the
21 suspects being in the business when you arrived, do
22 you know who was zip-tied in the office and who was
23 still in the warehouse?

24 A Yes, sir. I do.

25 Q Could you tell the jury which one was...

1 A Mr. Galloway was inside the office and Mr. Withers was
2 the one that walked out of the warehouse and I was met
3 by Forensic Investigator Pridemore and Mr. Withers
4 walking into the office when I walked in.

5 Q And when you walked in and Mr. Galloway, the defendant
6 here, was in the showroom, was he able to leave?
7 Could you explain to the jury the state that you saw
8 him in when you arrived?

9 A If I remember correctly, I could tell -- he still had
10 the zip ties on his hands, but they had been cut. He
11 no longer had zip ties on his feet and he was -- when
12 I first arrived, I didn't think he had anything to do
13 with it, because he was just standing there like
14 everybody else was.

15 Q Okay.

16 MR. ALLEN: I have no further questions, Your Honor.

17 THE COURT: Cross examination?

18 CROSS EXAMINATION OF MICHAEL HUNNICUTT BY MR. ANGELL

19 Q You say, Deputy Hunnicutt, when you arrived, that my
20 client was not zip-tied. Correct?

21 A To the best of my recollection.

22 Q Okay. And from everything you could tell, it looked
23 like the main principle defendant, like you just said,
24 was already in custody. Correct? The best you could
25 tell.

1 A Yes, sir.

2 Q Based on your observations. When you arrived at the
3 scene, did you see my client in the -- what room was
4 he in, exactly?

5 A I guess it would be called the lobby or showroom, ---

6 Q Okay.

7 A --- I think it was. Just pretty much, when you walk
8 into the front door, in that room right there as soon
9 as you walk in the front door.

10 Q Okay. And you mentioned some of your duties as a
11 deputy to get their information, the suspect's
12 information.

13 A Yes, sir.

14 Q Do you do anything more with the suspects other than
15 ask them for their names, their information? What
16 else do you do?

17 A Once we figure out everything going on, then we ask
18 them questions at that time to figure out what their
19 side of the story is.

20 Q Okay. Do you generally frisk them to make sure there
21 are no weapons?

22 A Yes.

23 Q Did you do that in this case?

24 A Yes.

25 Q And what did you find on my client?

1 A At that point in time, I don't believe I found
2 anything at that point in time.

3 Q Okay. So, there was no picks, no keys, no
4 screwdrivers, nothing?

5 A At the time of my arrival, no.

6 Q Okay. Did y'all take any pictures of the scene that
7 night?

8 A That night, I believe Mr. Pridemore took quite a few
9 pictures. Like I said, once forensics gets there's,
10 that's not my job.

11 Q So, your job is to, essentially, go interview
12 everybody that's there, make sure that nobody has
13 weapons on them and then to work from the information
14 you've been provided?

15 A Yes.

16 Q Isn't it true that by the time you arrived, everything
17 that Mr. Moon and Mr. Lester told you about had
18 already happened? You didn't see my client do
19 anything. Correct? You just came in and he was just
20 standing there.

21 A Yes, sir.

22 Q Okay.

23 MR. ANGELL: No further questions. Thank you, Your
24 Honor.

25 THE COURT: Any redirect?

1 MR. ALLEN: No, Your Honor.

2 THE COURT: May this witness be excused?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

5 THE COURT: Thank you, sir. You may be excused.

6 Would you call your next witness, please?

7 MR. ALLEN: Your Honor, at this time, the State calls
8 Investigator Chris Pridemore.

9 (After being duly sworn by the Clerk of Court, Chris
10 Pridemore testified as follows:)

11 CLERK OF COURT: Please have a seat. If you would,
12 please, state your full name and spell your last name.

13 INVESTIGATOR PRIDEMORE: Christopher Lee Pridemore.

14 P-R-I-D-E-M-O-R-E.

15 DIRECT EXAMINATION OF INVESTIGATOR PRIDEMORE BY MR. ALLEN

16 Q Investigator Pridemore, can you tell the jury where
17 you are currently employed?

18 A Anderson County Sheriff's office.

19 Q How long have you been employed there?

20 A Seven years.

21 Q And explain to the jury a little bit about what your
22 duties are at the Sheriff's Department.

23 A I am currently a forensics investigator. I go and
24 process crime scenes, various crime scenes, collect
25 the evidence and enter it.

THE STATE OF SOUTH CAROLINA VERSUS HENRY J. GALLOWAY

1 Q Now, has that been your position the whole time you've
2 been at the Sheriff's office?

3 A No, sir. No, sir. For the first five, I was on road
4 patrol. The last couple of years I've been in
5 forensics.

6 Q Okay. Now, on September 24th, early that morning
7 around 2:00, did you have the occasion to be working
8 that morning?

9 A Yes, sir. I was.

10 Q And how did you become involved in the case that is
11 the subject of the trial today?

12 A I was the only forensics investigator working that
13 night, that morning. I was at the office processing
14 items. I had my radio on. I heard the call come out.
15 It was close and so I finished up what I was doing and
16 headed to the location because I knew they would be
17 calling me to process the evidence.

18 Q Okay. So, you just kind of got a head start since you
19 were close to the scene.

20 A Yes, sir. Exactly.

21 Q All right. Now, did you, once you arrived on site --
22 explain to the jury, once you arrived on scene, the
23 next sequence of events.

24 A When I arrived on scene, first, I noticed there were
25 no marked police cars on the scene, so I figured maybe

1 they had already arrived and left, but then I was
2 speaking to a white male identified as Randall Moon
3 out front of the business and he advised me that I was
4 actually the first one to respond and show up. That's
5 when he told me what was going on. He said he had a
6 black male detained at the counter, which I did see a
7 black male standing by the counter in the lobby. He
8 stated that another one had actually ran back out and
9 that at first they thought he had left out of the
10 warehouse through a door on the side that they had
11 entered, but come to find out, he had actually hid in
12 the warehouse. At that time, I went through, saw the
13 individual behind some pallets of tile in the
14 warehouse. I was able to cover him with my weapon,
15 maneuver around behind him. I don't think he saw me
16 moving around in the warehouse. I come up behind him
17 and at that point I was able to get him into custody.
18 Pretty much from that point, Deputy Hunnicutt arrived
19 on scene and pretty much come in and took that
20 individual, later identified as Ranier Withers and
21 from that point, I started photographing and
22 processing the scene.

23 Q Okay. Speaking of the photographs, Mr. Angell made a
24 point earlier to say that these photographs that Mr.
25 Brock went over of the scene were taken a couple of

1 weeks ago and these aren't the photos that were taken
2 the morning of September 24th. Can you explain to the
3 jury why the photos from that morning aren't with us
4 and the reason for you going out and taking more
5 photos?

6 A Absolutely. Those are not the photos from the
7 incident. We had to go out and take those photos
8 because the photographs, the computer that we put the
9 photographs in actually crashed and we lost several,
10 several, hundreds and hundreds of cases worth of
11 photos, so, therefore, we had to go back out and take
12 something to be able to show different positions and
13 placements and whatever.

14 Q Okay. So, this is just one of, as you said, hundreds
15 of cases where the photos were lost and y'all
16 subsequently had to go back out to the incident scenes
17 and take photos as you did here.

18 A Yes, sir.

19 Q Okay. Now, can you tell the jury what evidence you
20 collected on the scene that morning?

21 A Absolutely. I collected a partial tennis shoe print
22 off a plastic bag, which was located in the warehouse,
23 near where Mr. Withers was hiding. I also collected a
24 brown tile with a possible latent print on it. I
25 collected two black-handled kitchen knives, one was in

1 the floor in the office near a safe and the other one
2 was in the warehouse behind the white van. I
3 collected two white socks from the floor in the
4 warehouse next to the forklift, which was close to the
5 white van. I collected one white sock from the floor
6 in the office near the desk, which was where the knife
7 and the safe was at. I collected a gray short-sleeved
8 shirt from the floor in the warehouse near the
9 forklift and also a green long-sleeved, could be a
10 sweatshirt, from the warehouse next to the side door,
11 which was the point of entry.

12 Q Okay. At this time, I am going to show you what has
13 been marked as Exhibit 3-A and 3-B and ask if you
14 recognize those two items.

15 A Yes, sir. These are the boxes that I put the knives
16 in.

17 Q Okay. And the knives from Moon's Tile that you
18 collected that night?

19 A Absolutely. Absolutely.

20 MR. ALLEN: Your Honor, at this time, I would ask that
21 State's Exhibits 3-A and 3-B be admitted into evidence.

22 THE COURT: Any objection?

23 MR. ANGELL: I do, Your Honor. I'd like to see the
24 knives if I can. Can we open those up and affirm that
25 those are the knives that he saw?

1 MR. ALLEN: Your Honor, I was getting them out. I
2 wanted them entered into evidence first.

3 Q Go ahead and open up each one of those. (Witness
4 complies)

5 A Okay. This would be the kitchen knife that was found
6 by the van.

7 Q Okay. That's 3-A or B?

8 A Exhibit 3-B.

9 Q Okay. So, this was the knife found next the van out
10 in the warehouse.

11 A In the warehouse.

12 Q Okay. Which would mean, who had possession of this
13 particular knife?

14 A This knife would have been in the possession of Mr.
15 Withers.

16 Q Okay. Mr. Galloway's co-defendant that night.

17 A Correct.

18 Q Now, if you will open up the second box and show the
19 jury that piece of evidence.

20 A And this one is 3-A.

21 Q Okay. And tell the jury where you found that knife.

22 A This knife was found in the room, in the office, where
23 the safe was.

24 Q Which, based on your training and experience, you
25 believe who was possessing that knife?

1 A This particular knife was in the possession of Mr.
2 Galloway.

3 Q Okay. Now, along with the knife in the warehouse, you
4 alluded to another item which was some white socks.
5 Is that correct?

6 A Yes, sir.

7 Q I'm going to show you what has been marked as Exhibit
8 Nos. 4-A and 4-B and ask you to open those. (Witness
9 complies)

10 A This is 4-B, from beside the forklift in the
11 warehouse.

12 Q Okay.

13 A (Witness holds up white sock) This is a white sock.
14 Two white socks. (Holds up two socks)

15 Q Okay. You said that was in the warehouse,
16 approximately, somewhere behind the van along with the
17 knife of Mr. Galloway's co-defendant?

18 A Correct. All of it was in the vicinity of the white
19 van and the forklift.

20 Q Okay. If you'll open 4-A.

21 A One white sock.

22 Q And where did you find that white sock?

23 A This sock was recovered in the office next to the
24 other knife in the office with the safe.

25 Q Which would have been worn by...

1 A Mr. Galloway. (Indicating)

2 Q Now, Investigator Pridemore, were you asked by the
3 Solicitor's office to make a sketch or drawing of the
4 layout of the business that shows where the doors are,
5 the distance between each door, a general layout of
6 Moon's Tile?

7 A Yes. I was.

8 Q How did you go about making the drawing? Tell the
9 jury what it is you did to come up with the dimensions
10 of the drawing.

11 A Well, first off, I had another investigator come out
12 to the location. We took overall measurements and
13 then we picked a point from a wall, from a corner, and
14 what we done is, we measured out to another wall and
15 then from inside that wall, we measured to another
16 wall, so basically, you've got all the dimensions and
17 sizes of the inside and outside. Those are loaded
18 into a computer.

19 Q Well, we'll get to that in a minute.

20 A And ended up with something that come out something
21 like this. (Holding up a document) It's pretty much
22 a rough estimate of the warehouse, office, offices,
23 lobby, et cetera.

24 Q And in the layout of the business as you just
25 mentioned, there was nothing that's been materially

1 altered as far as the dimensions ---

2 A No, sir. No, sir. As far as I can remember, this is
3 pretty much the same way, with the exception of the
4 van was not in the warehouse this last time when I
5 went out to take pictures.

6 Q All right. I'm going to show you what's been marked
7 as State's Exhibit 5. Do you recognize that?

8 A Yes, sir. I do.

9 Q And why is that?

10 A I'm the one that made it.

11 Q All right.

12 MR. ALLEN: Your Honor, at this time, may Investigator
13 Pridemore step down to go over the drawing with the jury?

14 THE COURT: Just one second. Any objections to it
15 being admitted into evidence?

16 MR. ANGELL: The one little objection that I do have,
17 the direction of the van. It seems to be facing in the
18 wrong direction in the pictures and so there seems to be
19 some discrepancy there.

20 THE COURT: Okay. That would be a cross examination
21 matter. Do you have an objection?

22 MR. ANGELL: No, Your Honor.

23 THE COURT: Thank you. Admitted, without objection.

24 (Whereupon, a diagram is entered into evidence as
25 State's Exhibit 5, without objection)

1 (Investigator Pridemore stands in front of the jury
2 with Mr. Allen with diagram)

3 Q Now, if you will, just go over -- let's step over
4 here. They may be able to see this. Just kind of
5 explain where the defendants made entry, where you
6 found them, where the evidence was found.

7 A This is, essentially, the front of the business.
8 Okay? When I arrived on scene in front of the
9 business, I entered right in there. Mr. Galloway was
10 right here by the counter. Mr. Brock was also inside.
11 They had made entry, the two subjects had made entry
12 through this side door beside the van. Come down this
13 little wall here, there are a set of double doors,
14 which you come into the lobby which is behind the
15 counter. Okay? The suspect comes through this door,
16 one stood right in this area here. The other suspect
17 come around here and went into this first office on
18 the left. Okay? Inside that office is a safe.

19 Q And when you refer to that suspect, who are you
20 referring to?

21 A That would be Mr. Galloway. At that point, Mr. Brock,
22 or Mr. Moon, flipped on the lights. You see Mr.
23 Withers take off running from this area. He runs down
24 and it appears he runs back out the door, but what he
25 done in actuality is, he run around the van over in

1 here. That's where we found the knife, the socks, et
2 cetera, over here. He went around and hid behind some
3 tile. Now, Mr. Galloway was brought out from this
4 office where the safe was open. Okay? And was put
5 down on the ground by the owner right here on this
6 side of the counter, which is where he was when I
7 arrived on scene.

8 Q Let me interrupt you right there, Investigator
9 Pridemore. When you arrived on the scene and found
10 Mr. Galloway right there as you've got depicted on the
11 drawing, was he tied up?

12 A Yes, he was. He had zip ties put on his legs. I
13 believe he had some on his hands, but I'm not sure. I
14 don't recall if they were cut or still binding him at
15 that time.

16 Q But he had zip ties on him when you arrived?

17 A Yes, sir. Yes, sir. At that point, after I got Mr.
18 Withers and detained him, Deputy Hunnicutt arrived on
19 scene, coming to the warehouse area. He met with me.
20 I turned him over so he immediately took him out to
21 his vehicle and I began processing.

22 Q Now, I know you've been over this, but just so we're
23 clear, can you explain to the jury each of these
24 sketches and who that depicts as to who was in each
25 sketch that you've got there?

1 A Yes. In this sketch, suspect one refers to Henry
2 Galloway, the man sitting right there at that desk.
3 (Indicating) Subject two, right here in the
4 warehouse, that is Ranier Withers, his accomplice.
5 That way you can understand who was who and where they
6 were located inside the business.

7 Q And, lastly, point out to the jury, they've already
8 seen the surveillance video, point out to the jury
9 where you've marked where the cameras were placed in
10 that business.

11 A The cameras, the first camera where we see the two
12 individuals coming around is actually on the backside,
13 so if I took this up, this camera right here on the
14 back, I believe it's the back left corner, catches
15 them coming this way around the back of the business.
16 Okay? There's a camera on the adjacent wall from the
17 door that they entered by the white van that also
18 shows them coming through that door, coming down
19 towards the camera and making a left into the double
20 doors into the lobby. Now, inside the lobby, if you
21 take to the right and look straight up on the ceiling,
22 you'll see another camera, which points towards the
23 two office doors, that direction. That is the one
24 that catches Mr. Galloway go over and into that first
25 office on the left where the safe is. That is also

1 the same camera that shows him being brought out by
2 the owner of the business, Mr. Moon.

3 Q All right. You can have a seat. (Investigator
4 Pridemore returns to the witness stand)

5 MR. ALLEN: Beg the Court's indulgence. Your Honor,
6 I'd ask that the knives, State's Exhibits 3-A and 3-B and
7 State's Exhibits 4-A and 4-B, the white socks found on
8 scene, be admitted into evidence.

9 THE COURT: Any objection?

10 MR. ANGELL: No objection, Your Honor.

11 THE COURT: Admitted, without objection.

12 (Whereupon, two knives are entered into evidence as
13 State's Exhibits 3-A and 3-B and three white socks are
14 entered into evidence as State's Exhibits 4-A and 4-B,
15 without objection)

16 Q Investigator Pridemore, based on your training and
17 experience and your past dealings with other crime
18 scenes, specifically burglaries, you told the jury
19 here that you found the two knives, which we know were
20 in the possession of the two defendants. Is it
21 possible for the locked doors of the business, as well
22 as the safe, to be opened, a process to open them with
23 a knife as the two you found on scene?

24 A Yes.

25 Q Okay. Can you explain a little bit about how someone

1 might do that?

2 A The door themselves, there's a little tab you can take
3 a knife and stick it in behind that. You can either
4 twist it sideways, which will pull that plunger back,
5 or if you get it up under there enough and wiggle it,
6 it will actually push itself back.

7 Q Okay. So, based on your experience and your training,
8 you know that two knives as we have here are able to
9 break into a locked door or locked safe?

10 A Absolutely.

11 Q Okay.

12 MR. ALLEN: No further questions, Your Honor.

13 THE COURT: Cross examination?

14 CROSS EXAMINATION OF INVESTIGATOR PRIDEMORE BY MR. ANGELL

15 Q You said you have experience, Investigator Pridemore,
16 or at least training in prying locks open with knives.
17 Is that what you are saying?

18 A No. What I am saying is that I have seen to where
19 doors have been opened. I have actually opened doors,
20 myself, with knives.

21 Q Okay. But you are not an expert on how to pry open a
22 door with a knife.

23 A Absolutely not.

24 Q Okay. And when you arrived, it sounds like my client
25 was in the front. That's what you testified to, in

1 the main lobby area. Correct?

2 A Yes, sir.

3 Q Okay, now, was he at that time -- I've heard there
4 were zip ties and he was tied and wasn't tied up. I'm
5 trying to find out when, exactly, he was untied after
6 being initially tied up. Was that after you arrived?
7 When you got there, what was the position my client
8 was in?

9 A Your client was zip tied when I arrived.

10 Q Okay.

11 A At that point, I went in and cleared the rest of the
12 business. I have no idea when he was untied.

13 Q Now, how long did you stay on the scene?

14 A Possibly, an hour.

15 Q Your main priority when you came, though, was to
16 apprehend the other co-defendant. Correct? That was
17 your focus.

18 A My main priority for coming was to process the scene.
19 Once I arrived and figured out there was nobody else
20 there and I was informed there was a second party,
21 then yes, my priority was to apprehend the second one
22 to make sure he wasn't loose in the warehouse.

23 Q Isn't it true, that by the time you had arrived
24 though, the crime my client is alleged to have
25 committed was already done. When you got there, he

1 was standing. He wasn't running or hiding and nor was
2 he in the office, the secretary's office, when you got
3 there. Correct?

4 A No, sir. He was tied up by the counter.

5 Q I just wanted to clarify. Are you the one that's
6 responsible for taking the photos on the scene?

7 A Yes.

8 Q Okay. Do you know what happened to the co-defendant?

9 A I do not know exactly. I believe that he pled guilty
10 and is currently serving his time.

11 MR. ANGELL: One moment, Your Honor.

12 Q Investigator Pridemore, you maintain that the knife --
13 where was the knife that you found that you maintain
14 belonged to my client, I believe it's 3-A. Is that
15 correct?

16 A In the office with the safe on the floor.

17 Q Okay. And where was it? Can you give a more specific
18 description, if you don't mind, on your sketch in
19 relationship with the safe in that office?

20 A (Witness marks on document) Right here. Which is,
21 roughly, within two feet of the safe towards the door.

22 Q Did Mr. Moon or Mr. Brock tell you they had moved the
23 knife or, in any way, changed the scene in that
24 office?

25 A I don't recall them saying anything about moving

1 anything in the office.

2 Q Okay. What else did you recover from that office that
3 had the filing cabinet in it, in addition to the
4 knife?

5 A In addition to the knife was a single sock.

6 Q Okay. Did you find any keys in the floor?

7 A I did not.

8 Q Did you find keys in any desk or any drawer?

9 A I believe there was a key, if I'm not mistaken, a key
10 in the safe.

11 Q Physically in the safe. So, you saw a key in the open
12 safe? Was it open or closed at this time?

13 A I believe it was open.

14 Q And what was in it?

15 A I do not recall.

16 Q Okay. You didn't look into the safe?

17 A No. No.

18 Q Okay. But to clarify, no key was found, just the
19 knife and a sock in the secretary's office. Right?

20 A The only things on the floor was a knife and a sock.

21 Q Okay.

22 MR. ANGELL: No further questions. Thank you.

23 THE COURT: Redirect?

24 MR. ALLEN: No, Your Honor.

25 THE COURT: You may be excused. Thank you, sir.

1 (Witness leaves the witness stand). Would you call your
2 next witness, please?

3 MR. ALLEN: The State rests, Your Honor.

4 THE COURT: All right. Madam Forelady, Ladies and
5 Gentlemen of the jury, if you would step back to your jury
6 room at this point. This will probably be a little bit
7 longer. We have some administrative matters to take up
8 right now and then we well get you back in just a few
9 minutes.

10 (Jury out at 3:56 p.m.)

11 THE COURT: All right. Mr. Angell, do you have any
12 motions to make?

13 MR. ANGELL: I do, Your Honor. I'd like to make a
14 motion for a directed verdict based on the evidence
15 provided so far. As to the safecracking, they haven't
16 shown that the safe actually had anything in it. There
17 just hasn't been enough evidence provided by the
18 prosecution, on both, for that matter. I move for a
19 directed verdict on both charges.

20 THE COURT: As to the burglary, I'm denying that
21 motion. I think there is certainly sufficient evidence in
22 the record for the jury to make a determination from. So,
23 it's a question for the jury. As far as safecracking,
24 looking at the elements under §16-11-390: It is unlawful
25 for a person to use explosives, tools, or other implements

1 in or about a safe used for the safekeeping of money or
2 valuables with the intent to commit larceny or other crime.
3 Although it's very minimal, it's not my job to weigh the
4 evidence. It would be improper for me to do so. I think
5 there is sufficient evidence to take it to the jury on
6 those elements and so I deny your motion for that as well.

7 Have you spoken to your client about his right to
8 testify?

9 MR. ANGELL: No, sir, Your Honor. I will do that at
10 this break if you don't mind.

11 THE COURT: All right. Let me do that right now and
12 I'll let you talk to him a little bit further.

13 MR. ANGELL: Okay.

14 THE COURT: Would you please stand, Mr. Galloway.
15 Would you raise your right hand? (Defendant complies)

16 (The Oath is duly administered to Mr. Galloway by
17 Judge McIntosh)

18 FIFTH AMENDMENT RIGHTS

19 THE COURT: Thank you. Would you have a seat. Now,
20 at this point in time I want to explain some of your rights
21 to you. If you do not understand anything I tell you,
22 would you stop me and let me know so I can phrase it and
23 explain it such that you do. Okay?

24 MR. GALLOWAY: Yes, sir.

25 THE COURT: If you want anything in more detail, let

1 me know. All right?

2 MR. GALLOWAY: Yes, sir.

3 THE COURT: We've reached that point in the trial, Mr.
4 Galloway, where you can have a right to present a defense.
5 That is a Constitutional Right, but you also have a right
6 to claim the protections afforded to you by the Fifth
7 Amendment of The United States Constitution. I'm going to
8 read to you just what it says, in relevant part, here. It
9 says that no person shall be compelled in any criminal case
10 to be a witness against himself. Okay, sir? That means
11 that you cannot be required to testify in this case. You
12 cannot be compelled to take the stand and admit or deny
13 your guilt. You don't have to say anything. The burden
14 remains on the State at all times to prove you guilty
15 beyond a reasonable doubt as to both charges, either or
16 both. Okay?

17 Now, you have a right to testify. That, also, is a
18 Constitutional Right. Whether or not you want to take the
19 stand and testify, whether or not you want to exercise your
20 Fifth Amendment Right of the Constitution is a personal
21 right that only you can make. I'll tell you, though, that
22 if you decide that you do want to testify, you will be like
23 other witnesses out there and if you have any crimes
24 involving dishonesty or false statements for crimes that
25 would be punishable for a year or more and I find the

1 probative value of those crimes is not substantially
2 outweighed by the prejudice to you and having you cross
3 examined about it, the State would be allowed to cross
4 examine you about those records in that regard to impeach
5 your credibility.

6 MR. GALLOWAY: Yes, sir.

7 THE COURT: Okay, sir? You would also be subject to
8 cross examination about other matters in this case. Okay?

9 MR. GALLOWAY: Yes, sir.

10 THE COURT: Just like any other witness.

11 MR. GALLOWAY: Yes, sir.

12 THE COURT: Now, if you were to choose not to testify,
13 at the end of this case, I would, in my final charge to the
14 jury, instruct them that the jury could not consider your
15 failure to testify, whatsoever. In fact, I would charge
16 them that it would be improper for them to even discuss the
17 fact that you have not testified. The burden remains on
18 The State of South Carolina to prove guilt beyond a
19 reasonable doubt. Do you understand?

20 MR. GALLOWAY: Yes, sir.

21 THE COURT: Okay. Now, I will give you an opportunity
22 to speak with your attorney, Mr. Angell, any family members
23 that you may want to speak to, anyone within reason here in
24 the courthouse that you want to speak with about whether or
25 not you do want to testify, but let me tell you,

1 ultimately, the decision is yours and your alone. It is to
2 be exercised by you or waived by you. Do you understand?

3 MR. GALLOWAY: Yes, sir.

4 THE COURT: Do you have any questions about anything
5 that I've gone over with you thus far?

6 MR. GALLOWAY: No, sir.

7 THE COURT: Okay. Now, Mr. Angell, at this point you
8 were wanting to discuss with your client whether or not he
9 wishes to take the stand?

10 MR. ANGELL: I would, Your Honor.

11 THE COURT: Other than your client, do you have any
12 intended witnesses in this case?

13 MR. ANGELL: No, Your Honor, but I may try to present
14 and get in Mr. Moon's statement from that night to impeach
15 or at least use it in my closing, if possible. I guess
16 I'll call him as a witness if I need to, but I wanted to
17 get his statement in.

18 THE COURT: Listen, I'm not asking you to try your
19 case, I just have to hear at the time it's done. I was
20 just thinking in terms of scheduling. Do you have any live
21 witnesses you intend to call?

22 MR. ANGELL: No, Your Honor. There are no other
23 witnesses, whatsoever. I may not need to do that. I need
24 to speak to my client.

25 THE COURT: Let me, I think it would be more efficient

1 for us if we go ahead and excuse the jury for the day and
2 just bring them back at 9:30 in the morning. We can go
3 over my charge to the jury with you guys and then I can go
4 over with you gentlemen what I anticipate. You will have
5 more time with your client and I can go over with you my
6 charge. Okay? Any objection to going that way?

7 MR. ANGELL: No, Your Honor.

8 THE COURT: Mr. Allen?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: Would you bring the jury back in.

11 (Jury in at 4:05 p.m.)

12 THE COURT: All right. Madam Forelady, Ladies and
13 Gentlemen of the jury, I brought you back in a little
14 sooner than I anticipated because I believe it's going to
15 take us a little longer than I anticipated and as such, I
16 am going to go ahead and excuse you for the remainder of
17 the day. I will ask that you be back in your jury room by
18 9:30 or 9:25 in the morning and then we will resume the
19 case at that point. I also will remind you not to speak
20 amongst yourselves about this case or with anyone else
21 about this case. Now, I hope you have a nice evening, but
22 you are free to go for the day.

23 (Jury out at 4:06 p.m.)

24 CHARGE CONFERENCE

25 THE COURT: All right. Does anybody have requests to

1 charge they want me to consider?

2 MR. ALLEN: No, Your Honor. Not other than usual.

3 THE COURT: let me go over with you my standard
4 charge. I will show you the substantive law. Mr. Angell,
5 I do my charge in three parts. The first part, I will go
6 over with the jury the general duties and rules that define
7 and control their duties as jurors and I will go over that
8 with you in just a second. Let me just give you the
9 structure. Next, will be the substantive law and in this
10 case it would be the law of second degree burglary and
11 safecracking and then the third part of my charge will be
12 the law that pertains to their deliberations in this
13 matter.

14 In the first aspect I will tell them, as I told them
15 in the first part of the case, that they have to make their
16 decision based on the evidence presented here in this
17 courtroom and from nowhere else, that they must apply the
18 law as I give it to them to the facts as they find them to
19 be. They are not to be concerned with any likes or
20 dislikes or prejudices to one side or the other and that's
21 what they took an oath to do and that they have to follow
22 all my instructions and not pick out the ones that they do
23 like and apply those and disregard the ones they don't
24 like. I go over and tell them what the evidence is and
25 what evidence is not and in this case, exhibits and

1 testimony presented is evidence. Arguments of counsel,
2 questions of counsel, objections of counsel are not
3 evidence. Anything that they might have heard outside the
4 courtroom is not evidence. Also, I'll explain to them the
5 difference between direct and circumstantial evidence and
6 explain to them that both are equally acceptable and that
7 there is not a degree of evidence required of
8 circumstantial as there is for direct. I go over with them
9 the fact that in making their findings of fact, they have
10 to determine credibility issues and that's just a natural
11 part of it. I will enumerate for them about six different
12 factors that they may want to consider in making their
13 credibility determinations and I'll also tell them they
14 don't check their common sense, but I do tell them that
15 they don't add the number of witnesses that appeared on one
16 side or the other in making that determination. There was
17 no expert testimony in this case, I don't believe. I will
18 remind them, again, the indictment is not evidence of
19 guilt, it doesn't raise a presumption or conclusion of
20 guilt and I also say there are multiple indictments and
21 each one is distinct and stands on its own and they have to
22 decide it uninfluenced by their decision on the other. I
23 will go over with them and charge further the presumption
24 of innocence, reasonable doubt, intent, and then it depends
25 on whether Mr. Galloway decides to testify or not, but I

1 will instruct if he does not testify that they are not to
2 consider the fact or anything about it and I have two
3 charges here, I have the verdict form and I have the charge
4 for second degree burglary. You guys take a minute and
5 look at that.

6 (Attorneys look at document)

7 MR. ALLEN: I have no objection, Your Honor.

8 THE COURT: Mr. Angell, have you had a chance to look
9 at the substantive charge law and the verdict form?

10 MR. ANGELL: I have, Your Honor.

11 THE COURT: Any objection to either?

12 MR. ANGELL: No, Your Honor.

13 THE COURT: All right. The third part of my charge
14 deals with their deliberations and I point out that they
15 are not partisans or advocates for one side or the other,
16 but they are to be fair and impartial and then explain to
17 them that in carrying out their deliberations, they are to
18 be engaged in careful consideration in weighing their
19 decision. I'll discuss with them that they have to have a
20 unanimous decision in order for it to be valid, however,
21 before they can be unanimous, they have to make their own
22 decision and don't be afraid to change their mind. If the
23 conversation and evidence tells you you shouldn't, don't
24 change your mind just to get a verdict. Okay, sir? Then I
25 go over some communications with the Forelady. I'll go

1 over with her how to fill our the verdict form. So, that's
2 pretty much the long and short of it. Okay? Any
3 objections to the proposed charge, from the State?

4 MR. ALLEN: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. ANGELL: No, Your Honor.

7 THE COURT: Very good. All right. Let me make a
8 suggestion that you talk with Mr. Galloway. I want to talk
9 to the attorneys back here in just a second before we cut
10 everybody loose and find out which way you want to go and
11 assist him if he needs any family members to talk to him
12 about his decision and then we'll leave for the day. Yes,
13 sir?

14 MR. ALLEN: If I may, Your Honor. The State would ask
15 that the hand of one is the hand of all charge be given to
16 the jury. During cross examination of Investigator
17 Pridemore, Mr. Angell elicited what happened to Mr.
18 Galloway's co-defendant and there was a statement that he
19 pled guilty to the same charges and so we would ask that
20 the hand of one is the hand of all law be charged the jury.

21 THE COURT: Mr. Angell?

22 MR. ANGELL: I object to that, because he wasn't
23 charged, he didn't plead to safecracking and I think it was
24 burglary second.

25 THE COURT: I know that came out. That probably

1 wasn't the best, but let me think about that. My tendency
2 is that I'm not going to charge that. Okay? Let me see
3 the attorneys back here a minute.

4 (Judge McIntosh and the attorneys leave the courtroom)

5 THE COURT: We had a meeting in my chambers at my
6 request. The purpose being, I wanted to check on the
7 status of his bond and also, Mr. Galloway's prior record.
8 Okay? I'm going to give both sides time to clarify the
9 record, but from what I understand, Mr. Galloway does have
10 a prior record involving burglary. Is that the case?

11 Mr. Galloway: Yes, sir. One.

12 THE COURT: And I am concerned, based on your prior
13 record and the facts elicited thus far, about your being
14 out overnight. So, before we go further, Mr. Angell, since
15 I put you on the spot, do you have anything you would like
16 to place on the record regarding our meetings in chambers
17 other than what I've put on the record?

18 MR. ANGELL: No, sir, Your Honor.

19 THE COURT: Mr. Allen?

20 MR. ALLEN: No, sir.

21 THE COURT: All right. What I'm going to do, I'm
22 going to revoke your bond. I'm going to have you spend the
23 night in the county jail tonight, because I want to make
24 sure you come back to trial tomorrow and finish up here.

25 MR. GALLOWAY: I thought that ---

1 THE COURT: It's not up for debate, Mr. Galloway.

2 MR. GALLOWAY: Yes, sir.

3 THE COURT: I'm not trying to be rude. I just want to
4 be sure. I had one take off the other day. Okay? And so,
5 that being said, I do want him to have a chance to meet
6 with Mr. Angell. They need further discussion. Will it be
7 possible for him to meet with him here before he goes out
8 to the detention center?

9 DEPUTY SHERIFF: He could meet with him downstairs ---

10 THE COURT: Sure.

11 DEPUTY SHERIFF: --- for a short time.

12 THE COURT: Well, give him, be reasonable with him.
13 Okay? If not, Mr. Angell, if you need additional time,
14 call me. I will be here. I'm right upstairs and I'll come
15 down there. I'm kidding. But all things said and done, we
16 are in recess for the day and I'll see you back in the
17 morning.

18 MORNING - MARCH 13, 2012

19 THE COURT: All right, Mr. Galloway, have you had the
20 opportunity to meet with your attorney, or whomever you'd
21 like to speak with, concerning whether or not you want to
22 testify today?

23 MR. GALLOWAY: Yes, sir.

24 THE COURT: And have you had sufficient time to make
25 that decision?

1 MR. GALLOWAY: Yes, sir.

2 THE COURT: What is your response? You do not wish to
3 testify?

4 MR. GALLOWAY: No, sir.

5 THE COURT: You wish to exercise your Fifth Amendment
6 Right?

7 MR. GALLOWAY: Yes, sir.

8 THE COURT: Very good. All right, now, do you intend
9 to call any witnesses today?

10 MR. ANGELL: No, Your Honor.

11 THE COURT: So, what we'll do is, we'll bring the jury
12 in. I'll give you an opportunity to rest. Now, the next
13 question would be the order of closing arguments versus
14 charge. I let the attorneys decide, give you the
15 opportunity for me to charge the jury first then you close
16 after I give the charge or we do the standard way, which is
17 you go ahead and give your closings and then I'll charge on
18 the law. Mr. Allen?

19 MR. ALLEN: I don't have any preference. Whatever Mr.
20 Angell would prefer. I know you typically like to do the
21 charge first.

22 THE COURT: I don't care. I really don't care one way
23 or the other.

24 MR. ANGELL: I'd prefer you charge first.

25 THE COURT: You want to do that?

1 MR. ALLEN: That's fine.

2 THE COURT: Do you need a minute or two or are you
3 ready to get on with it?

4 MR. ALLEN: We're ready.

5 MR. ANGELL: Ready, sir.

6 THE COURT: Would you bring the jury in, please.

7 (Jury in at 9:35 a.m.)

8 THE COURT: Good morning, Madam Forelady.

9 MS. PHILLIPS: Good morning.

10 THE COURT: Let me ask the jury before we get started,
11 has anyone spoken with anyone, each other, about this case
12 or have you seen, read, or heard anything about this case
13 during the time you were on break? (Jury indicates they
14 have not)

15 THE COURT: All right. Good. Mr. Angell, are you
16 ready to proceed with your side of the case, please?

17 MR. ANGELL: We rest, Your Honor.

18 THE COURT: Now, Ladies and Gentlemen of the jury,
19 there are typically five phases to every case. We have
20 opening statements, the presentation of the evidence,
21 closing arguments and then I charge on the law, then you
22 begin your deliberations. In this case, I've afforded the
23 opportunity to the attorneys to allow me to charge the law
24 first before they get into their closing arguments. They
25 have elected to do so, which means I will charge you on the

1 law that's applicable in this case and it will probably be,
2 I guess, thirty minutes and then the attorneys will give
3 closing arguments to you. We'll review the exhibits and
4 then I'll send word back for you to begin your
5 deliberations and so I remind you that even if we break,
6 you are not to begin your deliberations until you receive
7 word. Okay?

8 That being said, Ladies and Gentlemen, I'm not as
9 articulate as these attorneys and so some of this will be
10 read to you. I apologize to you in advance, but this is
11 the law in the case that you must apply. It will be in
12 three parts. First I will go over with you the general
13 rules that define and control your duties as jurors. Next
14 will be the substantive law that applies to this case,
15 i.e., what the State must prove in order to make out its
16 case against the defendant and third, there will be some
17 rules concerning your deliberations. Okay? And I will
18 give you a break after the first part of it because this is
19 longer than the second and third parts, but if you recall -
20 - can you hear me okay? (Jury indicates they are able to
21 hear) If you can't, at any time, let me know.

22 CHARGE ON THE LAW

23 If you will recall, at the beginning of this case, I
24 told you that as fact finders it is your duty to find what
25 the facts are from the evidence that has been presented

1 here in this courtroom and from no other place and you must
2 apply the law as I give it to you now and apply it to the
3 facts as you find them to be. It is your job to follow the
4 law as I give it to you. You shall not be concerned with
5 what the law should be or what you want it to be, but what
6 it is. Also, further, you should not be influenced by any
7 personal likes, dislikes, opinions, prejudices or undue
8 sympathy that you may have for one side or the other in
9 this matter. That means that you must decide this case
10 solely on the evidence that's been presented here in this
11 courtroom and according to the law as I give it to you. In
12 fact, the oath that you took at the beginning of this case,
13 you said you would do just that.

14 Now, in following my instructions today, you must
15 follow all of them. You cannot pick out the things about
16 my charge to you that you like and apply those and
17 disregard the ones you may dislike. They are all equally
18 important and again, you must not read into anything that I
19 may have said or done during this trial as indicative to
20 you as how you are to find facts in this case. I can
21 assure you that I have no feeling which way you are to find
22 your facts. Our Constitution does not allow trial judges
23 to have opinions on the facts. It is solely up to you,
24 because you are the sole judges of what the facts are in
25 this case.

1 Now, you are to determine what the facts are by
2 evaluating and weighing the evidence you heard during this
3 trial and there's no way for me to give you a set of scales
4 in a literal sense. This is entirely a mental process and
5 you evaluate and weigh the evidence simply by using your
6 good common sense and sound judgment that you brought with
7 you as you came in as jurors.

8 Now, the evidence in this case that you are to decide
9 the facts from, consist of this: it is the sworn testimony
10 of witnesses, whether it be on direct or cross examination,
11 regardless of whoever called that witness and also, any
12 exhibits that have been admitted into evidence. Those are
13 the only things that you can find the facts from in this
14 case.

15 So, I'll go over right now things that are not
16 evidence. Arguments and statements by the lawyers are not
17 evidence. They are not sworn. They are not on the witness
18 stand. They are advocates for their clients. They are
19 advocates for their side of the case. What they've said in
20 their opening statements, what they've said during this
21 trial and what they will say to you in a few minutes in
22 their closing statements is intended to help you interpret
23 the evidence, but it is not evidence. Therefore, when you
24 go back and begin your deliberations, if you remember facts
25 different from what either of these attorneys tell you that

1 they are, your memory will control as to those facts.

2 Also, Ladies and Gentlemen, questions and objections
3 by lawyers are not evidence. As I told you at the
4 beginning of this case, attorneys have a duty to their
5 clients under their sworn duties and obligations as an
6 attorney to object to anything they think something is
7 improper. Now, the fact that an objection may have been
8 raised and to the extent I've allowed you to see it, my
9 ruling on that objection is not evidence and would be
10 improper for you to consider the fact that there was an
11 objection or my ruling on that objection during your
12 deliberations.

13 Finally, Ladies and Gentlemen, anything that you may
14 have seen while court was not in session, during breaks or
15 overnight or over lunch breaks, is not evidence. You are
16 to decide this case solely from the evidence that has been
17 received here in this courtroom during this trial.

18 Now, there are two types of evidence, typically, that
19 is presented during any trial. You have direct evidence
20 and you have circumstantial evidence. Direct evidence is
21 pretty much what it sounds to be, it is this: it is
22 testimony of a person who asserts or who claims to have
23 actual and direct knowledge of a fact, such as an
24 eyewitness. Also, you have circumstantial evidence, and
25 this is a little more tricky. It is a proof of a chain of

1 facts and circumstances from which you can find that
2 another fact exists, even though that fact has not been
3 proven directly. If I have confused you, let me give you
4 an example. If you were to go to bed at night and you had
5 snow in your front yard and you were to wake up in the
6 morning and see tracks in your front yard, you may infer
7 that someone or something walked through your yard during
8 the night even though you did not actually see that person
9 or thing walk through your yard. That is an example of
10 circumstantial evidence.

11 Now, I will tell you that the law makes absolutely no
12 distinction between the weight or the value to be given
13 either direct or circumstantial evidence. You are entitled
14 to consider both kinds. There is not a greater degree of
15 certainty required for circumstantial evidence to be
16 considered by you. It just cannot be something that is a
17 matter of speculation. I will charge you further, that if
18 after weighing all the evidence, if you are not convinced
19 of the guilt of this defendant beyond a reasonable doubt,
20 it will be your duty to find him not guilty.

21 Now, in deciding what the facts are, you must consider
22 all the evidence. In doing this, you must decide which
23 testimony to believe and which testimony you do not want to
24 believe. You may disbelieve all or part of any witness'
25 testimony. You may believe all of any witness' testimony.

1 In making this decision, you can, but you are not required
2 to take into account a number of factors which would
3 include: was the witness able to see or hear or know about
4 the things about which that witness testified, how well was
5 the witness able to recall and describe those things, what
6 was the witness' demeanor while testifying, what was their
7 manner, was there some reason the witness would want to
8 give testimony that would help or hurt one side or the
9 other, did the witness have an interest in the outcome of
10 this case or did they have any bias or prejudice concerning
11 any party or issue involved in this case. You may ask
12 yourselves how reasonable was the witness' testimony
13 considered in light of all the evidence that has been
14 presented in this case. You may ask yourselves further,
15 was the witness' testimony contradicted by what that
16 witness has said or done at another time or by the
17 testimony of other witnesses or by any other evidence that
18 has been presented in this case.

19 Now, Ladies and Gentlemen, those are just some of the
20 factors that you may consider in determining a witness'
21 credibility in this matter and, of course, as jurors, you
22 do not check your common sense at the door when you are
23 sworn in and you should not in this case. You should use
24 those things in your day to day that you find indicative of
25 truthfulness or indicative of lack of truthfulness when you

1 make your findings of fact in this matter.

2 Now, in deciding credibility or believability, you may
3 believe as much or as little of each witness' testimony as
4 you think proper. You may believe all or part or none of a
5 witness' testimony, or you may believe one witness over
6 several or several over one, but most certainly, what you
7 do not do in determining this matter of credibility is
8 count the number of witnesses who have appeared for one
9 side or the other in testifying in this matter. It doesn't
10 matter whether it comes from direct or cross examination,
11 because your sole objective in this case is to find the
12 truth and it does not matter whether it comes from a
13 witness for the State or for the defendant.

14 I'm going to remind you once again, as I did at the
15 beginning of this case, the fact that the defendant in this
16 matter has been indicted, has been arrested and charged, is
17 not evidence of his guilt, it does not raise an inference
18 of his guilt, nor does it raise a presumption of his guilt.
19 These indictments are merely the mechanism by which The
20 State of South Carolina brings a defendant before a jury
21 such as yourselves for a determination of guilt or
22 innocence.

23 Also, there are two indictments in this matter. Each
24 of these indictments are separate and distinct offenses.
25 You must decide each indictment separately on the evidence

1 and law applicable to that indictment uninfluenced by your
2 decision as to the other indictment. The defendant may be
3 convicted or acquitted on any or all of the charges that
4 are pending before you and Madam Forelady, you will be
5 asked, and I'll go over this with you later, to write a
6 separate verdict, guilty or not guilty, for each charge.

7 Now, in this case, the defendant has pled not guilty
8 to both indictments. Therefore, that plea puts the burden
9 on the State to prove him guilty beyond a reasonable doubt.
10 A person charged with committing a criminal offense in
11 South Carolina is never required to prove himself or
12 herself innocent. Now, I charge you that it is an
13 important rule of law that a defendant in a criminal trial,
14 no matter what the seriousness of the charge may be, will
15 always be presumed to be innocent of the crime or crimes to
16 which the indictment has been issued unless guilt has been
17 proven by evidence satisfying you, the jury, of guilt
18 beyond a reasonable doubt. This presumption of innocence
19 does not end when you begin your deliberations, but it
20 accompanies the defendant throughout the trial until you
21 reach a verdict of guilt based on evidence satisfying you
22 of guilty beyond a reasonable doubt.

23 Now, the presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the defendant
25 which remains with the defendant until it has been stripped

1 from his shoulders by evidence satisfying you, the jury, of
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not a legal theory, it
4 is not just a legal phrase, it is a substantial right which
5 every defendant is entitled to unless you, the jury, are
6 convinced of guilt beyond a reasonable doubt.

7 So, that leads us to, what is reasonable doubt. I
8 gave you a short version of what that is at the beginning
9 of this trial, but let me tell you what it is. A
10 reasonable doubt is the kind of doubt that would cause a
11 reasonable, sincere, honest and conscientious person to
12 hesitate to act in an important matter in their own
13 affairs. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the defendant's guilt. Now,
15 there are very few things in this world that we know with
16 absolute certainty and criminal cases, the law does not
17 require proof that overcomes every possible doubt. If,
18 based on your consideration of the evidence you are firmly
19 convinced that the defendant is guilty of the crime or
20 crimes charged, you must find the defendant guilty. If, on
21 the other hand, you think there's a real possibility that
22 the defendant is not guilty, you must give the defendant
23 the benefit of the doubt and find him not guilty.

24 A reasonable doubt may arise from the evidence or from
25 a lack of the evidence. I further instruct you that the

1 defendant is entitled to every reasonable doubt that may
2 arise in the case. Now, Ladies and Gentlemen, what that
3 simply means is this: If, upon any issue of fact essential
4 to a conviction and a verdict of guilty of the offense
5 charged, if you have any reasonable doubt as to how that
6 issue should be resolved, it is your duty to resolve that
7 doubt in favor of the defendant.

8 Now, in order to establish criminal liability,
9 criminal intent is required. For example, the mental state
10 required to be proven by the State for a particular crime
11 might be purpose, intent, knowledge, recklessness or
12 criminal negligence. Criminal intent must be proven by the
13 State beyond a reasonable doubt.

14 Criminal intent is always a matter that must be
15 determined by you, the jury, from the circumstances
16 surrounding the situation. Now, there is no way to prove
17 intent to a mathematical certainty. There is no way that
18 medical science can dissect a person's brain to determine
19 what they had in mind at the time, so the law says that
20 criminal intent may be inferred from the circumstances
21 shown to have existed. This is how you make a
22 determination of whether or not the element requiring
23 intent was present. It is not necessary to establish
24 intent by direct and positive evidence, but intent may be
25 established by inference the same way as any other fact by

1 taking into consideration the facts and acts of the parties
2 in all the facts and circumstances of the case.

3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do based on the circumstances shown
6 to have existed. Criminal intent can arise from action or
7 a failure to act. It may arise from negligence,
8 recklessness or an indifference to duty or consequences
9 that is considered by the law to be the equivalent of
10 criminal intent.

11 Now, Ladies and Gentlemen, I will instruct you and
12 charge you that the fact that the defendant did not testify
13 may not be considered or discussed by you in any fashion
14 during your deliberations. Every defendant in the State
15 has the privilege against testifying and the fact that the
16 defendant in this case exercised that privilege shall not
17 be considered by you in your deliberations.

18 All right, Ladies and Gentlemen, that's the first
19 phase of my charge to you. Madam Forelady, I probably have
20 about ten more minutes. If you would poll your jury, I
21 will be glad to give you a stand up break or I'll be glad
22 to continue. If you would just kind of query your jury and
23 see which way they would like to go. (Ms. Phillips
24 complies)

25 MS. PHILLIPS: Just keep going.

1 THE COURT: A good Anderson County jury. All right.
2 Ladies and Gentlemen, this is the substantive law that must
3 be presented in this matter and must be proven by the State
4 in order to prove its charges against the defendant.

5 The first will be the law on second degree burglary.
6 The defendant is charged with second degree burglary. To
7 prove second degree burglary, the State must prove, beyond
8 a reasonable doubt, that the defendant entered into a
9 building without consent and with the intent to commit a
10 crime in the building. A building is any structure where
11 people assemble for the purpose of business, government,
12 education, religion, entertainment, public transportation
13 or public use, or where goods are stored. Finally, the
14 State must prove, beyond a reasonable doubt, that when
15 entering, while in the building or while fleeing, the
16 defendant or an accomplice was armed with a deadly weapon
17 or explosive. A deadly weapon is any article, instrument
18 or substance which is likely to cause death or great bodily
19 harm. Whether an instrument has been used as a deadly
20 weapon depends on the facts and the circumstances of each
21 case.

22 Now, Ladies and Gentlemen, the following are examples
23 of instruments that may be deadly weapons: a pistol, a
24 shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,
25 metal knuckles, a razor, gasoline, firebomb or Molotov

1 cocktail and lighter fluid. Or the State may also prove
2 when entering, while in the building or while fleeing, the
3 defendant or an accomplice displayed what was or appeared
4 to be a knife, pistol, revolver, rifle, shotgun, machine
5 gun or another firearm or the State may prove the defendant
6 entered or remained in a dwelling in the night time. Night
7 time is the period between sunset and sunrise during which
8 there is not enough daylight to recognize a person's face
9 except by artificial light or moonlight. That is the law
10 of second degree burglary.

11 The next is the law on safecracking. The defendant is
12 charged with safecracking. The State must prove, beyond a
13 reasonable doubt, that the defendant used explosives,
14 tools, or any other implement in or about a safe used for
15 keeping money or other valuables with the intent to commit
16 larceny or other crimes. Intent may be shown by acts and
17 conduct of the defendant and from other circumstances from
18 which you may naturally and reasonably infer intent.
19 Larceny is the taking and carrying away of the goods or
20 personal things of another person with the intent of
21 permanently depriving the owner of the property and convert
22 it to the taker's use. The defendant does not have to
23 succeed in breaking into the safe for the conduct to be
24 safecracking.

25 Now, that is the substantive law. That leads me to

1 the third part of my charge to you and that is the charge
2 that has to do with your deliberations. Let me tell you
3 this: Number one, you were selected by both parties in this
4 matter because they felt you could be fair and impartial to
5 both sides. You said you could. You don't serve as jurors
6 to be partisans or advocates for one side or the other.
7 You were chosen because each side believed you could be
8 fair and impartial and decide this case solely on the
9 evidence that's been presented without bias or prejudice to
10 either side. In doing so, you should use your experiences
11 in life, your good common sense, and your good sense of
12 logic and reason in your deliberations.

13 Now, let me say something about deliberation.
14 Deliberation is defined as this: It's a careful
15 consideration, weighing up with a view to a decision. Now,
16 regardless of what you may think, one of the geniuses about
17 our jury system is it allows twelve people from different
18 backgrounds and twelve different perspectives and different
19 walks of life to listen to the evidence, consider it, talk
20 about it and ultimately reach a verdict. We call them
21 deliberations for a reason. You are to consider the case
22 carefully and deliberately and discuss it in a calm
23 thorough, and courteous manner. Remember again, you are
24 not partisans or advocates for one side or the other. You
25 are judges of the facts and your sole interest in this

1 matter is to find the truth from the evidence you heard in
2 this courtroom. I would ask you and also charge you that
3 you are to listen to the views of your fellow jurors, you
4 are to consider other people's points of view, talk through
5 and courteously discuss all the evidence and remember, if
6 you are doing something deliberately, you are not in a big
7 hurry and you shouldn't be in this case. This case is very
8 important to both sides and it is their only day in court.

9 Now, when you retire to your jury room, you should
10 discuss the case with your fellow jurors and reach an
11 agreement if you can do so. In order to stand, your verdict
12 will be required to be unanimous. With that being said,
13 though, each of you must decide this case for yourself, but
14 you should only do so once you have impartially considered
15 all the evidence, you've discussed it fully with your
16 fellow jurors and listened to the views of your fellow
17 jurors.

18 Don't be afraid to change your opinion if the
19 discussion persuades you that you should change your
20 opinion, but do not change your opinion simply because the
21 other jurors think it's the right thing to do.

22 Now, again, in order for your verdict to be valid, it
23 must be unanimous, but you can only reach a verdict after
24 you've made up your own mind. Do not change an honest
25 belief about the weight or effect of the evidence simply to

1 reach a verdict. In other words, do not reach a verdict
2 simply because the other jurors want you to do so.

3 With that being done, Madam Forelady, once the jury
4 has reached a unanimous verdict, you are to fill out the
5 verdict form. You will have four options, two for each
6 charge. Under the indictment 2010-GS-04-2543, which is the
7 indictment for burglary second, your option will be not
8 guilty of burglary second or guilty of burglary second.
9 Whichever the verdict is, if you would simply check or
10 initial that option and then move on to the next
11 indictment, which is Indictment 2010-GS-04-2544, which is
12 the indictment for safecracking. Again, you will have two
13 options. You will have not guilty of safecracking or
14 guilty of safecracking. Again, check the option the jury
15 comes to a conclusion on unanimously and then once you do
16 you, I ask you to sign the verdict form, knock on the door
17 and we will receive your verdict here in the courtroom.
18 Let me remind you, though, the order in which the options
19 appear is of no consequence. They have to be in some order
20 or the other and so do not consider that or any consequence
21 of it.

22 Now, if it becomes necessary for the jury to
23 communicate with the Court during deliberations, I'm going
24 to ask that you do the same as you've done throughout this
25 trial and that is, write down the issue, question, or

1 whatever it is, sign it, knock on the door, the bailiff
2 will receive it, we will receive it here in the courtroom
3 and address it accordingly. Okay?

4 Now, what I want to do now is send you back to your
5 jury room. I want to go over with these attorneys whether
6 or not I have neglected to charge something that I should
7 have or I've stated something I shouldn't have during my
8 charge to you. Once we've concluded that, we will bring
9 you back for closing arguments. If you would go back to
10 the jury room, please.

11 (Jury out at 10:03 a.m.)

12 THE COURT: All right. First, I chose this morning
13 not to charge on the hand of one is the hand of all. I
14 think Mr. Angell was right, you don't know what the charges
15 were and I thought that would be more prejudicial than it
16 should be in this case. Other than that, Mr. Allen, do you
17 have any objections to the charge?

18 MR. ALLEN: No, Your Honor.

19 THE COURT: Mr. Angell?

20 MR. ANGELL: No, Your Honor.

21 THE COURT: Would you like a minute before you get
22 into your closing statements or are you ready to proceed?

23 MR. ALLEN: If I could have one minute.

24 THE COURT: Let's take until about five after and come
25 back for closing arguments.

1 (Brief Break)

2 THE COURT: Everybody ready to begin?

3 MR. ALLEN: Yes, Your Honor.

4 MR. ANGELL: Yes, Your Honor.

5 THE COURT: Bring us the jury, please.

6 (Jury in at 10:10 a.m.)

7 THE COURT: All right. Mr. Allen, Mr. Angell, are you
8 ready for closing arguments?

9 MR. ALLEN: Yes, Your Honor.

10 MR. ANGELL: Yes, Your Honor.

11 THE COURT: Mr. Allen.

12 MR. ALLEN: Thank you.

13 CLOSING ARGUMENT - MR. ALLEN

14 Ladies and Gentlemen, as you are well aware, we are
15 here today because Henry Galloway has been charged with
16 burglary in the second degree and safecracking and I know
17 you heard a lot from the Judge about reasonable doubt. I'm
18 not going to get into that too much other than to remind
19 you that reasonable doubt, of course, if not beyond all
20 doubt. As he alluded to just a few minutes ago, there are
21 few things in life that we know with absolute certainty, so
22 of course, that is not the standard the State has. Beyond
23 a reasonable doubt. As he said, one of the best
24 explanations I've ever heard of what that standard is, is
25 that you are firmly convinced of the defendant's guilt of

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1 the crimes he's charged with.

2 Now, let's first talk about burglary second and what
3 those elements are. First, the defendant entered a
4 building used for a business. Second, without consent and
5 third, with the intent to commit a crime therein, here in
6 Moon's Tile.

7 Now, the first element, entering a building. It's
8 clear, you saw the surveillance video. Investigator
9 Pridemore, when he got there, found the defendant tied up
10 inside the building. You heard from Randall Moon, you
11 heard from Lester Brock. There's no doubt, everybody in
12 this courtroom knows, they entered Moon's Tile in the early
13 morning hours of September 24, 2010.

14 Now, the second element, without consent. The
15 evidence that you saw throughout this trial shows without
16 consent by several ways. One, as you saw in the photos,
17 the entire business is surrounded by a fence, a high fence,
18 and it was locked that night. They climbed over that fence
19 to get into the building. Once they get over the fence,
20 they have to go through not one, but two different locked
21 doors to get to that office where that safe was. So, we
22 know they clearly had no consent. Beyond a reasonable
23 doubt, they were there that night and had no consent to
24 enter that building. Furthermore, it was during a time
25 when the business was closed, at 2:00 in the morning. They

1 had no business being there that night.

2 Now, the third element, with the intent to commit a
3 crime therein. What was the intent of Mr. Galloway that
4 night? I think we all know that, as well. They walked to
5 Moon's Tile, they had shirts or some kind of article of
6 clothing covering their faces, socks on their hands. Not
7 only do you see it on the video, socks on their hands, as
8 they came around the building, but also, Investigator
9 Pridemore told you that when he got on the scene, three
10 white socks was a part of the evidence that he collected.
11 One found in the room, in the showroom with the defendant.
12 The other socks were found in the warehouse where his co-
13 defendant fled around the van.

14 Also, as I mentioned before, they came in the middle
15 of the night, at 2:00 in the morning, when they assumed, if
16 not for Mr. Moon and Mr. Brock, they assumed it would be
17 empty that night and that that was going to be a fairly
18 easy crime to pull off, some easy money to go in there and
19 it won't take but a couple minutes to take the money out of
20 the safe.

21 So, during the course of this trial with all the
22 evidence you saw the sketch, the sketch clearly shows where
23 Investigator Pridemore found the two suspects. You saw the
24 two knives. You even saw Mr. Galloway holding the knife
25 when he was at gunpoint. You saw the socks. We've shown,

1 the State has shown, beyond a reasonable doubt, that will
2 allow you to be firmly convinced that the defendant entered
3 that building without consent and did not have permission
4 to be there and it's clear, based on their actions and what
5 they were wearing that night, that they intended to commit
6 a crime in that building, they intended to go in that safe,
7 get the cash and get out of there.

8 Now, lastly, the element of the intent to commit a
9 crime. As we also have in burglary second, it's
10 accompanied with several aggravating circumstances that we
11 have to show and in this case, one of the two we have, as
12 Judge McIntosh mentioned, is a deadly weapon. Clearly, the
13 two knives found in the building. The defendant was
14 carrying the knife when he was at gunpoint, when Mr. Moon
15 has the gun pointed at his back, and so we have the deadly
16 weapon. We have the knives that were collected into
17 evidence by Investigator Pridemore.

18 The second aggravating circumstance, we don't only
19 have one, we have two, was it occurred at night time. We
20 know, there's no dispute, it was around 2:00 a.m., it was
21 night time. The lights were off when they entered the
22 showroom, it' dark. So, we have the two aggravating
23 circumstances that are required for second degree burglary.
24 Two of them, two aggravating circumstances.

25 Now, let's move on to the charge of safecracking.

1 What safecracking calls for and what I, as the
2 representative of the State, has to prove beyond a
3 reasonable doubt, is that the defendant used either
4 explosives, tools, or implements to gain entry into the
5 safe, in or about the safe, used for the safekeeping of
6 money or valuables in an intent to commit larceny or
7 another crime. Judge McIntosh explained to you what
8 larceny is. So, let's look at that first element, the use
9 of tools or implements. Now, obviously, we don't have
10 explosives here. What we do have is tools or implements.
11 Now, based on the evidence, we know the camera wasn't
12 actually in the office where the safe is. We weren't able
13 to see that angle, but Mr. Moon was able to look into that
14 office as he approached the defendant with a gun. He
15 testified on the stand that he keeps the key to that safe
16 in the top right drawer of the desk and when he entered
17 that office, that key was not in that drawer. He said he
18 couldn't exactly recall where, it was either behind the
19 defendant somewhere around the defendant right at the desk,
20 but the important thing, it was not in that drawer.

21 Now, also, the defendant had the knife. We heard
22 Investigator Pridemore testify on the stand that based on
23 his training and experience, that he knows that knives can
24 be used to gain entry to lock doors, safes, especially this
25 safe, because as you will be able to see in the photo when

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1 you get back in the jury room and be able to take a closer
2 look, this safe wasn't, I don't know the particular name
3 for it, but the kind of knob that you turn, this was
4 actually a key like you would have on a door lock. This is
5 how it was locked. He testified that a knife can be used
6 to unlock those types of locks. We're not sure, because
7 the video surveillance doesn't show inside the room, but we
8 do know based on Investigator Pridemore and Mr. Moon, that
9 the defendant used either that knife or that key to get
10 into that safe and when Mr. Moon walked in that office, the
11 defendant was in front of that safe, the element of "in or
12 about that safe". We know that the third element is "used
13 for the safekeeping of valuables or money". That's what
14 the safe was used for.

15 And lastly, with the intent to commit a larceny or
16 another crime. Now, we know based on the defendant's
17 actions what the intent was. He was in that office, he
18 either got the key or used the knife, he's in front of the
19 safe with the safe open when Mr. Moon cuts the lights on
20 and goes into that office.

21 Now, Judge McIntosh mentioned at the end of that
22 charge, and this is important to remember, that to commit
23 the offense of safecracking, the defendant does not have to
24 get away with any valuables. He doesn't have to leave with
25 the cash or whatever it may be, only that he was in that

1 safe, or about that safe, and he used tools or implements
2 to get in there, that the safe was used for the safekeeping
3 of money or valuables and he was in that safe with the
4 intent to commit a larceny or another crime.

5 Now, what I've just gone over with you, I submit, is
6 clearly beyond a reasonable doubt, the standard that we
7 have to meet. It clearly meets that standard for burglary
8 second and safecracking. You'll be able to go back to that
9 jury room to look at all the evidence and photos and the
10 sketch that shows you where the defendant was found. You
11 will have your notes from the testimony, along with your
12 memory.

13 What I will ask you to do is, go back there and
14 deliberate, study the evidence carefully, take your time,
15 and deliver a verdict that you can say, confidently, that
16 you have delivered a verdict that you know you have, in
17 your minds, delivered the right verdict. And when you go
18 back there, the State is asking you to deliver a verdict
19 that delivers the truth, not that finds the defendant
20 guilty, but that speaks the truth. If you don't think he's
21 guilty, don't find him guilty, but it's our contention that
22 we've proved every element of every crime the defendant is
23 charged with, beyond a reasonable doubt, and we ask that
24 you deliver a verdict that speaks the truth of the events
25 that happened at Moon's Tile on September 24, 2010. Thank

1 you.

2 THE COURT: Mr. Angell.

3 MR. ANGELL: May it please the Court, Your Honor?

4 THE COURT: Yes, sir.

5 CLOSING ARGUMENT - MR. ANGELL

6 Madam Forelady, members of the jury, when we started
7 this trial yesterday, I told you to listen very closely, to
8 examine all the evidence, to listen to the witnesses and
9 that the State has the burden, always, to prove every
10 element beyond a reasonable doubt. Now, Mr. Allen didn't
11 talk about reasonable doubt too much. Why? I want to
12 start off with a story. It goes something like this:
13 There's a young boy in church and the offering plate is
14 going around Sunday morning and he's got some change in his
15 pocket and he wants to make his contribution to the
16 congregation and so he tries to put a dime in the offering
17 plate and he reaches into his pocket and is really not
18 paying attention and he puts a quarter in the plate. The
19 plate goes around and after church, the little boy comes up
20 to the preacher and says, "Preacher, I didn't mean to put a
21 quarter into the plate. I meant to put a dime in the
22 plate. I want to get it back." "Well, let me think about
23 this." He waits a few minutes and pauses and says, "Son,
24 I've got bad news and I've got worse news." He said,
25 "Preacher, what's that?" He said, "I can't give your money

1 back because you put it in the plate, so we'll keep the
2 quarter, but the worse thing, I checked with the Man
3 upstairs and he said he's only going to give you credit for
4 ten cents." So, what does that tell you? That goes to
5 intent and what I'm working towards here is, my client
6 didn't have the intent to commit a crime, didn't have the
7 intent. As you heard Lieutenant Hunnicutt on the stand,
8 when he arrived at the scene, he wasn't sure who the
9 defendant was. He thought the defendant was sitting in the
10 back of the squad car. My client was sitting there with
11 the other gentleman. It should make a juror think, how is
12 it that an officer shows up on the scene while my client is
13 tied up and he can't make heads nor tails of it. It
14 doesn't sound like the actions of a guilty man.

15 And according to safecracking, you heard Mr. Moon
16 testify that my client was standing, not in front of the
17 safe, not bent down into a safe, not reaching into a safe,
18 but in the room with a safe. And he testified that he had
19 a knife in his hand and that he found a sock or
20 Investigator Pridemore said he found socks. Mr. Moon said
21 that my client had a knife in his hand. But I submit to
22 you that if my client used a knife or a key, used a knife
23 to get into the safe by any means, there would be a mark on
24 the safe. There would be some sort of scratch or scrape,
25 some evidence of how he got into the safe. Mr. Moon said

1 he used a key. Well, when Investigator Pridemore came to
2 the scene, he didn't find a key. He didn't find a key on
3 the floor, he didn't find a key in the drawer, didn't find
4 anything on the defendant. He didn't find a pick, didn't
5 find any other tool to go into a safe.

6 Mr. Moon sat up here yesterday under cross examination
7 and said that he had the doors locked on the outside and on
8 the inside, double doors. A door on the outside and double
9 doors on the inside. He wasn't sure whether he locked the
10 safe or not. He's waiting for burglars to come in at night
11 and watching them on video and he's armed with guns, but he
12 forgets to lock the safe? He remembers to lock the side
13 door, the outside door and the main door coming in, but he
14 forgets to lock the safe, or at least, he can't remember.
15 If he thinks that's what they are coming in to do, you
16 would know what the disposition is of the safe.

17 The prosecution hasn't shown that my client knew about
18 the safe, didn't show how he entered the safe, didn't show
19 any other thing on my client, any other possession of any
20 other tool that helped him gain entry to that safe.

21 The Judge has already given you the charge and he said
22 to you, you have a duty. Not an option, but a duty, and at
23 this moment, my client is cloaked in a robe of
24 righteousness until you decide that he needs to be stripped
25 of that. What's the importance of that? The perspective

1 that you have when you walk into this courtroom, that he's
2 innocent and the State must prove, beyond a reasonable
3 doubt, all elements charged. The State hasn't met that
4 burden. I'm asking you to hold the State to that burden
5 this morning and find a verdict of not guilty for second
6 degree burglary and a verdict of not guilty for
7 safecracking. I thank you for your time. I know it's been
8 hard. I appreciate your listening and I ask you to return
9 a verdict of not guilty. Thank you.

10 THE COURT: Mr. Allen, any reply?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: All right. Very good. Madam Forelady,
13 what I'm going to do now is ask that you take your jury
14 back to the jury room, except our alternate here. I'll ask
15 that you stay here. Do not begin your deliberations. What
16 we're going to do is make sure we've itemized all the
17 exhibits and get the verdict form and shortly you will
18 receive those back there with clear instructions that you
19 may begin your deliberations. If you'd go back to the jury
20 room at this point.

21 (Jury out at 10:28 a.m.)

22 THE COURT: If you would look at the exhibits and make
23 sure you have everything accounted for.

24 MR. ALLEN: Yes, Your Honor. (Both attorneys check
25 the exhibits)

1 THE COURT: Guys, two things. If you would stay close
2 by. If you start to leave, give us a number so we can
3 chase you down. Also, if that jury wants to see that
4 surveillance tape, have it fired up and ready to go.

5 MR. ALLEN: It will take a few minutes to heat up, but
6 it wouldn't take long.

7 THE COURT: All right. Have you accounted for
8 everything?

9 MR. ALLEN: Yes, sir.

10 MR. ANGELL: Yes, sir.

11 THE COURT: Mr. Frazier, would you take the exhibits
12 and verdict form to the jury and tell them to begin their
13 deliberations.

14 MR. FRAZIER: All right.

15 (Alternate is released by Judge McIntosh off the
16 record)

17 THE COURT: I'd like to thank the attorneys for being
18 prepared and ready to go in this matter. When attorneys
19 are prepared, it makes my life a lot easier and makes the
20 trial go a lot smoother. We're in recess.

21 FIRST QUESTION FROM THE JURY

22 THE COURT: We have a jury question. This is the
23 question signed by Norma Phillips: Is the basis of the
24 jury's decision, secondary to the charge of safecracking,
25 based upon the defendant's intent or whether he actually

1 opened the safe?" Signed, Norma Phillips. Now, my
2 suggestion, and I'll be glad to hear from either side,
3 would be simply to re-charge them on safecracking. If I go
4 much further than that, I think I would be commenting on
5 the facts. Mr. Allen, what's your position?

6 MR. ALLEN: I would agree, Your Honor. Just read the
7 charge and include, well, you're going to read your whole
8 charge.

9 MR. ANGELL: I agree.

10 THE COURT: That's what I will do. Would you bring
11 the jury in, please?

12 (Jury in at 11:04 a.m.)

13 THE COURT: All right, Madam Forelady, I have received
14 what purports to be a question from the jury. I will read
15 this to make sure that it is, in fact, your question. "Is
16 the basis of the jury's decision, secondary to the charge
17 of safecracking, based upon the defendant's intent or
18 whether he actually opened the safe?" Is that the question
19 of the jury?

20 MS. PHILLIPS: Yes, sir.

21 THE COURT: All right. Ladies and Gentlemen of the
22 jury, what I am going to do is re-charge you on the law of
23 safecracking and then I will send you back to your jury
24 room. If that doesn't answer your question, write me
25 another and I will try to do it such that it does. Okay?

1 MS. PHILLIPS: Okay.

2 THE COURT: This is the law of safecracking as set
3 forth in §16-3-390 of our Code: The defendant is charged
4 with safecracking. The State must prove, beyond a
5 reasonable doubt, that the defendant used explosives,
6 tools, or any other implement in or about a safe used for
7 keeping money or other valuables with intent to commit
8 larceny or any other crime. Intent may be shown by acts
9 and conduct of the defendant and other circumstances from
10 which you may naturally and reasonably infer intent.
11 Larceny is the taking and carrying away the goods or
12 personal things of another person with the intent to
13 permanently deprive the owner of the property and to
14 convert it to the taker's use. The defendant does not have
15 to succeed in breaking into the safe for the conduct to be
16 safecracking." Now, Madam Forelady, I will ask that you go
17 back to the jury room. If that satisfies the question, you
18 may resume your deliberations. If it does not, would you
19 send me out another query and we'll see if we can solve any
20 questions that you may have. Okay?

21 MS. PHILLIPS: Yes, sir.

22 THE COURT: All right. Thank you very much.

23 (Jury out at 11:07 a.m.)

24 THE COURT: Any additions or exceptions from the
25 State?

1 MR. ALLEN: No, Your Honor.

2 THE COURT: From the Defense?

3 MR. ANGELL: No, Your Honor.

4 THE COURT: Okay, guys, stay fairly close by. We are
5 in recess again.

6 SECOND QUESTION FROM THE JURY

7 THE COURT: All right, the second request from the
8 jury is, "Is it possible for us to watch the video again."
9 I believe you guys are aware of that and Mr. Allen, I think
10 you've got everything prompted up and ready to go?

11 MR. ALLEN: Yes, Your Honor. I assume that they want
12 to watch it in its entirety. There were, like, three clips
13 to get the whole thing in.

14 THE COURT: I'll double check that and make sure. Do
15 you agree with that?

16 MR. ANGELL: Sure.

17 THE COURT: Would you bring the jury in, please?

18 (Jury in at 11:30 a.m.)

19 THE COURT: All right, Madam Forelady, Ladies and
20 Gentlemen of the jury, there is a request to view the video
21 again. Is that correct?

22 MS. PHILLIPS: Yes, sir.

23 THE COURT: Okay. Now, if you recall that video was
24 in several segments.

25 MS. PHILLIPS: Yes, sir.

1 THE COURT: Do you want to watch all the segments?

2 MS. PHILLIPS: Yes, sir.

3 THE COURT: Very well. Mr. Allen, would you go ahead
4 and start it and dim the lights, Mr. Frazier, so that we
5 can watch it, please?

6 MR. ALLEN: The first segment.

7 (Mr. Allen plays the first segment of the video for
8 the jury)

9 MR. ALLEN: Your Honor, at this point, there is
10 nothing. The defendants have now entered the building and
11 so that's where I stopped during the trial, because there's
12 nothing else. I'll go on to the second segment.

13 THE COURT: Any objection to that?

14 MR. ANGELL: No objection, Your Honor.

15 THE COURT: All right.

16 (Mr. Allen plays second segment of the video for the
17 jury)

18 MR. ALLEN: Your Honor, at this point ---

19 THE COURT: Let me just stop you. Do you have an
20 objection to just going to the next one?

21 MR. ANGELL: No, Your Honor.

22 THE COURT: All right. Go right ahead.

23 (Mr. Allen plays third segment of the video for the
24 jury)

25 THE COURT: All right, Mr. Frazier, you can cut on the

1 lights, please. (Mr. Frazier complies)

2 THE COURT: Madam Forelady, would you poll your jury
3 to see if that is satisfactory, please, ma'am?

4 MS. PHILLIPS: (Ms. Phillips complies) Yes, sir.

5 THE COURT: Okay. I'll ask you to go back to your
6 jury room and resume deliberations, please.

7 (Jury out at 11:47 a.m.)

8 THE COURT: All right, just for the record, any
9 additions or exceptions from the State?

10 MR. ALLEN: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. ANGELL: No, Your Honor.

13 THE COURT: All right. We'll be in recess. Y'all
14 stay fairly close by, please.

15 THIRD QUESTION FROM THE JURY

16 THE COURT: I don't know if my law clerk went over
17 this with you, but the question from the jury is: We need
18 to hear the explanation, once again, of the charge of
19 safecracking." I'll charge them again unless the State or
20 the Defense has an objection.

21 MR. ALLEN: No, Your Honor.

22 MR. ANGELL: No, Your Honor.

23 THE COURT: Would you bring the jury in, please, Mr.
24 Frazier.

25 (Jury in at 12:19 p.m.)

1 THE COURT: All right, Ladies and Gentlemen, Madam
2 Forelady, my understanding from the request is that you
3 would like me to re-charge you on the law of safecracking.
4 Is that correct?

5 MS. PHILLIPS: Yes, sir.

6 THE COURT: Okay. This is the law of safecracking:
7 The defendant is charged with safecracking. The State must
8 prove, beyond a reasonable doubt, that the defendant used
9 explosives, tools, or any other implement in or about a
10 safe used for keeping money or other valuables with intent
11 to commit larceny or any other crime. Intent may be shown
12 by acts and conduct of which the defendant and other
13 circumstances -- let me do that one more time. Intent may
14 be shown from acts and conduct of the defendant and other
15 circumstances from which you may naturally and reasonably
16 infer intent. Larceny is the taking and carrying away the
17 goods or personal things of another person with the intent
18 to permanently deprive the owner of the property and to
19 convert it to the taker's use. The defendant does not have
20 to succeed in breaking into the safe for the conduct to be
21 safecracking." Does that answer your request from the
22 jury, Madam Forelady?

23 MS. PHILLIPS: Yes. I think it will.

24 THE COURT: All right. I will ask that you resume
25 your deliberations, please, ma'am.

(Jury out at 12:22 p.m.)

THE COURT: Any additions or exceptions, from the State?

MR. ALLEN: No, Your Honor.

THE COURT: From the Defense?

MR. ANGELL: No, Your Honor.

THE COURT: All right. We'll be back in recess. Stay close by, if you would.

VERDICT

THE COURT: I am advised we have a verdict, Ladies and Gentlemen. Would you bring them in, please, sir.

(Jury in at 12:44 p.m.)

THE COURT: Madam Forelady, my understanding is that the jury has reached a verdict. Is that correct?

MS. PHILLIPS: Yes, sir. We have.

THE COURT: Is it unanimous?

MS. PHILLIPS: Yes, sir. It is.

THE COURT: Would you pass it to the bailiff, please, ma'am. (Verdict form is passed to the Judge)

THE COURT: Would you publish the verdict, please, ma'am.

CLERK OF COURT: Yes, sir. The State of South Carolina, County of Anderson in the Court of General Sessions. The State of South Carolina versus Henry Junior Galloway, verdict. We, the jury, under Indictment Number

THE STATE OF SOUTH CAROLINA VERSUS HENRY J. GALLOWAY

1 2010-GS-04-02543, unanimously find the Defendant Henry
2 Junior Galloway guilty of burglary in the second degree.
3 We the jury, under Indictment Number 2010-GS-04-02544,
4 unanimously find the Defendant Henry Junior Galloway is
5 guilty of safecracking. That is signed by Norma J.
6 Phillips, Foreperson.

7 THE COURT: All right, Ladies and Gentlemen, was that
8 your verdict in the jury room and is that your verdict now?
9 If so, would you raise your right hand? Let the record
10 reflect that all jurors raised their right hands.

11 Ladies and Gentlemen, as I've told you, the Court is
12 never concerned about the verdict. I am only concerned
13 about the process being followed. This was not an unduly
14 long trial, but you stayed engaged and you watched the
15 testimony and evidence being presented and so you did your
16 job as jurors and we appreciate that on behalf of Anderson
17 County and The State of South Carolina. I would love to be
18 able to tell you that I will let you go for the remainder
19 of the week, but we have a potential trial tomorrow at
20 9:30, so I will ask that you return here in the courtroom
21 on this level in the gallery and you may or may not be
22 selected on the next case, but it may happen. I will ask
23 you to go back to your jury room. I will step back there
24 and talk with you one quick second and then I'll dismiss
25 you and you'll have the opportunity to watch sentencing,

1 but you don't have to watch sentencing. Would you step
2 back, please.

3 (Jury out at 12:48 p.m.)

4 THE COURT: Mr. Galloway, would you stay here and I
5 will come back in just a minute for sentencing. Mr. Allen,
6 I want to hear about his prior record if he has any. I
7 believe from our conversation yesterday there is some prior
8 record, so if you will be ready for that. I will speak
9 with the jury and be back in just a minute. (Judge
10 McIntosh leaves the courtroom)

11 (Brief break)

12 SENTENCING

13 THE COURT: Counsel, let me ask you this: would you
14 agree that the range on burglary, second degree, is zero to
15 fifteen and safecracking is zero to thirty?

16 MR. ALLEN: I believe that's correct, Your Honor.

17 THE COURT: Do you agree with that?

18 MR. ANGELL: Yes, Your Honor.

19 THE COURT: Are you notifying probation, Reena?

20 CLERK OF COURT: Yes, sir.

21 THE COURT: Mr. Galloway, if you and your attorney
22 would step around. Mr. Allen, would you come around,
23 please, sir? (All comply) Before we get started, Mr.
24 Allen, would you give me the prior record for Mr. Galloway.
25 I believe you indicated that he had some.

1 MR. ALLEN: Yes, Your Honor. May it please the Court.
2 In 1995, he's got a burglary second, non-violent. The
3 sentence was eight years suspended to five years probation.
4 Also, in '95, he had two counts of trespass and a malicious
5 injury to personal property. In '96, he's got a criminal
6 domestic violence, a receiving stolen goods and he also had
7 a probation violation in '96, where he received eight
8 years. In '03, he has a disorderly conduct and a receiving
9 stolen goods. In '07, two counts of burglary, second,
10 violent, where he received a fifteen-year sentence. Two
11 counts of malicious injury to personal property and a petit
12 larceny. Lastly, in 2008, he had one count of assault and
13 battery and that's it.

14 THE COURT: Going back to the '07, burglary second,
15 violent, he was sentenced to a straight fifteen?

16 MR. ALLEN: That's my understanding, your Honor.

17 THE COURT: Is that your understanding?

18 MR. ANGELL: I'm not sure, Your Honor. According to
19 my client, he wasn't sentenced to fifteen years.

20 THE COURT: Do you have the criminal record?

21 MR. ALLEN: Yes, sir. (Hands document to Judge
22 McIntosh)

23 MR. ANGELL: He's telling me he got probation for that
24 charge, Your Honor.

25 THE COURT: It looks to me that in October 7, 2008,

1 that the defendant was convicted of burglary, second
2 degree, and sentenced to a consecutive sentence to
3 2000-17148.

4 MR. ALLEN: Your Honor, if I may pass up the
5 convictions.

6 THE COURT: Yes, sir.

7 (Mr. Allen hands document to Judge McIntosh)

8 THE COURT: Have you seen these?

9 MR. ANGELL: Yes, sir. Well, not that.

10 (Bench conference off the record)

11 THE COURT: All right. For the record, Mr. Galloway
12 currently is on probation and there is a victim in that
13 case who will not be able to be here and so this is not to
14 be with regard to any violation of existing probation.
15 We've checked with probation and Mr. Galloway, you do have
16 a current probation case. Your conviction today will be a
17 violation of that probation. I will not sentence you on
18 that, because we need to have the victim here or they have
19 the right to be here and it may be that I hear it or
20 another judge may hear that, but today, the only thing I
21 will be considering is your guilt for burglary, second
22 degree, in this case, and for safecracking.

23 So, going back, and I'm asking Mr. Angell, it appears
24 that in October of 2008, Mr. Galloway received a fifteen-
25 year sentence suspended on probation, which was consecutive

1 to a 2007 case. Is that correct?

2 MR. ANGELL: That's what I understand after speaking
3 with the solicitor, Your Honor.

4 THE COURT: Okay. Is that your understanding?

5 MR. ALLEN: Yes, Your Honor. It was suspended to
6 probation.

7 THE COURT: Okay. Mr. Angell, I will be glad -- I'm
8 going to give the victim a chance to speak, Mr. Moon, if
9 you want to any further.

10 MR. MOON: No, sir. I'm good.

11 THE COURT: Okay. Tell me about Mr. Galloway, please.

12 MR. ANGELL: Your Honor, he's been employed for around
13 six years. He lays sewer pipe. He's a father of five,
14 ranging in age from twenty down to three years old. His
15 wife is terminally ill with cancer. The co-defendant in
16 this case pled and got five years since it was on video, to
17 second degree burglary. He got five years.

18 THE COURT: All right. Mr. Galloway, anything you
19 want to add?

20 MR. GALLOWAY: No, sir. It's just that my Dad died
21 last Friday at 4:00. Going through that with my Dad and
22 with my wife and all, it's been kind of hard for me, Your
23 Honor, but you know, they are going to bury my Dad tomorrow
24 at 3:00 at Mountain Springs Church. I ain't got no
25 brothers or sisters. It's just me and my Mom, my kids, and

137

1 my wife.

2 THE COURT: I'm sorry to hear that. I know that's
3 tough.

4 MR. GALLOWAY: Thank you.

5 THE COURT: That still doesn't excuse your ---

6 MR. GALLOWAY: Yes, sir. Yes, sir.

7 THE COURT: --- your conduct in this case. That being
8 said, I'm going to sentence you currently, and this is
9 specifically exclusive of your probation violation, which
10 will be dealt with separately, to fifteen years. Thank
11 you. Good luck to you. Is he entitled to any credit?

12 MR. GALLOWAY: Thank you, sir.

13 MR. ALLEN: I'll have to check, Your Honor.

14 THE COURT: I'm going to mark it for time served. I
15 know he has some, so he's at least entitled to something.
16 Good luck to you.

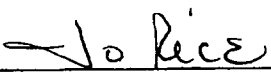
17 MR. GALLOWAY: Thank you, sir.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON) CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON MARCH 12-13, 2012 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 28TH DAY OF JUNE, 2012.



 JO RICE
 OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY J. GALLOWAY,

APPELLANT

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of safecracking when the object broken into was not a safe?

STATEMENT OF THE CASE

Appellate was convicted of second degree burglary and safecracking after a jury trial held before the Honorable R. Lawton McIntosh on March 12-13, 2012, in Anderson County. A fifteen (15) year sentence was imposed for second degree burglary and a concurrent fifteen (15) year sentence was imposed for safecracking. Aaron J. Angell, Esquire, was defense counsel.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of safecracking when the object broken into was not a safe.

Randall Moon testified that he worked at Moon's Tile. On September 24, 2010, he was working late because he was hoping to catch a thief. He has recently been broken into several times. Money was stolen out of their filing cabinet. It was a locking filing cabinet that they used as a safe. (Tr. p. 19, line 21 – p. 20, line 23).

At the conclusion of the State's case, defense counsel moved for a directed verdict on the safecracking charge. The trial court denied the motion. (Tr. p. 82, line 13 – p. 83, line 6). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where the evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir. 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir. 1994).

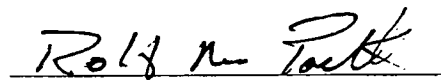
The statute on safecracking, S.C. Code §16-11-390 provides: “It is unlawful for a person to use explosives, tools, or any other implements in or about a safe used for keeping money or other valuables with intent to commit larceny or any other crime.” The above statute fails to define what a safe is. In this case, we just have a filing cabinet with a lock on it. Is that a safe? What about a desk drawer with a lock on it? What about people who keep money in their locked glove box in their car?

The statute is overbroad and does not give one any notice of what a safe is. Because a filing cabinet is not a safe, a directed verdict should have been granted to that charge.

CONCLUSION

A directed verdict should be granted on the charge of safecracking.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Pachak", is written over a horizontal line.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Anderson County

 R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY J. GALLOWAY,

APPELLANT

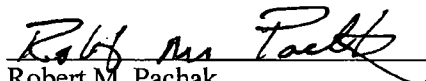
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Henry J. Galloway states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on March 13, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Henry J. Galloway.

Respectfully submitted,



 Robert M. Pachak
 Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of September, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY J. GALLOWAY,

APPELLANT

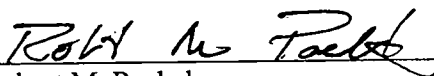
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Jury Voir Dire Transcript;
- (3) Entire Trial Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

September 4th, 2012


Robert M. Pachak
Appellate Defender

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

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

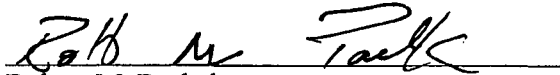
V.

HENRY J. GALLOWAY,

APPELLANT

CERTIFICATE OF SERVICE

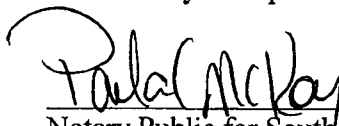
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a copy of the Anders Brief of Appellate and Record on Appeal have been served on Henry J. Galloway, #236967 at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472, this 4th day of September, 2012.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 4th day of September, 2012.

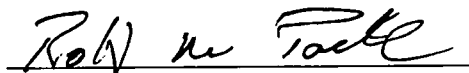


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 4, 2012



Robert M. Pachak
Appellate Defender

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

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

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

The State, Respondent,

v.

Henry Junior Galloway, Appellant.

Appellate Case No. 2012-210290

Appeal From Anderson County
R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2013-UP-103
Submitted January 1, 2013 – Filed March 13, 2013

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott, all
of Columbia; and Solicitor Christina Theos Adams, of
Anderson, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Anderson)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-04-01628

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Lieber Correctional Inst
2. Name and location of Court which imposed sentence Anderson County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) TWO 15 years Sentences
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 13, 2012
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The Court of appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. same
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Written opinion from the Court of appeals
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See additional Page
- (b) See additional Page
- (c) See additional Page
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See additional Page
- (b) See additional Page
- (c) See additional Page
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
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. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) First P.C.R.
- (b) N/A
- (c) N/A
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. Arron Angel
- ii. Arron Angel
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Sentencing
- iii. N/A
19. State clearly the relief you seek in filing this application:
See additional page
20. Are you now under sentence from any other court that you have not challenged?
NO

2015-CP-04-01628

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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.

Henry Galloway

SWORN to and subscribed before me this 3rd
day of July, 2013

Ludrian Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED-CLERK'S OFFICE
ANDERSON SC
2013 JUL -9 A 8:55
COMMON PLEAS AND
GENERAL SESSIONS

**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.

Henry Galloway
Applicant

SWORN or affirmed to and subscribed before me this
3rd day of July, 2013.

Ludrecin Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED-CLERK'S OFFICE
ANDERSON SC
2013 JUL -9 A & 56
COMMON PLEAS AND
GENERAL SESSIONS

1-OP-

Question from application - Form Number (5) Five P.C.R.

Question Number "10"

state concisely the grounds on which you base your
allegation that you are being held in custody unlawfully

Answer Number 10

A.

A1. — Ineffective Assistance of Counsel.

A2. — Trial Counsel's Actions

A3. — Double Jeopardy

B.

B1. — Directed Verdict

B2. — Failure to make the required contemporaneous
objection

B3. — Dominion And Control

C.

C1. — Trial Court Errored

C2. — Proof of ONE element

C3. — Reasonable Probability

1-OP-11

Question Number (11) from application
Form (5) Pive

State Concisely and in the same order the facts which
Support each of the grounds set out in (10)

Answer Number (11)

A.

A1. — Ineffective Assistance of Counsel

My trial Counsel Presented a Significant Obstacle in Preparing
a adequate defense in receiving a fair trial. There are Several
Separate Showings to demonstrate, that there is a reasonable
Probability that for my trial Counsel's unProfessional errors, that
the outcome of my trial would have been different.

At this time I will set forth a variety of ways my trial counsel
was ineffective, and failed to Present a defence at my trial.

The cumulative effect of which I was deprived the level of legal
assistance guaranteed by the Sixth (6th) amendment, of the
United States Constitution. For example, my trial Counsel, was
was ineffective for failed to employ an Safecracking
expert to show that the state hasn't met the burden
of Safecracking, or to dispute the conclusion of the States
case. Not having a Safecracking expert is a causative
factor in my trial.

My trial counsel was ineffective for not allowing witnesses to
come to my trial on my behalf. There were some witnesses
who would have provided a cogent defense at my trial.
to my right as a defendant to Present witnesses in my defense
see → Faratta v. California, 422 U.S. 806 (1975) State v. Schmid, 288
S.C. 301, 342 S.E. 2d 401 (1986) also see → Pauling v. State, 331
S.C. 606, 503 S.E. 2d 468 (1998).

Continue - A1.

My trial counsel was ineffective for failing to motion for a "Mere Prescense" charge, mere Prescense is not sufficient to convict without more, the state cannot convict. I do think that the trial judge erred by not given the jury the mere Prescense charge, and failure to give such a charge constitutes reversible error. → see State v. Kimbrell, 362 S.E. 2d 630 (1987)

I do think that the court not given the charge is a "abuse of discretion". I do understand that the decision whether to order a mistrial lies within the discretion of the trial court judge, to be rendering a fair and impartial trial impossible. My trial should have been a mistrial, for the conduct was so grossly improper that the trial judge abused its discretion in failing to intervene at that time. That there is a reasonable probability, if the right charge would have been given to jury, the outcome would have been undermining the confidence in the outcome of the trial, see → Id. 466 U.S. at 694, 104 S.C. at 2068, 80 L. Ed. 2d. at 698. also see Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989).

A2.

Trial Counsel's Actions

My trial counsel's actions is a causative factor in my case. I place heavy reliance on his actions.

My trial counsel failed to adequately investigate my case, failing to conduct a independent investigation into the case, made my trial counsel lack of preparation, to the potentially viable defense in my trial.

My trial counsel failed to object to certain comments, and the line of questioning, that I believe to be improper, and prejudice to my trial.

Continue...

A3. —

Double Jeopardy

The Charge of Burglary Second degree is a Felony, and Burglary-Safecracking is a Felony, my trial court Counsel and trial court Judge, Violated the double Jeopardy Provisions of both the Federal and our state Constitution when the courts convicted and sentenced me for the underlying offenses of burglary and safecracking.

This is an error in my case see → State v. Tesack, W. Va. 383 S.E. 2d (1989), Turner v. Holland, W. Va. 332 S.E. 2d 164 (1985), State v. Young, 166 W. Va. 309, 273 S.E. 2d 572 (1980).

The double jeopardy clauses of both the Federal and state Constitution protect a accused in a criminal proceeding from "multiple Punishments for the same offense". See → Sullivan Point I in Part. Conner v. Griffith, 160 W. Va. 680, 238 S.E. 2d 529. (1977). In determining what constitutes the "same offense" for double jeopardy purposes, courts apply the "same evidence test". This rule of law was first announced by the United States Supreme Court in Blockburger v. United States, 284 U.S. 299, 304 52 S. Ct. 180 18 76 L. Ed 306, 309 (1932).

From my understanding of the rule of the law is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not see State v. Hancock, 170 W. Va. 690 296 S.E. 2d 37 (1982) or see our U.S. Constitution Amendment Number (5) Five.

Continue... B

B1. — B.
Directed Verdict

On Page 82-83 my trial counsel motioned for a directed verdict on the charges of both the burglary and Safecracking. The language of Safecracking is not on this case at all, the trial judge should have granted the motion for the directed verdict for the state has not provided enough evidence for the charge.

I. argue the trial court judge erred in refusing to grant the directed verdict.

The totality of the circumstances of a particular case to determine in its own judgment whether they comport with the court's notions of decency, fairness, and fundamental justice. This meaningfully impaired my ability to a fair trial.

B2. — Failure to make the required contemporaneous objection.

My trial counsel failure to object to the states case on several separate times. (1) There was no objection to the courts charge to the jury. (2) There was no objection to the showing of the video for the 3rd time to the jury this was prejudice to my case. (3)

My trial counsel failure to object to the trial court judge revoking my bond while the trial was still going on, revoking my bond, was prejudice, violated my rights, court error, deliberate indifference.

B2- Continue...

My trial counsel should have objected to the trial court remark of revoking my bond at that time. My trial court counsel failed to safeguard my bond, or my interests in the money that I spent on my bond to stay out until I went to court. My trial court counsel had / has an ethical duty to protect my interests. By the trial court judge's remark / comment of, "I had one take off the other day" because to allow the Prosecutor, the court judge, to make a subsequent guess to what was in my mind at the time of the trial is to deprive me the basic protection which the guaranty of the, intervention of my bond was designed to secure. My trial court counsel should have objected to the comment that a co-defendant had pleaded to burglary second. If I was out on bond and did not show up for court the next day, the court or judge could not hold that against me. He would just need to let the jury know that they could not use that I did not show up for the rest of the trial, as me being or a sign of guilt, following his instructions to the jury. By the trial judge taking my bond, he had a opinion on the facts of the case, and my trial counsel failed to object.

Continue B3-

Dominion and Control, B3.

The State did not show that ^I had dominion or control nor that I exercise dominion or control over the safe.

I'm arguing that not having dominion or control over the safe, is so undermining the proper functioning of the adversarial process, that the trial cannot be relied upon as having produced a just result.

In violation of the 14th Amendment.

In-re-winslow 90 S.Ct. 1068 (1970) The Supreme Court has also stated that due-process commands that no man shall lose his liberty unless the state's / Government has borne the burden of producing the evidence on convincing the factfinder of his guilt. In my trial the state, has failed to do so. See → Suber v. State, 371 S.C. 640 S.E. 2d 884 (2007).

The indisputable fact remains, more specifically, that Burglary, is also the crime of Larceny, as defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in the presence by violence or by putting such person in fear. See → State v. Parker, 351 S.C. 567, 570, 571, S.E. 2d. 288, 289 (2002).

Giving incontrovertible evidence that, this court would be morally bound to over turn this case.

7-0F-11

Continue... C.

C.

Cl. Trial Court Errored

Trial Court Judge erred when not granting the directed Verdict, or when the trial Court Judge, interjected his Personal Opinion, and stereotype me. This was intentionally to my case, and contributed to the verdict rendered. Criminal LAW 369.1

Evidence of Prior Criminal acts, are to be used at the Sentence Proceeding as a whole, The trial Court Judge improperly drew an adverse inference, directly linking my Past criminal acts as guilt of the case.

This gave the Prosecutors a Powerful rhetorical tool in every respects of the trial.

The trial Court is required to charge a Jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed. See subv. State, 371 S.C. 440 S.E. 2d 884 (2007) Citing State v. Gourdine, 322 S.C. 396, 398, 472 S.E. 2d 241, 242 (1996).

Also see → State v. Miller, 375 S.C. 370, 652 S.E. 2d 444 (Ct. App. 2008) The test of the Error is whether I was overcome by the Circumstances Surrounding the trial Court's errors. The trial Court Judge did abuse its discretion.

C2. - Continue...

C2. → Proof of One element

upon finding Proof of one element of the crime of "Burglary" and of facts insufficient to establish the 2nd Second Charge of Safe Cracking, the Jurors could reasonably have concluded that they were directed to find against me on the Charge of Safe Cracking. This is why in my trial, the Jurors came back to the trial court Judge 3-times, the State, thus not forced to Prove "Beyond a reasonable doubt" every fact necessary to constitute the Crime charged " 397 U.S. at 364, and I was deprived of my Constitutional rights as explicated in Winship.

Because the Jurors coming to the trial Judge 3-times may have interpreted the Judge's instructions as constituting either a burden-shifting Presumption like that in Mullaney, or a conclusive Presumption like those in Morrisette, and United States Gypsum Co., and because either interpretation would deprive me of my rights of Due-Process of law.

I do think that the instructions given in this case were and are unconstitutional. I do understand that "an single instruction to a jury" may not be judged in artificial isolation, but must be viewed in the context of the overall charge, see → Cupp v. Naughton, 414 U.S. 141, 146-147 (1973).

Galloway v. State,
D.C.R.

Court of Common
Pleas

C- Continues ...

C3-

Reasonable Probability

First and "most obvious" I suffered a 6th & 6th amendment violation for which Prejudice should be Presumed under United States v. Cronce, 466 US. 648 (1984).

with Prejudice from both, my trial counsel and the trial court judge, in addition to the violations and errors of the court. That there is an reasonable Probability that the result at the trial would have been different, is significant to undermine the confidence in the outcome of the trial to show both error and Prejudice.

If the events had not transpired in my case the reasonable Probability, the outcome would have been different.

Question Number (19) From application

State clearly the relief you seek in filing this application:

Answer to Question Number (19)

There are Principles rooted in Due-Process and the belief that Justice is best served when a trial is fundamentally fair. I would ask this court at this time to let me enter in to the Plea of (5) Five years, for my counsel was the only one that wanted to go to court or trial.

With Protecting my rights as a defendant, to a fair trial. I would ask this court to vacate my sentence and my conviction at this time.

Also the Prejudice to my trial.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Case No. 2013-CP-04-1628
Henry Galloway, 236967	)	
S.C.D.C. No. 236967 ~~4~~ ,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief filed July 9, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the December 2010 term of the Anderson County Grand Jury for burglary, second-degree violent (2010-GS-04-2543) and burglary/safecracking (2010-GS-04-2544). Applicant was represented by Aaron Angel, Esq. On March 12, 2012, the State called its case to trial. Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh and was found guilty as indicted. Applicant was sentenced to fifteen (15) years imprisonment for burglary, second-degree, and fifteen (15) years imprisonment for burglary/safecracking. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert Pachak, Esq., of the Office of Appellate Defense pursuant to Anders v. California.¹ The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

Henry Junior Galloway, No. 2012-UP-103 (S.C. Ct. App. filed on March 13, 2013). The Remittitur was issued on April 5, 2013.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's trial transcript, the Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Failure to present favorable witnesses at trial;
 - b. Failure to consult a "safe cracking" expert;
 - c. Failure to request a mere presence jury charge;
2. "Trial Counsel's Actions:"
 - a. Failure to adequately investigate the case;
 - b. Failure to object to "certain comments, and the line of questioning, that I believe to be improper, and prejudice [sic] to my trial." (including) failure to object to the State "showing the video for the third time to the jury;" (and) "failure to object to the trial judge revoking my bond during the trial;"
3. "Double Jeopardy:"
 - a. "The charge of Burglary Second Degree is a felony, and Burglary-Safecracking is a felony, my trial court counsel/and trial court judge, violated the double jeopardy provisions of both the federal and our state constitution when the courts convicted and sentenced me for the underlying offenses of burglary and safecracking;"
4. "Trial Judge should have granted the motion for directed verdict."
5. "Trial Court Judge interjected his personal opinion and stereotype [sic] me;"

Any claims not specifically enumerated in the PCR application or amendments **not made ten (10) days prior to the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-

50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

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

counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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 Respondent submits that Applicant's second, third, fourth, and fifth allegations for Post-Conviction Relief that should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

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 an evidentiary hearing be held.

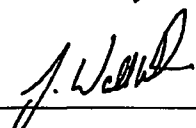
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By:  _____

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

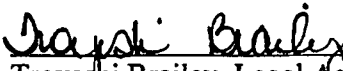
Dec 31st, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF ANDERSON	)	
	)	
	)	2013-CP-04-1628
HENRY GALLOWAY, # 236967	)	
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:

Hugh W. Welborn, Esq.
Post Office Box 173
Anderson, SC 29622

DATED this 31st day of December, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	2013-CP-04-1628
-----	)	

HENRY J. GALLOWAY,	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
DEFENDANT	)	
-----	)	

FEBRUARY 18, 2014
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR.

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

HUGH W. WELBORN, ESQUIRE
ATTORNEY FOR PLAINTIFF

WALT WHITMIRE, ESQUIRE
ASSISTANT ATTORNEY GENERAL

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

WITNESSES:

Henry J. Galloway

By Mr. Welborn . . . 6

By Mr. Whitmire . . . 17

Aaron J. Angell

By Mr. Whitmire . . . 23

By Mr. Welborn . . . 29

1 * * * P R O C E E D I N G S * * *

2
3 THE COURT: Yes, sir.

4 MR. WHITMIRE: May it please the court, Your
5 Honor. The last matter before this court today is
6 Henry Galloway vs. State of South Carolina. The case
7 number is 2013-CP-04-0628.

8 Mr. Galloway was indicted December 2010 for burg
9 2nd violent, and burglary safecracking. He was
10 represented by Aaron Angell. The State called its case
11 to trial. Mr. Galloway was convicted as indicted.

12 Judge McIntosh sentenced Mr. Galloway to 15
13 years in prison on each offense. The sentences were to
14 be served concurrently. A timely notice of appeal was
15 filed on Mr. Galloway's behalf. And, again, perfected
16 by Rob Pachak of the Office of Appellate Defense. The
17 Court of Appeals confirmed Mr. Galloway's conviction
18 and sentence is an unpublished opinion filed March 13,
19 2013.

20 Mr. Galloway has filed a timely application of
21 post conviction relief in which he has made ten
22 allegations of ineffective assistance of counsel, the
23 first of which is failure to employ a safecracking
24 expert; failure to call other relevant witnesses to
25 testify at trial; failure to request a jury instruction

1 on mere presence; failure to object to quote "certain
2 lines of questioning and comments" end quote; failure
3 to present a double jeopardy argument; failure to
4 object to the jury viewing State's evidence on more
5 than one occasion during the course of trial; failure
6 to make a directed verdict motion on safecracking; and
7 failure to convey a plea offer.

8 At this time, Your Honor, the State would move
9 for summary judgment on the ninth allegation, citing
10 the -- Mr. Angell did make a timely motion for directed
11 verdict, and that was argued on appeal by Mr. Pachak.

12 THE COURT: Okay. Have y'all looked through the
13 record, Mr. Welborn? Does it look like he made a
14 timely motion? (Pause.) Does it look like he made a
15 timely motion?

16 MR. WELBORN: Yes, sir.

17 THE COURT: Okay. So you would withdraw that
18 claim?

19 MR. WELBORN: My client wants to go forward on all
20 -- my client wants to go forward on all of his claims.

21 THE COURT: Okay. Sir, do you understand that the
22 record shows that one of your claims is that he failed
23 to make a timely motion for directed verdict; is that
24 right? Is that right?

25 MR. WELBORN: That is correct, Your Honor. That's

1 what he alleges.

2 MR. WHITMIRE: Yes, Your Honor. It's in the
3 application.

4 THE COURT: And you want to go forward with that
5 claim?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Okay. You can call your
8 first witness.

9 MR. WELBORN: If it please the court, we would
10 call Mr. Galloway.

11 THE CLERK: Raise your right hand.

12 THE COURT: Hold on just a second.

13 (Pause.)

14 THE COURT: You can go ahead.

15 HENRY J. GALLOWAY, having been
16 first duly sworn, testified as follows:

17 THE CLERK: If you would take the witness stand,
18 please, sir. And I need for you to state your name and
19 spell your last name for the record, please.

20 THE WITNESS: My name is Henry Junior Galloway.
21 Last name, Galloway, G-a-l-l-o-w-a-y.

22 THE CLERK: Thank you, sir. Have a seat.

23 (Pause.)

24 THE COURT: All right. Yes, sir.

25 MR. WELBORN: Your Honor, may I approach my client

H. GALLOWAY -- DIRECT BY MR. WELBORN

1 and show him something?

2 THE COURT: Sure.

3 (Pause.)

4 MR. WELBORN: May it please the court?

5 THE COURT: Yes, sir.

6 MR. WELBORN: May I question my client?

7 THE COURT: Sure.

8 **DIRECT EXAMINATION BY MR. WELBORN:**

9 Q. Mr. Galloway, you are Henry Galloway?

10 A. Yes, sir.

11 Q. Mr. Galloway, you are currently incarcerated
12 based upon being found guilty of safecracking and
13 burglary second degree; is that correct?

14 A. Yes, sir.

15 Q. I believe you're serving a -- a 15 year
16 concurrent serve sentence on each one; is that correct?

17 A. Yes, sir.

18 Q. Now, let's talk about what you've alleged in
19 your application for post conviction relief. You first
20 of all allege that there was a failure to present
21 favorable witnesses at trial, that your lawyer failed
22 to do that. Tell the court what favorable witnesses he
23 should have presented at trial that would have helped
24 your case.

25 A. Well, when I first -- when I talked to Mr.

H. GALLOWAY -- DIRECT BY MR. WELBORN

1 Angell, when he was first present to me for being my
2 lawyer, I told him about the guy that worked for Moon's
3 Tiles, which his name is James Grey, that worked for
4 Moon's Tiles, the guy that actually had me to be there,
5 who came there --

6 Q. Stop one moment. Moon's Tile was where you
7 allegedly broke in; is that correct?

8 A. Yes, sir.

9 Q. For the judge's understanding.

10 A. Yes.

11 Q. Thank you. Go ahead.

12 A. But it's the guy that works there, that
13 actually had me to be on there with him. Mr. Angell
14 said that he was going to contact and talk with this
15 guy, but he never did. He never contact; he never
16 called the guy to be in court for a witness or
17 anything.

18 Q. Let's talk about that a little bit. What was
19 this fellow, what would he have said?

20 A. I don't know what he would have said, but he
21 said he was going to talk to him.

22 Q. So you don't know if he would have been
23 favorable or not is what you're saying?

24 A. From my understanding, he would have been.

25 Q. What was your understanding of what he would

1 have said?

2 A. Once he got here, I couldn't tell you exactly
3 what he would have said, but he would have come to
4 court if Mr. Angell had did what he said he was going
5 to do.

6 Q. All right. The next thing you allege is there
7 was a failure to consult a safecracking expert. Now,
8 tell the court why you need to have a safecracking
9 expert?

10 A. Well, for one, they were proving me of being
11 safe -- they said I took a knife and opened a safe. In
12 my transcript, it states that I was only in there a
13 minute or two. So in a minute or two, ain't no way in
14 the world that anybody can crack a safe in a minute or
15 two. So they said that I used a knife. Then they got
16 -- they said I had a key, so they confused on what --
17 who had what or what was there.

18 Q. So what would a safecracking expert have
19 shown?

20 A. They would have shown them that a knife, if
21 they claims that I had --

22 MR. WHITMIRE: Objection, hearsay.

23 A. -- were not --

24 THE COURT: Hold on a second. Yes, sir.

25 MR. WHITMIRE: It's an objection to hearsay.

H. GALLOWAY -- DIRECT BY MR. WELBORN

1 THE COURT: Well, overruled. I'll allow it.

2 BY MR. WELBORN:

3 Q. Go ahead and answer the question. What would
4 a safecracking expert have said?

5 A. They would have showed -- the expert would
6 have showed that that knife, or whatever they said that
7 I had, would not have been the thing that would have
8 opened a safe.

9 Q. Did you talk to your lawyer about hiring a
10 safecracking expert?

11 A. No, sir. I really didn't, no, sir.

12 Q. All right. You also allege that he failed --
13 that your lawyer failed to request a mere presence jury
14 charge. Now, just so the court understands this, and
15 I'm not trying to say this in an unfavorable way, but
16 you were found inside a building at two a.m.; isn't
17 that correct?

18 A. Yes, sir.

19 Q. And that was the building for which you were
20 convicted of the safecracking and the burglary second;
21 is that correct?

22 A. Yes, sir.

23 Q. Now, tell the court why a mere presence would
24 have been an appropriate charge if this happened at two
25 in the morning?

H. GALLOWAY -- DIRECT BY MR. WELBORN

1 A. Well, for one like I said, if we go back to
2 Mr. James Grey. Mr. James Grey had me to have been
3 there to help him to load up a truck with sand and some
4 tile that they was using to work at Clemson University,
5 which they was laying tile at night time at Clemson
6 University because of all the students and the traffic
7 during the day, and they couldn't get things done the
8 way they wanted, so they were working at night. That
9 was the only reason that I was even there.

10 Q. Let me get this straight for the court to
11 understand it. You're telling me you were there doing
12 work at two a.m. at night at Moon's Brothers Tile?

13 A. It -- it wasn't actually two a.m. at that
14 time.

15 Q. Well, you were there in the middle of the
16 night?

17 A. Yeah, yes, I was there.

18 Q. And you were there to do work?

19 A. Yes, sir.

20 Q. Who hired you?

21 A. Mr. James Grey.

22 Q. And who was he again?

23 A. An employee for Moon's Tiles.

24 Q. All right. So your lawyer should have talked
25 with him about if you were just being there to go to

1 work?

2 A. Yes, sir.

3 Q. Thank you. Now, you also allege that your
4 lawyer failed to actually investigate the case -- be
5 specific about how he didn't investigate the case.

6 A. Okay. Well, for one, they said that -- they
7 got in the transcript that I had a knife. All right.
8 It's no latent fingerprints or DNA contained, none of
9 the stuff belongs to me. Everything that was said
10 through trial, it was just what I had -- Mr. Galloway
11 had this, Mr. Galloway had that. It wasn't any defense
12 there to say, well, ain't no latent fingerprints, ain't
13 no camera or surveillance to show that Mr. Galloway had
14 this. None of that was shown or told to the jury, so
15 it was just a one way thing.

16 Q. What else could your lawyer have done in
17 investigating this case?

18 A. Well, he would have been there, he would have
19 known they said it was a safe. And all this stuff
20 right here -- actually, when I went in, I wasn't
21 looking for no safe. I wasn't looking for really
22 nothing but the clipboard, but I didn't see no safe in
23 there.

24 Q. Well, let's talk about the clipboard. Why
25 were you there in the middle of the night to get a

1 clipboard?

2 A. Well, they say -- he -- Mr. Grey tell me that
3 they log the trucks in. So when he was putting the
4 last bucket of the sand that was on the truck, he told
5 me to get the clipboard. It was a clipboard that was
6 on the desk. He told me to grab the clipboard.

7 So I goes there to go grab the clipboard, but he
8 know that the people would have been in there. So
9 whatever Mr. -- or Moon's Tiles done had going on, Mr.
10 Grey been part of that, but set me up in -- in the
11 process of me being there, because he was never in
12 camera view. And I seen the cameras, but I never hid
13 my face. I never did nothing. I just went straight
14 there. The camera didn't show me doing nothing else
15 but just go straight in.

16 Q. You were there to be on the job?

17 A. Yes, sir.

18 Q. Okay. And your lawyer should have discovered
19 that in his investigation that you were there lawfully
20 to work?

21 A. Yes.

22 Q. Okay. Now, you also say that your lawyer
23 failed to object to certain comments, including failure
24 to object to the trial judge revoking your bond during
25 the trial. Now, tell the court how that was improper

1 or inadequate defense by your client (ph) to fail to
2 object to revoking the bond during the criminal trial?

3 A. Well, first, we was there -- Mr. Angell told
4 me to not to say anything in court, told me to sit
5 back, and he got this. He said, we'll make it through
6 this. Don't say nothing. Don't even look at the jury.
7 Look straight ahead; so I did so.

8 But when I lean over and tell him, to say let's
9 go back to the two kitchen knives, I say the knife
10 isn't none of mine. Just hold on. I got this. But he
11 never said anything to the jury, to the judge, or
12 nothing. He never even object to none of that. So me
13 and him start to argue a little bit.

14 I told him, I want him off my case. So they
15 goes to the judge's chambers, and they come back, and
16 then the judge revoke my bond; from what he said to the
17 judge, I don't know.

18 Q. All right. Now, you were in the middle of
19 trial, and you were going back to the county jail to
20 come back the next day; is that correct?

21 A. I suppose that's what they said, that I
22 suppose to come back the next day, which I would have
23 came back if I -- if I -- if I was at home.

24 Q. Okay. So you think that the judge, during the
25 middle of this criminal trial, should have let you go

H. GALLOWAY -- DIRECT BY MR. WELBORN

1 home that night without there being a bond on you; is
2 that your position?

3 A. I mean, I paid my bond. I didn't -- I didn't
4 revoke my bond when I was out there on the street. My
5 bond lady I called every week.

6 Q. Okay.

7 A. I came to court.

8 Q. Thank you. Now, you also allege that there's
9 double jeopardy here, that burglary second degree and
10 safecracking is to be considered to be double jeopardy.
11 Tell the court how that's double jeopardy, please, sir.

12 A. Well, first, he couldn't really -- he don't
13 have the evidence to prove me on -- on safecracking.
14 My codefendant received a five year sentence. All I
15 wanted was the same five years that he had. I didn't
16 want safecracking because they didn't have the proof to
17 charge me on the safecracking. And they give me
18 burglary with a 15, and then the safecracking with a
19 15. And my codefendant, the same thing, he get five
20 years.

21 Q. All right. You also allege that the trial
22 judge should have granted a motion for directed
23 verdict. Now, I showed you a transcript a moment ago.
24 And I think you would agree that the motion was made
25 for directed verdict; would you agree with that?

1 A. Yeah. Yeah.

2 Q. Okay.

3 A. I agree with that.

4 Q. Okay. Do you understand that this was taken
5 up on appeal in another way, instead of post conviction
6 relief?

7 A. Yes. Yes.

8 Q. And do you understand that the appeal was
9 upheld of the trial court; do you understand that?

10 A. Yes, sir.

11 Q. Okay. Now, you also said the trial court
12 interjected its personal opinion and stereotyped you.
13 And I think in our discussions earlier today, what you
14 meant by that was that he revoked your bond because
15 he's had other people whose bond he did not revoke, and
16 they left during trial. You felt that somehow you were
17 being stereotyped by that comment?

18 A. Yeah.

19 Q. Correct?

20 A. Yes.

21 Q. Now, the last thing is you allege that Mr.
22 Angell was -- instructed you that you had to go to
23 trial. That -- then you told me there had been a plea
24 offer of five years, you begged him to take it, and he
25 wouldn't take it; said, no, you've got to go to trial.

1 Tell the court about that. What happened with that?

2 A. Well, when I got here, Mr. Angell explain to
3 me that they was going to drop the safecracking and
4 give me the five years. Okay. Dropping the
5 safecracking and give me the five years. But I told
6 him that's what I want, but he said we have to go on to
7 trial. But I found out later that I could have dropped
8 it.

9 Q. Now, how did you find out there was a five
10 year plea offer on this case?

11 A. How did I find out?

12 Q. Yes, sir.

13 A. Because he told me.

14 Q. Let me get this straight. After you were
15 convicted, he told you there was a five year plea
16 offer?

17 A. Not after I got convicted -- I said when I got
18 to court, he said there was a five year -- they were
19 going to offer you five years and drop the
20 safecracking.

21 Q. All right. I -- I want to make sure the judge
22 is understanding and we're communicating. Okay.
23 You're telling the court, Mr. Angell said there was a
24 five year offer on -- would that be everything?

25 A. I guess so. I guess it would just been

1 burglary if they're going to drop the safecracking.

2 Q. Okay. And that you told him to take that
3 deal. And he didn't. He said, no, we've got to try
4 this case; is that it?

5 A. He said it's too late. We can't drop it now.
6 We got to go on with this case.

7 Q. Thank you.

8 A. Yes, sir.

9 Q. Answer anything opposing counsel may have,
10 please.

11 **CROSS EXAMINATION BY MR. WHITMIRE:**

12 Q. Good afternoon, Mr. Galloway.

13 A. Good afternoon.

14 Q. Mr. Galloway, how many times did you meet with
15 your attorney prior to trial?

16 A. I met with him once when I first got him and
17 four days before my trial.

18 Q. So just twice?

19 A. Yes.

20 Q. Did you talk to him over the phone at all?

21 A. Did I talk to him over the what now?

22 Q. The phone.

23 A. Oh, yeah, yeah. We -- we -- I talked to him
24 on the phone.

25 Q. And you were on bond; is that correct?

H. GALLOWAY -- CROSS BY MR. WHITMIRE

1 A. I was on bond.

2 Q. Did you explain to Mr. Angell your version of
3 the facts that led to your arrest?

4 A. Can I do what now?

5 Q. Did you explain to Mr. Angell your version of
6 the facts?

7 A. Of my arrest?

8 Q. Uh-huh.

9 A. Yeah.

10 Q. So he knew about -- is it Mr. James Grey?

11 A. Yeah.

12 Q. Did he discuss the State's evidence with you
13 at all?

14 A. All he said -- he just said that they got you
15 on video -- okay, which I can understand. I understand
16 the video. I seen the video.

17 Q. So you did view the video?

18 A. He -- he view me four days before my trial.

19 Q. And did you review Mr. Moon's statement?

20 A. I didn't find out about Mr. Moon's statement
21 until we got to court.

22 Q. So counsel never reviewed his statement?

23 A. No, sir.

24 Q. So I take it -- your contention is counsel
25 also didn't review the other victim's statement?

1 A. No, sir.

2 Q. So you learned for the first time Mr. Moon's
3 account of the facts when you got to trial; is that
4 correct?

5 A. Yep.

6 Q. And Mr. Moon claimed that you and your
7 codefendant jimmied the side door; do you recall that?

8 A. Jimmie the what?

9 Q. Jimmied the side door to get inside the
10 building?

11 A. Yeah, that's what they claim.

12 Q. And Mr. Moon also testified that he came in
13 the office where the safe was, popped the light on, and
14 found you by the safe; is that correct?

15 A. No, sir.

16 Q. That's what he testified to?

17 A. That -- yeah, that's what he testified, yes.

18 Q. He testified to the safe being closed prior to
19 you being in that room; is that correct?

20 A. He -- he said he don't know if it was closed,
21 or he don't know if it was opened. It's several parts
22 in the transcript to where he say it was open; he don't
23 remember if it was open, but it was prior to the close
24 -- during the time.

25 Q. But didn't he say he wasn't certain if certain

1 doors were locked, but the safe was shut?

2 A. I don't -- I don't --

3 Q. Well, the record will reflect it. And he
4 caught you with a knife in your hand?

5 A. He say he caught me with a knife, but it never
6 was no knife in my hand.

7 Q. He held you at gunpoint; is that correct?

8 A. Yeah. Yeah, he did do that.

9 Q. And you claimed this was all a big
10 misunderstanding; that you were there to do some work?

11 A. Ah, he asked me what I was doing, and I told
12 him what I was doing.

13 Q. And he still called the police?

14 A. Yeah.

15 Q. So you're willing to enter a five year guilty
16 plea to a crime you never committed; is that what
17 you're saying?

18 A. The burglary -- I meant -- hey, I was there.
19 I can't deny the burglary. Yes, I did go in there.
20 But for the safe, I did not mess with no safe. I
21 didn't see a safe.

22 Q. And so you did enter --

23 A. Yes, I did --

24 Q. -- Moon's Tile Store with the intent to -- to
25 rob; is that correct?

1 A. No. I did not attempt to rob it. I was there
2 to work.

3 Q. So then you -- you wouldn't be guilty of
4 burglary?

5 A. Well, I mean, that's what they got me -- I
6 mean, I was there. So if I enter in a building, and
7 they call it burglary, so I meant that's what it's
8 going to be.

9 Q. Didn't Mr. Angell explain the elements of
10 burglary 2nd degree violent to you?

11 A. Did he explain it to me, second degree
12 violent? No, he wouldn't -- it would have been non
13 violent.

14 Q. Did he explain the elements of safecracking to
15 you prior to trial?

16 A. No, sir.

17 Q. And is it correct that you have a conviction
18 for burglary, 1996?

19 A. Yes.

20 Q. Did you plead guilty to that, or did you go to
21 trial?

22 A. No. I went straight on and plead guilty to
23 it.

24 Q. Who was your attorney then; do you recall?

25 A. I don't -- no, I think I represented myself at

1 that time.

2 Q. So -- but it was your decision to enter that
3 plea?

4 A. Yes. I told the judge I don't think I need an
5 attorney.

6 Q. So although you did that 15 years prior, Mr.
7 Angell told you that you had to go to trial and you
8 believed him?

9 A. Well, he said I couldn't drop it.

10 Q. Drop the charge?

11 A. Yeah, he's the attorney, so.

12 MR. WHITMIRE: I beg the court's indulgence.

13 (Pause.)

14 MR. WHITMIRE: Nothing further, Your Honor.

15 THE COURT: Do you have any redirect?

16 MR. WELBORN: No, Your Honor.

17 THE COURT: All right. Thank you, sir. You can
18 step down.

19 MR. WELBORN: That's our case, Your Honor.

20 THE COURT: All right. Yes, sir.

21 MR. WHITMIRE: May it please the court, the
22 respondent calls Mr. Angell to testify.

23 THE COURT: All right.

24 THE CLERK: Right here, please, sir. Raise your
25 right hand.

1 AARON J. ANGELL, having been
2 first duly sworn, testified as follows:

3 THE CLERK: If you would take the witness stand,
4 and state your name and spell your last name for the
5 record, please.

6 THE WITNESS: Aaron Joseph Angell, A-n-g-e-l-l.

7 **DIRECT EXAMINATION BY MR. WHITMIRE:**

8 Q. Good afternoon, Mr. Angell. What is your main
9 area of practice?

10 A. Criminal defense.

11 Q. When were you appointed to represent Mr.
12 Galloway?

13 A. I believe it was in March of 2011, but let me
14 -- I can look.

15 Q. Have you reviewed your file in anticipate --
16 in anticipation of today?

17 A. I have.

18 Q. Do you have it with you?

19 A. Yes.

20 Q. Briefly detail your standard procedures when
21 you first get a case?

22 A. The first thing that I do is create a letter
23 of representation; a discovery motion; Rule 5
24 certificate of service, and send that out to the court,
25 as well as the Solicitor's Office, and keep a copy for

1 my file. And then at some point, depending on where my
2 client is, whether they're incarcerated or they're out
3 on bond, I set up a meeting and an initial interview to
4 kind of get a synopsis of their take on the -- in the
5 facts are -- at least get their side of the story. And
6 keep them involved -- as you know -- a criminal case
7 sometimes can go a year, two years, three years, and so
8 it's -- I do that initially. That's -- that's the
9 standard protocol for me.

10 Q. How many times did you meet with Mr. Galloway
11 prior to trial?

12 A. I would say I've got at least four records
13 here of meeting with him personally, and several phone
14 calls that I've -- that we had throughout the course,
15 over a year or two of representation.

16 Q. Do you recall Mr. Galloway's version of the
17 facts of his arrest?

18 A. Do I recall them?

19 Q. Yes.

20 A. I do, yes.

21 Q. And what were they?

22 A. What -- what was his version?

23 Q. Uh-huh.

24 A. Ah, from what he had told me basically, he was
25 going to get some money off of a table that some guy

1 had told him to get. And that it was sitting there,
2 and he was just going in there to get it. And that was
3 -- that was his version of the facts to me.

4 Q. Did he -- tell you about this witness, James
5 Greg, that he wanted you to interview?

6 A. To be honest, I don't recall that at all. But
7 I -- I don't recall that -- remember him telling me
8 that, but it's -- it's been a while. I don't remember
9 that guy.

10 Q. Would your file reflected it had he requested
11 it?

12 A. Yes, it would have.

13 Q. Did he ask you to investigate any potential
14 trial witnesses?

15 A. No, he didn't. I -- I -- I did go to the
16 scene, though, and investigate before trial, the actual
17 location so I could get an idea of, you know, the
18 perimeters of the building, et cetera.

19 Q. What was your impression of the State's
20 evidence against Mr. Galloway?

21 A. I -- I thought it was strong. I think that
22 they had, you know, eye -- two eye witnesses and it was
23 on video, so I certainly thought that they had a very
24 strong case against Mr. Galloway.

25 Q. At what point, during the course of the

1 representation, did Mr. Galloway bond out?

2 A. I think he -- he was out about the time I got
3 appointed, I believe. I don't remember meeting with
4 him in jail before at any point. I think we met in my
5 office -- I know we met in my office, but the initial
6 meeting was in my office as well. So I think he was
7 out on bond by the time I got appointed to him.

8 Q. Did you follow his codefendant's case?

9 A. I did not, but I know the outcome. I knew he
10 had a codefendant that pled.

11 Q. Briefly discuss or describe the plea
12 negotiations in this case?

13 A. In regard to this case, it had -- it started
14 with Catherine Huey. She was the first Solicitor on
15 the case, and she offered five years to burglary second
16 violent; and to dismiss the safecracking. It's my
17 understanding that's what the codefendant ended up
18 ultimately pleading to as well. I advised Mr. Galloway
19 on several occasions that I thought he should take the
20 offer.

21 And then the Solicitor transferred to Josh
22 Allen, and I guess it was reassigned to Josh Allen to
23 take it over, where the offer was renewed. And I told
24 Mr. Galloway that -- that, you know, it was the final
25 offer. And that once -- once we went to trial, and had

1 a jury selected, that the State had no burden or had no
2 responsibility to bring the offer back up, and it was
3 too late at that point. And we had tried to -- or I
4 had tried to -- to convince Mr. Galloway that that was
5 the smarter decision, to take the offer, so. And at
6 trial, it was too late.

7 Q. Were you able to formulate a defense strategy
8 or a theory of defense early on?

9 A. It's -- yeah, I mean, I understand what he's
10 saying with safecracking. I don't think that, you
11 know, -- I don't know that -- the State's evidence was
12 strong on that one. I thought that was something that
13 was kind of loose, so I knew that we could attack the
14 lack of evidence and conflicting -- possibly
15 conflicting statements or confusing statements by the
16 eye witnesses.

17 As to the burglary second, it was -- it was -- I
18 was -- our strategy was to go to the intent, because I
19 didn't want to -- I mean, when it was on video and the
20 jury saw it, I didn't want to say he wasn't there; so
21 we argued that he didn't have any intent to commit a
22 crime. He was just going in there to get \$100 or an
23 amount of cash out of a drawer, so that was -- that was
24 really the strategy that we had.

25 Q. And there was a tape recording of Mr.

1 Galloway's commission of this offense?

2 A. A video, yeah. There was a video.

3 Q. Do you recall the circumstances that led to
4 the victims staking out their own store at two a.m.?

5 A. To my understanding, they've had break-ins,
6 and that's what prompted this stake-out, if you will,
7 before. And as I recall, I think this was the first
8 night that they staked out -- maybe the second -- but
9 they were -- they were lying in waiting, and armed.

10 Q. Did you discuss Mr. Galloway's exposure he was
11 looking at on both of these charges?

12 A. Yes.

13 Q. And the elements of the offenses?

14 A. Yes.

15 Q. He still did not want to take the guilty plea?

16 A. Correct.

17 Q. Now, going to trial, did he ask you to
18 investigate any other line of defenses, any witnesses
19 for your case?

20 A. No.

21 Q. Did you discuss hand of one with them?

22 A. Yes.

23 Q. He brings some allegations today regarding, I
24 believe, mere presence as a charge; was that applicable
25 in this case?

A. ANGELL -- CROSS BY MR. WELBORN

1 A. I didn't believe, in my opinion, that it was.

2 Q. Did you see a potential double jeopardy issue?

3 A. I did not.

4 Q. Do you recall the circumstances of Mr.
5 Galloway's bond being revoked during the middle of
6 trial?

7 A. I do. The judge -- I believe that was when we
8 had gone back to chambers, directed that that's typical
9 protocol in a case such as this. And I -- he knew that
10 Mr. Galloway didn't want bond revoked. I told that
11 that was my client's wishes. I did not object to it,
12 and so the Judge did what he did. He has the
13 discretion and authority to do that, so he revoked it.

14 Q. Did you try this case to the best of your
15 ability?

16 A. I sure did.

17 MR. WHITMIRE: I beg the court's indulgence.

18 THE COURT: Yes, sir.

19 MR. WHITMIRE: No further questions. Thank you,
20 Mr. Angell. Please answer any questions that Mr.
21 Welborn has for you.

22 THE COURT: Yes, sir.

23 **CROSS EXAMINATION BY MR. WELBORN:**

24 Q. Mr. Angell, who all did you interview, the
25 favorable witnesses for my client besides him?

A. ANGELL -- CROSS BY MR. WELBORN

1 A. I didn't.

2 Q. Did he give you any names?

3 A. I don't recall the name of that individual,
4 but I knew that there was a guy that he had said that
5 told him where some money was. I don't recall the
6 name. I don't remember that individual specifically,
7 but I did not talk with him.

8 Q. He didn't give you the name or address of that
9 individual?

10 A. Not -- not that I recall, no.

11 Q. He says you should have had a safecracking
12 expert; why did you not get one?

13 A. Well, I thought that was something that --
14 first of all, I -- he never told me that. I didn't --
15 I didn't think to do that and that was never requested
16 by me, and I thought --

17 Q. Do you think that would have changed the
18 outcome of the trial if there had been some expert to
19 testify about how safes are cracked and opened?

20 A. Yeah, I don't think that would have helped
21 with the actual -- with the jury deciding on that. I
22 don't think a safecracking expert would have had
23 anything to do with the jury knowing how to get into a
24 safe. I don't think that would have helped at all.

25 Q. Now, if he was there working, as he just

1 testified, wouldn't mere presence be an appropriate
2 request for a jury charge?

3 A. I -- I -- I reckon so, but that wasn't -- that
4 wasn't what we were -- what he told me he was doing.

5 Q. What did he tell you, you were doing -- he was
6 doing?

7 A. He said he was going in to go get some money
8 for a buddy, to go get it, not that he was working or
9 doing any employment. That wasn't -- I never heard
10 working, that he was doing any type of job, for a
11 legitimate purpose.

12 Q. Did you say you went out to the crime scene?

13 A. I did.

14 Q. And you investigated out there, the layout of
15 the land so-to-speak, and sort of made sure you
16 understood where everything was?

17 A. That's correct.

18 Q. Did he give you any other witnesses' names for
19 you to interview or investigate?

20 A. None.

21 MR. WELBORN: Thank you.

22 THE COURT: Anything on redirect?

23 MR. WHITMIRE: Nothing further, Your Honor. The
24 respondent rests. I just ask that Mr. Angell be
25 excused from his subpoena.

1 THE COURT: All right. Thank you. Any objection?

2 MR. WELBORN: No objection.

3 THE COURT: Okay. Thank you, sir. Okay.

4 Anything else?

5 MR. WELBORN: No, Your Honor.

6 THE COURT: All right. From the State?

7 MR. WHITMIRE: Nothing, Your Honor.

8 THE COURT: All right. I'll look through this and
9 let you know something. You'll be here tomorrow?

10 MR. WHITMIRE: Yes, Your Honor.

11 THE COURT: I'll let y'all know tomorrow. Sir,
12 I'm going to take it under advisement, to read your
13 documents; okay?

14 THE DEFENDANT: Okay..

15 THE COURT: Thank you, sir.

16 THE DEFENDANT: Thank you.

17 MR. WELBORN: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. WHITMIRE: Thank you, Judge.

20 (Whereupon, the hearing adjourned.)

21

22 **END OF TRANSCRIPT**

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS ON THE 18TH OF FEBRUARY, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

9.29.15

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Henry Galloway,
S.C.D.C. No. 236967,

Applicant,

Richard M. Kirby
CLERK OF COURT

v.

State of South Carolina,

Respondent.

A TRUE COPY

JUL 16 2015

C.A. No. 2013-CP-04-1628

**ORDER OF DISMISSAL
(with prejudice)**

COMMON PLEAS AND
GENERAL SESSIONS

2015 JUL 16 AM 10:02

FILED-CLERK'S OFFICE
ANDERSON SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 9, 2013. Respondent filed its responsive pleadings. An evidentiary hearing into the matter was convened on February 18, 2014 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the December 2010 term of the Anderson County Grand Jury for burglary, second-degree violent (2010-GS-04-2543) and burglary/safecracking (2010-GS-04-2544). Applicant was represented by Aaron Angel, Esq. On March 12, 2012, the State called its case to trial. Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh and was found guilty as indicted. Applicant was sentenced to fifteen (15) years imprisonment for burglary, second-degree, and fifteen (15) years imprisonment for burglary/safecracking. The sentences were to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Robert Pachak, Esq., of the Office of Appellate Defense pursuant to Anders v. California. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Henry Galloway Jr., No. 2012-UP-103 (S.C. Ct. App. filed on March 13, 2013). The Remittitur was issued on April 5, 2013.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. failure to interview Henry Gates as a potential trial witness;
 - b. failure to consult an expert in safe cracking;
 - c. failure to investigate the State's lack of forensic evidence limited to fingerprints and D.N.A.;
 - d. failure to inform Applicant of the State's plea offer;
 - e. failure to object to the Trial Judge's decision to revoke Applicant's bond;
 - f. failure to continue the representation when Applicant instructed counsel that he desired to have counsel relieved during the middle of trial;
 - g. failure to make a directed verdict motion;
 - h. failure to make a double jeopardy motion;
 - i. failure to request a jury instruction on mere presence.

SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED

(a) Applicant's testimony

Applicant alleged counsel was ineffective for failing to interview and present the alleged witness "James Grate." Applicant testified that "Grate" was a person he knew that worked at Moon Tower. He further stated that "Grate" hired him on a project that involved laying tile at night in Clemson. He testified that "Grate" would have testified at Applicant's trial that he directed Applicant to enter the victims' store at 2 a.m. to retrieve a work document. Applicant acknowledged that he was aware video surveillance captured him and his co-defendant using a knife to break into the store's side door. He now testified that the knife did not belong to him. Applicant also testified counsel was ineffective for failing to consult an expert in "safe-

cracking." He speculated that an expert would have proven that he did not have the tools to break into the safe during the time the victims placed him in the room with the safe. He testified that he only met with counsel once prior to trial. He claimed counsel never reviewed victim statements with him. Last, he alleged counsel was ineffective for failing to investigate the State's lack of D.N.A. or fingerprint evidence.

Applicant alleged counsel was ineffective for failing to properly advise Applicant on the terms of the solicitor's plea offer. He testified that he would have accepted the offer that included an aggregate term of five years imprisonment had he known the solicitor agreed to nol prose the safe cracking charge. He stated that by the time counsel apprised him of the necessary information, the offer had terminated.

Applicant alleged counsel was ineffective for failing to object to the trial judge's order to revoke Applicant's bond after the first day of the trial. He testified that the trial judge improperly stereotyped him with an inmate in a prior trial that absconded in the middle of the trial. Applicant explained his displeasure with counsel at this juncture. Applicant alleged counsel was ineffective for not relieving himself during the middle of trial.

Applicant alleged counsel was ineffective for failing to make a double jeopardy argument at trial. Applicant testified that he was under the opinion that his constitutional rights had been violated here when the State simultaneously pursued both burglary, second-degree, and safecracking charges at trial. Applicant alleged counsel was ineffective for failing to request a jury instruction on mere presence. Last, Applicant alleged counsel was ineffective for failing to make directed verdict motions despite being informed counsel had in fact made the motions in question.

(b) Counsel's testimony

Counsel testified to his course of conduct during the representation. Counsel's primary area of practice is criminal law. Upon counsel's appointment on Applicant's case, he filed a letter of representation, scheduled his first consultation with Applicant among other things. Applicant's version of the facts that led to his arrest was that he entered the store to get money. Applicant's entry into the store was rendered unlawful where he did not have a legitimate purpose for being on the property. Applicant did not request counsel interview any witnesses prior to trial. Counsel reasoned that based upon Applicant's version of the facts and the circumstances of the case, a request that the trial judge instruct the jury on "mere presence" completely lacked merit. As the case progressed, counsel met with Applicant numerous times, independently investigated the State's evidence when he received discovery disclosures, apprised Applicant of the State's evidence and developments in the case, visited the crime scene, and followed development in the co-defendant's case. Counsel was unequivocal that Applicant never mentioned the alleged beneficial witness "Grate" during the course of his representation. Nor did Applicant explain his "current" the version of the facts that he adopted for this hearing to counsel. Counsel reasoned that an expert in the field of safecracking would have not been particularly useful in the context of the victims' statements and testimonies.

As a result of the above mentioned efforts made by counsel, it was his opinion that State had complied overwhelming evidence of Applicant's guilt. Counsel explained that burglary, second-degree, charge was not even in dispute. He further explained that the safecracking charge turned on whether the jury found the victim Randall Moon's statement and subsequent trial testimony credible. He apprised Applicant of the strength of the State's case and advised him to pursue favorable guilty plea negotiations. When the original solicitor on the case made the plea offer, counsel conveyed it to Applicant and benefits and detriments of entering a guilty plea.

Counsel advised Applicant on the matter. Furthermore, counsel cautioned Applicant that the solicitor had full discretion to revoke the offer.

Counsel believed an objection to the trial judge's decision to not renew Applicant's bond to be wholly unmerited and reasoned that the trial judge's posture was prototypical for a circuit court judge presiding over a multi-day general sessions trial. Counsel made directed verdict motions at the end of trial but was of the opinion that the trial judge properly denied the motions. Last, counsel explained that a double jeopardy argument here was wholly without merit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's action is lacking in credibility as a matter of global concern. Applicant makes numerous allegations that are entirely supported by his incredible testimony. The State's case against Applicant was simple and straight forward. Applicant found himself in a grave predicament to the common burglar: he got caught in the heist. This Court notes that Applicant makes numerous allegations that counsel failed to investigate matters that would have presumably been instrumental in contesting guilt; yet Applicant also opines that he would have accepted a plea. He simply cannot have it both ways. See State v. Barnes, Op No. No. 2014-001966 (S.C. Ct. filed July 1, 2015) (Toal, C.J. dissenting) (Respondent's conduct here should be examined for what it is: an effort to manipulate the system and pollute the administration of justice). Furthermore, this Court finds Applicant's other

allegations constitute one frivolity layered upon additional frivolity. In comparison, this Court finds counsel's testimony to be compelling. His testimony was the product of clear diligence and preparation as it evidenced his full attention to the PCR process. This Court finds counsel's PCR testimony further evidenced the competency of his representation concerning the allegations at issue.

EFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use 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, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

A.

This Court finds Applicant entirely failed to meet his burden of proof, let alone his burden of production on the following three allegations: (a) ineffective assistance of counsel -- failure to interview Henry Gates as a potential trial witness; (b) ineffective assistance of counsel -- failure to consult an expert in safe cracking; ineffective assistance of counsel; (c) ineffective assistance of counsel -- failure to investigate the State's lack of forensic evidence limited to fingerprints and D.N.A.

This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citation omitted).

This Court finds counsel's testimony dispositive. Regardless, Applicant has failed to produce any relevant and credible testimony or evidence concerning these three allegations. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result"). Therefore, these allegations is readily denied and dismissed with prejudice.

B.

This Court finds Applicant has failed to meet his burden to prove: (d) ineffective assistance of counsel -- failure to inform Applicant of the State's plea offer.

“The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to “all ‘critical’ stages of the criminal proceedings.” Missouri v. Frye, --- U.S. ---, ---, 132 S.Ct. 1399, 1402 (2012). “The question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser sentence, a conviction on lesser charges, or both.” Id., --- U.S. at ---, 132 S.Ct. at 1408.

In light of counsel’s compelling testimony that he informed Applicant of the offer and advised Applicant on its terms and conditions among others things, Applicant has produced no credible evidence in rebuttal. This Court notes that Applicant’s current post-hoc PCR representations appear to be the product of buyer’s remorse post the return of the guilty verdicts. In light of this Court’s credibility finding, further analysis is unnecessary. Therefore, this allegation is denied and dismissed with prejudice.

C.

This Court finds Applicant’s allegation (e) ineffective assistance of counsel -- failure to object to the Trial Judge’s decision to revoke Applicant’s bond is entirely without merit. Judge McIntosh made a sound pre-trial ruling that as a matter of course is virtually per se unchallengeable on either direct appeal or in this forum. Counsel is simply under no duty to make futile objections. Therefore, this allegation is denied and dismissed with prejudice.

Similarly, this Court finds Applicant’s allegation (f) ineffective assistance of counsel -- failure to continue the representation when Applicant instructed counsel that he desired to have counsel relieved during the middle of trial is without merit.

This Court finds that Applicant had no valid basis to even make a prima facie showing that a motion to have counsel relieved held merit. Far too commonly seen in this forum,

applicant's proceed on the general on this general allegation in light of adverse pre-trial ruling. Applicant is entitled to competent representation; yet, that right certainly does not extend to the appointment of an applicant's choosing. Applicant notably did not offer credible testimony or evidence that he wished to proceed pro se at any point during representation. This Court further notes that counsel rendered exceptional representation on the matters currently at issue. Therefore, this allegation is denied and dismissed with prejudice.

D.

This Court finds that Applicant's allegation: (h) ineffective assistance of counsel -- failure to make a double jeopardy objection is without merit.

"Where an act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180 (1932).

This Court agrees with counsel that Applicant's convictions do not constitute a double jeopardy violation. The offenses do not share identical elements. See S.C. Code Ann. § 16-11-312 (2010); See also Gibson v. State, 257 S.C. 230, 233, 185 S.E.2d 373, 374 (1971). Therefore, this allegation is denied and dismissed with prejudice.

This Court summarily rejects Applicant's allegation (g) ineffective assistance of counsel: failure to make a directed verdict motion where the transcript shows that counsel clearly made the objection and preserved the matter for appellate review. See McElvain v. Lewis, 283 F.Supp.2d 1104, 1125 (C.D. Cal. 2003) (There is no ineffectiveness for failure to object where the record shows an objection). Therefore, this allegation is denied and dismissed with prejudice.

This Court finds Applicant failed to meet his burden to prove his allegation: (i) ineffective assistance of counsel – failure to request a jury instruction on mere presence.

The defendant is entitled to a mere presence charge if the evidence supports it. State v. Franklin, 299 S.C. 133, 141, 382 S.E.2d 911, 915 (1989). The failure to charge “mere presence” may constitute reversible error. State v. Lee, 298 S.C. 298, 364, 380 S.E.2d 834, 835 (1989).

‘Mere presence’ is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that a person must personally commit the crime or be present at the scene of the crime intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. Secondly, mere presence is generally an issue where the state attempts to establish the defendant's possession of contraband because the defendant is present where the contraband is found. In such cases, the trial court may be required to charge the jury that the defendant's mere presence near the contraband does not establish possession.

State v. James, 386 S.C. 650, 653-54, 689 S.E.2d 643, 645 (Ct. App. 2010).

This Court finds Applicant failed to show that a mere presence instruction would have called into question the outcome of his trial. This Court agrees with counsel and finds that State's evidence of Applicant's guilt to be overwhelming as he was caught in the act. Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of July, 2015.


 HONORABLE J. CORDELL MADDOX, JR.,
 Presiding Judge
 Tenth Judicial Circuit

Anderson, South Carolina

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 2015 JUL 16 AM 10:02
 COMMON PLEAS AND
 GENERAL SESSIONS

WITNESSES

M W Hurnicutt, Anderson County Sheriff's Dept.

DOCKET NO. 2010-GS-04-02543

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

DEC 14 2010

Term

ARREST WARRANT NUMBER

J899097

THE STATE

VS.

Henry Junior Galloway

COMMITMENT

3/13/12-RT

FOR DEPT. OF CORRECTIONS

DEC 14 2010

Forfeiture

Forfeiture of Grand Jury

Date:

VERDICT

X Galloway

Indictment for

Burglary / Burglary (Violent) (After 06/20/85) -
Second degree

CTH

SC Code: 16-11-0312(B)
CDR Code: 0086

X James G. Phillips
Foreperson of Petit Jury
Date: 3-13-12

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on DEC 14 2010, the Grand Jurors of Anderson County present upon their oath:

Burglary / Burglary (Violent) (After 06/20/85) - Second degree

That Henry Junior Galloway did in Anderson County, on or about **September 24, 2010**, willfully and unlawfully enter Moon Tile, Inc. belonging to Randall Moon located at _____, Andeson, South Carolina, without consent and with the intent to commit a crime therein and did enter the building in the nighttime. This is in violation of 16-11-312(B) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Catherine J. Huay
ASSISTANT SOLICITOR

WITNESSES

M W Hunnicutt, Anderson County Sheriff's Dept

DOCKET NO. 2010-GS-04. 02544

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

DEC 14 2010

Term

ARREST WARRANT NUMBER

J899101

THE STATE

VS.

Henry Junior Galloway

COMMITMENT

3/13/12-RJ

JURY

DEC 14 2010

M W Hunnicutt

Foreperson

Foreperson of Grand Jury

Date:

CTH

Indictment for

VERDICT

X Gault

Burglary / Safecracking

SC Code: 16-11-0390

CDR Code: 0141

X M W Hunnicutt, Anderson County Sheriff's Dept

Foreperson of Petit Jury

Date: 3-13-12

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on DEC 14 2010, the Grand Jurors of Anderson County present upon their oath:

Burglary / Safecracking

That **Henry Junior Galloway** did in Anderson County, on or about **September 24, 2010**, willfully and unlawfully use explosives, tools, or other implements on or about a safe used for keeping money or other valuables located at Anderson, with the intent to commit a larceny or any other crime. This is in violation of §16-11-390 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Catherine J. Hayes
ASSISTANT SOLICITOR