

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Hampton County

Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 2015-UP-564 (S.C. Ct. App. filed Dec. 23, 2015)

2013-GS-25-0433

THE STATE,

RESPONDENT,

V.

TONYA MCALHANEY,

PETITIONER.

A P P E N D I X

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SC SUPREME COURT

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

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

The State, Respondent,

v.

Tonya Mcalhaney, Appellant.

Appellate Case No. 2014-000255

Appeal From Hampton County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2015-UP-564
Submitted October 1, 2015 – Filed December 23, 2015

AFFIRMED

Appellate Defender Tiffany Lorraine Butler, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Megan Harrigan Jameson, both of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 220(c), SCACR (stating an "appellate court may affirm any

ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal"); *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law" (alteration by court) (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))); *State v. Wilson*, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) ("If there is any evidence to support the admission of the bad act evidence, the trial [court's] ruling will not be disturbed on appeal."); *Anderson v. State*, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003) ("Evidence of other crimes is admissible under the res gestae theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case."); *State v. Martucci*, 380 S.C. 232, 258, 669 S.E.2d 598, 612 (Ct. App. 2008) ("Under [the res gestae theory], it is important that the temporal proximity of the prior bad act be closely related to the charged crime."); *State v. McGee*, 408 S.C. 278, 288, 758 S.E.2d 730, 735 (Ct. App. 2014) (holding that when "the uncharged offense is so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without the other . . . [and is thus] part of the res gestae of the crime charged[.]" evidence of the uncharged act is admissible (first and second alterations by court) (quoting *State v. Adams*, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996), *overruled on other grounds by State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014))); *State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006) ("Evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident or intent."); *State v. Benjamin*, 345 S.C. 470, 479-80, 549 S.E.2d 258, 263 (2001) (holding evidence of a defendant's subsequent bad act was admissible to show the defendant's intent during the commission of the charged crime).

AFFIRMED.¹

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

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

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TONYA MCALHANEY,

APPELLANT

APPELLATE CASE NO. 2014-000255

Appeal from Hampton County

Brooks P. Goldsmith, Circuit Court Judge

Opinion No. 2015-UP-564

PETITION FOR REHEARING

On December 23, 2015, this Court affirmed Appellant's conviction and sentence in an unpublished opinion. State v. McAlhaney, Op. No. 2015-UP-564 (S.C. Ct. App. filed Dec. 23, 2015). Pursuant to Rules 221(a) and 240, SCACR, Appellant respectfully requests this Court to rehear the matter based upon the following points that may have been overlooked or misapprehended in the summary opinion.

This Court affirmed the trial court's ruling that the evidence of Appellant's November 24, 2013 burglary was admissible in her trial for the November 23, 2013 burglary and based its holding on the *res gestae* theory. This Court also concluded that the November 24, 2013 burglary was a

subsequent bad act which “was admissible to show the defendant’s intent” during commission of the charged crime.”

The November 24, 2013 burglary was not “so intimately connected with” the November 23, 2013 burglary that its “admission [was] necessary for a full presentation of the case” against Appellant under *res gestae*. Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003). This Court may have overlooked the fact that Appellant’s codefendant, Ricky Sauls, testified against Appellant on behalf of the State. Sauls testified that on November 23, 2014, he and Appellant called Larry Crosby to take them to the CVS in the town of Varnville, South Carolina. R. 156, lines 17 – 23. On the way back, Crosby stopped by 108 Plywood Street to look at a truck that he was supposed to buy from Amanda Brown who resided there. R. 157, lines 1 – 5. Crosby told Sauls and Appellant that he had helped Brown move out of the house and that there were pills inside. R. 157, lines 6 – 9.

Sauls stated that he had been drinking that night but remembered that he, Appellant, and Hair all went inside of the house. R. 158, line 3. He admitted to taking knives and liquor but could not remember whether Appellant took anything. R. 159 – 161. They had been inside the house for ten minutes. R. 165, lines 5 – 7. When they were ready to leave, Sauls called Crosby to come pick them up. R. 165, lines 13 – 23. Sauls explained that it was Crosby’s idea for them to go into the house because pills were in there. R. 166, lines 2 – 23. Sauls did not see Appellant come out with pills, however. R. 166, line 25.

Because of this detailed testimony from Appellant’s codefendant, the November 23, 2013 burglary could be fully shown **without admitting any evidence of the November 24, 2013 burglary**. Nor is the November 24, 2013 burglary so intimately connected with and explanatory of the November 23, 2013 burglary, for which Appellant was on trial.” See State v. McGee, 408 S.C.

278, 287, 758 S.E.2d 730, 735 (Ct. App. 2014) (“One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnished **part of the context of the crime or is necessary to a full presentation of the case**, or is so intimately connected with and explanatory of the crime charged against the defendant.”)(emphasis added).

“Nonetheless, evidence considered for admission under the *res gestae* theory must satisfy the requirements of Rule 403 of the South Carolina Rules of Evidence.” State v. Dennis, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013). Under Rule 403, SCRE, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time or needless presentation of cumulative evidence. Hearing that Appellant was arrested inside of the same house for which she was on trial for burglarizing, **without a limiting instruction from the judge**, allowed the jury to make the impermissible inference that because Appellant committed the burglary on November 24th, she committed the burglary on November 23rd. Because this evidence was admitted, Appellant was unfairly prejudiced.

Citing State v. Benjamin, 345 S.C. 470, 479-80, 549 S.E.2d 258, 263 (2001), this Court wrote that “evidence of a defendant’s subsequent bad act was admissible to show the defendant’s intent during the commission of the charged crime.” The subsequent bad act in Benjamin was the armed robbery of a convenience store. Id. The weapon recovered from the convenience store was the same weapon used in a robbery and murder which occurred “several hours” earlier at another convenience store. Id.

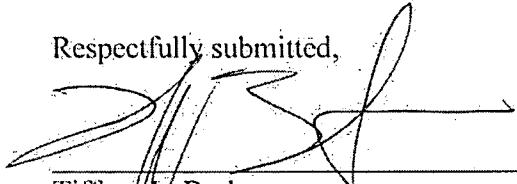
At trial, Benjamin asserted the defense of duress, arguing that he feared his codefendant would harm him if he did not participate in the robberies. Id. at 479, 549 S.E.2d at 263. The State presented testimony of the store clerk from the subsequent robbery. The clerk identified Benjamin

as one of the robbers who screamed at her when she tried to run away. Id. The Supreme Court found that testimony concerning the subsequent robbery was properly admitted to demonstrate Benjamin's intent to commit the earlier robbery, which was inconsistent with his defense of duress. Id. at 479-80, 549 S.E.2d at 263.

Appellant's case is readily distinguishable from Benjamin as she did not assert the defense of duress. Further, Appellant held the State to its burden of proof and did not testify.

For the reasons argued above, Appellant respectfully requests this Court to rehear this matter based upon the points that may have been overlooked or misapprehended concerning the admissibility of the November 24, 2013 burglary under the *res gestae* theory and as a subsequent bad act to show Appellant's intent to commit the burglary on November 23, 2013.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

This 7th day of January, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

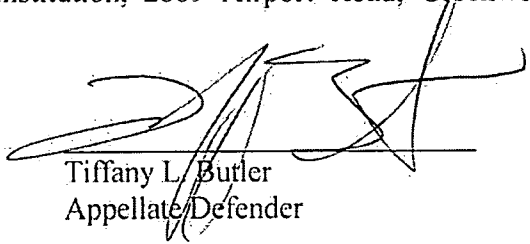
V.

TONYA MCALHANEY,

APPELLANT

CERTIFICATE OF SERVICE

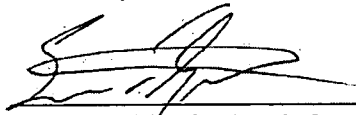
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Ms. Tonya Mcalhaney #358721, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 7th day of January, 2016.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 7th day
of January, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

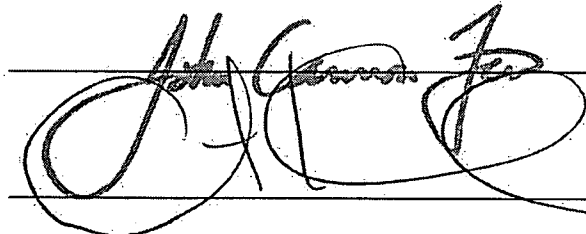
v.

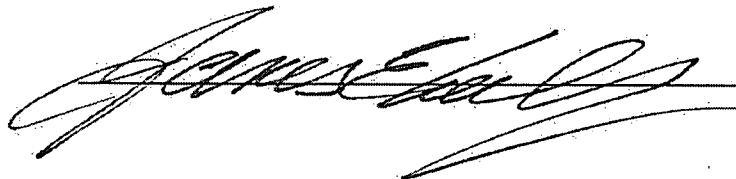
Tonya Mcalhaney, Appellant.

Appellate Case No. 2014-000255

ORDER

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

 C.J.
J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire

Tiffany Lorraine Butler, Esquire

Megan Harrigan Jameson, Esquire

Isaac McDuffie Stone, III, Esquire

The Honorable Brooks P. Goldsmith

FILED

February 19, 2016

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HAMPTON COUNTY

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TONYA MCALHANEY,

APPELLANT

APPELLATE CASE NO. 2014-000255

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STATE OF SOUTH CAROLINA
VS.
TRAVIS HAIR and
TONYA MCALHANEY,
DEFENDANTS.

VOLUME 1 OF 2

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EXHIBITS

[None]

State v. McAlhaney & Hair
Jury Qualification
February 2, 2014

JURY QUALIFICATION

THE COURT: We're going to try our best to minimize the inconvenience that we are causing each of you.

Our purpose this afternoon is to determine your qualifications and your eligibility to serve as jurors. It's a two-step process. You've already gone through the first part of it, which is called a roll call. The second part requires me to ask you questions to determine your qualification and your eligibility to serve as jurors.

For the most part, most of you won't be required to respond to any of these questions, for the most part. If you are -- if you need to respond to the question, though, I'll ask you to please stand, take a deep breath, and try to speak distinctly, give us your name, juror number, and then tell us why you stood. Once again, for the most part, most of you won't be required to do anything.

As to a couple of the questions, a couple of you may find the questions to be personal and you may prefer not to answer the question in front of everybody in the courtroom. And if that's the way you feel, that's fine. Just let me know. Just tell me you had rather answer it later and after all of the

State v. McAlhane & Hair
Jury Qualification
February 2, 2014

1 questioning is done, we'll give you an opportunity to
2 come down front and we'll speak about it in a little
3 more private manner.

4 But, once again, most of you won't be required
5 to do anything. For instance, the first question: is
6 there any member of the jury panel who is not a
7 citizen of the United States of America? If so,
8 please stand.

9 [Whereupon, there is no response]

10 THE COURT: Is any member of the jury panel not
11 a resident and citizen of Hampton County, South
12 Carolina? If so, please stand.

13 [Whereupon, there is no response]

14 THE COURT: Is any member of the jury panel
15 unable to read, write, speak, or understand the
16 English language? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: Does any member of the jury panel
19 have less than a sixty-grade education or its
20 equivalent? If so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: Is any member of the jury panel
23 unable, because of a mental or physical infirmity, to
24 render efficient jury service this week? For example,
25 does any member of the jury panel have a medical

State v. McAlhaney & Hair
Jury Qualification
February 2, 2014

1 condition that would interfere with your ability to
2 serve on jury duty?

3 And before everybody stands, let me -- that's
4 okay. That's okay. But what I wanted to say is that
5 we -- you know, we normally start at 9:00 or 9:30 and
6 work until five o'clock or so, depending on what's
7 going on. I try to take a break every hour and a half
8 or so. And so some people who, for instance, have
9 back problems, routinely state that they can't sit for
10 long periods of time. And I routinely tell them that
11 if anybody needs to take a break, just raise their
12 hand and let me know and we'll take a break. For any
13 reason, not just because you might have a back
14 condition.

15 I also tell people this oftentimes that if I
16 need to take a personal break, all I do is just say,
17 ladies and gentlemen, we're going to take a break.
18 But all you have to do is raise your hand and let me
19 know.

20 Now, back to my question. Does anyone have a
21 medical condition that would interfere with your
22 ability to serve on jury duty this week? If so,
23 please stand.

24 And give us your name and number. Yes, ma'am?

25 MS. FARRIS: I have sciatic nerve damage.

State v. McAlhane & Hair
Jury Qualification
February 2, 2014

1 THE COURT: Hang on -- I need your name and
2 number, though, first.

3 MS. FARRIS: Number 62. Sharon Farris.

4 THE COURT: All right. And tell me that again.
5 You have what?

6 MS. FARRIS: I have sciatic -- I have nerve
7 damage on my left side. I can't sit too long or stand
8 too long. They've got me on medication for it but it
9 doesn't help, you know, a whole lot.

10 THE COURT: And I wasn't here for the roll call.
11 Are you employed anywhere?

12 MS. FARRIS: No, sir. I'm a stay-at-home -- I'm
13 a stay-at-home mom.

14 THE COURT: Now, the issue you were telling me
15 about with your back, does it help if you can stand
16 up, like you're doing now, to relieve the pressure?

17 MS. FARRIS: Yes, sir.

18 THE COURT: Well, earlier, or a few moments ago,
19 I indicated that if you or anyone else did need to
20 take a break at any time that, really, all you had to
21 do is raise your hand. What about that? Could you
22 serve on jury duty if you could have a break I'm going
23 to say basically anytime you wanted to have a break?

24 MS. FARRIS: About every twenty minutes. Yes,
25 sir.

State v. McAlhaney & Hair
Jury Qualification
February 2, 2014

1 THE COURT: Well, maybe a little bit -- maybe a
2 little bit longer than twenty minutes.

3 MS. FARRIS: If I could bring a pillow?

4 THE COURT: You certainly could bring a pillow.

5 MS. FARRIS: I have a pillow.

6 THE COURT: Do you have it in your vehicle
7 outside?

8 MS. FARRIS: No.

9 THE COURT: Can you bring it tomorrow?

10 MS. FARRIS: [No response]

11 THE COURT: Can you bring your pillow tomorrow?

12 MS. FARRIS: Yes, sir.

13 THE COURT: If you are required to come back
14 tomorrow.

15 MS. FARRIS: Yes.

16 THE COURT: So with your pillow you think you
17 might be able to do it?

18 MS. FARRIS: I'll try it.

19 THE COURT: Okay. We'll try it. Thank you,
20 ma'am.

21 Has any member of the jury panel been convicted
22 by way of a guilty plea or by way of a trial, in a
23 state or federal court of record, of a crime
24 punishable by imprisonment for more than one year and
25 your civil rights have not been restored by way of

State v. McAlhaney & Hair
Jury Qualification
February 2, 2014

1 pardon or amnesty? And punishable by more than one
2 year means that you could have received a sentence of
3 more than one year, regardless of what sentence you
4 may have actually received. If that applies to you,
5 please stand.

6 [Whereupon, there is no response]

7 THE COURT: One question I forgot to ask
8 earlier.

9 MS. PARNELL: Is there anybody who's -- any
10 respective juror having a problem hearing or
11 understanding me? If so, please raise your hand.

12 [Whereupon, there is no response]

13 THE COURT: Okay. If I, hereafter, back away
14 from the microphone and start talking over here like
15 this and you have any trouble hearing me, would you
16 then, if I do something like that and cause things to
17 change and you have trouble hearing me, please raise
18 your hand or stand up or whistle or do something to
19 get my attention.

20 Is there any member of the jury panel who is a
21 clerk or deputy clerk of court, a constable, a
22 sheriff, or some other commissioned law enforcement
23 officer, a probate judge, a county commissioner, a
24 magistrate, or some other county officer, or are you
25 employed within the walls of any courthouse? If so,

State v. McAlhaney & Hair
Jury Qualification
February 2, 2014

1 please stand.

2 [Whereupon, there is no response]

3 THE COURT: And is there any member of the jury
4 panel who has previously served on jury duty in
5 circuit court this year? If so, please stand.

6 [Whereupon, there is no response]

7 THE COURT: And has any member of the jury panel
8 served as a member of the Hampton County Grand Jury in
9 the past few years? If so, please stand.

10 [Whereupon, there is no response]

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State v. McAlhaney and Hair
Jury Exemptions
February 3, 2014

JURY EXEMPTIONS

1
2 THE COURT: Ladies and gentlemen, we now move to
3 exemptions. State law provides for several exemptions
4 for jury duty. You may be qualified, but the
5 legislature has determined that for certain
6 individuals or categories of people you just simply
7 aren't required to serve on jury duty. And all you
8 have to say is, I had rather not do it, Judge; thank
9 you very much; no.

10 For instance, if you're sixty-five years of age
11 or older, you may be qualified. And we would like to
12 have you stay but you have the absolute right to say,
13 I choose not to serve. If anyone is sixty-five or
14 older and prefers not to serve on jury duty, please
15 stand.

16 And give us your name and number, please, mm.

17 MS. LOCKLAIR: My name is Elnora Locklair. And
18 I'm sixty-seven. And my jury number is 112.

19 THE COURT: You couldn't possibly be sixty-
20 seven.

21 We can't talk you into staying? No. You have
22 the right to say I choose not to serve on jury duty.
23 It's totally up to you.

24 MS. LOCKLAIR: I choose not to serve on jury
25 duty.

State v. McAlhaney and Hair
Jury Exemptions
February 3, 2014

1 THE COURT: Then you are excused. And thank you
2 for coming.

3 MS. LOCKLAIR: Thank you.

4 THE COURT: Another exemption concerns prior
5 jury service. No person is required to serve as a
6 juror, once again, in circuit court more often than
7 once every three calendar years. Therefore, if
8 there's any member of this jury panel who has
9 previously served on jury duty in circuit court in the
10 prior two calendar years and you wish to be exempted,
11 please stand.

12 [Whereupon, there is no response]

13 THE COURT: A similar exemption to what I
14 mentioned a moment ago: if you have served as a
15 member of the grand jury in the last five calendar
16 years, you have a right to be exempted. So if that
17 applies to you and you wish to be exempted, please
18 stand.

19 [Whereupon, there is no response]

20 THE COURT: The next exemption deals with those
21 who have young children. You may be exempted if you
22 have a child under the age of seven and you have legal
23 custody of the child and you are primarily responsible
24 for caring for the child and you're unable to find
25 anyone else to take care of the child while you are

State v. McAlhaney and Hair
Jury Exemptions
February 3, 2014

1 serving on jury duty. If that applies to you and you
2 wish to be exempted, please stand.

3 Yes, sir. Your name and number?

4 MR. WILLIAMS: Dequawn Williams. 167.

5 THE COURT: 167?

6 MR. WILLIAMS: Yes.

7 THE COURT: All right, sir.

8 MR. WILLIAMS: My child is four. My girlfriend
9 works at night and I get off work at 3:00.

10 THE COURT: Let me make sure I understand. She
11 works at night?

12 MR. WILLIAMS: Uh-huh. Well, afternoons. Well,
13 at 2:30.

14 THE COURT: She goes to work --

15 MR. WILLIAMS: He gets off the bus at 3:00.

16 THE COURT: Say that again. She goes to work at
17 3:00?

18 MR. WILLIAMS: 2:30.

19 THE COURT: 2:30.

20 MR. WILLIAMS: And he gets off the bus at 3:00.

21 THE COURT: So are you the person who's normally
22 there --

23 MR. WILLIAMS: Yes, sir.

24 THE COURT: -- to take care of the child?

25 MR. WILLIAMS: Yes, sir.

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1 THE COURT: And how old is the child?

2 MR. WILLIAMS: Four.

3 THE COURT: There's nobody else available to do
4 it?

5 MR. WILLIAMS: No, sir.

6 THE COURT: That's it? You're it?

7 MR. WILLIAMS: [Indicates affirmatively]

8 THE COURT: All right, sir. We'll excuse you
9 from jury duty. Thank you for coming.

10 MR. WILLIAMS: Thank you, sir.

11 THE COURT: If you are a primary caretaker of a
12 person who is sixty-five years of age or older, or a
13 person who is severely disabled, and such individual
14 cannot be left alone and you're unable to find anyone
15 to care for that person while serving on jury duty,
16 you may be exempt. So if that applies to you and you
17 wish to be exempted, please stand.

18 [Whereupon, there is no response]

19 THE COURT: The next exemption involves those of
20 you who may be attending school or working at a school
21 in some capacity. And if this applies to you, we can
22 transfer you to another term of court that may not
23 interfere with your school responsibilities. But if
24 you're a full-time student or working at a school in
25 some capacity and you wish to apply for a transfer,

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1 please stand.

2 Yes, ma'am. Your name and number?

3 MS. BOSTICK: Jody Bostick. Number 14.

4 THE COURT: Number 14. Yes, ma'am?

5 MS. BOSTICK: And I'm a school teacher at
6 Hampton District One.

7 THE COURT: And?

8 MS. BOSTICK: And I would like to ask for a
9 transfer.

10 THE COURT: I want to tell you a quick story.
11 We're going to do that in just a minute. This was a
12 year or so ago. I forgot where I was, even. And I
13 was there for the roll call and I knew that several
14 people in the audience worked for the school district.
15 That's what they said they did for a living. And a
16 lady on the front row, sort of like you, didn't stand
17 up when I asked this question about if you want a
18 transfer. And I said, Ms. Smith, you're a school
19 teacher; you don't want to apply like the others are
20 applying? No, Judge; I don't want to be at that
21 school.

22 Now, you want to apply -- do you want sometime
23 this summer, perhaps? You tell me.

24 MS. BOSTICK: Yeah. That'll be fine.

25 THE COURT: The clerk will send you another.

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1 notice. You're excused. Thank you, ma'am.

2 MS. BOSTICK: Thank you.

3 THE COURT: And, yes, ma'am? Your name and
4 number?

5 MS. MURRELL: Shirley Murrell. Number 123.

6 THE COURT: 123?

7 MS. MURRELL: Yes.

8 I'm employed at the Hampton County school.
9 That's why I --

10 THE COURT: And you would like to be transferred
11 to the summer?

12 MS. MURRELL: Yes, sir.

13 THE COURT: You will get another notice. Thank
14 you so much.

15 Is there any member of the jury panel who is
16 employed with the Department of Corrections at a
17 penitentiary and would like to be exempted? If so,
18 please stand.

19 [Whereupon, there is no response]

20 THE COURT: Is there any juror who performs
21 services for a business, a commercial, or an
22 agricultural enterprise and you are so essential to
23 the operation of that business that if you were
24 required to serve on jury duty the business would be
25 required to close or cease to function? If that

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1 applies to you and you wish to be exempted, please
2 stand.

3 Yes, sir? Your name and number?

4 MR. LONG: Barry Long. 112 -- or 113, I
5 believe. 113. Bad with numbers. But I'm a tax
6 accountant and we have stacks and stacks. If I could
7 get transferred to the summer, it would be --

8 THE COURT: Have you got something coming up you
9 need to work on?

10 We can transfer you.

11 MR. LONG: Thank you.

12 THE COURT: All right.. Thank you. You're
13 excused, then.

14 Ladies and gentlemen, that actually concludes
15 the statutory list of qualifications and exemptions
16 for jury service. It may be, though, that you're
17 qualified and no exemption applies to you but,
18 nevertheless, this turns out to be a terrible week for
19 you. And under certain circumstances, we could
20 arrange for a transfer, as you've seen us do with
21 other people. So if anyone wishes to apply for a
22 transfer just on the grounds that this is a terrible
23 week for me, please stand.

24 Everybody in the building cannot receive a
25 transfer.

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1 The lady in the gray and white that stood first.
2 Yes, ma'am. Your name and number?

3 MS. MYERS: Bonnie Myers. 124.

4 THE COURT: Yes, ma'am?

5 MS. MYERS: This is going to sound crazy. For
6 emotional reasons.

7 My son is very ill in New York. He's got two
8 massive strokes. If I'm away from the phone for more
9 than a few minutes -- I mean, I just don't think that
10 I could bear it. My mother is very ill in Beaufort.
11 She's eighty-one. I'm the only family member -- it's
12 a very bad week.

13 THE COURT: We can take care of that. July,
14 August? Next fall?

15 MS. MYERS: August through December would be
16 fine.

17 THE COURT: You'll receive another notice.
18 Thank you, ma'am. You're excused.

19 THE CLERK OF COURT: And she was 124?

20 THE COURT: 124.

21 124, wasn't it?

22 MS. MYERS: 124. Bonnie Myers.

23 THE COURT: Ms. Myers.

24 MS. MYERS: Thank you.

25 THE COURT: And this gentleman in this blue

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1 and --

2 MR. SHEFFIELD: Ryan Sheffield. Number 148.

3 I'm starting a new job tomorrow and it would be
4 kind of bad for me to miss my first week.

5 THE COURT: Okay. I understand that. Next fall
6 be better?

7 MR. SHEFFIELD: Yes, sir.

8 Next fall, or whatever. Whenever you want.
9 Just I think this week right here is kind of bad.

10 THE COURT: This week might not look good to
11 your employer. I agree.

12 148. We'll send you another notice.

13 MR. SHEFFIELD: Thank you.

14 THE COURT: Thank you, sir.

15 Yes, ma'am? The lady -- I'm trying to look at
16 her. Yes, ma'am?

17 MS. MCPHERSON: Joyce McPherson.

18 I just had surgery and I'm --

19 THE COURT: I'm sorry. Give me that number
20 again.

21 MS. MCPHERSON: 117.

22 THE COURT: 117. Yes, ma'am. Say it one more
23 time.

24 MS. MCPHERSON: I just had knee surgery and I'm
25 going for therapy --

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1 THE COURT: Oh. You're undergoing -- you need
2 to be in therapy on a regular basis?

3 MS. MCPHERSON: Yes, sir.

4 THE COURT: I guess you can't go early in the
5 morning before you come to court, can you?

6 MS. MCPHERSON: Depending on what time court
7 starts.

8 THE COURT: All right. We'll transfer you.

9 You need -- how much longer do you think you're
10 going to be in therapy?

11 MS. MCPHERSON: At least four weeks.

12 THE COURT: Maybe sometime this summer?

13 MS. MCPHERSON: Yes, sir.

14 THE COURT: Okay. Thank you, ma'am. You're
15 excused.

16 And the gentleman in the back of the room. Yes,
17 sir? Your name and number?

18 MR. BOWERS: Juror number 17.

19 THE COURT: 17?

20 MR. BOWERS: Allen Bowers.

21 THE COURT: Yes, sir?

22 MR. BOWERS: I have a lot to worry about. I'm
23 unemployed right now and I have this guy that's
24 letting me work to make money and I need to make that
25 to pay my bills. I don't mind, you know, during the

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1 summer time, but right now is not a good time for it.

2 THE COURT: And I wasn't here for the roll call.
3 What's the nature of your work? What kind of work do
4 you do?

5 MR. BOWERS: Well, I do mostly carpenter. You
6 know, anything out of the ordinary. It don't make no
7 difference to me. You know, he puts me to work -- at
8 the daytime. I get off work at night.

9 THE COURT: Is next month or two months from now
10 going to be better than now?

11 MR. BOWERS: Yes, sir. It will be a whole lot
12 better, I hope and pray, sir.

13 THE COURT: But you'll be able to serve on jury
14 duty then, you think?

15 MR. BOWERS: No problem.

16 THE COURT: All right. You'll receive another
17 notice. Thank you for coming, sir. You're excused.

18 MR. BOWERS: Yes, sir. Thank you, sir.

19 THE COURT: Oh. I'm sorry. The lady standing
20 in the back of the room.

21 UNIDENTIFIED: You told me I could stand up when
22 I needed to.

23 THE COURT: I did tell you that.

24 And, yes, sir?

25 UNIDENTIFIED: Your Honor, can I talk to you

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1 about it at the recess?

2 THE COURT: Your name and number, sir?

3 MR. HAYES: 87. Joseph Hayes.

4 THE COURT: 87?

5 Okay. Solicitor, anyone else we need to talk
6 to?

7 MR. WRIGHT: No, sir.

8 THE COURT: All right, sir. I'll let you --
9 I'll come down now and let you talk to me, if you
10 would like. Did you say you wanted to speak now, sir?

11 [Whereupon, juror number 87 comes forward]

12 [Whereupon, the Court, juror number 87, and
13 counsel confer]

14 MR. HAYES: Thank you.

15 THE COURT: Sure thing. Stay with us.

16 He's going to stay.

17 THE CLERK OF COURT: He's going to stay? Okay.
18 Just protect him for Friday?

19 THE COURT: Protect him on Friday.

20 All right. I find the jury panel qualified.

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JURY VOIR DIRE

THE COURT: Solicitor, you have a case for us?

MR. WRIGHT: Yes, sir.

The State calls the State vs. Travis Hair and Tonya McAlhaney in indictment numbers 2013-GS-25-435, 433 and 434.

In 2013-GS-25-434, Tonya McAlhaney is charged with the offense of burglary in the second degree. The State alleges that in Hampton County, on or about November 24th, 2013, the defendant, Tonya McAlhaney, did enter the dwelling located at [REDACTED] in the Town of Hampton, County of Hampton, in South Carolina, that was being utilized by Amanda Deloach Brown, as a local residence, with the intent to commit a crime therein.

The State alleges, in indictment 2013-GS-25-43 -- or 00435, that Tonya McAlhaney committed the offense of burglary in the first degree, in that on November 23rd, 2013, the defendant -- I apologize -- that warrant numbers 2013-GS-25-433, Tonya McAlhaney is charged with burglary in the first degree and it's alleged that in the County of Hampton, on or about November 23rd, 2013, the defendant, Tonya McAlhaney, did enter the dwelling located [REDACTED] Town of Hampton, County of Hampton, State of South

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1 Carolina, that was being utilized by Amanda Deloach
2 Brown, as a local residence, at night, without
3 consent, and with the intent to commit a crime
4 therein, in violation of South Carolina Statute Code
5 16-11-311.

6 And also that Travis Hair is being charged in
7 indictment number 2013-GS-25-003 -- 435 with the
8 charge of burglary in the first degree. It alleges
9 that in Hampton County, on or about November 23rd,
10 2013, the defendant, Travis Hair, did enter the
11 dwelling located at [REDACTED] Town of
12 Hampton, County of Hampton, South Carolina, that was
13 being utilized by Amanda Deloach Brown for a local
14 residence, at night, without consent, with the intent
15 to commit a crime therein, a violation of South
16 Carolina Statute Code 16-11-311.

17 THE COURT: Ladies and gentlemen, in just a few
18 moments I am going to begin asking you questions
19 relating to these charges that you've just heard
20 announced by the solicitor.

21 Before I do that, though, I'm going to ask the
22 attorneys who are involved in this case if they will
23 identify themselves to you, along with any other
24 attorneys who have --

25 MS. SMART-GITTINGS: May I approach, Your Honor?

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1 THE COURT: Certainly.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: Ladies and gentlemen, before we
5 proceed further selecting a jury in this case, we're
6 going to give you a ten-minute break. But this is --
7 it's not a voluntary break, it's a mandatory break.
8 In other words, you have to leave the courtroom. So
9 I'll ask you to take your ten-minute break outside the
10 courtroom. Try to get back in ten minutes, ladies and
11 gentlemen.

12 [Whereupon, the jury panel exits the courtroom
13 at 3:17 p.m.]

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1 THE COURT: Apparently, the jury is all gone.
2 But you need to get your clients in the courtroom.

3 MR. PLEXICO: Yes, please.

4 MS. SMART-GITTINGS: Yes, Your Honor.

5 THE COURT: Okay.

6 [Off the record momentarily]

7 [Whereupon, Mr. Hair and Ms. McAlhaney enter the
8 courtroom at 3.20 p.m.]

9 THE COURT: All right. A sidebar a moment ago,
10 defense counsel indicated they thought their clients
11 might wish to plead to the charges for the
12 indictments.

13 In that regard, where are we, Mr. Plexico?

14 MR. PLEXICO: Yes, Your Honor.

15 We would enter a plea of guilty. We had talked
16 last year -- last week, or before, Your Honor, of
17 entering a plea to a burglary, Judge. And I jotted
18 down it was a burglary non violent.

19 Now, I don't know where that is now, but that's
20 what we -- he was talking he wanted a full ten-year
21 sentence. I was asking for three to seven. We didn't
22 want to go to trial on this. My client has asked -- I
23 mean, there's nothing to try.

24 THE COURT: All right. Hang on just one minute.

25 The indictments -- let me make sure I

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1 understand. Is each defendant charged with one count
2 of burglary?

3 MR. PLEXICO: My client has two counts on two
4 successive days, Judge.

5 THE COURT: Okay. Well, that's -- well, now, is
6 your client prepared -- I thought I heard some
7 discussion during sidebar indicating there might be an
8 issue here. Is your client prepared to plead guilty
9 to the indictments as presented?

10 MR. PLEXICO: We were going to plead to a
11 burglary second non violent. As long as it's a
12 burglary second non violent, that's what we want to
13 plea to, Judge.

14 I mean, we didn't think there was a real issue
15 to try. The only issue is habitation. And, you know,
16 it's where my client says she wants to go ahead and
17 plea to it. However, it's still a burglary, but then
18 it would only go to the degree.

19 THE COURT: All right.

20 MS. SMART-GITTINGS: Judge, my client was
21 offered a burglary second. If I remember correctly,
22 he said a burglary second violent. I asked for the
23 non violent and he would not negotiate on that, on the
24 violent or non violent. If I remember correctly, my
25 offer was burglary second violent.

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1 THE COURT: All right. But you're referring to
2 burglary second violent, aren't you?

3 Now, let me hear what the solicitor has to say.

4 MR. WRIGHT: It's my position that we're trying
5 the cases unless they plead to the indictments as
6 true-billed by the grand jury.

7 The offers were made. They waffled to say they
8 may want to plea but it had to be under certain
9 conditions that I wasn't willing to make. I wanted a
10 plea for ten years and, my client won't take -- won't
11 take that; well, take it to them and see what they
12 say. I didn't get any response.

13 I have my witnesses that came down from a
14 different part of the state and I'm prepared to go
15 forward.

16 MS. SMART-GITTINGS: My position, Your Honor, is
17 today is the first day of the term of court. He did
18 not tell us that the offer expired Friday. I can't
19 remember what day he gave me the offer, but he didn't
20 tell me that the offer expired Friday. Because today
21 being the first day of court, I told him this morning
22 that my client did not want a trial. So to take -- to
23 say that he's withdrawn the offer without giving the
24 expiration date for the offer I think is not in the
25 interest of fairness or justice.

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1 THE COURT: Well, nevertheless, the offers, as I
2 understand it, have not been accepted. The solicitor
3 does not agree to reduce the charges. And doesn't
4 that put us back in the position of trying the case or
5 the cases?

6 What's your guesstimate on time, solicitor? How
7 long do you think the case is going to take?

8 MR. WRIGHT: I say we give it to the jury by
9 lunch tomorrow. At the latest, when we get back from
10 lunch at 2:00, with closings.

11 THE COURT: And --

12 MR. WRIGHT: Definitely not beyond tomorrow.

13 THE COURT: And one alternate juror, now?

14 MR. WRIGHT: That's fine with me, Your Honor.

15 Can we -- is there any way we can -- if
16 something was crazy to happen, that we're willing to
17 go forward with however many we have at the end of
18 tomorrow? You know, for some reason?

19 THE COURT: I doubt if defense counsel is going
20 to agree with that.

21 MR. WRIGHT: Just only an idea.

22 Then I would have two alternates, then, just to
23 be on the safe side. I don't want to have any issues
24 with that. It's pretty --

25

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MOTION FOR A CONTINUANCE

MR. PLEXICO: Your Honor, I would not agree to that. If we tried that, I would have another motion.

Your Honor, this is my notice of trial date. Your Honor, this was clocked in on January the 16th. The solicitor should have a copy. He's the one that delivered it to me.

Madam Clerk, if you would present that to His Honor.

[Whereupon, the clerk of court proffers documents to the Court]

MR. PLEXICO: I would move to continue the case, Your Honor, on the grounds that I was given notice of those four cases. My understanding was, a fair understanding is, is that they would not be all called together. These are matters that happened -- one is 12/28/2012, another is 1/9/2013, another is 8/4/13, and another is on or about 11/23 of '13 and 11/24 of '13. And it was sort of, I thought was a notice -- a take-your-pick notice of these different cases.

Now, he didn't say anything about joining them. Okay? These are five cases with that spread. One is her sister's trailer; another is Brunson Elementary music room; another is the First Baptist Church, which I'll refer to as our local Goodwill Center where

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1 donations were alleged to have -- you know, old
2 clothes and stuff taken. And then there is the one on
3 [REDACTED], which was two different days on
4 [REDACTED].

5 I would suggest that defense counsel, to
6 adequately prepare for a trial, would have to have
7 notice of joinder. I believe that we have not been
8 given notice of joinder, Your Honor, and it would be a
9 violation of the state and federal due process clauses
10 to go forward without proper notice of joinder with
11 regards to this matter, Your Honor.

12 I don't believe that, on its face, is a proper
13 notice of joining those two cases -- which he has
14 already read to the jury without our clients even
15 being present -- and they want to go forward. I've
16 never seen that happen before.

17 THE COURT: Solicitor?

18 MR. WRIGHT: Your Honor, that notice -- this
19 defendant has a multitude of charges on the docket.
20 When I initially gave the notice I was like, hey, on
21 notice; I'm trying your client on something-something.
22 She's got too many -- too many issues on the docket.

23 I've talked to Mr. Plexico multiple times
24 between that time about this particular case. We've
25 had discussions about this particular case on the day

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1 -- on the indictments that I presented.

2 And he never accepted the offer that I made. I
3 make offers, they don't accept them. I make notices.
4 They assume that we're not going to have trial when
5 they have a valid notice given to them.

6 As far as joinder, the rules clearly say that
7 they can be joined together, have to have the same
8 exact set of facts. This happened exact -- they were
9 together when they robbed the house. It's not a
10 situation where they can be unjoined. Basically, it's
11 almost impossible to try the case without having them
12 being mentioned, you know, as either anonymous
13 codefendant or something of that nature.

14 I think it's for judicial economy to try them
15 both together. If not, I can try one on one day and
16 try the next on Wednesday. It doesn't make any sense.
17 We're wasting jurors. I can move on to another case
18 and try it.

19 MR. PLEXICO: We have -- may I, if he's -- may
20 I?

21 THE COURT: Sure.

22 MR. PLEXICO: We have two joinders here. We
23 have joinders on indictments 2013-434 and 435, which
24 were presented only to Tonya McAlhaney. We also have
25 the joinder with Travis Hair. I'm not quite sure

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1 which one the solicitor was addressing. But I agree
2 with his statement. I believe his intent was to try a
3 case out of the plethora of cases I was noticed on in
4 regards to this person. However, I would not
5 anticipate joinder of two of her cases to be tried at
6 one time. I wasn't given notice of that. I
7 understood he was going to pick one of her cases, not
8 two of her cases, and then one of his. That's a
9 different --

10 THE COURT: All right.

11 MR. WRIGHT: Your Honor, it's got the same set
12 of facts. I really don't know what his argument is,
13 exactly, because he's talking about cases that aren't
14 being called to trial and saying that I shouldn't call
15 those cases. I'm not calling those cases. I'm
16 calling the cases that happened at [REDACTED]
17 on consecutive days where they went into a house and
18 committed burglary first and then she went back the
19 next day and committed burglary second. That's what
20 I'm -- that's what I'm trying.

21 He's talking about a bunch of cases that have --
22 shouldn't be -- that aren't in front of the Court
23 right now. And I -- you know, I don't know why he's
24 bringing those up, you know. But he was noticed. For
25 everything he has a docket and has been indicted, we

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1 need to sit down and talk. He never -- we never
2 talked about doing ten years. It was always about
3 less than -- less than ten years.

4 I'm of the position that it should be tried
5 together for judicial economy and especially of the
6 State and of the Court to get this resolved at one
7 time, as opposed to having a whole week caught up with
8 one case that we can resolve in a day and a half.

9 THE COURT: All right. Anything else?

10 MR. PLEXICO: I would suggest -- I would make
11 that notice a part of the Court record, Your Honor.
12 And that was -- my motion was to continue the matter
13 for lack of notice, Your Honor, about the joinder
14 issue.

15 MR. WRIGHT: And just to clarify. In State v.
16 Tucker, it's laid out that charges can be joined in
17 the same indictment and tried together where they
18 arrive at the same -- out of a single chain of
19 circumstances or proved by the same evidence and/or
20 the same general nature and no real right of the
21 defendant has been prejudiced. In this particular
22 case, I believe all of those elements are satisfied.
23 They have the same set of facts.

24 And going back to my initial judicial economy,
25 it makes no sense to tie up a whole week trying a case

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1 that we can do all together and take a day and a half.

2 MR. PLEXICO: Well, notice would be essential.

3 That was --

4 MR. WRIGHT: He was noticed.

5 MR. PLEXICO: Notice on everything.

6 But not that we were going to -- I mean, no
7 lawyer would anticipate they were going to try a
8 12/28/12 burglary with an 11/23/13 burglary.

9 MR. WRIGHT: That's --

10 MR. PLEXICO: No reasonable lawyer -- the dates
11 on those things that's in front of you, Your Honor,
12 the cause of action dates is 12/28/12 on indictment
13 ending in -- 2012 ending in 85, is 1/9/2013 and 2013
14 ending in 002, nobody would --

15 MR. WRIGHT: Incorrect.

16 MR. PLEXICO: -- what these --

17 MR. WRIGHT: They're consecutive days, Your
18 Honor.

19 MR. PLEXICO: Count the number of indictments.

20 He's noticed me on all the prior charges that
21 she had. No reasonable lawyer would anticipate he was
22 going to try two of those.

23 MR. WRIGHT: That's not before the Court.

24 MR. PLEXICO: That's -- he's just joined it in
25 front of a jury without my client being present. Then

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1 I would move to continue because citing both -- if you
2 -- if the rule he has is to go forward on one, then my
3 client has been prejudiced in front of this jury pool
4 because he read two burglary indictments against her
5 without her even being present because they didn't
6 slow down and roll into it and they didn't slow down
7 and go get the clients, who were in custody.

8 MR. WRIGHT: Your Honor, he had the ability to
9 make an objection at the time when Your Honor asked me
10 to call my cases. He didn't.

11 In addition, that can be clarified on the record
12 before we get started. You know, all -- everything
13 he's citing, in the State's opinion, are non issues.
14 You know, stuff that could be clarified by Your Honor
15 or things that he was noticed that his client was
16 going to have a trial.

17 I think that in the past they get notice of
18 trial, they think they don't have a trial. But we're
19 going to have a trial, if you allow me, Your Honor.

20 THE COURT: All right.. I agree with the
21 argument of the solicitor on this. I don't see -- I
22 don't see a constitutional violation of due process,
23 from the facts that have been presented to me;
24 therefore, I deny your motion.

25 MR. PLEXICO: I understand your ruling, Your

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1 Honor.

2 THE COURT: Thank you.

3 What else? Anything else?

4 MS. SMART-GITTINGS: Nothing from Defendant
5 Hair, Your Honor.

6 THE COURT: Now let's -- let me -- let's talk
7 about how many -- how many strikes do we get here?

8 MR. PLEXICO: Burglary first, I have ten. I
9 believe she has ten. That gives us a total of twenty.

10 THE COURT: The State gets twenty -- or ten.

11 MR. WRIGHT: Yeah. It's five and ten, normally,
12 so I guess I get ten and they get twenty total.

13 THE COURT: Well --

14 MR. PLEXICO: They never get over ten.

15 MR. WRIGHT: If they add them together, then
16 it -- to add mine, too.

17 MS. SMART-GITTINGS: Your Honor, I believe the
18 State will get ten strikes, five for each defendant.

19 MR. WRIGHT: Your Honor, there was one --

20 MS. SMART-GITTINGS: It's Defendant Hair's
21 position that they get ten strikes, five for each
22 defendant.

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MOTION TO QUASH

MR. WRIGHT: I do have two motions, but since we're handling motions I guess we could do it all right now.

THE COURT: All right. What are the nature of the motions?

MR. WRIGHT: One is on the indictment, 2013-GS-24-434, the word -- the words without consent were left out as a scribner's error. I wanted to correct that.

THE COURT: All right. Tell me which one so I can find it.

MR. WRIGHT: 434. I think I wrote in there that -- I left out the words without consent in the language. I don't think it's -- she was on notice that she was charged with burglary in the second degree. I just wanted to clarify that, in case it comes up later on down the road. In the last sentence I should have put without consent. I said -- I think I said that she entered -- I forgot the exact wording I used, but I should have had the words without consent.

It may not be an issue. I wanted to at least clarify that in case it came up later on down the road in appeal or something of that nature. It may not be

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1 an issue, but I just wanted to bring that to the
2 Court's attention -- but a scribner's error. They had
3 notice of what they was being charged with and things
4 of that nature.

5 And for the other indictment, it -- we're
6 alleging they entered the house without consent --

7 THE COURT: I understand.

8 MR. PLEXICO: I believe that consent is a
9 necessary element of must be -- whether there was
10 consent or not is something that only the grand jury
11 could decide. That could not possibly be a key
12 element to this crime. Burglary is entry without
13 consent with intent to commit a crime therein.

14 It would be three elements, and those elements
15 need to be presented to a grand juror. I would move
16 to quash that indictment on those grounds, since it
17 does not allege without consent. And that's only --
18 and I don't think the indictment flies.

19 If he proved the allegations in the indictment
20 as it stands, it's not a crime because --

21 MR. WRIGHT: It is.

22 MR. PLEXICO: -- it's not burglary because --

23 MR. WRIGHT: It still is.

24 MR. PLEXICO: Excuse me. Excuse me. I'm
25 addressing the Bench.

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1 THE COURT: Right. Let him finish.

2 MR. PLEXICO: It is not a crime unless it is
3 without consent, and that is not what they have
4 presented to the grand jury. Therefore, I would move
5 that this indictment be quashed, Your Honor. It could
6 not be fixed by the Scribner's error. That's not
7 Steve spelled with a P-H instead of a V.

8 MR. WRIGHT: May I be heard?

9 THE COURT: Absolutely.

10 MR. WRIGHT: I did say in violation of the
11 statute code, which would encompass all the elements
12 therein. It's just the wording. And I'm trying to
13 correct the record to make it as correct as possible.
14 I don't think it's a fatal flaw in the indictment
15 because I do have a catch-all, in violation of this
16 particular statute, which would encompass all the
17 elements therein.

18 THE COURT: The 16-11-312 deals with second
19 degree burglary?

20 MR. WRIGHT: Correct, Your Honor.

21 THE COURT: And what do you say, Mr. Plexico?

22 MR. PLEXICO: Well, Your Honor, what -- I
23 believe that whether or not the issue -- the consent
24 is an issue that needs to be presented -- or the lack
25 thereof needs to be presented to the grand jury and

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1 they could not return a proper true bill without it.

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MOTION FOR A CONTINUANCE

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2 MR. PLEXICO: Further, since he's already read
3 this to the jurors, Your Honor, that that would
4 prejudice my client going forward if you dismiss it.
5 I think it's clearly an improperly-drawn indictment
6 and improperly presented indictment. To go forward,
7 since he's already read both indictments to the jury
8 pool, Judge, that that would prejudice my client's
9 trial on the remaining indictment and would entitle
10 her to a continuance on those grounds.

11 MR. WRIGHT: Your Honor, law enforcement was a
12 witness. They were there. And they have access to
13 the statutes. And the actual warrant has the consent
14 element in there. It was just left out, a Scribner's
15 error.

16 And I believe that it's not a fatal flaw and
17 that law enforcement had access to the statute codes.
18 And we can't say one way or the other whether or not
19 they read the whole statute to them. I believe that
20 when they went in the back they explained all the
21 elements, because most of my law enforcement guys in
22 this area are seasoned veterans.

23 And I would like to say that it's only a
24 Scribner's error. I wanted to correct it for the
25 record. I'm sure we could have went forward without

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1 even bringing it up but I just wanted -- the State is
2 trying to be as forward as possible and correct it for
3 the record.

4 MR. PLEXICO: Your Honor, if we could get a
5 transcript of the grand jury proceedings, which we
6 both --

7 MR. WRIGHT: We don't.

8 MR. PLEXICO: -- know is impossible, we could
9 substantiate that. But there's no way we would know
10 that, because they're secret in South Carolina.
11 There's no way we could know that. We have no idea
12 whether anything was presented in regards to that.
13 And as it stands on its face, I believe that it's
14 improper.

15 THE COURT: All right. As to indictment 2013-
16 GS-25-434, the motion to quash is granted.

17 Now, solicitor, what about the second part of
18 his motion, and that is that he therefore is entitled
19 to a continuance on 433 because 434 was read to the
20 jury?

21 MR. WRIGHT: Your Honor, I'm sure the jury
22 couldn't tell you what I said when I -- when I was
23 speaking to them, first of all.

24 Second of all, I don't think there's prejudice.
25 It's a different date. And by there being another --

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1 a codefendant, I'm sure they couldn't tell you right
2 now, if you asked them, how many indictments were for
3 Ms. McAlhaney versus Mr. Hair. They wouldn't know,
4 based on them being, you know, I guess lay
5 interpretations of what I was saying. I feel as if
6 there was no prejudice to the defendant.

7 And, Your Honor, I know you've already moved on.
8 But are you saying that the catch-all of in violation
9 of the statute isn't insufficient? Is that --

10 THE COURT: That's correct.

11 MR. WRIGHT: Okay. Thank you.

12 THE COURT: All right. As to the motion to
13 continue, I'm going to deny it.

14 I'm going to instruct the jury to disregard the
15 statements made earlier to the -- by the solicitor to
16 them about what was being tried by whom -- who was
17 being tried -- who was being tried on what charges.
18 And I'll give them a synopsis of what the indictments
19 say.

20 Is there anything else before the jury comes
21 back in?

22 MR. WRIGHT: I have one more motion, Your Honor.

23 THE COURT: All right.

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MOTION IN LIMINE

MR. WRIGHT: I would like to make a motion in limine to restrict both members of the public defender's office from mentioning facts that they don't intend to prove in their case, specifically, that Ms. McAlhaney is a teacher, used to be teacher. Without them calling her as a witness, I don't think they could really get into that. And I would like to be able to just stick to the facts, as opposed to going through try to, you know -- trying to get sympathy or something of that nature because she used to be a teacher, unless they found cause which I don't know and I can't comment about. So I would like to restrict them in their opening, at least, from making any references to anything they don't plan on bringing out in their case in chief.

THE COURT: Specifically, you're talking about whether she --

MR. WRIGHT: Her former profession.

THE COURT: Okay. Mr. Plexico?

MR. PLEXICO: Your Honor, I think that if they have a State's witness who has -- I don't know -- they have a -- there's an indicted third party they plan to call for a witness, who knows my client well. And if he testifies that he knows her or he knows she used to

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1 be a school teacher, that's how he knows her, there's
2 a -- there's going to be a -- all the officers who are
3 -- we all knew her, here in this community, as a
4 school teacher. Most of the jurors already know her
5 as a school teacher. She taught their children. I
6 mean, this is not a town of 4,000 or 5,000 people. I
7 don't know. I mean, everybody knows Ms. McAlhaney was
8 a school teacher. That was her profession. I don't
9 really get this. I don't see the point.

10 MR. WRIGHT: I stand by my motion. If they're
11 not going to call her as part of their case in chief,
12 I believe that they should be limited from talking
13 about it in their opening or closing. Or if it comes
14 out during the trial, then, hey, it is what it is.

15 He's saying that something may come out. He's
16 not intending to call -- my understanding is that he's
17 not intending to present that as part of evidence in
18 his case in chief.

19 MR. PLEXICO: Your Honor, I believe my opening
20 can include anything I anticipate that comes in as
21 evidence reasonably, whether it's through direct
22 testimony or through cross-examination.

23 THE COURT: I agree. I agree.

24 I deny -- and I deny the State's motion to
25 restrict.

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1 MR. PLEXICO: Thank you, Your Honor.

2 THE COURT: Now, how many jurors do we have
3 left, Madam Clerk?

4 THE CLERK OF COURT: Fifty-three.

5 [Off the record momentarily]

6 THE COURT: Solicitor, we may not -- we may not
7 have enough jurors to try the case.

8 MR. WRIGHT: I would just ask that we --

9 THE COURT: I guess we'll see.

10 MR. WRIGHT: -- can they be -- can they be
11 impartial. I believe they can be impartial, you know.
12 I don't think it should be -- they know -- everybody
13 is going to know everybody in this small town. But
14 can they be fair and impartial is the crux of the
15 matter. I think most of them probably can.

16 THE COURT: I'm sure y'all know more about this
17 than I do.

18 Okay. Anybody need to take five before the jury
19 comes back in?

20 MR. PLEXICO: If we could, please, Your Honor,
21 so I can clear off my desk. Thank you so much, Your
22 Honor.

23 THE COURT: All right. We'll be at ease for a
24 few minutes.

25 [Whereupon, a recess is taken from 3:50 p.m. to

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1 3:55 p.m.]

2 THE COURT: All right. Let's let the jury back
3 in.

4 MR. PLEXICO: Your Honor, my client will enter a
5 plea.

6 THE COURT: Let's stop the jury from coming back
7 in.

8 MR. WRIGHT: Your Honor --

9 THE COURT: I can't force him.

10 MR. WRIGHT: Your Honor, he's going to enter a
11 plea?

12 MR. PLEXICO: We've got it. We've got it. We
13 did the paperwork. A burglary second, like you just
14 said.

15 MR. WRIGHT: No. I didn't say a burglary
16 second.

17 MR. PLEXICO: You said a range.

18 MR. WRIGHT: A range? A range, also?

19 MR. PLEXICO: You said a range of ten to fifteen
20 years.

21 MR. WRIGHT: Yeah. Yeah, if she's willing to do
22 that.

23 [Whereupon, Mr. Wright and Mr. Plexico confer]

24 [Whereupon, Mr. Plexico and Ms. McAlhaney
25 confer]

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1 MR. PLEXICO: Okay. Just forget it. We'll go
2 to trial.

3 Sorry about that. I apologize to the Bench.

4 I'm ready, Your Honor. Sorry.
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JURY VOIR DIRE

MR. PLEXICO: May I approach with my requested voir dire, Your Honor?

[Whereupon, Mr. Plexico proffers documents to the Court]

[Whereupon, the jury panel enters the courtroom at 3:59 p.m.]

THE COURT: Welcome back, ladies and gentlemen. I hope you enjoyed your break. And I apologize. I really thought that we would ask you to be back in here after that ten-minute break. I was wrong, and I apologize again.

In just a moment -- we're waiting on one of the defense attorneys to come back in the courtroom. As soon as he does, I'll address you again.

[Off the record momentarily]

THE COURT: We are getting ready to select a jury.

But I tell you that -- I'm going to tell you who is being charged with what. And you are to disregard the statements made by the solicitor to you earlier where he told you who was being charged with what.

The defendants, Tonya McAlhaney and Travis L. Hair -- is that the correct way you pronounce the name -- are both being charged with entering a dwelling at

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1 [REDACTED] in the Town of Hampton on or about
2 November the 23rd, 2013. This dwelling was being
3 utilized by one Amanda Deloach Brown as a local
4 residence and this occurred at night without the
5 consent of Ms. Brown and with the intent to commit a
6 crime therein, all in violation of the laws of this
7 state.

8 Now, in just a few moments I'll begin asking you
9 some questions about your knowledge of -- and your
10 ability to serve as a juror in this case. The
11 attorneys involved are going to identify themselves to
12 you, and any other attorneys that may be assisting
13 them on the case. After they do that -- after they do
14 that, they'll give you the names of any potential
15 witnesses that may be called in the case. After all
16 of that is done, I will ask you questions about your
17 relationship with the attorneys involved in the case,
18 with the defendants themselves, and with any of the
19 witnesses that will be identified to you.

20 Now, we begin with the solicitor, Mr. Wright.

21 MR. WRIGHT: Good afternoon, ladies and
22 gentlemen. My name is Kelvin Wright and I'm the
23 deputy solicitor in Hampton County and Allendale
24 County. And I'll be trying this case by myself.
25 I'll have assistance from my investigator, Mr. Bruce

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1 Davis.

2 And witnesses -- and witnesses who will be
3 called in this case include Ricky Sauls of Hampton,
4 South Carolina, Sargent Bradford Wright of the Hampton
5 County Sheriff's Office -- Police Department --
6 Hampton County Police Department -- Amanda Deloach
7 Brown of Hampton, South Carolina, Roma Mueller of
8 Lexington, South Carolina, and Althea Taylor of
9 Lexington, South Carolina, Larry Crosby of Hampton,
10 South Carolina, Patrolman Nicholas Guin, and Major
11 James Fulton. Those are the potential witnesses.

12 THE COURT: Thank you, sir.

13 And Mr. Plexico?

14 MR. PLEXICO: Your Honor, could we approach
15 briefly, please?

16 THE COURT: Sure.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: And now the attorney for the
20 defendants will have the opportunity to identify
21 themselves.

22 MR. PLEXICO: I'm Stephen Plexico. I'm public
23 defender. And next January will be my quarter of a
24 century here as your local public defender in
25 Allendale and Jasper Counties.

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1 This is my client. This is Ms. Tonya McAlhaney.
2 I represent Ms. McAlhaney today. Please have a seat.

3 [Whereupon, Ms. McAlhaney complies]

4 MR. PLEXICO: And this is co-counsel, Ms.
5 Stephanie Smart-Gittings.

6 MS. SMART-GITTINGS: My name is Stephanie Smart-
7 Gittings. I'm with the public defender's office for
8 Allendale, Hampton, and Jasper, as well. I will be
9 representing Mr. Travis Hair.

10 Michelle McKinney is our legal assistant in our
11 office.

12 THE COURT: Now, ladies and gentlemen, has any
13 member of the jury panel ever been related by blood or
14 related by marriage to any of the attorneys involved
15 in this case, or to any of the witnesses that have
16 been identified to you, or to either of the
17 defendants? If so, please stand. If you've ever been
18 related by blood or related by marriage to any of
19 those individuals, please stand.

20 And I've forgotten your name and number.
21 Please, ma'am, if you'll give it to you again.

22 MS. FARRIS: I need to ask a question. Number
23 62. Sharron Farris.

24 THE COURT: Yes, ma'am.

25 MS. FARRIS: Is she related to Perry McAlhaney?

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1 THE COURT: I don't know.

2 MR. PLEXICO: She is.

3 MS. FARRIS: He's my brother-in-law.

4 THE COURT: So you are related, then.

5 MS. FARRIS: Okay. I didn't know. That's why I
6 wanted to make sure.

7 THE COURT: Let me ask you a question. I might
8 as well go ahead and ask you now. I take it, then,
9 that you are not -- and I don't know this. Are you a
10 close personal friend of the defendant?

11 MS. FARRIS: I don't even know her.

12 THE COURT: Okay.

13 MS. FARRIS: I just wanted to make sure I --

14 THE COURT: Would that -- well, would the fact
15 that you are related to her, as you have described,
16 would that interfere with your ability to be a fair
17 and impartial juror?

18 MS. FARRIS: I cannot honestly say.

19 THE COURT: Meaning you don't know whether you
20 could or not? You don't know whether that --

21 MS. FARRIS: I don't know her. I don't know how
22 she's related to Perry.

23 THE COURT: All right. Let me ask you again,
24 then, and make sure.

25 MS. FARRIS: No, I don't.

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1 THE COURT: Okay.

2 MS. FARRIS: I probably could.

3 THE COURT: You probably could be a fair and
4 impartial juror?

5 MS. FARRIS: Yes.

6 THE COURT: Do you -- you probably could? Does
7 that mean that you --

8 Let me ask the question another way. Would the
9 relationship that you've just described, would that
10 interfere with your ability to be a fair and impartial
11 juror?

12 MS. FARRIS: No.

13 THE COURT: You said no?

14 MS. FARRIS: [Indicates affirmatively]

15 THE COURT: All right. Thank you, ma'am.

16 MR. WRIGHT: What's her number again, Your
17 Honor?

18 THE CLERK OF COURT: 62.

19 THE COURT: 62.

20 Has any member of the jury panel ever had a
21 close personal or social relationship with any of the
22 attorneys involved in the case, or any of the
23 witnesses that have been identified, or with the
24 defendant -- either of the defendants? If so, please
25 stand. If you've ever had a close personal or social

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1 relationship with any of those individuals, please
2 stand.

3 And let's get your name and numbers.

4 MR. WADE: Juror 163.

5 THE COURT: All right, sir.

6 MR. WADE: I know the assistant -- or the
7 attorney, the public defender, really well.

8 THE COURT: The lady with her hand up?

9 MR. WADE: Yeah.

10 THE COURT: I need to ask you a few questions.
11 How long, approximately, have you known her?

12 MR. WADE: Thirty-something years. Her father
13 and my father were real good friends.

14 THE COURT: Does she ever visit in your home?
15 Do you ever visit in her home?

16 MR. WADE: Not recently, no.

17 THE COURT: Do you belong to any civic or
18 religious organizations where you see her on a regular
19 basis?

20 MR. WADE: No.

21 THE COURT: Would that -- would the relationship
22 that you've described with us -- or to us, would that
23 interfere with your ability to be a fair and impartial
24 juror in this case?

25 MR. WADE: Not really.

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1 THE COURT: You've got to speak up. I couldn't
2 hear you.

3 MR. WADE: No.

4 THE COURT: No.

5 MR. WADE: She's not on trial.

6 THE COURT: That's right. Okay. All right.
7 Thank you, sir.

8 Has any member of the jury panel or a member of
9 your immediate family ever been represented by any of
10 the attorneys involved in this case? If so, please
11 stand and remain standing.

12 Yes, ma'am?

13 UNIDENTIFIED: My stepson was represented by
14 him --

15 THE COURT: You're referring to Mr. Plexico?

16 UNIDENTIFIED: [Indicates affirmatively]

17 THE COURT: And how long ago was that,
18 approximately?

19 UNIDENTIFIED: Twelve and a half years.

20 THE COURT: Let me ask -- let me ask you this,
21 now. Would that relationship that you just described,
22 would that interfere with your ability to be a fair
23 and impartial juror in this case?

24 UNIDENTIFIED: No, sir.

25 THE COURT: Thank you, ma'am.

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1 UNIDENTIFIED: Yes, sir.

2 THE COURT: Has any member of the jury panel
3 formed or expressed an opinion about any issue or any
4 matter involved in this case? If so, please stand.

5 [Whereupon, there is no response]

6 THE COURT: Is any member of the jury panel
7 related by blood or marriage to any member of law
8 enforcement?

9 All right. Let's calm down, now.

10 Yes, ma'am. Your name?

11 MS. FARRIS: Number 62. Sharon Farris.

12 THE COURT: Yes, ma'am?

13 MS. FARRIS: Police Chief Perry McAlhaney is my
14 brother-in-law.

15 THE COURT: Brother-in-law. Okay.

16 Would that fact interfere with your ability to
17 be a fair and impartial juror in this case?

18 MS. FARRIS: No, sir.

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

20 What about the gentleman on my far right who I'm
21 trying to look in the eye. Yes, sir?

22 MR. PARKER: Number 128, Your Honor.

23 THE COURT: 128?

24 MR. PARKER: Yes, sir.

25 THE COURT: Yes, sir?

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1 MR. PARKER: Detective Byrd's my brother-in-law.
2 THE COURT: Okay. I take it you know each other
3 fairly well?
4 MR. PARKER: Yes, sir.
5 THE COURT: And would that fact interfere with
6 your ability to be a fair and impartial juror in this
7 case?
8 MR. PARKER: No, sir.
9 THE COURT: All right. Thank you, sir.
10 And yes, ma'am?
11 MS. ANDERSON: Juror number 4.
12 Barry Singleton.
13 THE COURT: You're going to have to say that
14 again.
15 THE CLERK OF COURT: Number 4.
16 MS. ANDERSON: Juror number 4.
17 Barry Singleton.
18 THE COURT: I'm sorry. And the reason you
19 stood.
20 MS. ANDERSON: Right.
21 MR. WRIGHT: She's related to Barry Singleton.
22 MS. ANDERSON: Second cousins.
23 THE COURT: Second cousin?
24 MS. ANDERSON: Yes, sir.
25 THE COURT: Okay. Let me ask you: I'm thinking

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1 now, I have several second cousins that I never have
2 seen in years.

3 MS. ANDERSON: Well, we know each other. We see
4 each other.

5 THE COURT: Are y'all close?

6 MS. ANDERSON: Yes, sir.

7 THE COURT: Did you say yes? I couldn't
8 understand you.

9 MS. ANDERSON: We talk --

10 THE COURT: I'm sorry. What?

11 MS. ANDERSON: What did you ask me? If we're
12 close? Yeah. I mean, we talk. We talk to each
13 other. We're not farther apart but --

14 THE COURT: How often do you see each other?

15 MS. ANDERSON: Passing by sometimes, or standing
16 or leaving -- or standing or leaving at the same time.

17 THE COURT: All right. Well, do you think that
18 relationship would interfere with your ability to be a
19 fair and impartial juror in this case?

20 MS. ANDERSON: No.

21 THE COURT: You think you could be a fair and
22 impartial juror?

23 MS. ANDERSON: Yes.

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

25 Yes, sir. Your name and number?

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1 MR. DUNCAN: Juror number 59. Lacy Duncan.

2 I live near Barry Singleton. I have a nephew,
3 Justin Edwards.

4 THE COURT: All right. Say it all over one more
5 time.

6 MR. DUNCAN: I said I live near Barry Singleton.
7 I know him. I also have a nephew that work in --

8 THE COURT: You know who?

9 MR. DUNCAN: Barry Singleton.

10 THE COURT: How well?

11 MR. DUNCAN: How well? We live near each other.
12 Very well.

13 THE COURT: How often do you see each other?

14 MR. DUNCAN: Sometimes I can see him about two
15 or three times a week. Sometimes I go two or three
16 weeks where I don't see him.

17 THE COURT: Now, you also said you have a
18 relative?

19 MR. DUNCAN: Yes. Justin Edwards.

20 THE COURT: And Justin Edwards is?

21 MR. DUNCAN: Sheriff's department.

22 THE COURT: Hampton County Sheriff's Department?

23 MR. DUNCAN: Yes, sir.

24 THE COURT: Now, will those facts interfere with
25 your ability to be a fair and impartial juror in this

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1 case?

2 MR. DUNCAN: No, sir.

3 THE COURT: All right, sir. Thank you, sir.

4 Has any member of the jury panel, or a member of
5 your immediate family, ever been employed by any law
6 enforcement agency? If so, please stand.

7 And your name and number?

8 MS. COOK: Number 43. Cathy Cook.

9 THE COURT: Yes, ma'am?

10 MS. COOK: I have a brother-in-law who used to
11 be with the Hampton County Sheriff's Department, and I
12 have a brother-in-law that is on duty now in Hampton
13 County -- I mean, Town of Hampton Police Department.
14 His name is Ricky Cook. He's a policeman here in
15 Hampton.

16 THE COURT: All right. Would that fact
17 interfere with your ability to be a fair and impartial
18 juror in this case?

19 MS. COOK: No, sir.

20 THE COURT: Thank you, ma'am.

21 Has any member of the jury panel, or a member of
22 your immediate family, ever been the victim of a
23 violent crime or burglary? If so, please stand. You
24 or a member of your immediate family ever been the
25 victim of a violent crime or a burglary?

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1 And, yes, sir. Your name and number.

2 MR. PARKER: Juror 128. Harold Parker.

3 THE COURT: Yes, sir, Mr. Parker.

4 MR. PARKER: My father's house was broken into a
5 year and a half to two years ago here in Hampton.

6 THE COURT: All right. And that -- was the
7 breaking and entering ever resolved or solved?

8 MR. PARKER: Yes, sir..

9 THE COURT: Okay. Would that fact interfere
10 with your ability to be a fair and impartial juror?

11 MR. PARKER: No, sir.

12 THE COURT: Okay. Thank you, sir.

13 Is there any member of the jury panel who is a
14 member of or a contributor to any group which has as
15 its primary concern the promotion of law enforcement
16 or victims' rights? And these groups would include
17 but would not be limited to MADD or SADD or CAV or
18 such similar groups? If so, please stand.

19 [Whereupon, there is no response]

20 THE COURT: Does any member of the jury panel
21 know of any reason whatsoever why he or she should not
22 serve as a juror in this case, with particular
23 emphasis being placed on your ability to be fair and
24 impartial to both the State and to each of the
25 defendants? If so, please stand.

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1 [Whereupon, there is no response]

2 THE COURT: Additional questions that I had
3 already requested? From the State?

4 MR. WRIGHT: No additional.

5 THE COURT: From defense counsel?

6 MR. PLEXICO: No, Your Honor.

7 MS. SMART-GITTINGS: None, Your Honor.

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STRIKING OF THE JURY

THE COURT: All right. Madam Clerk, if you would please select us a jury.

THE CLERK OF COURT: Yes, sir.

THE COURT: Ladies and gentlemen, the computer is now randomly selecting names of perspective jurors, which will be called one at a time.

Each side in the case has a certain number of what are referred to as strikes or the ability to turn down a juror. They don't have to announce any reason or tell us why. And it can be almost any reason. It could be what you were wearing today, it could be where you work, where you live. Just almost anything can constitute a reason that a lawyer may prefer not to have you on the jury. It could also be a reason that they would -- one reason may be they want to just try to get somebody else on the jury.

In just a moment, we'll have that list ready.

[Off the record momentarily]

THE CLERK OF COURT: When I call your name, if you'll just stand where you are. You don't have to come forward. Just stand where you're seated.

Number 89. Chakischa Hicks. And I know I didn't say it right.

What says the State?

State vs. McAlhaney and Hair
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1 MR. WRIGHT: Please present the juror.

2 THE CLERK OF COURT: What says Defendant Number
3 1, McAlhaney?

4 MR. PLEXICO: Please swear the juror.

5 THE CLERK OF COURT: And Defendant Hair?

6 MS. SMART-GITTINGS: Please seat the juror.

7 THE CLERK OF COURT: Come forward, Ms. Hicks.

8 [Whereupon, Ms. Hicks, juror number 89, is
9 seated in the jury box as a juror]

10 THE CLERK OF COURT: Number 47. Nicholas
11 Cuevas.

12 What says the State?

13 MR. WRIGHT: Please present the juror.

14 THE CLERK OF COURT: What says Defendant
15 McAlhaney?

16 MR. PLEXICO: Please swear the juror.

17 THE CLERK OF COURT: What says the Defendant
18 Hair?

19 MS. SMART-GITTINGS: Please seat the juror.

20 THE CLERK OF COURT: Come forward, please.

21 [Whereupon, Mr. Cuevas, juror number 47, is
22 seated in the jury box as a juror]

23 THE CLERK OF COURT: Number 3, Mario Allen.

24 What says the State?

25 MR. WRIGHT: Please excuse the juror.

State vs. McAlhaney and Hair
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1 THE CLERK OF COURT: You can have a seat.
2 Number 150, Sheila Smith.

3 What says the State?

4 MR. WRIGHT: Please present the juror.

5 THE CLERK OF COURT: What says Defendant
6 McAlhaney?

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

9 THE CLERK OF COURT: You can have a seat.
10 Number 64, Henrietta Fields.

11 What says the State?

12 MR. WRIGHT: Please present the juror.

13 THE CLERK OF COURT: What says the Defendant
14 McAlhaney?

15 MR. PLEXICO: Please swear the juror.

16 THE CLERK OF COURT: What says Defendant Hair?

17 MS. SMART-GITTINGS: Please seat the juror.

18 THE CLERK OF COURT: You can come forward.

19 [Whereupon, Ms. Fields, juror number 64, is
20 seated in the jury box as a juror]

21 THE CLERK OF COURT: Number 40, Anthony Cherry.
22 What says the State?

23 MR. WRIGHT: Please present the juror.

24 THE CLERK OF COURT: What says Defendant
25 McAlhaney?

State vs. McAlhaney and Hair
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1 MR. PLEXICO: Please swear the juror.

2 THE CLERK OF COURT: Defendant Hair?

3 MS. SMART-GITTINGS: Please seat the juror.

4 THE CLERK OF COURT: Come forward, please.

5 [Whereupon, Mr. Cherry, juror number 40, is
6 seated in the jury box as a juror]

7 THE CLERK OF COURT: Number 147, Elizabeth
8 Scriven.

9 What says the State?

10 MR. WRIGHT: Please excuse the juror.

11 THE CLERK OF COURT: You can have a seat, Ms.
12 Scriven.

13 Number 10, Nicole Bennett.

14 What says the State?

15 MR. WRIGHT: Please present the juror.

16 THE CLERK OF COURT: What says Defendant
17 McAlhaney?

18 MR. PLEXICO: Swear the juror.

19 THE CLERK OF COURT: Defendant Hair?

20 MS. SMART-GITTINGS: Please excuse this juror.

21 THE CLERK OF COURT: Number 62, Sharon Farris.

22 What says the State?

23 MR. WRIGHT: Please present the juror.

24 THE CLERK OF COURT: What says Defendant
25 McAlhaney?

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1 MR. PLEXICO: Please excuse the juror from the
2 trial of this case.

3 THE CLERK OF COURT: Number 160, Delacy Thomas.
4 What says the State?

5 MR. WRIGHT: Please present the juror.

6 THE CLERK OF COURT: What says Defendant
7 McAlhaney?

8 MR. PLEXICO: Please swear the juror.

9 THE CLERK OF COURT: What says Defendant Hair?

10 MS. SMART-GITTINGS: Please seat the juror.

11 [Whereupon, Mr. Thomas, juror number 160, is
12 seated in the jury box as a juror]

13 THE CLERK OF COURT: Number 36, Ada Capers.
14 What says the State?

15 MR. WRIGHT: Please present the juror.

16 THE CLERK OF COURT: What says Defendant
17 McAlhaney?

18 MR. PLEXICO: Court's indulgence.

19 Please swear the juror.

20 THE CLERK OF COURT: What says Defendant Hair?

21 MS. SMART-GITTINGS: Please seat the juror.

22 [Whereupon, Ms. Capers, juror number 36, is
23 seated in the jury box as a juror]

24 THE CLERK OF COURT: Number 128, Harold Parker.
25 What says the State?

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1 MR. WRIGHT: Please present the juror.

2 THE CLERK OF COURT: What says Defendant
3 McAlhaney?

4 MR. PLEXICO: Please excuse the juror from the
5 trial of this case.

6 THE CLERK OF COURT: You can have a seat.
7 Number 49, Monica Cuyler.
8 What says the State?

9 MR. WRIGHT: Please present the juror.

10 THE CLERK OF COURT: What says Defendant
11 McAlhaney?

12 MR. PLEXICO: Please swear the juror.

13 THE CLERK OF COURT: What says Defendant Hair?

14 MS. SMART-GITTINGS: Seat the juror, please.

15 [Whereupon, Ms. Cuyler, juror number 49, is
16 seated in the jury box as a juror]

17 THE CLERK OF COURT: Number 16, Charles Boswell.
18 What says the State?

19 MR. WRIGHT: Please present the juror.

20 THE CLERK OF COURT: What says Defendant
21 McAlhaney?

22 MR. PLEXICO: Please swear the juror.

23 THE CLERK OF COURT: What says Defendant Hair?

24 MS. SMART-GITTINGS: Please excuse this juror.

25 THE CLERK OF COURT: Number 162, Shaqunda Wade.

State vs. McAlhaney and Hair
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February 3, 2014

1 What says the State?

2 MR. WRIGHT: Please present the juror.

3 THE CLERK OF COURT: What says Defendant
4 McAlhaney?

5 MR. PLEXICO: Please swear the juror.

6 THE CLERK OF COURT: What says Defendant Hair?

7 MS. SMART-GITTINGS: Please seat the juror.

8 [Whereupon, Mr. Wade, juror number 162, is
9 seated in the jury box as a juror]

10 THE CLERK OF COURT: Number 37, Danny Capers.
11 What says the State?

12 MR. WRIGHT: Please present the juror.

13 THE CLERK OF COURT: What says Defendant
14 McAlhaney?

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

17 THE CLERK OF COURT: Number 104, Mary Langdale.
18 What says the state?

19 MR. WRIGHT: Please present the juror.

20 THE CLERK OF COURT: What says Defendant
21 McAlhaney?

22 MR. PLEXICO: Please swear the juror.

23 THE CLERK OF COURT: What says Defendant Hair?

24 MS. SMART-GITTINGS: Please seat the juror.

25 [Whereupon, Ms. Langdale, juror number 104, is

State vs. McAlhaney and Hair
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1 seated in the jury box as a juror]

2 THE CLERK OF COURT: Number 45, Taylor Crapse.

3 What says the State?

4 MR. WRIGHT: Please present the juror.

5 THE CLERK OF COURT: What says Defendant

6 McAlhaney?

7 MR. PLEXICO: Please swear the juror.

8 THE CLERK OF COURT: What says Defendant Hair?

9 MS. SMART-GITTINGS: Please excuse the juror.

10 THE CLERK OF COURT: Number 144, Tina Sanders.

11 What says the State?

12 MR. WRIGHT: Please present the juror.

13 THE CLERK OF COURT: What says Defendant

14 McAlhaney?

15 MR. PLEXICO: Please swear the juror.

16 THE CLERK OF COURT: What says Defendant Hair?

17 MS. SMART-GITTINGS: Please seat the juror.

18 [Whereupon, Ms. Sanders, juror number 144, is

19 seated in the jury box as a juror]

20 THE CLERK OF COURT: Number 11, Clara Black.

21 What says the State?

22 MR. WRIGHT: Please present the juror.

23 THE CLERK OF COURT: What says Defendant

24 McAlhaney?

25 MR. PLEXICO: Please excuse the juror from the

State vs. McAlhaney and Hair
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1 trial of this case.

2 THE CLERK OF COURT: Number 171, Carolyn Wright.

3 What says the State?

4 MR. WRIGHT: Please present the juror.

5 THE CLERK OF COURT: What says Defendant

6 McAlhaney?

7 MR. PLEXICO: Please swear the juror.

8 THE CLERK OF COURT: What says Defendant Hair?

9 MS. SMART-GITTINGS: Please seat the juror.

10 [Whereupon, Ms. Wright, juror number 171, is
11 seated in the jury box as a juror]

12 THE CLERK OF COURT: Number 163, James Walsh.

13 What says the State?

14 MR. WRIGHT: Please present the juror.

15 THE CLERK OF COURT: What says Defendant

16 McAlhaney?

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

19 THE CLERK OF COURT: Number 143, Linda Sanders.

20 What says the State?

21 MR. WRIGHT: Please present the juror.

22 THE CLERK OF COURT: What says Defendant

23 McAlhaney?

24 MR. PLEXICO: Please excuse the juror from the
25 trial of this case.

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1 THE CLERK OF COURT: Number 139, Candice
2 Robinson.

3 What says the State?

4 MR. WRIGHT: Please present the juror.

5 THE CLERK OF COURT: What says Defendant
6 McAlhaney?

7 MR. PLEXICO: Please swear the juror.

8 THE CLERK OF COURT: What says Defendant Hair?

9 MS. SMART-GITTINGS: Please seat the juror.

10 THE COURT: I believe you've got your twelve,
11 don't you?

12 THE CLERK OF COURT: Yes, sir.

13 THE COURT: Two alternates.

14 [Off the record momentarily]

15 THE COURT: Bear with us a moment, ladies and
16 gentlemen.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE CLERK OF COURT: Number 71, Jeannie
20 Giardina. I know I didn't say it right.

21 MS. GIARDINA: Jeannie Giardina.

22 THE CLERK OF COURT: What says the State?

23 MR. WRIGHT: Please present the juror.

24 THE CLERK OF COURT: What says Defendant
25 McAlhaney?

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1 MR. PLEXICO: Please excuse the juror from the
2 trial of this case.

3 THE CLERK OF COURT: Number 81, William Hadwin.

4 MR. WRIGHT: Please present the juror.

5 THE CLERK OF COURT: What says Defendant
6 McAlhaney?

7 MR. PLEXICO: Swear the juror.

8 THE CLERK OF COURT: What says Defendant Hair?

9 MS. SMART-GITTINGS: Please seat the juror.

10 [Whereupon, Mr. Hadwin, juror number 81, is
11 seated in the jury box as an alternate juror]

12 THE CLERK OF COURT: Number 67, Willie Frazier.
13 What says the State?

14 MR. WRIGHT: Please present the juror.

15 THE CLERK OF COURT: What says Defendant
16 McAlhaney?

17 MR. PLEXICO: Please swear the juror.

18 THE CLERK OF COURT: What says Defendant Hair?

19 MS. SMART-GITTINGS: Please seat the juror.

20 [Whereupon, Mr. Frazier, juror number 67, is
21 seated in the jury box as an alternate juror]

22 THE COURT: Any matters of law the Court needs
23 to consider concerning the composition and selection
24 of the jury? From the State?

25 MR. WRIGHT: Nothing from the State, Your Honor.

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1 THE COURT: Either of the defendants?

2 MR. PLEXICO: None, Your Honor.

3 MS. SMART-GITTINGS: None from Defendant Hair,
4 Your Honor.

5 THE COURT: Ladies and gentlemen, those jurors
6 who have not been selected and are not sitting over
7 here, we're ready to let you go for today and letting
8 you go for tomorrow.

9 I'm going to ask you to call tomorrow evening,
10 6:00 p.m. or after, for instructions about what to do
11 next. There will be a message on the machine that
12 could say one of several things. It could say please
13 come in Wednesday morning, or it could say call back
14 Wednesday evening, or it could possibly say thank you
15 very much, your service for the week has ended. Or
16 something like that.

17 I'm going to remind you, you're still on jury
18 duty until either you're in here and I tell you that
19 you're excused from jury duty or the magic machine
20 tells you that you're excused from jury duty.

21 Does anybody have a question? Anybody have a
22 question at all? No questions? No questions?

23 THE CLERK OF COURT: Judge?

24 UNIDENTIFIED: We call the clerk of court?

25 THE CLERK OF COURT: There is a call-in number

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1 at the security desk, and they can pick it up on their
2 way out.

3 THE COURT: That's a good question. I thought
4 you had the number already. That's my mistake.

5 There's a number at the check-out desk, the
6 security desk, downstairs that will give you a number.
7 That's the number to call.

8 Any other good questions like that?

9 [Whereupon, there is no response]

10 THE COURT: Ladies and gentlemen, you are
11 excused until further notice.

12 [Whereupon, the remaining jury panel is excused
13 and exits the courtroom at 4:18 p.m.]

14 THE COURT: Ladies and gentlemen, due to the
15 lateness of the hour, we're not going to get anything
16 accomplished this afternoon or this evening. I'm
17 going to ask you to come back in the morning. Be in
18 the jury room at 9:30 in the morning. Before you
19 leave, the bailiff will show you where the jury room
20 is. You'll be escorted up here tomorrow morning.

21 I'm getting ready to ask you to do something
22 that's going to be real hard, though. Until the case
23 is completely over, you can't talk to anybody about
24 the case. And that's going to be real hard when you
25 go home. When you leave here you're going to see

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1 family, friends, and loved ones who are going to say,
2 I heard you got picked, you got picked, didn't you or
3 -- it's going to come up. And then they're going to
4 want to know who's involved, what's involved, what
5 kind of case is it, who are the people. Right now,
6 the both sides have selected to you as what they
7 believe to be fair and impartial jurors. Presumably,
8 you don't know anything of any significance about this
9 case. So you'll make a decision about what happens
10 here in the courtroom, not what somebody outside the
11 courtroom tells you they heard about this case or
12 cases like this.

13 And believe it -- it happens. It happens. If
14 you start talking to people about the case, then
15 they're going to tell you what they heard, what they
16 heard somebody say that they knew about this case.
17 Well, if anybody knew something about this case,
18 they'll be here this week and you'll hear from them.

19 So at any rate, we're getting ready to let you
20 go until 9:30 in the morning. Any questions, any
21 problems? Anybody going to have a problem being here
22 at 9:30 in the morning?

23 Ladies and gentlemen, you're excused. See you
24 in the morning.

25 [Whereupon, the jury exits the courtroom at

State vs. McAlhaney and Hair
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1 4:47 p.m.]

2 MR. WRIGHT: Are you going to pick the
3 foreperson, or are you going to ask them to vote in
4 the morning, or --

5 THE COURT: I'll let them do that later, I
6 think, as they know each other.

7 Do you still -- do you still think we'll finish
8 it --

9 MR. WRIGHT: Yeah.

10 THE COURT: -- get it to the jury tomorrow?

11 MR. WRIGHT: Yes, sir.

12 THE COURT: Anything we need to take care of,
13 before the jury comes in in the morning, from anybody?
14 Can anybody think of any problems, anything we need to
15 take care of?

16 Is this going to be a time that defense counsel
17 needs to talk to the solicitor again about what issues
18 are on the table from the standpoint of what they
19 might be able to talk to their clients about doing or
20 not doing?

21 MR. WRIGHT: Nothing on the table, Your Honor.

22 THE COURT: Did you want to say something?

23 MR. WRIGHT: Nothing on the table right now.

24 THE COURT: All right.

25 MR. PLEXICO: We may have an issue of any

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1 statements that the defendants have made, Your Honor,
2 and whether or not they need to be redacted in regards
3 to that --

4 THE COURT: Well, now is the time let's talk
5 about it.

6 MR. WRIGHT: None of these defendants made a
7 statement. The codefendant made a statement and he
8 will have live testimony, so there's no issues. They
9 can have an opportunity to cross-examine him as much
10 as they want to. So we have no issues.

11 MR. PLEXICO: The codefendant is in jail,
12 unrepresented. And we're unaware of any offers that
13 have been made, or any promises, and I would find it
14 difficult to believe that somebody with twenty -- from
15 1986 -- a criminal record of burglary dating back to
16 1986, which their witness, Ricky Sauls, has, has not
17 been promised something by someone in exchange for his
18 testimony today. That would go also for Mr. Crosby,
19 Larry Crosby, who also has --

20 MR. WRIGHT: He has --

21 MR. PLEXICO: -- an extensive criminal history.

22 MR. WRIGHT: He has the opportunity to cross-
23 examine everybody that I call on the witness stand.

24 But I represent to you right now, no deals have
25 been made to anybody.

State vs. McAlhaney and Hair
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February 3, 2014

1 MR. PLEXICO: Okay.

2 MR. WRIGHT: In fact, I made an offer to plea

3 straight up to burglary first to Mr. Ricky Sauls. And

4 the other witness that's -- was involved has no

5 charges.

6 THE COURT: The guy you were talking about is

7 the one that's in jail?

8 MR. WRIGHT: Yeah. He has an offer to plead

9 straight up.

10 THE COURT: Okay. All right.

11 MR. WRIGHT: Which he hasn't got because he

12 doesn't have an attorney.

13 THE COURT: He hasn't applied for an attorney?

14 MR. WRIGHT: I thought that he was represented

15 by the public defender's office, until this morning.

16 I thought he was represented by Bob Hughes with their

17 office, because I knew that the other two were

18 represented. But Bob told me he wasn't, and so --

19 THE COURT: It seems like somewhere along the

20 line we need to talk to him about an attorney.

21 All right. This case, then, we're in recess

22 until tomorrow morning at 9:30. We'll do this at 9:15

23 in the morning, in case something is going on.

24 [JURY TRIAL ADJOURNS AT 4:54 P.M.]

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[Exhibits pre-marked by counsel unless otherwise noted]

MARKED/ADMITTED

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[Items from Home]

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[Items From Home]

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[Statement]

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PROCEEDINGS

THE COURT: All right. Any matters we need to take up before the jury comes in this morning? Solicitor?

MR. WRIGHT: None that I'm aware of, Your Honor.

THE COURT: Mr. Plexico?

MR. PLEXICO: Yes, Your Honor.

Your Honor, one of the witnesses is a Larry Crosby. I have a pending case against a Larry Crosby that I represent him on. The State has represented to me that they do not intend to call him as a witness. He is witness number 6 on their witness list, Larry Crosby of Hampton, South Carolina.

I'm going to put this on the record and so -- I wouldn't have a conflict, then. So I just want to -- and I told my client I have a pending case on him. And we might want to talk to her about that and put it on the record and make sure there's no conflict.

I've not discussed this matter with him. He called my office yesterday for five seconds and left a message and I didn't return the call. I didn't know where he's at and I haven't discussed the matter with him.

THE COURT: All right.

MR. WRIGHT: I would like the defendants in this

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1 case -- I don't want -- defendants know the issue. I
2 want to make sure -- I've got the defendants coming
3 in.

4 But Larry Crosby's pending case is not out of
5 the same facts and circumstances. And in an attempt
6 to avoid a conflict, the State has elected not to call
7 him. He's not an essential witness. He's more of a
8 circumstantial, collateral evidence involved in the
9 case. So just to keep the record as clean as
10 possible, we elected not to call him.

11 THE COURT: All right. Well, since he's not
12 going to be called, there apparently won't be a
13 problem.

14 MR. WRIGHT: Thank you.

15 MR. PLEXICO: Just for the appearance of a
16 conflict, I would like to put that on the record with
17 my client.

18 THE COURT: Okay.

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State vs. McAlhaney and Hair
Motion for Sequestration by Mr. Plexico
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MOTION FOR SEQUESTRATION

MR. PLEXICO: And I also have a motion under 615 to exclude -- for sequestration, Judge, the fact witnesses in regards to this case.

THE COURT: Say that one more time. You want to exclude what?

MR. PLEXICO: The witnesses -- I'm moving to sequester the witnesses under Rule 615. This is all a matter of fact in regards to who says what and who knows what.

THE COURT: All right. Solicitor, any objection to sequestration?

MR. WRIGHT: None, Your Honor.

I would like to have one member from the family to be available to be in the courtroom at all times and one member of law enforcement to be in the courtroom at all times.

MR. PLEXICO: This is Charles Deloach. His -- this was the home of Mr. Deloach, who passed away in September. I think it's pushing the envelope to say that any one person is the victim in regards to this case. Nobody had title to the property in regards to that. They were just -- I mean, I don't see who would be a victim, aside from the State. So I think the officer --

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1 THE COURT: I, of course, know very little about
2 the case.

3 MR. WRIGHT: He's incorrect in his analysis.

4 The house is actually in probate. It belonged
5 to Mr. Deloach's mom, and the three heirs are present
6 in the courtroom and they would have -- they are
7 owners of the property.

8 Mr. Deloach, when he passed away, his rights
9 went to his daughter. And that's Ms. Amanda Deloach
10 Brown. And then Ms. -- I don't want to say the wrong
11 name -- Ms. Thomas -- Taylor and Ms. Muller are the
12 other two heirs. So they're all the rightful owners
13 of the property, so they are the victims in the
14 matter.

15 But the State is willing to go down to just one
16 of them being in the courtroom, as opposed -- I think
17 we're entitled to have all three of them. But they
18 all three own the property. But we're willing to just
19 allow --

20 THE COURT: The Court will allow one of the
21 owners of the property to remain in the courtroom.

22 Now, what about -- you're talking about law
23 enforcement. Are you talking about law enforcement
24 witnesses or --

25 MR. WRIGHT: Yes.

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1 I don't want to say the wrong title. But Jim --
2 James Bolton, Blue, I would like to have him in the
3 courtroom as -- during the trial.

4 THE COURT: His role in all this is?

5 MR. WRIGHT: He -- this was an investigation.
6 He's the supervisor of all the officers that's
7 involved in the case.

8 THE COURT: All right. Mr. Plexico?

9 MR. PLEXICO: Your Honor, I don't have a problem
10 with Mr. Bolton being in here as the chief lead
11 investigator in regards to my client.

12 MS. SMART-GITTINGS: I don't, either, Your
13 Honor.

14 THE COURT: All right. We'll leave -- we'll
15 have Major Bolton in here.

16 MR. WRIGHT: Thank you.

17 THE COURT: Yes, sir?

18 MR. PLEXICO: Your Honor, in regards to that,
19 13-GS-25-00434, which was quashed yesterday: I
20 understand the State intends to bring in facts in
21 regards to that. I think that would -- it wouldn't
22 be -- I think it would be -- if it was relevant, it
23 would be unduly prejudicial to my client, Judge. And
24 these are two separate incidents and I don't see where
25 -- I mean, you've already quashed the indictment, and

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1 to bring that in I think would be unduly prejudicial
2 and a due process violation and violation of the
3 rules, Judge.

4 MR. WRIGHT: I don't agree with him.

5 It was one big investigation. Just to enlighten
6 the Court, what happened was law enforcement was
7 notified that someone was breaking into a house. They
8 went to the house. They found Ms. McAlhaney in the
9 house. They detained her, got permission to search
10 her home. Went to her home. The two other co-
11 defendants were at the home. One of the co-defendants
12 came outside and they basically, hey, yeah, we did --
13 we broke in a house last night, we took a bunch of
14 stuff, we shouldn't have did it, it was wrong. They
15 got a statement from them. They collected all the
16 items. So it's one big investigation that's all
17 connected.

18 She went into the house on the first day -- all
19 three of them went into the house the first day,
20 committed burg first. The next day she went to the
21 home to get some -- she saw some meds that she wanted
22 to take, and she went back to take the meds and got
23 caught in the house.

24 And that's -- the second day is the burg second
25 that you quashed the indictment. I still think it's a

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1 part of the investigation, even though she's not on
2 charge for that particular charge at this particular
3 time. And it wouldn't be fair to the State, either,
4 to put parameters around -- her acts were all
5 connected, in the State's opinion.

6 THE COURT: Let's think about that. Common
7 scheme. Prove identity.

8 MR. PLEXICO: Yes.

9 Could we have our clients in, Judge --

10 THE COURT: Sure. I think they should be in
11 here.

12 [Whereupon, Ms. McAlhaney and Mr. Hair enter the
13 courtroom at 9:31 a.m.]

14 THE COURT: What about it, Mr. Plexico? Isn't
15 it part of the plan, common scheme?

16 MR. PLEXICO: Judge, I think it's simply another
17 incident. It would be like it's not the same set of
18 facts or circumstances. She's by herself. There were
19 four people alleged involved in the first incident,
20 Judge. It would highlight her participation and
21 prejudice her in relation to Codefendant Hair and make
22 her look more culpable in the first event that -- for
23 instance, Mr. Hair, that would not -- that would deny
24 her, I believe, a fair trial in regards to that
25 matter, Judge: that it was a different time, it was

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1 different players. And the only thing that's common
2 is the place, Judge. And I think it would unduly
3 prejudice her.

4 They don't intend to introduce any statements
5 that she made. So, I mean, there are no issues in
6 regards to that.

7 I just don't see how it's a common scheme or
8 plan, Judge, because it's different players. You had
9 four involved in the first one, two of which are on
10 trial.

11 Now, this is just my client, who was in the
12 home, Judge, the second time, which is a wholly,
13 independent, separate matter. So if we had a separate
14 trial, she would testify as to why she was in that
15 home.

16 THE COURT: Anything?

17 MR. WRIGHT: Yes, sir.

18 Just to correct, there's only three people
19 involved in the actual burglary first, only three
20 people that have been charged. The fourth person,
21 unless he has the ability to swear out a warrant and
22 arrest somebody, I don't know who he's talking about.
23 We have three people: Ricky Sauls, who's going to
24 testify, and these two defendants that were involved
25 in this burglary first.

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1 And we -- it goes directly towards
2 identification and common scheme that she knew how to
3 get into the house and that she had been in the house
4 before.

5 And I think that everything is so linked
6 together that to cut that piece of the investigation
7 out would make it look like it's disjointed and would
8 actually prejudice the State in their prosecution of
9 the defendants because the fact that they developed
10 her as a suspect would come out of thin air versus
11 them finding her in the house and getting -- missing
12 -- go to the house -- to her home and finding the
13 items. So the theory of the State's case was all from
14 them being at her house with items from the location,
15 which would be disjointed and prejudice the State in
16 their prosecution of the defendant, you know.

17 I know we need to protect her rights. But the
18 fact she's not being charged with it doesn't mean it
19 didn't happen. And we have witnesses here to testify
20 to that. And to cut that part out would make my whole
21 case look as if it came out of thin air, which would
22 be an issue that they would jump on, and I don't think
23 that would be fair.

24 THE COURT: Mr. Plexico?

25 MR. PLEXICO: Your Honor, this is the -- from

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1 the State's witness, Ricky Sauls: [reading] we were
2 the individuals involved in this incident. Ricky,
3 that would be Ricky Sauls, Tonya, that would be my
4 client, Larry Crosby, who is not going to be called to
5 testify, and Travis, who was driver, who is on trial.
6 That's four people, Judge.

7 And then it says again: [reading] who took you
8 to commit the offense. Larry Crosby.

9 So this fourth person is involved. It's a whole
10 different set of individuals or a different set of
11 circumstances. And I just don't see how that's
12 common. There are too many elements that are
13 different, Judge, aside from the fact all we can say
14 is an alleged burglary, which, of course, wouldn't be
15 the same. The players need to be the same, the
16 circumstances need to be the same. And I think it
17 would be unduly --

18 MR. WRIGHT: Judge --

19 MR. PLEXICO: -- prejudicial and would not be
20 allowed under 404(b).

21 MR. WRIGHT: -- just to keep the Court fully
22 informed: if he kept reading the statement, he would
23 see where Mr. Sauls says that Mr. Cook [phonetic]
24 dropped him off. And then when asked do you think he
25 knew about what was going on, he basically said, I

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1 didn't know what was going on until we got there.

2 So that's why my office didn't charge them. But
3 that's not neither here nor there. We're just
4 enlightening the Court there's only three people
5 involved in this case, three people who have been
6 charged, based on the facts that will come out on the
7 witness stand.

8 But just to reiterate what I said before, I
9 believe that it will be prejudicial to the State and
10 unfair to the prosecution of the defendant if we take
11 a sentence and splice out a piece of it, because then
12 it would be disjointed, it wouldn't make any sense,
13 that they were developed as suspects. And the
14 identification that law enforcement used to develop
15 these defendants as suspects is totally connected to
16 the fact that they found her in the house.

17 MR. PLEXICO: I would offer his statement,
18 Judge, which doesn't say anything about Larry not
19 knowing what was going on. It says that: [reading]
20 did the individual know that you-all were planning to
21 commit the offense. I did not know until we go there.

22 So Larry Crosby dropped them off and then came
23 back and picked them up, which is what the evidence is
24 going --

25 I would like to make that a Court's Exhibit.

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1 MR. WRIGHT: I would object. I don't think it
2 has anything to do with what we're talking about. I
3 think that's a red herring that he's jumping all over
4 but doesn't have anything to do with this question of
5 should be able to go into the facts from the whole
6 incident.

7 THE COURT: All right. I'm going to deny the
8 motion. I think it's admissible under two theories,
9 common scheme or identity, and I don't find it to be
10 duly prejudicial. For those reasons, I'm going to
11 deny the motion.
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MOTION FOR A CONTINUANCE

MR. PLEXICO: Your Honor, also, we had a bench conference yesterday --

THE COURT: We did.

MR. PLEXICO: -- and I would like to put that on the record, if we could.

THE COURT: Certainly.

MR. PLEXICO: You -- I had moved to continue since the fourth indictment, ending in 2013-GS-00434, was quashed. The solicitor called the case, read both indictments ending in 434 and 435. I thought that unduly prejudiced my client. I moved for a continuance on those grounds. You gave an instruction to the jury. And correct me if I'm wrong, but you instructed them to ignore what the solicitor said at the call of the case and pay attention to your remarks in the form of a curative instruction. I think the prejudice was so great in that and that they now know that members of the jury who were in the jury venire at the time know that she has been indicted on two separate charges would -- that's a prejudice that cannot be erased and overcome and I would move for a continuance on those grounds, Judge.

THE COURT: All right. I understand, and would deny the motion.

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1 MR. PLEXICO: And that was made
2 contemporaneously with that; is that correct, Your
3 Honor?

4 THE COURT: That is correct.

5 MR. PLEXICO: All right. Thank you, Your Honor.
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1 MR. PLEXICO: Further, my client is here. I
2 would ask my client on the record, Judge, if I have
3 told her I have a pending case with Larry Crosby.
4 It's an unrelated drug case. He is not to be called
5 as a witness in regards to this matter. So just -- I
6 want to make sure for the appearance -- that there's
7 no appearance of impropriety.

8 I've discussed the matter with her. She tells
9 me she wishes to -- for me to remain as her counsel
10 and she does not see any kind of conflict or how she
11 would be prejudiced.

12 Ms. McAlhaney?

13 Would you like to swear her in?

14 THE COURT: No. I take your word for that.

15 MR. PLEXICO: Is that correct, Ms. --

16 MS. MCALHANEY: That is correct.

17 MR. PLEXICO: Okay. I have nothing further.
18 Ms. Smart may have something.

19 MS. SMART-GITTINGS: May it please the Court,
20 Your Honor?

21 THE COURT: Certainly.

22 MS. SMART-GITTINGS: There is the issue of Ricky
23 Sauls you did mention that briefly on the record
24 yesterday.

25 Ricky Sauls, from my understanding, is not

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1 represented by anyone in our office. The State
2 mentioned that they had spoken to Mr. Ricky Sauls. My
3 concern is that they spoke to him. He is charged with
4 a burglary first, which is a most-serious offense, and
5 I need to make sure that his rights were protected
6 with regard to his testimony and the fact that he'll
7 be incriminating himself for this burg.

8 I think that, in an abundance of caution, the
9 Court should appoint an attorney to represent Mr.
10 Sauls, have someone talk to Mr. Sauls, to make sure
11 that he is informed of all his rights prior to his
12 testimony today.

13 And if -- Your Honor, if the State has spoken to
14 Ricky Sauls, we would like to know whether or not they
15 took any notes, we would like to know who spoke with
16 Mr. Sauls and what -- the contents of the conversation
17 with Mr. Sauls.

18 THE COURT: What about it, solicitor?

19 MR. WRIGHT: Your Honor, I spoke with Mr. Ricky
20 Sauls for the first time on yesterday, after the case
21 was called. I did not communicate to him personally.
22 My investigator did. And the bulk of the conversation
23 was, is this your statement. Yes, that's my
24 statement. Read the statement. Did you get
25 Mirandized. Yes. Do you -- is that a correct

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1 statement. Yes.

2 That's what happened. That was the gist of the
3 whole statement -- conversation. It might have lasted
4 a total of five minutes. And that was on yesterday
5 afternoon after the case was called.

6 As far as getting him appointed an attorney, I
7 made contact with Mr. Bob Hughes, with the public
8 defender's office, and asked him to be present in the
9 courtroom at ten o'clock at the latest so that in case
10 the judge wanted to appoint Mr. Sauls an attorney,
11 that someone from the public defender's office would
12 be available to be appointed. I'm not saying that's
13 who you have to appoint. But I did call to make
14 contact with him this morning.

15 Beyond that, I just want to reiterate no offers
16 have ever been made to Mr. Ricky Sauls in reference to
17 this case and nothing has been spoken to him outside
18 of what he has in his statement he gave law
19 enforcement. That's what law enforcement --

20 THE COURT: And the statement that we're
21 referring to has been provided to counsel?

22 MR. WRIGHT: Oh. Yes. Yes, sir. Yes, sir.
23 Yes, sir. Matter of fact, I think he may have
24 introduced it to you a minute ago, asked you to look
25 at the statement from Ricky Sauls.

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1 THE COURT: Is that what -- is that what it was?

2 MR. WRIGHT: Yeah.

3 MR. PLEXICO: That was one of them. He has two
4 pages -- there were two pages. I put one page in as a
5 Court's Exhibit.

6 THE COURT: All right.

7 MR. WRIGHT: And I spoke with law enforcement.
8 No one has made any promises to him as of five minutes
9 ago, or whenever we started this hearing here today.

10 THE COURT: All right. Does that satisfy the
11 issues you were raising?

12 MS. SMART-GITTINGS: With regard to the content
13 of the conversation.

14 But, Judge, it's very serious for him to come in
15 here and testify and incriminate himself. And if he
16 wanted to have a trial later, he has given up that
17 right to a trial if he comes in here and testifies
18 that he, in fact, is guilty of that.

19 It's one thing to have written statements. But
20 his attorney has an opportunity to challenge those
21 statements at a trial. But if he testifies under oath
22 in this courtroom today, those rights, his rights,
23 have been violated. And that is my concern.

24 MR. PLEXICO: I join in her motion, too, on
25 behalf of my client, McAlhaney.

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1 MR. WRIGHT: While we appreciate their concerns,
2 I think it's kind of looking out for the interest of
3 their client and not looking out for the interest of
4 Mr. Sauls as their true motivation for their I guess
5 motion or their statements.

6 And I believe that Mr. Sauls made the statements
7 beforehand, being honest, and I would hate for them to
8 come in and motivate him to be dishonest to the Court.
9 And I think the ultimate goal is to have as much
10 honesty in the courtroom as possible. And I think
11 that their motions would kind of breed dishonesty.

12 THE COURT: Well, here's what we're going to do.
13 We're going to wait and see when he's called. He may
14 have an attorney by the time he's called to the
15 witness stand.

16 MR. WRIGHT: Yes, sir.

17 MS. SMART-GITTINGS: He's in jail, Your Honor.

18 THE COURT: All right.

19 MS. SMART-GITTINGS: And I don't know that -- I
20 mean, and that's the problem that I have. He's been
21 in jail since this crime occurred and the State should
22 have provided an attorney to him prior to today, but
23 the State didn't --

24 THE COURT: Did he ask for any attorney? I
25 don't know.

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1 MS. SMART-GITTINGS: -- and he sent his
2 representative to the jail to talk with him, knowing
3 he was uncounseled. And to me, Your Honor, it brings
4 up ethical concerns.

5 MR. WRIGHT: Your Honor, I take issue to her
6 making that statement on the record.

7 But, Your Honor, he has the right to ask for an
8 attorney. You don't have the right to automatically
9 have an attorney, you have the right to ask for one.
10 And when you ask for one, you get one. If he didn't
11 ask for one, he doesn't get one.

12 So I take issue with her statement on the record
13 that it may be an ethical issue.

14 THE COURT: All right. You can't force him to
15 have an attorney if he doesn't want an attorney.

16 I guess we'll just see what happens.

17 MS. SMART-GITTINGS: Correct, Your Honor.

18 THE COURT: Okay.

19 MR. PLEXICO: There's another motion, Judge.

20 THE COURT: All right.

21 MR. PLEXICO: Your Honor -- all right. My --
22 they gave me an NCIC report, Judge, for Mr. Ricky
23 Sauls. It shows that he had a series of burglaries in
24 the '80s. And he also had a malicious injury in the
25 '80s; he had an escape; he had a driving under

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1 suspension in 1990s; he had criminal domestic
2 violence, it looks like several arrests, in 2000,
3 2011.

4 I believe that his experience in the criminal
5 justice system is relevant on cross-examination to
6 show that he knows how to cut a deal on how to behave
7 in a courtroom and how to get the best deal for
8 himself. So I just -- I intend to cross-examine him
9 that he does have prior experience with the criminal
10 justice system and he knows how to cut a deal.

11 I do not intend to bring in the specifics of his
12 prior convictions, because I don't think that would be
13 allowed under the rules. However, I'm not bringing in
14 that to show character as much as I am bringing it in
15 -- excuse me -- because I am bringing it in to show he
16 knows how to work the system.

17 THE COURT: Solicitor?

18 MR. WRIGHT: I believe that his prior record is
19 fair game for defense counsel to go into. I think
20 during closing he can definitely make any type of
21 inferences that he desires on behalf of his client.

22 I think to make that assertion to the defendant
23 while he's on the stand and saying, you're doing this
24 just so you can get a -- is kind of not fair to him
25 until he has an attorney. So if he has an attorney,

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1 I'm sure that can be taken care of beforehand.

2 But it's my position it's fair game. He can do
3 whatever he wants to, as far as the witness. I'm not
4 trying to protect the witness. No deal has been made.
5 Nothing's been communicated to him that he will get a
6 better deal or -- he gave a statement on his own
7 volition. So them going into it and attacking him, I
8 really don't know what we will gain in this hearing.
9 But I think it's fair game to do whatever he wants to.

10 THE COURT: All right. I'll permit examination
11 of that witness to inquire of him, based on his
12 experience, about whether or not he anticipates a
13 deal. And, of course, whether or not he's already
14 received one. You can certainly ask him that.

15 MR. PLEXICO: Thank you, Your Honor.

16 THE COURT: All right. Anything else?

17 Opening statements: five minutes each.

18 MR. WRIGHT: Thank you, Your Honor.

19 THE COURT: And let me see -- let me see the
20 attorneys in chambers for just a minute.

21 [Whereupon, a recess is taken from 9:47 a.m. to
22 10:02 a.m.]

23 MR. WRIGHT: Your Honor, before we get started,
24 can we get some clarification as to this is a Court
25 Exhibit or a Defense Exhibit?

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1 MR. PLEXICO: That's a Court's Exhibit, Your
2 Honor.

3 THE COURT: Yes. I think it would be.

4 MR. PLEXICO: Number 1. From the defense.

5 [Whereupon, Court's Exhibit Number 1 is marked
6 by the court reporter]

7 MR. WRIGHT: And I just want to note that I did
8 object to it being entered. I didn't think it had any
9 relevance to what was going on at the time.

10 THE COURT: Right. And I noted the objection.
11 All right. Are we ready for the jury?

12 MR. WRIGHT: Are we going to do the appointment
13 thing or are we going to do that later on?

14 THE COURT: Well, it seems to me that, actually,
15 the defendant had requested the appointment of an
16 attorney. It had just never been acted on.

17 THE CLERK OF COURT: So I've done it now.

18 MR. WRIGHT: Okay.

19 THE COURT: So she's signed off and appointed
20 the office.

21 MR. HUGHES: Which I guess would be me, Your
22 Honor. Is my client here?

23 OFFICER: He should be in lockup. We had him
24 come at ten o'clock.

25 MR. WRIGHT: Yeah. I told them to have him here

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1 by 10:00.

2 I guess we need a second to give him a copy of
3 the file so he can know what he's doing.

4 THE CLERK OF COURT: He's already got a copy of
5 the file.

6 MR. WRIGHT: He has a copy?

7 THE CLERK OF COURT: Of Ricky Sauls' file.

8 MR. WRIGHT: He has a copy of Ricky Sauls' file?

9 MR. HUGHES: I've got a copy of the indictment
10 and the --

11 MR. WRIGHT: Well, he's --

12 MR. HUGHES: I have a copy of --

13 THE CLERK OF COURT: I mean the Court's file.

14 MR. WRIGHT: Okay.

15 THE CLERK OF COURT: I mean, what I have in my
16 file, he's got a copy of.

17 MR. WRIGHT: Okay.

18 [Off the record momentarily]

19 MR. HUGHES. Let me go talk to my client, Your
20 Honor.

21 THE COURT: Certainly.

22 THE COURT: All right. Let's bring the jury in.

23 [Whereupon, the jury enters the courtroom at
24 10:05 a.m.]

25 THE COURT: Welcome, ladies and gentlemen.

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1 Once again, I need to apologize to you because I
2 needed you to come in at 9:30 and then we don't see
3 you until well after ten o'clock.

4 The first thing we're going to do this morning
5 is have our clerk of court administer to you your oath
6 as jurors.

7 THE CLERK OF COURT: Would you stand and raise
8 your right hand, please.

9 [Whereupon, the jury is duly sworn by the clerk
10 of court as follows: do you solemnly swear or affirm
11 that you shall well and truly try and true deliverance
12 make, between the State of South Carolina and the
13 accused at the bar, and a true verdict give, according
14 to the evidence, so help you God]

15 THE CLERK OF COURT: If you accepted the oath,
16 please acknowledge and have a seat.

17 [Whereupon, all jurors take their seat]

18 MR. WRIGHT: Your Honor, I want to make sure I
19 adhere to the ruling you made earlier. Can I ask the
20 witnesses to leave the courtroom?

21 THE COURT: I'm sorry. Yes. Go ahead.

22 MR. PLEXICO: And not to discuss the case.

23 [Whereupon, witnesses exit the courtroom]

24 THE COURT: Now, ladies and gentlemen, as you've
25 been told, we're about to begin the trial of the State

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1 of South Carolina versus Travis L. Hair and the State
2 of South Carolina versus Tonya McAlhaney.

3 Both defendants are charged, by way of
4 indictments, with the crime of burglary in the first
5 degree. The elements of burglary in the first degree
6 will be explained to you at a later time.

7 I need to tell you a couple of things, though.
8 The fact that the defendants were indicted is not
9 evidence in this case. An indictment is just -- is
10 merely the vehicle that brings this case into the
11 courtroom. The defendants have pled not guilty to the
12 indictments. The State, then, therefore, has the
13 burden of proving each of the elements of the
14 indictment to your satisfaction beyond a reasonable
15 doubt and it will be your duty, ladies and gentlemen,
16 to determine whether the State meets that burden.

17 Your purpose as jurors is to find and determine
18 the facts of the case. You are the sole judges of the
19 facts of the case. And if at any time I do anything
20 to cause you to believe that I have an opinion about
21 the facts of the case, you must disregard it. The law
22 doesn't permit me to express an opinion about the
23 facts of the case in your presence. You are to
24 determine the facts from the testimony you hear from
25 the witness stand here, and other evidence that might

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1 be introduced during the trial.

2 In a few moments, the attorney will make their
3 opening statements where they tell you what they think
4 the evidence will show or will not show. After that,
5 witnesses typically begin taking the witness stand and
6 will be examined and cross-examined.

7 Once all of the evidence has been submitted to
8 you, the attorneys will then make their closing
9 arguments to you where they try to tell you how -- to
10 convince you to see the case the way they see it.

11 And then I will tell you about the law that
12 applies in the case. Then you retire to the jury room
13 and you begin your deliberations. But until that
14 point, not only are you not permitted to talk to
15 anybody about the case, but you actually are not
16 allowed to talk about the case even in the jury room,
17 even among yourselves, not until everything is done.

18 From time to time, you may see the attorneys ask
19 to see me at a sidebar or I ask them to approach. It
20 may even require us to ask you to step out of the
21 courtroom while we discuss matters outside your
22 presence. The reason we do this is not to keep
23 secrets from you but it's because normally I'm being
24 required to discuss with the lawyers a matter of law
25 but in doing that, it may require me to discuss the

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1 facts of the case with those lawyers. And as I've
2 already told you, I can't discuss the facts of the
3 case in your presence. So be patient and bear with
4 us. Listen to the testimony.

5 And, ladies and gentlemen, we'll now hear
6 opening statements from the attorneys, beginning with
7 the solicitor.

8 MR. WRIGHT: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. WRIGHT: Permission to move freely?
11 Permission to move freely?

12 THE COURT: Sure.

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State vs. McAlhaney & Hair
Opening Statement by Mr. Wright
February 4, 2014

OPENING STATEMENT

MR. WRIGHT: First of all, I'm Kelvin Wright.
I'm the administrative solicitor of Hampton County and
it's my job to prosecute cases in this county.

Today before the Court we have two defendants.
Those defendants are Tonya McAlhaney, Mr. Travis Hair.
And I state to you that both of these defendants are
guilty of burglary in the first degree. It's my job
to prove to you beyond a reasonable doubt that they
are, in fact, guilty of burglary in the first degree.

If I was in your seat, I imagine the first
question I would have is what's burglary in the first
degree. In the South Carolina code we define burglary
in the first degree under 16-11-311. And it's
entering the dwelling of another without consent, with
the intent to commit a crime therein, during nighttime
hours.

We're going to present witnesses to establish
that that's what occurred in this situation. We're
going to present Ms. Amanda Deloach Brown and she's
going to testify about facts and circumstances
surrounding the ownership of the home and the fact
that it's still a house, it's still a dwelling, and
she still lives there from time to time, which is
vital for your decision that it's a dwelling that was

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1 entered.

2 We're going to present -- she's also going to
3 testify about the items that were taken from the home.
4 Some items were found to be in the defendant's
5 possession, and they're going -- she's going to
6 identify some of those items as items that came from
7 out of the home to help establish that the crime did
8 occur therein.

9 We're going to present Ms. Roma Muller. That's
10 Ms. Brown's aunt. She's also one of the owners of the
11 home. Her testimony is going to show that Ms.
12 Deloach, who is Amanda Brown Deloach's -- Amanda
13 Deloach Brown's father passed away and when he passed
14 away, his interest went to her because she's his
15 daughter but a couple of months earlier the
16 grandmother died and the house went to the three
17 heirs. So that's why we have all three of them.

18 And the third person is going to be Ms.
19 Christina Taylor. She's also going to testify about
20 items that were taken from the home and the fact that
21 someone was still living in the home.

22 We're going to present law enforcement from
23 Hampton Police Department: Sargent Bradford Drawdy,
24 Patrolman Nicholas Ginn, and Major James Bolton.
25 They're going to testify to the fact that they

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1 investigated a crime and, based on their
2 investigation, they did warrants. And we then got
3 that information and we indicted these defendants for
4 burglary in the first degree.

5 There's also going to be Mr. Ricky Sauls
6 testifying. He's a codefendant. And in this
7 particular case, he wrote a statement basically
8 admitting that he and these two defendants committed
9 burglary in the first degree.

10 Straightforward case. Brevity is always
11 appreciated in my household during Grace and at
12 church, so I'm going to do everything I can to be as
13 brief and concise as possible, because this is a big
14 case. This is a big day for the victims, a big day
15 for the defendants. So I'm going to ask that you give
16 your attention and listen to all the facts, make no
17 assumptions.

18 The judge is going to instruct you as to what
19 the law is. What I told you is my interpretation of
20 what the statute says. The judge, what he says is
21 what counts. He's in control of the law; you're in
22 control of the facts. If I say something and you
23 don't believe me, then it's not real. Whatever you
24 believe is what the facts are.

25 And I assert to you that when we get done with

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1 the trial here today, you're going to have the tools
2 to go in the back and deliberate and come back with a
3 guilty verdict for both Ms. Tonya McAlhaney and Mr.
4 Travis Hair for burglary in the first degree, because
5 we're going to present evidence to show that on
6 November 23rd, 2013, Travis Hair, Tonya McAlhaney, and
7 Ricky Sauls entered the home located at [REDACTED]
8 [REDACTED] in Hampton, South Carolina, at seven o'clock
9 p.m., without consent and with the intent to steal
10 items from the home. That's what we're going to show
11 you today. And when I do that, or when the State does
12 that, I ask that you go in the back, deliberate,
13 discuss the facts, and come back with a guilty verdict
14 and find both Travis Hair and Tonya McAlhaney guilty
15 of burglary in the first degree. Thank you for your
16 time.

17 THE COURT: Mr. Plexico?
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State vs. McAlhaney & Hair
Opening Statement by Mr. Plexico
February 4, 2014

OPENING STATEMENT

MR. PLEXICO: My name is Stephen Plexico. I have the pleasure to be here in front of you today. I represent Tonya McAlhaney. Ms. Smart-Gittings represents Mr. Travis Hair.

These people are on trial for an extremely serious matter. Any matter that comes to general sessions is very serious. We're not in civil court where who hit who and bent that fender, well, when the jury comes back, somebody gets out the checkbook, they write a check, and it's over with. When we're here when it's over with, if you find them not guilty they go home. But in case y'all have a guilty verdict, that person generally goes to prison.

We're not talking the county jail. This isn't Judge Williams' court or, if y'all remember, Judge Henderson's court, where you might get thirty days or time served. These are serious matters that we're here about. Extremely serious matters.

Burglary first is a very, very serious crime. The State has the burden of proof. The defendants start out in a cloak of innocence, one-hundred percent, and they have to remove that until there -- where there is not a reasonable doubt, and that's about for which you can give a reason in regards to

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1 this matter. They have many elements to prove.

2 Now, why is the burden on the State? The State
3 has all of the taxing power. They've got all the
4 police power. What does a lone defendant have? They
5 have an appointed lawyer, and that's the only thing
6 many defendants have in general sessions and criminal
7 court today, and they don't always have a court-
8 appointed lawyer in some of our courts in this state.

9 Now, there's no way to overcome the power of the
10 State so the founding fathers properly placed all of
11 the burden on the State and all the burden of proof is
12 on the State. The defense has nothing to prove at
13 all. They have to carry the heavy burden all the way
14 down to where there is not a reasonable doubt left
15 about guilt. And you have to have proof in front of
16 you that you firmly believe removes every reasonable
17 doubt in regards to each and every element.

18 It's like a car. Now, if you take off the
19 tires, it's not going anywhere. If you take out the
20 transmission, it's not moving. If you take out the
21 motor, it's not moving. If you take out the driver,
22 it sits there. Now, you have to have all the elements
23 together for that car to move.

24 Now, and they have to prove each and every one
25 of those elements beyond a reasonable doubt. You can

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1 have a transmission, but the car is no good if you
2 can't change gears. If you can't get it out of park,
3 where are you going? If the engine won't turn over,
4 where is it going? If there aren't any tires, that
5 car might be really great but that car isn't rolling
6 anywhere. It's just sitting there.

7 They have the burden. We don't have the burden.
8 And that's the way the founding fathers set it up
9 hundreds of years ago.

10 Bottom line here is you're the jurors. The
11 judge will decide what the law is, but you decide what
12 the facts are. And nobody can take that decision away
13 from you. You are probably the most powerful -- this
14 is the most powerful time in your lives, unless you
15 sit on another jury, because you have the fate of a
16 fellow citizen in your hands and you're -- once you
17 decide that Joe ran the red light and hit Mary, okay,
18 well, that's a fact. That is etched in stone.

19 The judge decides, oh, we're going to turn this
20 into some other kind of case, well, that would be an
21 error of law. And you can appeal an error of law.
22 But there is no appeal of a finding of fact of a jury.
23 And we have excellent, overworked judges in South
24 Carolina, let me tell you.

25 What happens today happens. This is it. You

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Opening Statement by Mr. Plexico
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1 have responsibilities. I want y'all to listen to the
2 evidence and think carefully about it.

3 Now, they are trying to prove a burglary first
4 degree. They have to prove each and every element of
5 that. It's the burden of the State of South Carolina.
6 If they fail in any of their duties, you must return a
7 verdict at the end of the day as not guilty. Thank
8 you very much.

9 THE COURT: Thank you, Mr. Plexico.

10 Ms. Gittings?

11 MS. SMART-GITTINGS: May it please the Court,
12 Your Honor.

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State vs. McAlhaney & Hair
Opening Statement by Ms. Smart-Gittings
February 4, 2014

OPENING STATEMENT

MS. SMART-GITTINGS: Good morning, ladies and gentlemen of the jury.

This is going to be a very long and tedious task for you. You're going to have to listen to three attorneys and many, many witnesses. And I'm going to warn you in advance that all the witnesses presented to you will be cross-examined by Mr. Plexico and they will also be cross-examined by my self. And that's going to make it very hard and very long for you, as the jurors. I'm just getting that out there, letting you know that in advance.

And why am I doing that? Because it's going to be so important for you to pay attention to every question asked each witness and every answer given by each witness. And why is that? Because as jurors, you're triers of the facts. You'll determine which facts you believe is true. And why is that important? In order for the State to prove their case beyond a reasonable doubt, they have to prove that by putting witnesses on the witness stand. Those witnesses will provide testimony. They're going to talk to you. They're going to tell you things and then the things that they tell you, you have to determine whether they told you something that is going to meet an element.

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Opening Statement by Ms. Smart-Gittings
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1 For example, there is going to be testimony with
2 regard to the residence that's in question. You have
3 to listen to the witnesses and you have to determine
4 whether or not you believe the testimony of the
5 witnesses with regards to the residence.

6 There's going to be testimony about intent.
7 You're going to have to listen to the witnesses to
8 determine whether or not you heard something that
9 proves to you that both defendants intended to do the
10 crime that they are charged.

11 Those are just examples. But that is what makes
12 it tedious. Because right now, Mr. Travis Hair, who
13 is seated at the table with me, is innocent. He has
14 pled not guilty. And that means that the State has to
15 prove to you that he is, in fact, guilty. And they
16 have to do that, again, by the testimony.

17 What the lawyers say to you is not evidence. We
18 can't present evidence to you. We can tell you what
19 we believe the witnesses say. But as far as the facts
20 are concerned, it is totally in your discretion to
21 determine the facts. You do that by listening to the
22 witnesses to determine whether you believe what they
23 say or whether you believe for some reason they may be
24 biased or they may be prejudiced and they're giving
25 this testimony because it benefits them. Or you may

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1 believe that you -- you may believe everything that
2 witness says, you may believe some of the things that
3 the witness says, or you don't have to believe
4 anything that the witness says.

5 And the other great thing about the criminal
6 justice system is you don't have to agree with each
7 other. You were selected because we believe that the
8 twelve of you will be fair, and you will be impartial,
9 you will use your life experiences to determine the
10 facts of this case.

11 From your life experiences, you get to judge the
12 witnesses. You get to determine whether you believe
13 them. And that is going to be crucial. And if you
14 pay close attention, you may hear something that
15 causes doubt to you, that causes you to hesitate. And
16 if, in fact, you hear something, or you don't believe
17 something, we submit to you that that is a reasonable
18 doubt.

19 And if you find a reasonable doubt with regard
20 to Mr. Hair, we submit to you that the proper verdict,
21 the truthful and the just verdict, at the end of this
22 trial will be not guilty. Thank you.

23 THE COURT: All right, Ms. Gittings.

24 Solicitor, you may call your first witness.

25 MR. WRIGHT: The State calls Sargent Bradford

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Opening Statement by Ms. Smart-Gittings
February 4, 2014

1 Drawdy.

2 THE COURT: Mr. Drawdy?

3 [Whereupon, Mr. Drawdy comes forward]

4 THE CLERK OF COURT: Place your left hand on the
5 Bible and raise your right hand.

6 [Whereupon, Mr. Drawdy is duly sworn by the
7 clerk of court as follows: do you swear to tell the
8 truth, the whole truth, and nothing but the truth, so
9 help you God]

10 THE WITNESS: I do.

11 [Whereupon, Mr. Drawdy takes the witness stand]

12 MR. WRIGHT: Sargent Drawdy, I'm aware that
13 you're a little bit under the weather --

14 THE WITNESS: Yes, sir.

15 MR. WRIGHT: -- but please speak as clear as
16 possible so the jury can hear everything you say
17 today.

18 THE WITNESS: Yes, sir.

19 MR. WRIGHT: If you need a break to take care of
20 your cold situation, just let me know and we'll take a
21 break. I'll get you some water or something.

22 THE WITNESS: Thank you.

23 MR. WRIGHT: All right, sir.

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Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

BRADFORD DRAWDY

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Please, let's start off by telling the jury who
you are.

A. I'm Sargent Bradford Drawdy, Hampton Police
Department.

Q. And how long have you been with Hampton Police
Department?

A. I've been with Hampton now going on seven years.

Q. How long have you been in law enforcement in
general?

A. Eleven years.

Q. Okay. Become an officer -- how did you get to
be an officer?

A. I started with Orangeburg County back in 2002 as
a dispatcher and then upon coming twenty-one, I went to
the Academy. And I started -- I spent about three years
in Orangeburg County.

Q. Okay. All right. Did you have an occasion to
have any involvement in this case that's before the Court?

A. Yes, sir.

Q. Can you please enlighten the jurors?

MIA PERRON, CVR-CM-M

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1 A. Yes, sir.

2 On November 24th, 2013 --

3 MR. PLEXICO: Your Honor, I would object to this
4 being in narrative form. I would ask that it be in
5 the form of response to direct examination. I cannot
6 anticipate hearsay when it's given in a narrative
7 form.

8 THE COURT: Solicitor?

9 MR. WRIGHT: Can we approach? I can say yeah.
10 I just don't want to -- I think it would be easier to
11 approach.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 MR. WRIGHT: I apologize, Mr. Drawdy.

15 You were telling us -- but when you're telling
16 us what happened, please tell us what you observed,
17 not what you heard. We don't want any hearsay
18 evidence to be presented to the jury.

19 THE WITNESS: Yes, sir.

20 MR. WRIGHT: Okay?

21 A. On that particular morning, November 24th,
22 myself and Officer Ginn arrived in a patrol vehicle
23 together. We were on 601 North.

24 MR. PLEXICO: Your Honor, I would renew my prior
25 object, based on -- that I had earlier, Your Honor --

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1 THE COURT: I've taken notice --

2 MR. PLEXICO: -- to this line of questioning.

3 THE COURT: I note the objection.

4 MR. PLEXICO: Thank you, Your Honor.

5 Q. [Mr. Wright] Please continue on.

6 A. We received a call from dispatch of a concerned
7 citizen calling in stating there was a -- excuse me -- a
8 white female that had broken into a residence and was
9 currently in the residence.

10 MR. PLEXICO: That's all hearsay.

11 I would move to strike that and ask for a
12 curative instruction.

13 THE COURT: I'll grant that motion.

14 Ladies and gentlemen, you are to disregard the
15 last statement from the witness. I've ordered it
16 stricken from the record.

17 MR. WRIGHT: All right. I just want to remind
18 you again. Please don't state what you heard. But
19 you can say that, based on what you heard, you went
20 and did x, y and z.

21 A. We got called, a burglary in progress. We
22 responded. Upon us making contact with the resident, I
23 went to one side, Officer Ginn went to the other side. We
24 could hear movement.

25 At that point in time, we contacted Hampton

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1 County Sheriff's Office for backup of the Varnville Police
2 Department.

3 While in route, we continue to announce that law
4 enforcement was on scene, Hampton Police Department, and
5 we could hear movement. After a while, the movement
6 stopped. We continued to have perimeter of the residence,
7 or watch the residence.

8 Once Hampton County Sheriff's Office and
9 Varnville arrived, we then decided to make entry. Officer
10 Ginn noted that there was a back door open. At that point
11 in time the sheriff's office, Officer Ginn, made entry
12 into the back door.

13 Upon being told that the perimeter was secure,
14 myself and Varnville then made entry also. While making
15 entry, I could hear in the background that they had found
16 the suspect.

17 I then went towards the back of the residence.
18 At that point in time, that's when they found the
19 defendant, Tonya McAlhaney, in the bedroom and they were
20 bringing out her in handcuffs.

21 Q. [Mr. Wright] Can you please identify who Tonya
22 McAlhaney is?

23 A. The white female over there in the blue -- I
24 believe blue dress.

25 Q. All right. So she was taken into custody?

Bradford Drawdy
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1 A. She was taken into custody. Yes, sir.

2 Q. What happened next?

3 A. Upon being taken into custody, she was brought
4 out of the house in handcuffs. Upon being taken towards
5 the car, Officer Ginn did Mirandize her, read her her
6 Miranda warning.

7 MR. PLEXICO: Your Honor, I would object to
8 hearsay again.

9 MR. WRIGHT: He witnessed it, Your Honor.

10 THE COURT: I'll overrule it. Go ahead.

11 A. I observed the officer Mirandize her, at which
12 time a watch fell out of her pocket onto the ground. I
13 recovered the watch. I bagged it. And later it was
14 identified by --

15 MR. PLEXICO: Your Honor, I object to hearsay
16 again, Your Honor.

17 THE COURT: I sustain that objection.

18 Q. [Mr. Wright] Please continue on.

19 A. Okay. She was then -- the family was then
20 notified and later responded.

21 She was then taken to Hampton County Police
22 Department, where Major Bolton was --

23 Q. Can I stop you before --

24 A. Yeah.

25 Q. -- you go any further?

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1 Do you remember how the watch looked?

2 A. I do not.

3 Q. Do you remember if it was like --

4 A. I think -- I think it had like a leather band on
5 it.

6 MS. SMART-GITTINGS: Objection. Speculation,
7 Your Honor.

8 He said he does not remember how the watch
9 looked.

10 MR. PLEXICO: I join that.

11 THE COURT: I sustain the objection.

12 Q. [Mr. Wright] But it was a watch?

13 A. Yes, sir.

14 Q. Okay. And you knew -- the other officer saw
15 that it was a watch?

16 A. Yes, sir.

17 Q. And it had a leather band on it?

18 A. Yes, sir.

19 Q. All right. Please continue on.

20 A. We contacted Major Bolton, which is typically
21 our investigator and does all our witness -- talks to all
22 our witnesses and defendants and stuff. So he responded
23 to the police department, at which time --

24 MR. PLEXICO: Your Honor, I would object. We've
25 already had a matter in regards to this and

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1 representations by the State.

2 May we approach?

3 MR. WRIGHT: I'm not sure. I guess we need to
4 know --

5 MR. PLEXICO: May we approach?

6 MR. WRIGHT: -- what you're talking about.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 Q. [Mr. Wright] All right. Who did you find in
10 the house when you arrived at the house?

11 A. Ms. McAlhaney.

12 Q. Did she have permission to be there?

13 MR. PLEXICO: Objection, Your Honor. Your
14 Honor, I object. That's clearly hearsay.

15 THE COURT: Hearsay. I sustain the objection.

16 MR. WRIGHT: Okay.

17 Q. [Mr. Wright] All right. You found her in the
18 house.

19 Did she give any statements?

20 A. Not to me. No, sir.

21 Q. All right. What was your involvement, after
22 that point, in this investigation?

23 A. I was just -- me and my partner, which was
24 Officer Ginn, we arrived in the patrol car. We started
25 our investigation. We then took her to the office, like I

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1 said. That's where she was turned over to Major Bolton to
2 be interviewed.

3 Q. Okay.

4 A. Okay. From that point on, I just assisted with
5 getting the paperwork together, such as the Miranda and
6 all that.

7 Q. All right. Did your investigation carry over to
8 the incident that occurred --

9 MS. SMART-GITTINGS: Leading --

10 Q. [Mr. Wright] -- the day before?

11 MS. SMART-GITTINGS: Leading, Your Honor.

12 Objection.

13 MR. PLEXICO: I join in that objection.

14 MR. WRIGHT: I'll rephrase my question.

15 THE COURT: All right. I'll sustain the
16 objection.

17 Q. [Mr. Wright] Were you a part of any other
18 investigations on a different date?

19 A. Yes, sir.

20 Q. Please tell -- that involved Ms. McAlhaney and
21 Mr. Hair?

22 A. Yes, sir.

23 After the interview, I was asked to go to Bob
24 White Trial, her residence, to -- where we were given
25 permission to --

Bradford Drawdy
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1 MR. PLEXICO: Your Honor, I would object to
2 that. That would be based on hearsay.

3 And, furthermore, I would have a motion, Your
4 Honor, in regards to --

5 May we approach?

6 THE COURT: All right.

7 [Whereupon, an off-the-record bench conference
8 is held]

9 THE COURT: Ladies and gentlemen, I have to ask
10 you to step in the jury room. I have a matter I need
11 to discuss with the attorneys outside your presence.

12 [Whereupon, the jury exits the courtroom at
13 10:37 a.m.]

14 THE COURT: All right. Solicitor, tell me what
15 you wish for this witness to say in response to your
16 question. No. What questions you want to ask him.
17 I'm sorry. Excuse.

18 MR. WRIGHT: All right. Basically, what else
19 I'm trying to get out of this witness is that he went
20 to the address on the 24th, she was found in the
21 house, and that based on consent to go into the house
22 they went to the house and they got information about
23 the 23rd incident involving Ricky Sauls.

24 THE COURT: So the issue we were taking up at
25 the sidebar a few minutes ago is where did the consent

Bradford Drawdy
Direct Examination by Mr. Wright
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1 come from?

2 MR. WRIGHT: Yeah.

3 There's a consent to -- I believe by Mr. Bolton

4 --

5 Am I saying it right? Was it --

6 Or, again, one of the officers got consent to
7 search the home from Ms. McAlhaney. She never gave a
8 written statement, never gave a verbal statement, that
9 I'm aware of. But they asked permission to go in the
10 home, she signed giving them permission to go in the
11 home.

12 MR. PLEXICO: I don't have that. I don't have a
13 written consent from my client.

14 MR. WRIGHT: It was -- I don't know. I can't
15 say what he has and doesn't have. It was in my file
16 and they had access to my file. I know my -- Miss
17 Peggy gives them everything out of the file.

18 MR. PLEXICO: Could I see it?

19 MR. WRIGHT: Sure, you can see -- they're both
20 in my --

21 MR. PLEXICO: I mean could I see the consent,
22 not -- I don't want to fumble through your files.

23 [Whereupon, Mr. Wright reviews documents]

24 [Whereupon, Mr. Wright proffers documents to
25 Mr. Plexico]

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1 MR. WRIGHT: If they want to have a hearing in
2 reference to whether or not it was voluntarily signed
3 not to give a statement and whether she voluntarily
4 gave consent when she signed her name, I think it may
5 be the appropriate time to do that. But she never
6 gave a verbal statement or a written statement --

7 MR. PLEXICO: In the interest -- in the interest
8 of time, could we just have the Court's indulgence for
9 a few seconds and --

10 THE COURT: Certainly.

11 [Whereupon, Mr. Plexico and Ms. Smart-Gittings
12 confer]

13 MR. PLEXICO: Your Honor, we won't -- we'll
14 withdraw the objection to the issue of consent, based
15 on my client acknowledging her signature on that.

16 THE COURT: Okay.

17 MR. PLEXICO: And I would make that a Court's
18 Exhibit, too. A Defense Court's Exhibit Number 2, the
19 consent form that's being referred to, so in case
20 there's an appeal the appeals court --

21 THE COURT: Why wouldn't this be part of the
22 State's --

23 MR. WRIGHT: Yeah. It's going to come in.

24 THE COURT: -- a State's Exhibit?

25 MR. WRIGHT: It's going to come in.

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1 MR. PLEXICO: Okay. All right. I just -- just
2 in case it doesn't, I would --

3 THE COURT: Anything else before the jury comes
4 back in?

5 MR. PLEXICO: No, Judge.

6 THE COURT: Bring the jury back.

7 [Whereupon, the jury enters the courtroom at
8 10:42 a.m.]

9 THE COURT: Welcome back, ladies and gentlemen.
10 I believe we are ready to resume the examination
11 of the witness.

12 Solicitor?

13 MR. WRIGHT: Yes, sir.

14 Q. [Mr. Wright] Just to get us back on track: I
15 believe you were saying you were headed to her address on
16 Bob --

17 A. [REDACTED]. Yes, sir.

18 Q. All right. Please go forward.

19 A. Due to [REDACTED] being in the county, we
20 notified Hampton County Sheriff's Office. They met us at
21 the police department. We then followed each other out
22 there.

23 Once on scene, the sheriff's office and Major
24 Bolton proceeded. Major Bolton made contact with the
25 people inside. We stayed outside on the perimeter.

Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

1 After a little while went by, I did observe
2 Major Bolton talking to Ricky Sauls.

3 And after that, we then went inside and starting
4 retrieving items that were later identified as items that
5 were taken --

6 MR. PLEXICO: I object, Your Honor.

7 That's hearsay. I would move to strike --

8 THE COURT: I sustain the objection.

9 Disregard the last statement of the witness,
10 ladies and gentlemen, and order it stricken from the
11 record.

12 Go ahead.

13 Q. [Mr. Wright] Did you observe anybody claim any
14 of the items?

15 A. I did --

16 MR. PLEXICO: I object, Your Honor. That's
17 hearsay.

18 THE COURT: I sustain -- I sustain the
19 objection.

20 MR. WRIGHT: All right. Okay.

21 Q. [Mr. Wright] But items were collected?

22 A. Yes, sir.

23 Items were collected and taken to the Hampton
24 Police Department for -- to be entered into evidence, yes,
25 sir.

Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

1 Q. Did you have any other involvement in this case
2 that you personally observed?

3 A. Other than talking to the -- you know, that's
4 it, yeah.

5 Q. Okay. That's it?

6 A. Yes, sir.

7 Q. All right. Is there anything else?

8 Do you remember what you collected in your
9 investigation? Like items?

10 A. Like I said earlier, the watch that was located
11 at the time of the arrest.

12 MR. WRIGHT: Can I ask that he step down and
13 look at something?

14 THE COURT: Sure.

15 MR. WRIGHT: All right. Please come look.

16 MR. PLEXICO: Your Honor, I believe he's
17 testified he can't remember what the watch looked
18 like, and, therefore, that wouldn't be of any -- it
19 would be irrelevant and it would be overly suggestive
20 and it wouldn't be of any relevant evidence here,
21 Judge, under the Rules.

22 MR. WRIGHT: Are you done?

23 He testified about the fact there's a leather
24 band on it and that -- and I believe that if he saw
25 the watch, he could say whether it's not -- whether or

Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

1 not it's the watch that he remembers seeing.

2 You know, pulled out of thin air, you know, I
3 couldn't tell you what kind of watch I had on
4 yesterday, you know, without looking and saying, oh,
5 yeah, that's the watch.

6 And if he can't do that, he can't do it. If he
7 can, he can. I think he should have the opportunity
8 to at least look.

9 Or I can bring it to him. I was trying to be
10 more respectful to the jury and allow him to come down
11 and look.

12 Either he can or can't.

13 THE COURT: I'm going to sustain the objection.

14 MR. WRIGHT: All right. Thank you, Your Honor.

15 Q. [Mr. Wright] From your investigation, were
16 there any other suspects developed to be a part of the
17 burglary first that occurred on the 23rd?

18 A. Yes, sir.

19 Q. Who were they?

20 A. Tonya McAlhaney. Tonya McAlhaney, Travis Hair,
21 and Ricky Sauls.

22 Q. Who is Travis Hair?

23 A. Travis Hair is going to be the white male
24 sitting next to Ms. Gittings, Attorney Gittings.

25 Q. All right. So, basically, your investigation,

Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

1 you believe that Mr. Hair and Ms. McAlhaney both committed
2 the crimes of burglary in the first degree?

3 A. Yes, sir.

4 Q. All right. Do you have a working definition of
5 what burglary in the first degree is?

6 A. Burglary in the first degree --

7 MR. PLEXICO: Your Honor, I object.

8 This is -- it's a matter of law, Your Honor. I
9 don't think he's qualified. He's not an expert --

10 MR. WRIGHT: I retract that.

11 MR. PLEXICO: -- he's not a lawyer.

12 MR. WRIGHT: I retract that.

13 THE COURT: I sustain the objection.

14 Q. [Mr. Wright] Were there any other persons
15 involved in this crime that were developed, other than the
16 three people you just named?

17 A. I believe the name Larry Crosby was brought up
18 at one point in time.

19 Q. Did you ever speak directly to Larry Crosby?

20 A. I never did directly, no, sir.

21 Q. So you can't add anything --

22 Did you ever get a statement from Travis Hair?

23 A. No, sir, I did not.

24 Q. Did you ever get a statement from Tonya
25 McAlhaney?

Bradford Drawdy
Direct Examination by Mr. Wright
February 4, 2014

1 A. No, I did not.

2 Q. Did you ever get a statement from Ricky Sauls?

3 A. I was there when he was being -- but not
4 directly, no, sir.

5 MR. WRIGHT: Okay. Please answer any questions
6 that defense counsels have for you.

7 MR. PLEXICO: May I approach the witness?

8 THE COURT: You may.

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Testimony of Bradford Drawdy
Cross-Examination by Mr. Plexico
February 3, 2014

CROSS-EXAMINATION

BY MR. PLEXICO:

Q. Is this an incident report from the Hampton Police Department?

A. Yes, sir, it is.

Q. Is that your name typed at the bottom?

A. Yes, sir.

Q. In regards to this matter, does it not point out that a warrant was obtained for subject Crosby -- that would be Larry Crosby -- for accessory after the fact?

A. This particular report right here is a supplemental. Officer Ginn right here. That's not my supplemental.

Q. All right. But Mr. Crosby was involved in regards to this matter; correct?

A. His name did come up. Yes, sir.

MR. PLEXICO: All right. I don't believe I have anything else. Answer any questions by Ms. Gittings.

MS. SMART-GITTINGS: May it please the Court, Your Honor?

THE COURT: Sure.

MS. SMART-GITTINGS: I'm sorry. I can't remember your rank correct. I'm sorry.

THE WITNESS: Can't what? Oh. Rank?

MS. SMART-GITTINGS: Your rank.

Testimony of Bradford Drawdy
Cross-Examination by Mr. Plexico
February 3, 2014

1 THE WITNESS: Sargent.

2 MS. SMART-GITTINGS: Sargent?

3 THE WITNESS: Yes, ma'am.

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Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

CROSS-EXAMINATION

BY MS. SMART-GITTINGS:

Q. Sargent Drawdy, you worked with Officer Cook;
correct?

A. Ricky Cook.

Q. Ricky Cook?

A. Yes.

Q. And he was involved in the investigation of this
case, as well; correct?

A. The previous night. Yes.

Q. Okay. So let's make it clear for the jury that
we're here today and you've given testimony regarding two
occasions at [REDACTED] correct?

A. Yes, ma'am.

Q. And the second time is when --

MR. PLEXICO: I would --

MS. SMART-GITTINGS: I'm sorry.

MR. PLEXICO: I would object, Your Honor, based
on my prior objection to anything in reference to that
matter.

THE COURT: Again, noted.

Q. [Ms. Smart-Gittings] You -- upon your
investigation, you never saw Travis Hair in the residence,
did you?

A. No, ma'am.

Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

1 Q. And you -- did you do a follow up on the
2 incident on the 23rd?

3 A. [No response][

4 MS. SMART-GITTINGS: May I approach the witness,
5 Your Honor?

6 THE COURT: You may.

7 A. The --

8 Q. [Ms. Smart-Gittings] Can --

9 A. Yes.

10 Q. -- you identify this document?

11 A. Yes.

12 The incident on the 24th is what led to -- we
13 already had -- whenever I come in in the morning, I enter
14 the reports into the computer. So --

15 Q. Okay. So you entered the reports in the
16 computer?

17 A. Based on another officer's written report. I
18 just enter them in.

19 Q. Okay. So --

20 MS. SMART-GITTINGS: May I approach?

21 Q. [Ms. Smart-Gittings] So then during your
22 investigation, it was revealed to you that only two people
23 came out of the residence carrying bags; correct?

24 A. No. That's --

25 Q. Based on what you entered in the computer, did

Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

1 you know that only two people came out of the residence
2 carrying bags?

3 A. Based off of Lieutenant Cooks report, yes.

4 Q. That you entered in the computer?

5 A. That I entered in the computer. But --

6 Q. And --

7 A. -- but that other --

8 Q. And -- and --

9 MR. WRIGHT: Your Honor, I --

10 Q. [Ms. Smart-Gittings] -- those two people are --
11 who are those two people?

12 THE COURT: Do you have an objection? I'm
13 sorry.

14 MR. WRIGHT: Just in general, she is trying to
15 elicit testimony that he's told that that he didn't
16 create -- it's not his statements. He may have
17 entered them in.

18 Just wanted to put that on the record.

19 THE COURT: That's what he said.

20 MR. WRIGHT: Yeah.

21 A. I mean, I -- all I do is enter them in the
22 computer to be submitted to SLED. I don't -- it's -- I
23 was not on scene that night.

24 Q. [Ms. Smart-Gittings] Okay.

25 A. All I do is take what was handwritten and put

Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

1. them in the computer.

2. Q. Okay. But did -- you did enter in the computer
3. that an eyewitness saw two people coming out of the
4. residence; correct?

5. A. If that's what's on that report, that's what I
6. entered in.

7. Q. And those two people are Ricky Sauls and Tonya
8. McAlhaney; correct?

9. A. If that's what the report says. But a later
10. investigation --

11. MR. PLEXICO: I would object to the mention --
12. only to the mention of Tonya McAlhaney, because that
13. would be hearsay.

14. THE COURT: Overruled.

15. Go ahead.

16. Q. [Ms. Smart-Gittings] So an eyewitness only
17. identified two suspects?

18. A. I cannot answer that. I was not there.

19. Q. But that's what you put -- would you put
20. information in the computer that you did not believe to be
21. helpful to your information?

22. A. I would put whatever is on that incident report,
23. whatever that other officer put.

24. Q. Okay.

25. A. I'm going to submit to whatever that officer

Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

1 wrote in their original report. Not all officers enter
2 them in the computer.

3 Q. Okay. And the residence that we're talking
4 about is the residence of Charles Deloach; correct?

5 A. Yes, ma'am.

6 Q. Now, are you familiar with that residence?

7 A. I am.

8 Q. And were you familiar with Mr. Deloach?

9 A. I mean, I had met him on occasion, yes, ma'am.

10 Q. Do you have occasion to patrol that area of the
11 town?

12 A. I mean, we were asked -- after he passed away,
13 we were asked to do security checks at --

14 Q. Okay. And --

15 A. -- that whole area, because I believe he owned
16 several houses right there.

17 Q. Did you personally do security checks?

18 A. I did -- I did -- I worked day shifts, so I did
19 during the day, yes, ma'am.

20 Q. Okay. Now, did you ever see anyone living in
21 that house when you did security checks after Mr. Deloach
22 died?

23 A. I did not.

24 But that Tuesday prior, I had met with his I
25 believe daughter or granddaughter -- the one young lady

Testimony of Bradford Drawdy
Cross-Examination by Ms. Smart-Gittings
February 4, 2013

1 right here. She was reporting a --

2 MR. PLEXICO: Your Honor, that would be hearsay.

3 I would object to that.

4 THE COURT: I'm going to sustain the objection.

5 MS. SMART-GITTINGS: Correct.

6 Q. [Ms. Smart-Gittings] Did you personally know
7 anyone living in that residence after Ms. Deloach --
8 Mr. Deloach died?

9 A. No.

10 Q. Okay. And you patrolled that area?

11 A. Yes.

12 MS. SMART-GITTINGS: I have no other questions,
13 Your Honor.

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Testimony of Bradford Drawdy
Redirect Examination by Mr. Wright
February 4, 2013

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q. Did you observe Tonya McAlhaney in the house?

A. I did.

MR. WRIGHT: The Court's indulgence.

No further questions.

MR. PLEXICO: Briefly.

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Testimony of Bradford Drawdy
Recross-Examination by Mr. Plexico
February 4, 2014

1 RECCROSS-EXAMINATION

2 BY MR. PLEXICO:

3 Q. When you went in the house, you saw
4 Ms. McAlhaney, you testified to. You didn't turn on any
5 lights or anything; correct?

6 A. No. The lights were on when we entered in.

7 Q. But there were overhead lightbulbs on?

8 A. Yes, sir.

9 Q. Okay. So you could see Ms. McAlhaney?

10 A. Yes, sir.

11 MR. PLEXICO: I don't have anything further.

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Testimony of Bradford Drawdy
Further Redirect Examination by Mr. Wright
February 4, 2014

FURTHER REDIRECT EXAMINATION

BY MR. WRIGHT:

Q. You said there were lights on in the house?

A. Yes, sir.

Q. Like somebody lived there?

A. Yes, sir.

Q. Was there water?

A. Yes, sir.

We checked all that before we left. They had
running water and utilities.

Q. Utilities?

A. Yes.

Q. Was there furniture in the house?

A. Yes, sir. Every room.

MR. WRIGHT: No further questions.

THE COURT: All right. Thank you, sir. You may
step down.

THE WITNESS: Thank you.

[Whereupon, Mr. Drawdy is excused and exits the
witness stand]

THE COURT: You may call your next witness.

MR. WRIGHT: I would like to call Ms. Roma
Muller.

[Whereupon, Ms. Muller comes forward]

THE CLERK OF COURT: Good morning, Ms. Muller.

Testimony of Romà Muller
Redirect Examination by Mr. Wright
February 4, 2014

1 your name?

2 THE WITNESS: Ricky Sauls.

3 MR. WRIGHT: Can you spell your last name.

4 THE WITNESS: S-A-U-L-S.

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Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

RICKY SAULS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Mr. Sauls, where do you currently reside?

A. Sir?

Q. Where do you currently reside? Where are you
living right now?

A. [REDACTED]. Well, temporarily, the
county jail.

Q. And why are you in the county jail?

A. Burglary.

Q. All right. What do you mean burglary? What
happened?

A. Well --

MR. PLEXICO: Your Honor, that would be asking
for a narrative and I would object to that being given
in a narrative form.

THE COURT: All right. I'll sustain that
objection.

Q. [Mr. Wright] When you weren't in jail, where
did you live?

A. [REDACTED].

Q. All right. Did you live there in November of

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 2013?

2 A. No.

3 I was visiting, actually. Me and her split up.
4 Yeah. I was -- visited my mom's, and then went back.

5 Q. Okay. All right.

6 A. Because she was helping me get my unemployment
7 and everything started.

8 Q. Okay. Let's be more specific. On the 23rd of
9 November, 2013, where did you live?

10 A. [REDACTED].

11 Q. All right. And who did you reside there with?

12 A. Tonya McAlhaney.

13 Q. Tonya McAlhaney?

14 All right. Did you have the occasion to be
15 involved in a crime?

16 A. Yeah.

17 Q. Can you please tell me about that.

18 A. Well, me and her walked up town. And we went to
19 the grocery store. And she went to CVS to pick up her
20 prescription. And then I think she forgot something else
21 there. And we walked -- we called Larry.

22 Q. Larry? Larry?

23 A. Larry Crosby.

24 And Larry Crosby come to the house, and he took
25 us back uptown. And I forgot what we went up there for.

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 And then he stopped by the truck that he supposed to be
2 bought from Amanda.

3 Q. Amanda? Would that be Amanda Brown?

4 A. I don't know. Charles Deloach's daughter.

5 Q. Charles Deloach's daughter, Amanda Brown.

6 A. And he convinced Tonya -- well, he helped Amanda
7 and them move out the house. They were loading the truck,
8 the U-Haul, and everything, loading it up, and he
9 convinced Tonya that there was pills in the house.

10 Q. Pills?

11 A. Pills or whatever. I don't know, because I was
12 drinking at the time.

13 Q. Drinking.

14 A. And I asked her not to go in the house. But I
15 don't know if she went in the house or not.

16 But then me and Larry got into it, because I
17 didn't like what he done. Me and him got into it right
18 there by the truck. And then when we got back to the
19 house, then me and him got into it because I kicked him
20 out because he made me upset to what he asked Tonya to do.

21 Q. Did Tonya ever go in the house?

22 A. I don't know. I don't think --

23 All I know is I went back around there to get
24 her and she was out, and Larry and them took off.

25 Q. Did Travis Hair ever go in the house?

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 A. I think all of us went in that night.

2 Q. So all of you did go in the house?

3 A. All of us went in there.

4 We were in and out in probably not even ten
5 minutes, because the back door was unlocked.

6 Q. Okay. But you, Tonya McAlhaney, and Travis Hair
7 all went inside the residence that we're talking about?

8

9 A. [Indicates affirmatively]

10 Q. What time of day was it?

11 A. About seven o'clock.

12 Q. Would you agree that's night time?

13 A. I believe it was, because it was dark.

14 Q. All right. Did you happen to attempt to do
15 anything to help the residents out when you went inside?

16 A. [Indicates negatively]

17 Q. What was your -- what was the intention when you
18 went inside?

19 A. I didn't want to go in there.

20 Q. I know you didn't want to go in. But what was
21 your intention? Were you going to --

22 A. Well, actually, I was a little drunk, if you
23 want to know the truth. And I went in there -- I don't
24 know what I went in there for, if you want to know the
25 truth.

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 Q. Did you --

2 A. I was --

3 Q. But while you were in there, did you take
4 anything?

5 A. Yeah. I took knives and liquor.

6 Q. You took knives and liquor?

7 A. Yeah.

8 Q. All right. Did Tonya take anything?

9 A. I think all of us took the same thing.

10 Q. The knives and liquor? All you guys took it,
11 including Travis Hair?

12 A. Uh-huh.

13 Q. All right. Were any other items taken?

14 A. What?

15 Q. Were any other items, like pills or documents,
16 taken?

17 A. Huh-uh.

18 Q. Christmas ornaments?

19 MS. SMART-GITTINGS: Leading, Your Honor.

20 THE COURT: Overruled.

21 Go ahead.

22 Q. [Mr. Wright] Were any other items taken?

23 A. I seen Christmas ornaments. That's it.

24 Q. I'm going to hand you an exhibit. If you
25 recognize it, you do; if you don't, you don't. Okay?

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 Just look in this first before -- do you recall --

2 MR. WRIGHT: You can stand up.

3 Q. [Mr. Wright] Do you recognize any of these
4 items?

5 A. Huh-uh.

6 Q. Okay. I'm going to hand you another container.
7 You said you took knives and alcohol?

8 A. That's it.

9 Q. Do you recognize these items?

10 A. Yeah. That's -- right there.

11 Q. All right. So did you take this item?

12 A. [No response]

13 Q. Did you take this item?

14 A. Just them three right there.

15 Q. Did you take this item?

16 A. Yeah. I done that.

17 Q. All right. Did you take --

18 A. Yes. I took all of it.

19 Q. You took this knife?

20 A. Uh-huh. And that one.

21 Q. And this one?

22 A. Uh-huh.

23 Q. And this one?

24 A. Yeah.

25 Q. And this one?

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 A. Yeah.

2 Q. And you said all three of you took those?

3 A. No. I put -- I put them in my hands.

4 Q. You put those in your hands. Okay.

5 Did Tonya McAlhaney take anything?

6 A. I don't know.

7 I wasn't paying no attention. I just got there
8 and left. We all walked out.

9 Q. Did you ride back home together?

10 A. They all rode back home together.

11 Q. Were any items --

12 A. It was dark and I couldn't see. I was drinking
13 liquor and I was drinking King Cobras.

14 Q. So is there a possibility they took anything?

15 MS. SMART-GITTINGS: Objection. Speculation.

16 A. Not to my knowledge.

17 MR. WRIGHT: I'm not -- I'm just asking is there
18 a possibility.

19 Q. [Mr. Wright] Is there a possibility they --

20 MR. PLEXICO: Your Honor --

21 THE COURT: He's already answered the question.
22 I overrule the objection.

23 MR. WRIGHT: Yeah.

24 Q. [Mr. Wright] It's a possibility, it's just
25 something you didn't see; correct?

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 A. I reckon. I don't know.

2 Q. All right. Did you -- you ever been in trouble
3 before with the law?

4 A. Yes.

5 I had trouble I would say about twenty years
6 ago.

7 Q. What kind of trouble did you have?

8 A. 1986.

9 Q. Such as?

10 A. I had burglary.

11 That was the last serious charge I had. That
12 was twenty years ago.

13 Q. Okay. Did you give a statement to anybody in
14 this case?

15 A. Yeah.

16 I was drunk when I wrote a statement.

17 Q. Did you give a statement to Blue?

18 A. No. I think it was Officer Ginn.

19 Q. So you gave a statement to Ginn?

20 A. I think it was Ginn. I don't know.

21 Q. Okay.

22 A. It was one of them.

23 Q. I'm going to hand you up some documents and you
24 tell me if you recognize these documents.

25 MR. WRIGHT: And I apologize. That's the

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 Miranda and two statements. I apologize.

2 [Whereupon, the witness reviews documents]

3 Q. [Mr. Wright] And, specifically, is that your
4 signature on the bottom of the documents?

5 A. Yeah, that's my signature.

6 Q. Okay. Do you mind reading --

7 MR. WRIGHT: Well, at this time, Your Honor, I
8 would like to move the Miranda form and the two
9 statements into evidence.

10 MR. PLEXICO: I believe that would be an
11 inadmissible bolstering, Judge. I mean, he's here to
12 testify, not --

13 THE COURT: I sustain the objection.

14 Q. [Mr. Wright] All right. I would like to show
15 you the whole --

16 At any time, did you say to law enforcement that
17 some girl stuff --

18 MS. SMART-GITTINGS: Objection. Leading, Your
19 Honor.

20 A. If I did --

21 THE COURT: Hold on just one second.

22 Overruled. Go ahead.

23 Q. [Mr. Wright] At any time, did you say to law
24 enforcement that some girl stuff was taken?

25 A. I didn't see no girl stuff.

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 If I said it, I didn't -- I mean, I -- because
2 like I said, I was drinking.

3 Q. Would you agree that this statement you gave on
4 11/24, 2013, was made --

5 A. Well, the only thing, I didn't see no girl
6 stuff. But when I cleaned up -- when I was at my -- at
7 the trailer and I was cleaning up, all I seen was a bunch
8 of styrofoam Christmas ornaments and knives that I saw.
9 That's all I seen.

10 Q. So when you're admitting in this statement and
11 you said that some girl --

12 A. If I wrote it on there.

13 Q. Okay. What did Travis Hair do inside the [REDACTED]
14 [REDACTED]

15 A. Went to sleep.

16 Q. What else did he do?

17 A. Went to sleep.

18 Q. He just went inside and went to sleep?

19 A. [Indicates affirmatively]

20 Q. And then what did he do when he left out of
21 there? He didn't take anything with him?

22 MS. SMART-GITTINGS: Objection, Your Honor.

23 Asked and answered. He answered two times.

24 THE COURT: Overruled.

25 Go ahead.

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

- 1 Q. [Mr. Wright] What did he do after he woke up?
- 2 A. We went home.
- 3 Q. How did he wake up?
- 4 A. I woke him up.
- 5 Q. All right. How long were you guys in the house,
- 6 total?
- 7 A. About ten minutes.
- 8 Q. So he slept for ten minutes?
- 9 A. Yeah. He'd just got off work.
- 10 Q. And he went and laid down for ten minutes and
- 11 you woke him up?
- 12 A. Yeah.
- 13 Q. How did you get back home?
- 14 A. Larry Crosby.
- 15 Q. How did Larry Crosby know to come get you? Did
- 16 you call him?
- 17 A. His cell phone. We called him.
- 18 Q. You called him?
- 19 A. [Indicates affirmatively]
- 20 Q. What did you say to him when you called him?
- 21 A. I told him to come get us --
- 22 Q. So --
- 23 A. -- and he come back and got us.
- 24 Q. He did --
- 25 A. It was Larry Crosby's idea for all this to go

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 on.

2 Q. What was Larry Crosby's idea? For you guys to
3 do what?

4 A. Well, I just told you the first time.

5 Q. What would you categorize that? Go burglarize
6 this home? Would that be a correct --

7 A. The only thing --

8 MS. SMART-GITTINGS: Objection, Your Honor.
9 Leading.

10 THE COURT: Okay. I'll sustain that objection.

11 Q. [Mr. Wright] What was Larry Crosby's intention
12 for you to do when you got there?

13 A. He went there to look at the truck, just like I
14 said. He asked Tonya to go in the house, and I asked
15 Tonya not to. Me and him got in an argument.

16 Q. What did he ask -- what did he ask her to do in
17 the house?

18 A. He said something about pills -- he's a drug
19 addict, he's on probation. He ain't nothing but a thief
20 himself. And it made me upset, if you want to know the
21 truth.

22 Q. Yes, sir. Just tell me -- that's all I want is
23 the truth.

24 All right. So she went in to get --

25 A. She didn't come out with no pills, though.

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1 Q. She didn't come out with pills?

2 A. I didn't see nothing. It was dark.

3 Q. Would you agree it was possible she could have
4 come out, you just didn't see them?

5 A. I just didn't see them. All I did was --

6 Q. Okay.

7 A. -- Larry took off and left us.

8 Q. But your understanding was for her to take -- to
9 go get the pills when she went in, basically?

10 A. I don't know what they talked about. I was on
11 the passenger's side.

12 Q. I thought you just now said that he told her to
13 go get the pills because you saw --

14 MS. SMART-GITTINGS: Objection, Your Honor.
15 Badgering.

16 A. When he -- he mentioned something about the
17 pills. Okay?

18 THE COURT: Slow it down. Here's what we've got
19 to do. We've got to slow down the process.

20 You ask a question; you answer the question.
21 One at a time.

22 Q. [Mr. Wright] Specifically, about the pills:
23 what did you overhear?

24 A. He mentioned --

25 MR. PLEXICO: That's hearsay, Your Honor. I

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1 would object.

2 A. What he --

3 THE COURT: Hold on one second. Hold on one
4 second.

5 I'll sustain the objection.

6 Q. [Mr. Wright] What's your understanding as to
7 why Tonya was going in the house?

8 MR. PLEXICO: That would be based on hearsay.
9 It's a conclusion drawn on hearsay. It would also
10 be --

11 THE COURT: I sustain the objection.

12 Q. [Mr. Wright] You previously said that she went
13 in the house to get pills.

14 A. Okay. Larry helped them move. Larry and
15 Travis. Buddy wanted Travis to stay at the store and
16 work, and then Amanda wanted Travis down there to help
17 load the U-Haul. All right. Then Larry went in there to
18 help them and Larry spotted the pills and he told Tonya
19 about them.

20 Q. Okay.

21 A. And Tonya went toward the house --

22 MR. PLEXICO: I object. All of that's hearsay,
23 Your Honor.

24 A. Tonya went toward the house --

25 THE COURT: Overruled.

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February 4, 2014

1 Go ahead.

2 A. And he asked me to go get her. And like I say,
3 me and him got into it. He should have went in there and
4 got her instead of me. And when I went to go get her, he
5 took off.

6 Q. [Mr. Wright] You said Travis had been in the
7 house before?

8 A. He was helping them -- help Amanda unload --
9 load stuff on the U-Haul. That's what he told us, him and
10 Larry, that they --

11 MS. SMART-GITTINGS: Objection.

12 A. -- was helping move --

13 MS. SMART-GITTINGS: Hearsay, Your Honor.

14 THE COURT: Sustained. Objection sustained.

15 A. That they was helping move.

16 Q. [Mr. Wright] Specifically to your codefendant,
17 what did he say that's admission of a crime?

18 A. Travis -- like I said, Buddy didn't want Travis
19 to go down there, because somebody has to sit there and
20 watch the store in case somebody --

21 Q. Who's Buddy?

22 A. The man that worked for Amanda, I reckon. I
23 don't know who he --

24 Q. So that's another person, though? That's not
25 anybody --

Testimony of Ricky Sauls
Direct Examination by Mr. Wright
February 4, 2014

1 A. Yeah.

2 Q. Okay.

3 A. He run the store.

4 Q. Okay.

5 A. And Travis was working with him. And Larry was
6 out there helping them.

7 All right. Then --

8 Q. You said the store --

9 A. -- Larry went down there to help Amanda load
10 stuff on the U-Haul. And then what Travis and Larry said,
11 that they wanted Travis to go down there to help, too.
12 And that's when Larry spotted the pills.

13 Q. Just to clarify: Ricky Sauls, Tonya McAlhaney,
14 and Travis Hair all went into the house on November 23rd,
15 2013? When I say house, I mean [REDACTED] Is
16 that correct?

17 A. [No response]

18 Q. And it was seven o'clock, which is night time,
19 is what you said; correct?

20 A. Yeah. Seven o'clock to me. I reckon. It was
21 about 7:00.

22 Q. Did you know Ms. Amanda Brown?

23 A. Not really.

24 Q. You never met her?

25 A. I met her one time, because we went over there

Testimony of Ricky Sauls
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1 by the car. That's the only time I met her.

2 Q. You wouldn't know whether she was living in the
3 house or not, would you?

4 A. Uh-huh.

5 All I know is she was from either Columbia or
6 Greenville or something like that.

7 Q. Okay.

8 A. That's all I know.

9 MR. WRIGHT: Please answer any questions that
10 the defense attorneys have.

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Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

CROSS-EXAMINATION

BY MR. PLEXICO:

Q. Sir, you were drinking a lot that day, you said;
is that correct?

A. Actually, I -- I mean, I ain't drunk nothing in
three months. I quit drinking because I figured my
relationship was more important. But that night I was
drinking. Yes, I did.

Q. Okay. So you didn't usually drink but you were
pretty snookered that night. Is that a fair statement?

A. I drunk some liquor and about two King Cobras.

Q. All right. Now, did y'all take any -- did you
take any -- smoke any marijuana or smoke --

A. I don't do drugs.

Q. -- any other drugs or anything to snort or
anything?

A. I don't do drugs.

Q. All right. So, now, you were impaired; correct?

A. Sir?

Q. You were impaired; correct? You were high? You
were drunk?

A. I was high.

Q. All right. Now, you know you're in a lot of
trouble here; correct?

A. I know that.

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. All right. Now, and you're saying that this
2 Larry character, Larry Crosby, he had been going over
3 there and helping them move things out of the house?

4 A. And he was helping them at the store, too.

5 Q. Okay.

6 A. And then, like I said, it was Larry's idea.

7 Q. And this is Travis you're saying was helping
8 move things out of the house?

9 A. Larry worked for Miss Amanda at the store.

10 Q. All right. Now, so nobody was living in that
11 house; is that true?

12 A. No, sir. Not that I know of.

13 Q. Okay. Was anybody staying there?

14 A. I didn't see nobody.

15 Q. All right. The house wasn't even fit to live
16 in. Wasn't there junk everywhere?

17 MR. WRIGHT: Your Honor, he said he didn't know.

18 MR. PLEXICO: He went in. He knows.

19 MR. WRIGHT: He said he didn't know. He said
20 that -- when I asked him, he said just now he didn't
21 know who was living in the house or anything.

22 MR. PLEXICO: I asked about the condition.

23 THE COURT: Overruled.

24 Go ahead.

25 MR. PLEXICO: Thank you.

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. [Mr. Plexico] The condition of the home, it was
2 just bad; right?

3 A. It was nice on the inside.

4 Q. But, I mean, it wasn't ready to live in at all?
5 Wasn't there bags everywhere from them moving stuff?

6 A. Yeah.

7 Q. Okay. So, obviously, the intent was to clean
8 the house out; right?

9 A. I reckon.

10 Q. I mean, there wasn't anybody moving in. That's
11 true; right?

12 A. No.

13 As far as I knew, they was moving out.

14 Q. All right. So they're cleaning the house up.

15 Now, they were also selling the cars, right,
16 that he had at the shop?

17 A. Don't know nothing about selling the cars.

18 Q. All right. But you had seen him about selling
19 the cars -- about a car? You knew that Larry was over
20 there about a vehicle?

21 A. Larry bought -- Larry supposed to be bought the
22 truck. That's what he says. I don't know.

23 Q. All right. Now, so Larry's in and out of the
24 place loading things up on a U-Haul; is that correct?

25 A. That's what he told us, yes.

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. Okay. Now, so in Tonya's mind, didn't she
2 believe that --

3 MR. WRIGHT: Your Honor --

4 Q. [Mr. Plexico] -- Larry could give them --

5 MR. WRIGHT: Your Honor --

6 Q. [Mr. Plexico] -- permission --

7 THE COURT: Hold on one second.

8 MR. WRIGHT: Your Honor -- Your Honor --

9 THE COURT: We have an objection.

10 MR. WRIGHT: Hearsay. He's asking about
11 something that's entirely --

12 THE COURT: I'll sustain -- I'll sustain the
13 objection.

14 MR. WRIGHT: Okay.

15 Q. [Mr. Plexico] All right. Now -- okay. So
16 Larry's telling you it's okay because he has permission --
17 he's been in and out of the house and he's been going in
18 and out --

19 A. He didn't tell --

20 Q. -- moving stuff --

21 A. -- he didn't tell --

22 Q. -- out?

23 A. He didn't tell me it was okay.

24 Q. All right. Now --

25 A. Because I really don't even care for Larry, if

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 you want to know the truth.

2 Q. All right. But you're with Larry?

3 A. I was riding --

4 Q. You're with Larry?

5 A. -- up town. Yeah.

6 Q. All right. Now, so when Larry -- so Larry has
7 an idea that it's -- that -- to go in the house, right,
8 and he's telling where things are in the house? You
9 overheard that?

10 A. [Indicates affirmatively]

11 Q. Okay. Now -- all right. Would that give the
12 impression that Larry had a right to go in and out of the
13 house, since he's been going in and out of the house --

14 A. No, he ain't had --

15 Q. -- and you know all this?

16 A. No, he ain't had no right going in there.

17 Q. Okay. All right.

18 A. Because Miss Amanda was in Columbia. Done gone
19 back, I reckon.

20 Q. All right. Now, so you didn't see Tonya take
21 anything; correct?

22 A. Right.

23 Q. And you're incarcerated at the time? I mean --

24 A. I was drinking.

25 Q. -- now.

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 A. I wasn't drunk-drunk.

2 Q. All right. So, this didn't happen around four
3 o'clock --

4 A. No.

5 Q. -- and then later --

6 A. Seven o'clock. I know what time it happened.

7 Q. All right. Now, so you went in first; is that
8 correct?

9 A. No.

10 Q. All right. Did Travis go in first?

11 A. I don't know who went in first. All I know is
12 the back door was unlocked.

13 Q. Okay. So you were taking care of your business
14 when you were in there? You don't know what anybody else
15 did; correct?

16 A. No. I did -- I took the knives and liquor and I
17 snatched him and, let's go.

18 Q. All right. You snatched Travis and said let's
19 go?

20 A. I woke him up.

21 Q. All right. Now --

22 A. I asked Tonya, let's go.

23 Q. Tonya was -- but she was outside? She wasn't in
24 the house?

25 A. All of us was in the house --

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. Okay. Larry -- was Larry in the house?

2 A. No.

3 Larry was waiting down the road somewhere.

4 Q. All right. Now, but you didn't see Tonya take
5 anything. Is that what you say? Correct?

6 A. Far as I know, the only thing that was taken was
7 the liquor and knives.

8 Q. Okay. And that's what you took?

9 A. [Indicates affirmatively]

10 Q. All right. Now, you know you're charged with
11 burglary first; correct?

12 A. I know. It carries fifteen to life.

13 Q. All right. So you're --

14 MS. SMART-GITTINGS: Objection, Your Honor. May
15 we approach?

16 MR. PLEXICO: That's State v. Mizzell, Your
17 Honor.

18 MR. WRIGHT: You asked the question.

19 [Whereupon, an off-the-record bench conference
20 is held]

21 THE COURT: All right. Ladies and gentlemen,
22 we're going to take a lunch break until 1:30. Be back
23 in the jury room at 1:30.

24 [Whereupon, the jury exits the courtroom at
25 12:22 p.m.]

Testimony of Ricky Sauls
Cross-Examination by Mr. Plexico
February 4, 2014

1 THE COURT: Well, I don't know. Does the
2 witness need to be here?

3 MR. WRIGHT: If you excuse him he can go, but
4 you haven't excused him up to that point right there.

5 THE COURT: There isn't any reason for him to
6 stay, is there?

7 MR. WRIGHT: No.

8 I think it's more Mr. Plexico asked a bad
9 question and now you've got to decide, you know --

10 MR. PLEXICO: I need to be heard.

11 I don't understand the objection, because I have
12 case law that backs up my right to ask that question.

13 THE COURT: Go ahead.

14 MR. PLEXICO: So I don't understand.

15 THE COURT: We'll deal with that in just one
16 second.

17 Now, okay. The witness may be excused until
18 1:30.

19 MR. WRIGHT: Thank you, Your Honor.

20 [Whereupon, Mr. Sauls is excused and exits the
21 witness stand]

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Motion for a Mistrial
By Ms. Smart-Gittings

MOTION FOR A MISTRIAL

1
2 THE COURT: Now, then, we have a -- joint
3 motions from defense counsel?

4 MR. WRIGHT: No. I think only she's making a
5 motion. He's not making a motion.

6 THE COURT: Yes, ma'am?

7 MS. SMART-GITTINGS: Your Honor, based on the
8 fact that Mr. Sauls indicated to the jury that for the
9 penalty of burglary first he could be charged with
10 fifteen to life, I think that prejudices my client.
11 Unfortunately, I'm forced to ask for a mistrial on
12 behalf of my client, based on that testimony to the
13 jury.

14 MR. WRIGHT: I think, in fact, it gives them a
15 reason to take leniency and not come back -- I think
16 it has the exact opposite effect as what she's saying.
17 And I don't think that it prejudices her client. If
18 anything, it gives them some incentive to go out and
19 come back not guilty. And it affects the State, more
20 so.

21 But I have no objection and I have no motions.
22 But I think that her motion is I wouldn't say moot,
23 but I believe it's not to the effect that she's
24 explained to the Court. If anything, they're going to
25 give her client leniency.

Motion for a Mistrial
By Ms. Smart-Gittings

1 MR. PLEXICO: Your Honor, I would cite State v.
2 Mizzell -- M-I-Z-Z-E-L-L -- 349 S.C. 326. It's a
3 Supreme Court state that's arising out of Colleton
4 County.

5 They have said that it is an infringement on the
6 confrontation clause in South Carolina, and State --
7 South Carolina Constitution and the Federal
8 Constitution, not to allow a question in regards to
9 the length of the sentence that an individual is
10 looking at that they're trying to avoid themselves;
11 therefore, there's case law clearly on point that you
12 can say, Mr. Smith, aren't you trying to avoid a
13 maximum ten-year sentence on grand larceny.

14 You know, if that just happens to be the crime
15 the client -- my client's hard luck, well, so be it.
16 But you have the right to put in, as far as effective
17 cross-examination, exactly what they're looking at.

18 The Supreme Court has heard that issue, that
19 specific issue, and that's what State v. Mizzell
20 stands for, Your Honor.

21 And I had a right to ask the question, and it
22 should have been allowed.

23 MR. WRIGHT: No objection from the State on him
24 asking the question. I would prefer him not to, but
25 no objection. It's already out there now.

Motion for a Mistrial
By Ms. Smart-Gittings

1 If he would -- if the question was, beforehand,
2 should he ask the question, the State's position would
3 be no.

4 The question has already been asked. I think if
5 we put more attention on it and do a whole bunch of
6 corrective measures, it's going to just make -- make
7 the problem bigger, if there is a problem. I don't
8 think there's a problem.

9 THE COURT: Wait a minute.

10 Okay. What about State v. Mizzell?

11 MR. WRIGHT: I agree with Mr. Plexico he has a
12 right to try to defend his client. And he's trying to
13 show the jury that I guess the State's witness has
14 some incentive to get up there and lie. But I don't
15 think that -- I think that's the reason why he asked
16 the question, you know. But I'm sure he can enlighten
17 the Court better than I could.

18 THE COURT: Ms. Gittings?

19 MS. SMART-GITTINGS: Your Honor, I'm not
20 familiar with the State v. Mizzell case, so I can't
21 speak to the facts and distinguish -- or distinguish
22 it against this case.

23 My only concern is now the jury knows the
24 penalty that my client could receive. This particular
25 case, they're codefendants. They're charged with the

Motion for a Mistrial
By Ms. Smart-Gittings

1 same burglary. He's testifying regarding the exact
2 same burglary and he blurted out the penalty and that
3 means the penalty that my client could possibly face,
4 as well. And I think it's prejudicial. It's
5 certainly more prejudicial than probative, Your Honor.

6 MR. WRIGHT: He's not a part of law. I think
7 you instructed them from the beginning that the law
8 comes from the bench and that they're charged with the
9 facts. Whatever you say is going to be what they
10 should take back with them.

11 So I think that from the beginning you told them
12 that you're in charge of the law and they're in charge
13 of the facts. I think I said in my opening -- I know
14 Mr. Plexico said it in his. I'm not sure if Ms.
15 Gittings did. But I think that it shouldn't be an
16 issue.

17 [Whereupon, the Court reviews documents]

18 THE COURT: State v. Mizzell talks about
19 balancing the need for confrontation against the
20 preference that the jury not know anything about
21 possible sentencing. But my reading is consistent
22 with what Mr. Plexico indicates he believes it says,
23 and that is the right to confrontation trumps the
24 right not to have the jury know anything about
25 possible sentencing. Therefore, I am overruling the

Motion for a Mistrial
By Ms. Smart-Gittings

1 motion. Thank you very much.

2 Anything else we need to do during the lunch
3 break?

4 [Whereupon, there is no response]

5 THE COURT: All right. We'll be in recess until
6 1:30.

7 [Whereupon, a recess is taken from 12:29 p.m. to
8 1:35 p.m.]

9 MR. WRIGHT: Your Honor, I would like to put on
10 the record that the State does not intend to call --
11 I apologize.

12 [Whereupon, Mr. Wright reviews documents]

13 MR. WRIGHT: -- Ms. Christina Taylor. And I
14 would like for her to be released from the
15 sequestration and allowed to be in the courtroom.

16 THE COURT: All right. I hear no objection.
17 That motion is granted.

18 MS. SMART-GITTINGS: I don't have any objection,
19 Your Honor.

20 MR. PLEXICO: No objection, Judge.

21 MR. WRIGHT: Thank you.

22 THE COURT: All right. It appears we're ready
23 for the jury. Let's --

24 MR. PLEXICO: Your Honor? Your Honor, before
25 that, I noticed the sequestered witnesses were

Motion for a Mistrial
By Ms. Smart-Gittings

1 together at lunch. And that would be Ms., at the
2 time, Christina Taylor, Roma Muller, Amanda Deloach
3 Brown, that they were together at lunch, Your Honor.

4 I think that was in violation of the
5 sequestration order and I would ask that Amanda Brown
6 also be struck from the witness list in regards to
7 that matter, Your Honor.

8 MR. WRIGHT: Amanda Brown wasn't sequestered
9 because she was the representative for the family.
10 She wasn't under the sequestration motion. Neither
11 was Jim -- Blue Bolton. I believe that was taken care
12 of, before we even started the case, that they
13 wouldn't be under the sequestration motion.

14 MR. PLEXICO: But she has had the opportunity to
15 discuss the case and the testimony with those
16 witnesses, Judge, and I think it's in violation of the
17 sequestration order as far as witness, at the time,
18 Christina Taylor and Roma Muller. And, therefore,
19 that would corrupt her testimony and I would ask that
20 she be deleted, also, from the State's witness list.

21 The State had a responsibility to explain what
22 sequestration is, as defense counsel does to their
23 witnesses, and it's up to them to see to it that a
24 Court's order of sequestration is carried out. They
25 failed to do that and I ask -- I'm asking in fairness

Motion for a Mistrial
By Ms. Smart-Gittings

1 that Amanda Deloach Brown be stricken from their
2 witness list.

3 MR. WRIGHT: Your Honor, in fact, I did talk to
4 them. They came and said, hey, we want to go to lunch
5 together, can we go to lunch together. I said, hold
6 on, let me think about this. And then me and my
7 investigator, we decided that we weren't going to call
8 Ms. Christina Taylor and said that since -- I'm not
9 calling you; if you tell me you're not going to talk
10 about the case while you're gone; I'm going to ask you
11 again when you get back if they talked about the case.

12 And I did. And they said they weren't going to
13 talk about it and they told me when they got back they
14 hadn't talked about it. So they were aware of the
15 sequestration motion, in general.

16 But at this time I believe that Ms. Amanda Brown
17 wasn't under sequestration, and since I wasn't calling
18 Ms. Taylor, that they're in compliance with the
19 sequestration motion.

20 MR. PLEXICO: I think that makes it worse, that
21 he told them that they could go together.

22 THE COURT: I understand your motion. I'm going
23 to deny the motion.

24 Now, anything else before the jury is brought
25 in?

Motion for a Mistrial
By Ms. Smart-Gittings

1 MR. PLEXICO: No, Your Honor. I have not
2 finished my cross of State's witness Sauls.

3 THE COURT: Put him back on the witness stand.

4 MR. WRIGHT: Yes.

5 Can somebody bring Mr. Sauls out?

6 [Whereupon, Mr. Sauls comes forward]

7 [Whereupon, Mr. Sauls re-takes the witness
8 stand]

9 THE COURT: And now we can also bring the jury
10 in.

11 [Whereupon, the jury enters the courtroom at
12 1:36 p.m.]

13 THE COURT: Welcome back, ladies and gentlemen.

14 I believe we're ready to resume with cross-
15 examination of the witness.

16 MR. PLEXICO: Thank you. Thank you, Your Honor.
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Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

CONTINUED CROSS-EXAMINATION

BY MR. PLEXICO:

Q. Now, sir, Mr. Sauls, it's true you said that the house wasn't even secured; correct?

A. The house was unlocked.

Q. Okay. Now, you discussed this case with the solicitor and with Investigator Davis; correct? Is that correct?

A. Uh-huh.

Q. Okay. Now, you know you're looking at a minimum of fifteen years to life?

A. Uh-huh.

Q. You know this is a two strikes and you're out and you've got to serve eighty-five percent?

A. I understand that.

Q. So you're looking at twelve years nine months in prison.

A. I understand that.

Q. How old are you?

A. Forty-five.

Q. You're forth-five years old?

A. Yes, sir.

Q. So you'll be close to sixty years old; is that correct?

A. Uh-huh.

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. Now, what kind of promises did they exactly make
2 to you?

3 A. They didn't make no promises to me.

4 Q. Now, are you hoping, since you don't have a
5 promise, that if you testify really well and rope in
6 everybody that you're going to be rewarded for your
7 testimony?

8 A. I'm probably looking at regular time.

9 Q. Okay. But you certainly don't -- you certainly
10 expect a break --

11 A. I mean --

12 Q. -- don't you?

13 A. -- I don't want it.

14 Q. So you expect a break; is that a fair --

15 A. A break?

16 Q. Yes.

17 A. Yeah.

18 Q. All right. So in your mind, you have cut a deal
19 with the solicitor's --

20 A. I ain't cut no deal with them.

21 Q. -- is that --

22 But you're going to get less time than twelve
23 years nine months; right?

24 A. I ain't cut no deal with them.

25 Q. Now, you have experience in the criminal justice

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 system; correct?

2 A. Uh-huh.

3 Q. And you know if you offer testimony, you're
4 going to get a lesser sentence; isn't that correct?

5 A. They didn't offer me no plea or nothing.

6 Q. I just -- was that an answer to my question?

7 A. No, sir. I --

8 Q. Would you answer my question? Now would you
9 answer my question?

10 A. Go ahead.

11 Q. You know, from your experience in the criminal
12 justice system, that if you testify favorably for the
13 State --

14 MR. WRIGHT: Your Honor --

15 Q. [Mr. Plexico] -- that you're going to get --

16 MR. WRIGHT: Objection.

17 Q. [Mr. Plexico] -- a lot less time?

18 A. Yeah.

19 THE COURT: Hold on one second.

20 MR. WRIGHT: Objection. He's not an --

21 THE COURT: Hold on one second. Hold --

22 MR. WRIGHT: He's not an expert. He's asking
23 for some type of opinion on a hypothesis that I think
24 is out of the information that he has in his knowledge
25 base. He's asking him do they -- based on your

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 experience -- he's almost like trying to qualify him
2 as an expert as a criminal citizen, or something of
3 that nature.

4 THE COURT: I understand.

5 MR. WRIGHT: I think it's improper.

6 THE COURT: I understand the motion. I'm going
7 to overrule it.

8 MR. WRIGHT: Thank you, Your Honor.

9 Q. [Mr. Plexico] So your answer was based on your
10 experience of the criminal justice system, you think
11 you're going to get a whole lot less time; isn't that
12 right?

13 A. I didn't say that.

14 Q. What is right?

15 A. I don't know -- I don't know what I'm getting.

16 Q. I know you don't know what you're going to get.
17 But you have expectations that you're going to be treated
18 much more leniently?

19 A. I should be treated like everybody else --

20 Q. Okay. Based on --

21 A. -- everybody that was in it.

22 Q. What did you just say?

23 A. I deserve to get treated -- that means I --
24 yeah, I should get punished with my friends --

25 Q. Right.

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 A. -- for what I done.

2 Q. Okay. But since you're testifying favorably for
3 the State, based on your experience you just said, yes,
4 you did expect to receive less time. Isn't that what you
5 just said?

6 A. I don't expect to receive no less time. I shore
7 don't.

8 Q. Okay. Now, so you would expect us to believe
9 that you're up here and you don't have any expectations of
10 leniency? Is that what you're trying to tell us?

11 A. No.

12 Q. That's not correct, is it?

13 A. No.

14 Q. So you do have expectations of leniency?

15 A. No.

16 You're trying to confuse me. That's what you're
17 trying to do.

18 Q. No. I just want you to answer the questions.

19 So you do have an expectation of leniency; isn't
20 that correct?

21 A. If you say so.

22 Q. What is your expectation? Not mine. Yours,
23 sir.

24 A. So what are -- what are you actually saying to
25 me?

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. I'm asking you do you have an expectation of
2 leniency when it comes time for your case.

3 A. [No response]

4 Q. So you don't have -- you don't think you're
5 going to get anything --

6 A. I know --

7 Q. -- for you coming in here --

8 A. -- I'm probably going --

9 Q. -- and testifying?

10 A. -- to get time.

11 Q. But you know you'll get less time testifying --

12 A. I don't know that.

13 Q. -- favorably?

14 A. I don't know that.

15 Q. Do you believe that?

16 A. No, I don't believe that.

17 Q. Okay. Now, so you want us to believe that
18 you're in here testifying and you know the more you rope
19 in, the better it is for the State. The more codefendants
20 you rope in, the better it is for the State; right? It
21 makes you a more effective witness?

22 A. [No response]

23 Q. You didn't know that --

24 A. Yeah, I know that.

25 Q. -- from the State?

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 So don't you want to be an effective witness for
2 the State?

3 A. [No response]

4 Q. Don't you? That's a yes or a no.

5 A. [No response]

6 Q. Don't you want to be a more effective witness
7 for the State?

8 A. I just want to make this easy and simple and
9 just get this over with.

10 Q. Now, so would you -- do you -- yes or no, and
11 then you can explain it. Do you want to be an effective
12 witness for the State?

13 A. I reckon so.

14 Q. Okay. In exchange for that effectiveness, you
15 expect something?

16 A. Do I expect something?

17 Q. Yes.

18 A. No, I don't.

19 Q. Would you expect that somebody who was a less
20 effective witness would be rewarded the same as somebody
21 who was a more effective witness? Wouldn't the person who
22 was a more effective witness get a better deal than the
23 less effective witness, when it really came down to it, in
24 your opinion?

25 A. Not really.

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 Q. So that doesn't make sense to you as a matter of
2 logic?

3 A. Yes, it make sense to me.

4 Q. It does. Okay.

5 So that is -- and you're a logical man; correct?

6 A. I reckon so.

7 Q. All right. So that makes sense to you?

8 A. I reckon so.

9 Q. Okay. Now, so you have a motivation to be an
10 effective witness; correct?

11 A. I reckon so.

12 Q. All right. Now, so you want to rope in as many
13 people as possible. That's true, isn't it? You want to
14 rope in as many people as possible?

15 A. No.

16 Q. Okay. Now, that house wasn't even secured;
17 correct?

18 A. There wasn't nobody staying in it.

19 Q. All right. So it was an empty home. Nobody was
20 dwelling there?

21 A. There wasn't nobody in it.

22 Q. All right. Now, did anybody know the items you
23 were carrying out to start with?

24 A. Yeah, they knew what I had. They shore did.

25 Q. But not to start with? In the end, you're

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 saying they did?

2 Q. What?

3 Q. In the end, you're saying they did. But they
4 didn't see you as you got --

5 A. They was in the house. When I was in the house,
6 they seen me take the knives and the liquor. Okay?

7 Q. Now, and you're saying this wasn't earlier in
8 the day?

9 A. It was seven o'clock.

10 Q. All right. And you're saying you don't know
11 what Ms. McAlhaney did; correct?

12 A. She went -- I know she went in the house.

13 Q. But you don't know what she did in there?

14 A. What she didn't do?

15 Q. What she did in there. You don't know because
16 you --

17 A. No, I don't know what she did. I wasn't in
18 there with her.

19 Q. -- you were paying attention to yourself. Thank
20 you.

21 All right. Now, you and Larry got into an
22 argument; correct?

23 A. Yeah. At the trailer.

24 Q. All right. Now, you don't see Larry here today,
25 do you?

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 A. No.

2 Q. All right. So Travis had been drinking, you had
3 been drinking, Tonya had been drinking. Is that a fair
4 assessment of the whole thing?

5 A. [Indicates affirmatively]

6 Q. Okay. Now, were y'all drinking with Larry?

7 A. No.

8 Q. Okay. Now, what did you have the stuff in when
9 you carried it off? You put it in a bag?

10 A. Huh?

11 Q. Did you put it in a bag?

12 A. That bag right there he's got that in.

13 Q. All right. And you carried that bag off. It
14 was concealed; correct?

15 A. Do what?

16 Q. You carried the bag off. It was concealed;
17 correct?

18 A. [Indicates affirmatively]

19 Q. All right. Now, so you left with Larry; right?

20 A. I did what?

21 Q. You left with Larry?

22 A. All of us left with Larry.

23 Q. All right. Now --

24 MR. PLEXICO: The Court's indulgence.

25 [Whereupon, Mr. Plexico and Ms. McAlhaney

Testimony of Ricky Sauls
Continued Cross-Examination by Mr. Plexico
February 4, 2014

1 confer]

2 MR. PLEXICO: I don't have anything further at
3 this time.

4 MS. SMART-GITTINGS: Briefly, Your Honor.

5 Mr. Sauls, I just have a few questions for you.
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Testimony of Ricky Sauls
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

CROSS-EXAMINATION

BY MS. SMART-GITTINGS:

Q. You spoke with someone from the solicitor's office yesterday; correct?

A. Yeah.

They come and talked to me, was that the right statement I wrote. I said yeah. That's all he asked me.

Q. Okay. And then today you spoke with Mr. Hughes; correct?

A. The public defender?

Q. Yes.

A. Yeah.

That's the first time I seen him.

Q. And after you talked with Mr. Hughes, you told Mr. Hughes you didn't want to testify, you were going to say you wanted to reserve your right?

A. Then I changed my mind.

MR. WRIGHT: Your Honor --

Q. [Ms. Smart-Gittings] And then after that --

MR. WRIGHT: I object, Your Honor.

Q. [Ms. Smart-Gittings] -- you came back and testified again?

THE COURT: Hold on just one second.

MR. WRIGHT: That's a communication between him and his attorney. I don't think it's appropriate for

Testimony of Ricky Sauls
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

1 her to ask him questions about what he discussed with
2 his attorney. It's a privileged conversation.

3 THE COURT: Overruled. It can be waived.

4 Q. [Ms. Smart-Gittings] And then --

5 A. I changed my mind.

6 Q. You changed your mind when Mr. Hughes told you
7 that the solicitor would grant your request; right?

8 A. Not really.

9 I just changed my mind. I --

10 Q. You changed your mind.

11 A. -- changed my mind on my own.

12 Q. Okay.

13 A. Ain't nobody forced me to do none of that.

14 Q. And you're testifying truthfully basically --

15 A. Yes.

16 Q. -- from what you --

17 A. Yes, I am.

18 Q. And your version of the facts are that -- is
19 that Mr. Hair went in the house and went to sleep?

20 A. Everybody was plundering around, and he went to
21 sleep. He was pretty wasted when he -- him and Larry come
22 to the house.

23 Q. Okay. But he went to sleep? He didn't take
24 anything, he went to sleep?

25 A. All of us was in there plundering.

Testimony of Ricky Sauls
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

MS. SMART-GITTINGS: Okay. Thank you.

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Testimony of Ricky Sauls
Redirect Examination by Mr. Wright
February 4, 2014

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q. Do you know what trespassing is?

A. Yeah.

Q. Would you say that you trespassed?

A. Yeah. I did something I wasn't supposed to do.

Q. Would you say that Ms. McAlhaney trespassed?

A. All of us did something we wasn't supposed to do.

Q. Would you agree that Mr. Hair trespassed?

A. [Indicates affirmatively]

Q. And this all occurred at night time? You said seven o'clock. Night time.

A. [No response]

MR. WRIGHT: No further questions.

MR. PLEXICO: I don't have any on redirect.

THE COURT: Thank you, sir. You may step down.

MR. WRIGHT: May this witness be excused, Your Honor? Be allowed to go back?

MR. PLEXICO: I'm not going to call him, Your Honor.

MS. SMART-GITTINGS: No objection, Your Honor.

THE COURT: The witness may be excused.

[Whereupon, Mr. Sauls is excused and exits the witness stand]

Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

JAMES BOLTON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Blue, tell the Court your real name.

A. Jim Bolton. B-O-L-T-O-N.

Q. And what do you do for a living?

A. I'm the assistant chief of the Hampton Police
Department.

Q. And how long have you been with the Hampton
Police Department?

A. Approximately twenty-five years now.

Q. How long have you been in law enforcement?

A. Twenty-five years.

Q. Okay. So one -- sounds good.

Did you have the occasion to be involved in the
case involving burglary first charges against Travis Hair,
Ricky Sauls, and Tonya McAlhaney?

A. Yes, sir, I did.

Q. Were you lead investigator on that case?

A. Yes, sir.

Q. How did you develop these three people as
suspects?

A. I was called at around 8:40, 8:45 that morning.

MIA PERRON, CVR-CM-M

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Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

1 They told me that they --

2 Q. I'm sorry --

3 A. -- Officer Sargent Drawdy.

4 Q. That morning being the 23rd or the 24th?

5 A. The 24th.

6 Q. Okay.

7 A. Sargent Drawdy had called me, told me they had
8 responded to a call at [REDACTED] that they had
9 found Ms. Tonya McAlhaney in the residence and they had
10 arrested her and taken her back to the office.

11 Q. And then what did you do in response to that?

12 A. I got dressed. I went to the office. I talked
13 to Miss Tonya -- took Miss Tonya into my office, read her
14 her Miranda rights, got her to sign the form.

15 MR. PLEXICO: Your Honor --

16 MR. WRIGHT: I think we already covered this,
17 Your Honor, earlier at the bench.

18 MR. PLEXICO: I don't know where he's going with
19 this. So if we have had representations made --

20 MR. WRIGHT: I'm still within the compliance of
21 what we said earlier. Nothing --

22 MR. PLEXICO: I have --

23 MR. WRIGHT: -- has changed.

24 MR. PLEXICO: I have no objection.

25 Q. [Mr. Wright] All right. Just to clarify, she

Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

1 never gave you a statement?

2 A. No, sir, she did not.

3 Q. All right. Go ahead.

4 A. While we were sitting there talking and she was
5 signing the forms, she had a bottle sticking out of her
6 blouse. I could see the bottle cap. I asked her what it
7 was. She told me it was her medication. I asked her to
8 let me look at it. She took it out and handed it to me.
9 It was a bottle of cough syrup prescribed to Charles
10 Deloach.

11 At this time, I told her I wanted to go to her
12 house and look at the things that had been stolen. I had
13 a report that the night before, the house had been broke
14 into. I wanted to go look there. She agreed to give --
15 she signed a consent form for us to search her residence.
16 She stated that she wanted to go with me and I told her
17 that was okay.

18 We went out there and she unlocked the door for
19 us. And --

20 Q. And just to clarify, she wasn't under arrest at
21 the time, was she?

22 A. Yes, sir.

23 Q. She was under arrest?

24 A. Yes.

25 Q. So she was under arrest. Okay.

Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

1 A. Right. They had arrested her in the residence
2 that morning.

3 When she unlocked the door. We went in. And
4 Mr. Travis Hair was inside the residence. We took him
5 outside. While I was talking to Tonya, we heard noises in
6 the front bedroom, went in there, and Mr. Sauls was in
7 there. We took him outside. I Mirandized Mr. Sauls in
8 the yard, in front of other officers, and asked him where
9 the stuff was they took the night before.

10 MR. PLEXICO: Your Honor, this is impermissible
11 bolstering, Your Honor. It's hearsay.

12 MR. WRIGHT: I would say it goes for
13 identification of these -- I asked him how he
14 developed these three suspects.

15 THE COURT: I sustain the objection.

16 MR. WRIGHT: Okay. All right.

17 Q. [Mr. Wright] So at some point, you gathered the
18 items that are in Exhibit 1 and 2. How did you get those
19 items?

20 A. Yes, sir.

21 After talking with Mr. Sauls in the yard, we
22 went into the residence. There was a black, plastic trash
23 bag that he told me some of the stuff was in. We opened
24 that bag up. It had mail in it addressed to Charles
25 Deloach. It had some jewelry in it, some prescription

Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

1 pills, a few other things. We took that out of that bag
2 and set it aside, because there was other stuff that we
3 didn't want -- need for anything.

4 And I asked him where the knives and liquor were
5 that he said he had taken. He told me they were behind
6 the couch. We went over there. We moved the chair out of
7 the way. The knives and the liquor were right beside the
8 couch.

9 Q. Okay. Any reason to believe he wasn't being
10 truthful?

11 MR. PLEXICO: Your Honor, that's --

12 MS. SMART-GITTINGS: Objection, Your Honor.

13 THE COURT: I'll sustain the objection.

14 Q. [Mr. Wright] Was he intoxicated?

15 A. Not at that point, no, sir.

16 Q. Had you threatened him?

17 A. No, sir.

18 Q. Was he under any duress that you were aware of?

19 A. No, sir, not that I'm aware of.

20 Q. Did you promise him anything?

21 A. No, sir.

22 Q. Did he -- did he have permission to be in the
23 house?

24 A. No, sir.

25 Q. Did he convey to you that Tonya McAlhaney was

Testimony of James Bolton
Direct Examination by Mr. Wright
February 4, 2014

1 involved in --

2 MR. PLEXICO: Your Honor, all this is
3 impermissible bolstering and it's hearsay, Your Honor.

4 THE COURT: I sustain the objection.

5 MR. WRIGHT: The Court's indulgence.

6 Q. [Mr. Wright] Where is -- is [REDACTED]
7 in Hampton County?

8 A. Yes, sir.

9 It's in the town of Hampton. You go 601 North
10 and right there in front of Never Mar [phonetic] there's a
11 small gas station. That was Charles Deloach's station.
12 And just behind that station down the street is [REDACTED]

13 [REDACTED]

14 Q. And you're an officer in this area. In
15 November, late November, does it get -- is it dark at
16 seven o'clock at night?

17 A. Yes, sir. It gets dark around 5:30 or six
18 o'clock.

19 MR. WRIGHT: Please answer any questions that
20 the defense attorneys have for you.

21 MR. PLEXICO: I don't have any questions of this
22 witness, Your Honor.

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Testimony of James Bolton
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

CROSS-EXAMINATION

BY MS. SMART-GITTINGS:

Q. Major Bolton --

A. Yes, ma'am?

Q. -- do you have a Lieutenant Cook employed by the
Hampton Police Department?

A. Yes, ma'am.

Q. And is he under your supervision?

A. Yes, ma'am.

Q. And he was involved in the investigation of this
case; correct?

A. He took the initial report on the first
burglary.

Q. Okay. And that is the burglary with -- let's
make it clear for this jury. Mr. Travis Hair is only --

MR. WRIGHT: Objection, Your Honor.

There was a ruling earlier in reference to this,
I believe. I don't mind if she puts it out there. I
just want to make sure that the record is clear. I
thought you ruled earlier. If you didn't, then you
didn't. I just want to make sure.

MS. SMART-GITTINGS: He said this burglary.
He's only charged with one burglary. He's never been
a suspect in two.

THE COURT: Proceed.

Testimony of James Bolton
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

1 Q. [Ms. Smart-Gittings] But because there have
2 been back and forth --

3 THE COURT: Go ahead with your question.

4 Q. [Ms. Smart-Gittings] Because we've been back
5 and forth --

6 A. Yes, ma'am.

7 Q. -- about two different burglaries, I just want
8 to make it clear to the jury that the State's allegation
9 is that Mr. Hair was only involved in one burglary;
10 correct?

11 A. On the night of the -- 11/23.

12 Q. And that is the burglary that Lieutenant Cook
13 investigated; correct?

14 A. Not investigated. He took the initial report.

15 Q. Lieutenant Cook took the initial report?

16 A. Yes, ma'am.

17 Q. And in Lieutenant Cook's report, someone told
18 him that they saw two people coming out of that house that
19 night; correct?

20 A. I don't remember exactly what the report said.

21 Q. There were two bags into evidence; correct?

22 A. Yes, ma'am.

23 Q. And those are the only two bags that you have in
24 evidence pertaining to the burglary that particular night;
25 correct?

Testimony of James Bolton
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

1 A. Correct.

2 Q. And Sargent Drawdy is the one that inputs the
3 information in the computer; correct?

4 A. Sargent Drawdy does, myself, and Sargent Rosier.

5 Q. Okay. You're privy to what's pertained in your
6 police report because you're --

7 A. Yes, ma'am.

8 Q. -- the Major, you're the investigator?

9 A. Yes, ma'am.

10 Q. And you're privy to the information provided to
11 Lieutenant Cook?

12 A. Yes, ma'am.

13 Q. Okay. But Lieutenant Cook is not here to
14 testify today, is he?

15 A. No, ma'am.

16 Q. Are you familiar with whether or not Lieutenant
17 Cook provided a report?

18 A. Yes, ma'am.

19 Q. Did he, or did he not?

20 A. He did provide a report, yes.

21 Q. He did. Okay.

22 But he didn't input that information into the
23 computer. Sargent Drawdy did; correct?

24 A. Correct.

25 Q. Okay. But Sargent Drawdy would put in only what

Testimony of James Bolton
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

1 Lieutenant Cook had in his report; correct?

2 A. That's what it's supposed to be, yes, ma'am.

3 Q. And Sargent Drawdy testified today, and you were
4 in the courtroom when he testified today, that he did, in
5 fact, put in his report that an eyewitness saw two people,
6 Ricky Sauls and Tonya McAlhaney, carrying bags --

7 MR. PLEXICO: All that's hearsay, Your Honor.

8 MR. WRIGHT: He didn't say the names of the
9 people.

10 MS. SMART-GITTINGS: Yes, he did.

11 THE COURT: I sustain the objection.

12 MR. PLEXICO: I would move to strike and ask for
13 a curative instruction, Your Honor.

14 THE COURT: Ladies and gentlemen, disregard the
15 last question and response by the witness. I'm going
16 to order it be stricken from the record.

17 Q. [Ms. Smart-Gittings] You don't know who
18 Lieutenant Cook interviewed, do you?

19 A. No, ma'am.

20 Q. Okay. And the only person that could provide
21 the information would be Lieutenant Cook; correct?

22 A. Yes, ma'am.

23 Q. But he's not here today?

24 A. No, ma'am.

25 Q. Not subpoenaed to be here today?

Testimony of James Bolton
Cross-Examination by Ms. Smart-Gittings
February 4, 2014

1 A. No.
2 Q. Not on the witness list to be here today, is he?
3 A. No, ma'am.
4 MS. SMART-GITTINGS: Okay. I don't have any
5 other questions.
6 THE COURT: Any redirect?
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Testimony of James Bolton
Redirect Examination by Mr. Wright
February 4, 2014

REDIRECT EXAMINATION

BY MR. WRIGHT:

Q. Just to be fair to the jury: I'm going to hand up the incident report related to the 11/23/2013 incident. I want you to read that and tell me if this is the report.

MS. SMART-GITTINGS: Your Honor, may I approach?
I'm not sure exactly which document he's handing him.

MR. WRIGHT: 2013 --

THE COURT: Show counsel what document you're referring to.

[Whereupon, Mr. Wright and Ms. Smart-Gittings confer]

[Whereupon, the witness reviews documents]

MR. WRIGHT: Do you mind if I grab that from you, Mr. Bolton?

[Whereupon, Mr. Bolton proffers documents to Mr. Wright]

[Whereupon, Mr. Wright and Ms. Smart-Gittings confer]

A. Yes, sir. This is a report that Ricky -- Lieutenant Ricky Cook wrote concerning a burglary on 11/23/2013 at [REDACTED]

Q. [Mr. Wright] Now, does he say who told him that those two persons carried bags from the location? And, more specifically, does it say that there were only two

Testimony of James Bolton
Redirect Examination by Mr. Wright
February 4, 2014

1 people involved in the burglary?

2 A. [No response]

3 Q. Or does it say --

4 A. It says --

5 Q. -- he went to pick up Travis Hair --

6 A. He said he saw the suspect Ricky Sauls carrying
7 bags from the residence and containing --

8 MR. PLEXICO: Your Honor, I object. This is all
9 hearsay, Your Honor.

10 THE COURT: I sustain the objection.

11 MR. WRIGHT: May we approach, Your Honor?

12 [Whereupon, an off-the-record bench conference
13 is held]

14 Q. [Mr. Wright] Well, let me ask it a different
15 way.

16 During your investigation of the burglary that
17 occurred on November 23rd, 2013, at [REDACTED]
18 Hampton County, South Carolina, did you have any
19 information that would lead you to believe that Travis
20 Hair wasn't involved in it?

21 A. That Travis Hair was involved?

22 Q. Was not involved.

23 A. Was not? No, sir.

24 Q. All the evidence you collected led you to
25 believe that three people were involved and --

Testimony of James Bolton
Redirect Examination by Mr. Wright
February 4, 2014

1 MR. PLEXICO: Your Honor, I -- Your Honor, I
2 object.

3 This is a matter for the jury. He's taking this
4 as a province for the jury as to what is the
5 conclusion to draw from the facts that have been to
6 the Court.

7 THE COURT: I sustain the objection.

8 Q. [Mr. Wright] How many suspects did you develop
9 as -- in this situation -- this incidence?

10 A. Three.

11 Q. Who were those three people?

12 MR. PLEXICO: Your Honor, I -- I withdraw.

13 Q. [Mr. Wright] Who are those people that you
14 developed as suspects for this burglary first?

15 A. Tonya McAlhaney, Travis Hair and Ricky Sauls.

16 MR. WRIGHT: No further questions.

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Testimony of James Bolton
Recross-Examination by Mr. Plexico
February 4, 2014

RECROSS-EXAMINATION

BY MR. PLEXICO:

Q. Larry Crosby: you know, didn't y'all have a warrant for Larry Crosby in regards to this?

A. We had looked at him as a suspect but we could not put him in the residence.

Q. Okay. But he wasn't an accessory after the fact or before the fact for carrying somebody over there?

A. I don't know if he knew what they were doing. They called him to come pick them up and he went and picked them up.

Q. Now, you don't know who was there because you weren't there; correct?

A. Correct.

Q. All right. And you interviewed Ricky Sauls; correct?

A. Yes, sir.

Q. All right. And I believe your name -- is that your initial on his statement as a witness? Do you recall?

A. [No response]

Q. But you took his statement?

A. I took a verbal statement from him on the -- out at Tonya McAlhaney's house.

Nick, Patrolman Nick Ginn, took the written

Testimony of James Bolton
Recross-Examination by Mr. Plexico
February 4, 2014

1 statement at the office when we got back there.

2 MR. PLEXICO: All right. I don't have anything
3 further.

4 MS. SMART-GITTINGS: I don't have anything
5 further, Your Honor.

6 MR. WRIGHT: Nothing further of this witness.
7 Ask that he be allowed to --

8 THE COURT: You may step down and you may be
9 excused.

10 MR. WRIGHT: Your Honor, at this time, the State
11 rests.

12 THE COURT: The State rests.

13 Ladies and gentlemen, I'm going to ask you to --
14 ask you to step in the jury room. I've got some
15 matters of law I need to discuss with the attorneys
16 outside your presence. I hope this won't be long.

17 [Whereupon, the jury exits the courtroom at
18 2:20 p.m.]
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Motion To Dismiss Indictment
By Mr. Plexico
February 4, 2014

MOTION TO DISMISS INDICTMENT

THE COURT: Any motions from either defendant?

MR. PLEXICO: Your Honor, I do move to dismiss indictment 2013-GS-25-00435, Your Honor.

I believe that the State has not carried their burden in providing evidence as to this is a dwelling, Your Honor. A dwelling is required on a burglary first degree.

I believe that a house that is not lived in on a regular basis -- Ms. Brown testified that she -- her domicile, as I believe would be a good way to characterize it, is in Spartanburg. That's where her husband lives. She was here taking care of a business while she did said -- did say she was at the house sometimes, but it does not appear that this was a dwelling.

I would move to dismiss the indictment in regards to that and -- and dismiss the burglary first and let it go forward as no more than a burglary second, Your Honor, under 16-11-312.

MR. WRIGHT: Your Honor, the State relies on State v. White. It can be found at 349 S.E. 3d 562, and also at S.E.2d 305, 2002, which states that a dwelling is any structure in which someone sleeps on a regular basis, as long as that person is identifiable

Motion To Dismiss Indictment
By Mr. Plexico
February 4, 2014

1 -- in this case, it is. It's Ms. Amanda Brown -- and
2 this includes an occupied residence is an occupant
3 identified and intending to return.

4 She testified that she intended to return, that,
5 in fact, she stayed in this location longer than she
6 stayed in the location in the other part of the State.

7 I think that we definitely have enough to get
8 this thing to the jury and it's a jury question to
9 decide whether or not they believe that it should be
10 categorized as a dwelling. But there's more than
11 enough evidence, and the case law supports, that it
12 should be considered a dwelling.

13 THE COURT: I agree with the solicitor. I think
14 that it's a jury question. I think there is
15 sufficient evidence that this building constituted a
16 dwelling, and therefore I deny the motion.

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Motion For A Directed Verdict
by Ms. Smart-Gittings
February 4, 2014

MOTION FOR A DIRECTED VERDICT

THE COURT: Other motions?

MS. SMART-GITTINGS: Your Honor, I have a motion for a directed verdict in that the State failed to prove competent evidence that my client, Mr. Hair, was more than being merely present at the scene.

The only eyewitness testified that Mr. Hair went in and he went to sleep. He testified that he had to wake him up before they left and that he didn't take anything, he didn't see him take anything. He testified that he took things and that he could only tell the Court what he took. Mr. Plexico asked him several times and he vehemently said that Mr. Hair was asleep.

Secondly, alternatively, Your Honor, Sargent Brad Drawdy testified -- Drawdy testified that there was an eyewitness that saw two people with two bags. There's two bags into evidence. And those two people were Ricky Sauls and Tonya McAlhaney.

So I think if the Court is inclined to believe the codefendant, whose testimony of course was to help himself, then I think that the Court should find that Mr. Hair was merely present.

The State did not prove that Mr. Hair intended to trespass at the residence. So we would submit to

Motion For A Directed Verdict
by Ms. Smart-Gittings
February 4, 2014

1 the jury that the State failed to prove any element of
2 burglary -- prove the element of intent for Mr. Hair.

3 MR. WRIGHT: Your Honor, first of all, the items
4 that were discussed during this trial were in two
5 separate containers because I put them in separate
6 containers. They came to me in one container. So I
7 think she's referring to the fact that there is an
8 Exhibit 1 and Exhibit 2, which has no bearing on the
9 case other than I separated out the knife and the
10 liquor so that when I spoke to Mr. Sauls I could talk
11 about that. So the two-bag part, I'm not sure exactly
12 how that plays into it but I think that should be
13 considered a red herring.

14 The State is relying on attempt to commit a
15 crime therein, relying on McMillan v. State, which can
16 be found at 383 S.C. 480, 487 through 488, also at
17 S.E.2d 905, 908 through 909, 2009, which states that
18 an attempt to commit a crime therein element of
19 burglary can be inferred from the act of trespassing
20 in the night time.

21 We're also relying on voluntary intoxication is
22 not a defense unless the use of alcohol or drugs cause
23 permanent sanity and destroy the defendant's ability
24 to know right from wrong, which can be found at State
25 v. Hartfield, 300 S.C. 469, 388.

Motion For A Directed Verdict
by Ms. Smart-Gittings
February 4, 2014

1 It was testimony that he had been drinking but
2 there's no testimony that he's permanently insane.
3 He's here today. We don't have a McNaughton or Blair
4 issue in front of the Court. So I take judicial
5 notice that he's not permanently insane.

6 And, in addition, there was testimony that he
7 went into the house. And it can be inferred to the
8 jury that he went in first and he broke the door open.
9 But even beyond that, he was inside the house without
10 permission, which would be trespassing. And I believe
11 that the fact it was night time and he trespassed into
12 the house, it can be inferred that there was an
13 attempt to commit a crime therein.

14 MS. SMART-GITTINGS: Your Honor, there is no
15 testimony that he was the first person in the house.
16 No one testified to that.

17 THE COURT: I didn't remember it, but --

18 MS. SMART-GITTINGS: No one testified to that.

19 And there's no -- there has been no testimony
20 that he was under a trespass notice, that he was not
21 allowed to be in the house. In fact, there was
22 testimony that he had been in there earlier. So with
23 regard to the trespass issue, the State did not put
24 any competent evidence that he was under a trespass
25 notice. So to now rely that the crime he committed

Motion For A Directed Verdict
by Ms. Smart-Gittings
February 4, 2014

1 therein was a trespass.

2 MR. WRIGHT: I think she's inferring it the
3 wrong way.

4 I don't have to prove that he went in and was
5 trespassing. It could be inferred by the fact that he
6 was in there without permission, which is considered
7 trespassing, not the trespass after notice statute
8 that we have in our code of laws. I'm not talking
9 about that trespass. I'm talking about trespass, that
10 being some place you're not supposed to be. And
11 that's what was contemplated in the case law, not
12 trespass after notice that's codified in our statutes.

13 And he knew the victim was going to be there,
14 based on testimony that was presented in evidence that
15 he was there when the statement came out that she was
16 going to be out of town.

17 And there was no permission given from anybody,
18 who owned the property, who occupied -- or occupied
19 the property, to allow him to be in the house. I
20 think that that is trespass.

21 THE COURT: Ms. Gittings, I agree with the
22 arguments made by the solicitor on this issue. I
23 think there is sufficient evidence that he was guilty
24 of trespass and that that intent to commit a crime can
25 be -- could be found by the jury that evidence has

Motion For A Directed Verdict
by Ms. Smart-Gittings
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1 been submitted.

2 THE COURT: Any other motions?

3 MR. PLEXICO: I don't have any other directed
4 verdict motions, Judge.

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State vs. McAlhaney and Hair
Charge Conference
February 4, 2014

CHARGE CONFERENCE

1
2 THE COURT: All right. Well, let me talk about
3 a couple of things, then.

4 One is I need to talk to the defendants about
5 their right to testify. I need to talk about -- we
6 need to talk about the verdict form.

7 What's the State's position on any lesser
8 includeds?

9 MR. WRIGHT: For purposes -- I believe that --
10 I'm okay with the lesser includeds being offered to
11 the jury, if they decide that it's less than it is.
12 I'm not going to be a stickler and say that they have
13 to find them guilty of burglary first. I believe it's
14 burglary first. I believe that the Court should offer
15 them a lesser included. If they decide to go that
16 route, they go that route, but I'm not willing to do
17 it.

18 THE COURT: What about the defendant McAlhaney?

19 MR. PLEXICO: Yes, Your Honor.

20 I would ask that lesser included degrees of
21 burglary be included, burglary second or burglary
22 third, Your Honor, and I believe that would be
23 appropriate.

24 MR. WRIGHT: I oppose the third. But second, I
25 believe that I can't give violent quite. This would

State vs. McAlhaney and Hair
Charge Conference
February 4, 2014

1 be burglary second non violent, based on the facts.
2 So I think burglary second non violent is
3 contemplating a place is not a dwelling.

4 But if I can't have second, then I would like to
5 have second violent, also. But I'll have to look back
6 at the statute. I'm just going off the top of my
7 head. I hadn't -- I didn't anticipate that question,
8 specifically.

9 But I'm okay with a general second violent and
10 non violent being offered.

11 THE COURT: I know -- I knew you would stand.
12 Go ahead.

13 MS. SMART-GITTINGS: With respect to Defendant
14 Travis Hair, Your Honor, we would ask for a lesser
15 included of burglary second and burglary third. We
16 include burglary third because if the Court -- if the
17 jury does not believe the testimony from Ms. Brown
18 that she lived there and it was, in fact, a dwelling,
19 then they can find that it was a burglary third. And
20 based on that, we would ask for a burglary third, Your
21 Honor, because if the jury doesn't believe that it was
22 a dwelling, then it could be a building; therefore, it
23 would be a burglary third.

24 MR. PLEXICO: And, Your Honor, I would join in
25 that and also add that there was testimony from

State vs. McAlhaney and Hair
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1 several witnesses that no one lived there, including
2 one from law enforcement, that it did not appear to
3 them that anybody lived there and the last person
4 known to live there was Charles Deloach.

5 THE COURT: Solicitor?

6 MR. WRIGHT: I believe there was evidence
7 presented in multiple ways to establish that this was
8 a dwelling, and from multiple witnesses. And the
9 witnesses that they're relying upon were the robbing
10 the durn -- or robbing the house. And how are they
11 going to say whether someone lived there or not when
12 you're trying to set it up to rob it, you know? It
13 doesn't make any sense to me.

14 But I understand why they're making it and
15 trying to help their clients out. But there's no way
16 that someone who -- meaning Mr. Ricky Sauls -- can
17 make the opinion as to whether or not somebody lives
18 in a house that he robbed, you know. I don't think
19 that's in the interest of any type of justice when you
20 had live testimony from the occupant and from one of
21 the owners that someone was residing there.

22 I believe there's more than enough to exclude
23 burglary third as being an option. Because this was a
24 house. It wasn't a shed. It wasn't like an open
25 structure. This was a house at night time, which

State vs. McAlhaney and Hair
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1 would be an aggravating factor.

2 MR. PLEXICO: Well, the officer, Judge,
3 testified he didn't know that anybody lived there
4 after Charles Deloach died. That's what he testified
5 to, which could be believed by the jury. And if they
6 believe the officer, then they could easily find it's
7 only a building --

8 MR. WRIGHT: I believe there was testimony where
9 she called law enforcement and asked for somebody to
10 come and check out the place because she was there at
11 night with her kids.

12 I believe that burglary third, this wouldn't be
13 an appropriate charge.

14 MS. SMART-GITTINGS: Judge, if I may? State v.
15 Ferredy at 257 S.E.2d 154 clearly talks about, in this
16 particular case, about an apartment building, I
17 believe. And it says that if there's evidence that no
18 one was living in there at a particular time, even
19 though it was furnished, even though it had all those
20 things, that it could be considered a burglary third.

21 And I think based on the fact that I believe it
22 was Sargent Drawdy testified that he didn't know
23 anybody lived there, the fact that the police did not
24 know to call Ms. Brown specifically, there could --
25 the jury could infer from the facts that no one lived

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1 there and intended to return within a certain amount
2 of time. And that would make it fall under State v.
3 Ferredy.

4 MR. WRIGHT: Your Honor, I would like to change
5 my position and ask that only burglary first be
6 charged to the jury.

7 THE COURT: And why is that?

8 MR. WRIGHT: Because I feel as if it's burglary
9 first.

10 And I kind of want to either send them home or
11 send them to jail. If they feel as if this was a
12 dwelling, then I believe that they -- the defendants
13 should have the right to go home.

14 [Whereupon, the Court reviews documents]

15 THE COURT: All right. I'm going to charge
16 first and second.

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23 DEFENDANTS' RIGHTS

24 THE COURT: Let me now address Ms. McAlhaney and
25 Mr. Hair concerning their right to testify.

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1 Ms. McAlhaney, Mr. Hair, it appears at this time
2 we've reached the stage of the proceedings where you
3 have a right to present your defense. You have a
4 right to claim the protections given to you by the
5 fifth amendment to the Constitution of the United
6 States of America.

7 This amendment states, in part, as follows: no
8 person shall be required in any criminal case to be a
9 witness against himself. This means that you cannot
10 be required to testify in this case. You have the
11 right to testify; however, no one can make you
12 testify. This is a personal right that you have and
13 no one can waive this right except you.

14 If you decide to testify, you will be subject to
15 the same rules that govern other witnesses and you may
16 be examined and cross-examined on any relevant issue
17 in the case.

18 In addition, if you have any convictions
19 involving dishonesty, false statement, crimes
20 punishable by imprisonment for one year, and the Court
21 determines that the probative value of admitting this
22 evidence outweighs its prejudicial effect for you, the
23 solicitor would be able to introduce your record to
24 attack your credibility.

25 If you decide to testify, the decision on your

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1 part must be freely, voluntarily, and intelligently
2 made with the knowledge of the protections given to
3 you by the fifth amendment and of the consequences of
4 your decision to testify.

5 If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you did
7 not testify any consideration whatsoever. There is to
8 be absolutely no prejudice to you because you did not
9 testify.

10 It's left entirely up to you whether or not you
11 are going to testify. And you may talk this -- about
12 this with your family, friends, attorney, or anyone
13 else, but the final decision is left entirely up to
14 you.

15 Do you understand what I have said so far,
16 Ms. McAlhaney?

17 MS. MCALHANEY: Yes, Your Honor, I do. And I
18 waive that right to testify.

19 THE COURT: I'm sorry?

20 MS. MCALHANEY: I do understand, and I waive my
21 right. I'm not going to testify.

22 THE COURT: Not going to testify.

23 Mr. Hair, have you understood what I've said so
24 far?

25 MR. HAIR: Yes, sir.

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1 THE COURT: Do you have any questions about
2 anything?

3 MR. HAIR: No, sir.

4 THE COURT: Have you had a chance to discuss
5 with your lawyer whether or not you should testify?

6 MR. HAIR: Yes, sir.

7 THE COURT: Have you decided yet?

8 MR. HAIR: Yes, sir.

9 THE COURT: And your decision would be?

10 MR. HAIR: I do not want to testify.

11 THE COURT: Not to testify?

12 MR. HAIR: Yes, sir.

13 THE COURT: Okay. Thank you both.

14 THE COURT: All right. Do y'all want to take
15 ten minutes before we bring the jury back in?

16 MR. PLEXICO: Please, Your Honor.

17 [Whereupon, a recess is taken from 2:43 p.m. to
18 2:50 p.m.]

19 MR. WRIGHT: Your Honor, just to clarify: which
20 burglary second are you charging? Violent or non
21 violent?

22 THE COURT: Well, I don't know that the charge
23 is any different, is it?

24 MR. WRIGHT: Yes.

25 One is -- I'm going off the top of my mind. If

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1 you break into a house and you don't have -- it's not
2 at night time and it's no weapon and no injury, then
3 that's burglary second non violent. I think burglary
4 second violent is if it's a structure, which could
5 include a house, and it's -- but doesn't have to be a
6 dwelling. The dwelling actually it comes out -- if
7 you break into a house that's not a dwelling and it's
8 at night time, it could be burglary second.

9 So depending on how they categorize the
10 structure that's [REDACTED] if they say that
11 it's a dwelling then I believe it's a burglary second
12 non violent. If they say it's not a dwelling --

13 THE COURT: Does anybody have that statute?
14 Have y'all got that charge? Do y'all agree with that,
15 Mr. Plexico?

16 MR. PLEXICO: I have the statute, Judge. May I
17 approach?

18 THE COURT: I was just going to ask if you agree
19 with --

20 MR. PLEXICO: No, Your Honor.

21 THE COURT: -- what the solicitor said.

22 MR. PLEXICO: No.

23 MR. WRIGHT: I may be incorrect. I'm going off
24 the top of my head.

25 MR. PLEXICO: Well, may I approach?

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1 THE COURT: Okay. Sure.

2 MR. PLEXICO: This says: displays what is or
3 appears to be knife, pistol, revolver, rifle.

4 I don't believe they're displaying this to
5 anyone.

6 MR. WRIGHT: We're talking about night time.
7 We're not talking about a weapon.

8 MR. PLEXICO: Well, then, I would ask that that
9 part not be charged, then. There is -- may be C and D
10 involved. You know, if he's talking about night time,
11 that's what the testimony was.

12 MR. WRIGHT: There's testimony about a knife,
13 but I never alleged that they were armed with a knife,
14 you know.

15 MR. PLEXICO: It's not in the -- that's correct.
16 It's not in the indictment. What's in the indictment
17 is at night.

18 Am I correct, Mr. Solicitor?

19 MR. WRIGHT: Correct.

20 MR. PLEXICO: So I would ask that you delete the
21 rest of it.

22 MR. WRIGHT: I think he should define whether
23 it's burglary second violent or non violent, Steve.

24 MR. PLEXICO: Correct.

25 But they're asking that it be charged as a

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1 violent and it's night time.

2 MR. WRIGHT: I think the difference is whether
3 it's in a dwelling or not. If it's not a dwelling
4 then it's one, if it is a dwelling it's the other.
5 I'm not sure whether it's violent or non violent.
6 That's what I'm presenting as the issue. I'm not sure
7 exactly what you're talking about.

8 MR. PLEXICO: I'm asking that he --

9 MS. SMART-GITTINGS: Your Honor, I think that if
10 it's a dwelling, it's non violent. I think that if
11 it's a building, it's violent. But a dwelling is not
12 violent.

13 THE COURT: Where do y'all -- do y'all see that
14 in the statute --

15 MR. WRIGHT: Yes. It's --

16 THE COURT: -- we're reading here?

17 MR. WRIGHT: I'm not sure what year that book is
18 from that Steve just handed you, but I can pull it up
19 if you would like to look at it on the web site.

20 [Whereupon, Mr. Wright reviews documents]

21 MR. WRIGHT: Here you go, Your Honor. You can
22 look at it --

23 THE COURT: Well, y'all can look at it.

24 What I mean is tell me what is different than
25 what I've been -- than what we've been talking about.

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1 MR. WRIGHT: What's different?

2 THE COURT: Maybe I'm just --

3 MR. WRIGHT: Burg third is going to a structure.
4 It could be a shed, it could be anything, but it's a
5 structure. When you get to burg --

6 THE COURT: Where are you reading from? Where
7 are you reading from?

8 MR. WRIGHT: Oh. Let me pull up that statute.
9 I'm going off the --

10 I remember in law school they said we think
11 great thoughts; pull up the book. So let me pull up
12 the Rule and let you look at it.

13 [Whereupon, Mr. Wright reviews documents]

14 MR. WRIGHT: All right. Your Honor, it's 16-11-
15 3312: a person is guilty of burglary in the second
16 degree if a person enters a dwelling without consent
17 with the intent to commit a crime therein. And that's
18 basically burg second non violent.

19 Burg second violent is: a person is guilty of a
20 burglary in the second degree if the person enters a
21 dwelling without consent -- enters a building.

22 So the violent, this contemplates a building.
23 The non violent contemplates that it's a dwelling.
24 But in order to be burglary second violent, you have
25 to have another component which, in this case, would

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1 be at night time.

2 So if for some reason the jury decided that it
3 wasn't a dwelling, it's actually more time that the
4 defendants are facing, because if it's a dwelling,
5 then you don't go into the whole residence, night
6 time, or not. If -- I mean, the night time --

7 Let me say it this way. If it's a dwelling,
8 it's automatically burg second non violent. If it's a
9 dwelling and it's night time, then it's burg first.
10 If it's just a building, in general, and it's at night
11 time, then it's burg second violent.

12 So if for some reason they decide that this
13 place at [REDACTED] is not a dwelling, then
14 we'll be into the burglary second violent category.

15 If they believe that it's a dwelling but it's
16 not night time, then it's burg second. If it's a
17 dwelling and night time, it's a burg first. Which is
18 a conflict. I'm sure that it'll be horrible to
19 explain that to the jury, the distinctions.

20 Want me to give it to you again, Your Honor?
21 Have you got it?

22 If it's a structure, it's burg third. If it's a
23 dwelling, then automatically burg second non violent.

24 THE COURT: I need to give this back to counsel,
25 because he can't follow any of this since I took his.

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1 MR. PLEXICO: No. That's all right.

2 MR. WRIGHT: Do you agree with what I'm saying,
3 Steve, or am I incorrect in my analysis? If it's a --
4 if it's -- if you go inside a shed, like if I break
5 into your shed, that's burg third. If I break into
6 your shed at night, that's burg second violent. If I
7 break into your house, which is a dwelling, then it's
8 automatically burg second non violent. If I break
9 into your house at night, which is a dwelling at night
10 time, that's burg first, as it pertains to this case.

11 Now, there are other elements in there about
12 armed with a weapon and all kinds of information. But
13 for this case, we're looking at just night time as
14 being the aggravating factor.

15 And so depending on whether or not the jury
16 decides it's a dwelling -- if it's not a dwelling,
17 this is just --

18 THE COURT: Slow down. Slow down. Slow down.
19 Slow down. Slow down.

20 You're talking too fast and talking faster than
21 I can read. Although I don't know --

22 MR. WRIGHT: It's under 16 --

23 THE COURT: -- if anybody else is having trouble
24 following as fast -- as I am.

25 MR. WRIGHT: Near the water, Your Honor. I

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1 apologize. I speak a little fast.

2 [Whereupon, the Court reviews documents]

3 THE COURT: Let me -- have y'all had a chance to
4 look at it yet?

5 MR. PLEXICO: Yes, Your Honor.

6 THE COURT: We don't have a burglary second
7 under Subsection A, do we?

8 MR. WRIGHT: It's my opinion that the evidence
9 shows that it was at night time, which would elevate
10 it up to be a burg first. So if for some reason the
11 jury decided it was at four o'clock -- I think Mr.
12 Plexico kept asking was this at four o'clock -- if
13 they believe that somebody lied and said it was 7:00,
14 and it was at 4:00, that it could be burg second
15 nonviolent. But if it was at seven o'clock, then it's
16 burg first if it was a dwelling. So if it's a
17 dwelling and it's night time, it's burg first, in my
18 opinion.

19 THE COURT: That's what I just said, is that I
20 don't think -- I don't think we have a burglary second
21 under Subsection A.

22 MR. WRIGHT: I said --

23 MS. SMART-GITTINGS: A and B, I believe, Your
24 Honor, was the burglary second.

25 But I think the designation is whether or not

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1 it's a dwelling, and the other one is whether or not
2 it's a building. And then there are other
3 subsections, 1, 2, 3, that have to do with the deadly
4 weapon --

5 THE COURT: That don't apply.

6 MS. SMART-GITTINGS: -- which I don't think are
7 applicable.

8 THE COURT: Right.

9 MS. SMART-GITTINGS: So I think, Your Honor,
10 that these are for the burglary non violent.

11 MR. WRIGHT: Incorrect, Your Honor.

12 One of the last provisions in B under B(3), it
13 says entering or remaining occurs at night time --

14 THE COURT: Right.

15 MR. WRIGHT: -- which would be the elevation to
16 burglary second violent.

17 So we actually -- if it's a dwelling and it's at
18 night time, it has to be burglary first. But if for
19 some reason they've convinced the jury it's not at
20 night time, then it's burglary second non violent.
21 And so all -- I think --

22 THE COURT: I think that's where we are as a
23 matter of law under the facts of this case. In other
24 words --

25 MR. PLEXICO: If they believe it did not happen

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1 at night, then an A would be appropriate. And we
2 would ask on that basis that an A be charged. I agree
3 with the solicitor on that.

4 THE COURT: Well, wait a minute. Wait a minute.
5 Whoa, whoa, whoa.

6 That's not what he said, though.

7 MR. WRIGHT: A, B and the -- it essentially
8 depends on whatever the jury believes. It could be
9 burglary --

10 THE COURT: Well, is there any evidence that it
11 didn't happen at night?

12 MR. WRIGHT: I believe that it was -- all the
13 witnesses' testimony was that it was at seven o'clock,
14 which I believe Major Bolton said at seven o'clock it
15 was dark at that time of the year.

16 But if for some reason they didn't want to
17 believe him, because they have the ability not to
18 believe any testimony presented on the witness stand,
19 they could say it was day time.

20 I'm just trying to cover all the angles. I
21 don't want something to pop up later on down the road.
22 In my opinion, it was night time, but I don't know
23 what they want to argue.

24 THE COURT: But there's no evidence that it
25 wasn't night -- at night.

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1 MR. WRIGHT: I agree.

2 [Whereupon, Mr. Plexico and Ms. Smart-Gittings
3 confer]

4 [Whereupon, the Court reviews documents]

5 THE COURT: All right. Let me talk about this
6 again.

7 I'll be glad to hear anybody on this issue but
8 the way I see it right now, if the jury does not
9 believe that it's a burglary first, then they will
10 decide if it's a burglary second. The only kind of
11 burglary second available to the jury to choose from
12 is that it was not a dwelling but that it was, in
13 fact, a building. Isn't that right?

14 MR. WRIGHT: No, sir.

15 The elements that we are alleging in our
16 burglary first is that they entered without consent
17 into a dwelling at night time. That's the burglary
18 first that we're alleging. So if --

19 THE COURT: So it's burglary first.

20 MR. WRIGHT: Burglary first.

21 So if they believe that it wasn't at night time,
22 then we're in burglary second nonviolent. If they
23 believe that it wasn't a dwelling, then we're in
24 burglary second violent.

25 But let's just say that we're going to go ahead

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1 and consent that it happened at night time, if it
2 happened --

3 THE COURT: What I'm saying is there's no
4 evidence that it happened at any time other than at
5 night time. The only evidence is that it was at night
6 time. There's not any conflicting evidence.

7 MR. WRIGHT: I'm okay with that, but I --

8 MS. SMART-GITTINGS: Well, if that's the case,
9 Your Honor, I would submit to the Court that it's a
10 burglary third because the dwelling issue is paramount
11 to a burglary third. Because if they --

12 THE COURT: But under a burglary --

13 MS. SMART-GITTINGS: -- don't believe that it's
14 a dwelling --

15 THE COURT: -- under a burglary second, B, it's
16 just a building at night; isn't that right?

17 MS. SMART-GITTINGS: That is correct, Your
18 Honor.

19 And burglary third would be not a dwelling, but
20 a building as well.

21 MR. WRIGHT: Can she repeat that, Your Honor?
22 I'm not sure what she -- I don't understand how she
23 got down to burglary third, because, you know -- I
24 can't argue right now because I didn't understand what
25 she was saying.

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1 THE COURT: I'll go ahead and look and see what
2 she's saying about burglary third. Hang on one
3 minute.

4 [Whereupon, the Court reviews documents]

5 THE COURT: But it can't be burglary third
6 because it happened at night; isn't that right?

7 MR. WRIGHT: Correct, Your Honor.

8 Because if it's not a dwelling, if it's a
9 structure and it's night time, then it's burglary
10 second violent.

11 THE COURT: All right. So here's what I'm --
12 here's what I'm going to charge. And the verdict form
13 that I propose is the same.

14 [Whereupon, the Court and the clerk of court
15 confer]

16 MS. SMART-GITTINGS: Your Honor, are you using
17 one verdict form or two verdict forms?

18 THE COURT: Well, one for each defendant.

19 MS. SMART-GITTINGS: Okay.

20 THE COURT: That would give -- in the
21 instruction to the jury, the jury will be told that
22 the indictment is for burglary first and they must
23 consider whether or not the defendant is guilty of
24 burglary first. If they find that the defendant is
25 not guilty, the State has not proven beyond a

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1 reasonable doubt all the elements of first degree
2 burglary, then they should consider whether -- second
3 degree burglary, whether the State has proved second
4 degree burglary, which contains all of the elements of
5 first degree burglary except that requirement that the
6 building be a dwelling. That's the only difference.

7 MR. WRIGHT: I'm A-okay with that, if you agree
8 with my charges.

9 THE COURT: I think your charge is the same as
10 my standard charges.

11 MS. SMART-GITTINGS: Your Honor, with regard to
12 Defendant Hair, we object to the intoxication charge
13 and the intent to commit a crime therein charge. What
14 the State wants the Court to charge, it can be
15 inferred from the act of trespassing in the night
16 time.

17 I think the State is trying to usurp some of its
18 position to commit -- to prove the intent therein and
19 wanted the Court to charge that there was a trespass
20 so that they can fall back on the trespass. So I
21 would object to that charge.

22 MR. PLEXICO: And I agree --

23 MS. SMART-GITTINGS: And neither one of us have
24 alleged intoxication as an offense, so I don't think
25 it's relevant.

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1 MR. PLEXICO: I agree with that, Your Honor.

2 And it is burden-shifting and it's the State's
3 duty to prove each element beyond a reasonable doubt,
4 including the intent to commit a crime therein.

5 MR. WRIGHT: Your Honor, from the witness stand
6 the codefendant said that they all had been drinking.
7 I don't know what they're going to allege in their
8 closings. They've presented no case. I just wanted
9 the jury to be charged that they allege that they did
10 know what he were doing, because they said he was
11 sleeping because he was sleeping off his drunk. And I
12 think that that shouldn't be an excuse and it should
13 be charged.

14 If they don't allege that he was drunk and
15 sleeping through the whole time, then I don't think --
16 maybe, yeah, it shouldn't be appropriate.

17 As far as the attempt to commit a crime therein,
18 I believe the case law allows that to be -- that if
19 it's night time and you're inside someone's house,
20 it's assumed that you intent to do a crime therein at
21 night time. And so I --

22 THE COURT: I'm going to charge my standard
23 charge, which does not specifically refer to
24 trespassing. All right? It refers, though, to intent
25 to commit a crime and intent may be shown by acts and

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1 conduct of the defendant and other circumstances from
2 which you may naturally and reasonably infer intent.

3 I am not going to charge voluntary intoxication.

4 MS. SMART-GITTINGS: Thank you, Your Honor.

5 MR. WRIGHT: I just want to note that I still
6 want the nighttime element, because the case law is
7 clear that if it's night time and you're in somebody's
8 -- you're somewhere you're not supposed to be at night
9 time, it's assumed you have intent to do something to
10 commit a crime if you're somewhere you're not supposed
11 to be at night time, you know.

12 THE COURT: I understand. I'm not going to
13 charge it, but I understand what you're saying.

14 MR. WRIGHT: Thank you.

15 MR. PLEXICO: Your Honor, could I have about
16 thirty seconds? I'll be right back.

17 [Off the record momentarily]

18 MR. WRIGHT: Your Honor, can I just get some
19 clarification that just because you're charging it
20 doesn't mean I can't argue it?

21 THE COURT: That's right.

22 MR. WRIGHT: All right. I just wanted to make
23 sure. I mean, I didn't want objections, jumping up,
24 me doing my --

25 THE COURT: No. You can argue what are they

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1 doing there during the night.

2 MR. WRIGHT: Yeah.

3 I just don't want to --

4 THE COURT: Yes.

5 Twenty-five minutes total?

6 MR. WRIGHT: I don't need that long.

7 THE COURT: Twelve? I'm just kidding.

8 MR. WRIGHT: You can give me a limit of twenty,
9 but I'll definitely try to be a whole lot under there.

10 THE COURT: Twenty? Twenty?

11 MS. SMART-GITTINGS: I won't be twenty minutes,
12 Your Honor.

13 MR. PLEXICO: I run on and on -- I'm sorry,
14 Judge. I'm sorry. But if I could have -- I have no
15 problems with the verdict form. If I could have
16 twenty-five. I will try to speak loudly enough.

17 THE COURT: All right. Let's bring the jury in.

18 [Whereupon, the jury enters the courtroom at
19 3:19 p.m.]

20 THE COURT: Welcome back once again, ladies and
21 gentlemen.

22 As you saw before we took that little rest, the
23 State has rested, which means the State has presented
24 their case to you.

25 The defendants now have the opportunity, should

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1 they choose to do so, to present evidence, although
2 they're not required to do so.

3 Mr. Plexico?

4 MR. PLEXICO: The defense would rest, Your
5 Honor.

6 THE COURT: All right. Ms. Gittings?

7 MS. SMART-GITTINGS: Defendant Hair rests, Your
8 Honor.

9 THE COURT: Ladies and gentlemen, you have heard
10 and seen and received all of the evidence that you're
11 going to hear, see and receive. What's left is for
12 the attorneys to make their closing arguments to you,
13 and I'm going to tell you about the law, then you'll
14 retire to your jury room and you'll begin your
15 deliberations.

16 We begin with the State. Solicitor?

17 MR. WRIGHT: May it please the Court.

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CLOSING ARGUMENT

MR. WRIGHT: Things didn't go as quick as I wanted it to, but we're getting it done in one day. So I hope you guys don't hold being here until almost 3:30 against me. Let's get to it.

As I told you in the beginning, Travis Hair and Tonya McAlhaney are guilty of burglary first degree. There's evidence presented here today that clearly establish that they entered a dwelling of another, Ms. Brown, Ms. Muller and Ms. Thomas -- Taylor, Taylor, without consent. None of them gave consent. And they then attempt to commit a crime therein. Went in for -- one person went in to take some drugs, other person took some knic-knack stuff, another person took some alcohol. But at the end of the day, they trespassed.

They went some place they weren't supposed to be. If you go somewhere you're not supposed to be, that's a crime. That requires if you find that at night time they went somewhere they weren't supposed to be, with the intent to commit a crime therein, that's burglary first.

When it's all said and done here today, I'm asking you to come back with a verdict that's the only correct verdict, which is guilty of burglary first

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1 degree. At that point, it's up to the judge.

2 It's your job to look at the facts and decide
3 what the facts are. And the facts are clearly
4 burglary in the first degree.

5 I want to thank you for being attentive. I've
6 been watching you guys, and nobody fell asleep on me.
7 And, you know, it's kind of cold in here. And I don't
8 know what they gave you for lunch, hopefully something
9 good, you know. You know, but I appreciate it.

10 MR. WRIGHT: This is the one and only time that
11 you, in your lifetime, unless you get called again,
12 get a chance to be in this position where you have the
13 ability to do what's the correct thing to do, which is
14 to make sure that the rules of our state are adhered
15 to. It's about rules, rules we have.

16 In this case, it was stated to you earlier I
17 have the burden. I'm a big guy, but they make me seem
18 a lot bigger: the big 'ole State has the burden; they
19 have access to all the resources. I'm still looking
20 for them, but apparently I have access to them. But
21 in this case, law enforcement did a great job. They
22 got one of the codefendants to -- he was an honest
23 guy. Made a mistake, but he's an honest guy. He told
24 the truth. Even -- multiple times, you sure you want
25 to say that; you're sure you -- yes, I'm going to tell

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1 the truth; you know, I was in there, I shouldn't have
2 been in there, and Travis and Tonya was in there with
3 me. You sure you want to say that? That's his
4 fiancé. He told the truth. His woman. He had no
5 reason to lie. He had all the motivation in the world
6 to not tell the truth. But he's an honest guy. Now,
7 he committed a crime, but he was honest and I give him
8 much respect for that.

9 I remember -- I'm from a family. I have an aunt
10 that's an attorney. I don't know if you guys -- you
11 guys probably know -- but one of the stories that she
12 tells in court that kind of brings you back to what's
13 going on here in this case, she likes to say that if
14 there's a puddle of water down here and you look into
15 it and you say, oh, man, that's me. You know, some
16 nemesis come along and they take their foot and they
17 hit that water and it gets all ripley, you look in
18 there, oh, that's not me. It's still you. The truth
19 is the truth. Just give it time. It'll settle down.
20 The truth will come out.

21 The truth was told in this case. These
22 defendants are guilty of burglary in the first degree.
23 The judge is going to give you the option to find them
24 guilty of something lesser. In my opinion, disregard
25 that. Burglary first degree is what they're guilty

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1 of. He's going to explain to you what burglary in the
2 second degree is. That's not what happened here.
3 They did that, but they went farther on. Because
4 burglary in the first degree is the higher charge than
5 burglary in the second degree. I request that you do
6 not give them the lesser burglary in the second degree
7 conviction but find them guilty of burglary in the
8 first degree.

9 Let's talk about what was presented to you on
10 the witness stand, because that's what you need to
11 look at and think about when you go in the back.

12 Law enforcement went out to [REDACTED]
13 in Hampton, South Carolina. They had a report that
14 somebody was stealing something out of the house.
15 They got there and, low and behold, Ms. McAlhaney in
16 the house. Eventually, they get in there and they
17 take her into custody. And she doesn't give a
18 statement, but she gives permission for them to go
19 check their house. They go to their house and
20 Mr. Sauls and Ms. Hair -- Mr. Hair are in the house.

21 They bring them out and they find all this
22 stuff. Now, this is what was recovered. This doesn't
23 mean this is what was taken. You know, criminals take
24 stuff. They don't keep all of it, you know. There's
25 evidence in here that some stuff was being burned.

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1 I'm sure anything that could have been used, drug-
2 wise, was already used. I'm sure anything that could
3 have been -- one of these bottles is open, one of
4 them's not. I'm sure there were probably more bottles
5 than what we have here. The fact that they were
6 trying to burn stuff, and you take with that and you
7 decide what you want to. But, in theory, there's a
8 lot more stuff than this. But this is what was
9 recovered.

10 Mr. Sauls admits that he didn't want to go in
11 there: man, I didn't want to go in this house and rob
12 these people; I'm going to take the knives, though;
13 I'm taking the liquor. This is some -- I don't drink
14 this stuff. I don't know what it is. But it's
15 something. I've seen it before, Goldschla [phonetic].
16 I've tasted it, too. It's pretty, but not tasty.
17 Now, I've had a lot of this. This one was opened.
18 I'm not a knife enthusiast, but these are some pretty
19 cool-looking knives. Look like Rambo. You know, it
20 is what it is. They went in there and they looted
21 these peoples house.

22 We had the victims testify that they were going
23 through a whole lot. That's not neither here nor
24 there, but it was very, very antidotal. They told you
25 that family members had passed away and that's the

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1 reason why they were doing this staying a couple of
2 days and going back and forth.

3 I'm sure that Ms. Brown would loved to not to
4 have to have been in Hampton County. She lived
5 somewhere else. But she says she was here on a
6 regular basis taking care of matters for her family.
7 She -- to the point where she even took her kids out
8 of regular school and put them in home-schooling. She
9 lived in the house. She said she stayed there more
10 than she did in her regular house in Spartanburg in
11 2013.

12 She said that she communicated to other members
13 of the staff and Travis Hair and -- was one of the
14 people who overheard she wasn't going to be there. So
15 he came up with this idea, let's go rob her while
16 she's out of town. That kind of action shouldn't be
17 rewarded with being allowed to go down to a burglary
18 second degree. That's burglary in the first degree
19 when you go in somebody's house at night time.

20 The common law from England that was brought
21 over to the United States, gave a more stringent
22 punishment to go into somebody's house at night time.
23 It's for everybody. Night time, people may be in the
24 bed sleeping, may be with their loved ones, kids may
25 be there. You don't know what's going on. Day time,

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1 you could sit there and watch somebody go to work and
2 say, all right, well nobody's in the house, and you
3 rob them. That's a crime and that's bad. But it's a
4 whole lot worse to go in the night time.

5 This happened at night time. There's been no
6 evidence presented that it didn't happen at night
7 time. I asked the question, seven o'clock, is it dark
8 at that time of year? Think about it. That's
9 November 23rd, Thanksgiving. Say about Thanksgiving
10 time, it's dark. So it's night time. I think that
11 element has been proven beyond a reasonable doubt.

12 Let's talk about what that means. Beyond a
13 reasonable doubt doesn't mean beyond any doubt, you
14 know. That's called beyond a shadow of doubt. We all
15 talk about that in church. In court, it's beyond a
16 reasonable doubt. In civil court they have something
17 called preponderance of the evidence. That means more
18 than fifty percent. Beyond a reasonable doubt means
19 beyond what a reasonable person would require to
20 convict.

21 We picked you guys because we thought you were
22 all reasonable. You don't owe me any favors. You
23 don't owe Ms. McAlhaney or Mr. Hair any favors.
24 You're going to be an independent person, look at the
25 facts, and make a decision and decide do you want

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1 people in the community to go in people's houses at
2 night time and then get charged with a lesser charge,
3 or do you want them to be found guilty of what the
4 statute says they did, go into a house without consent
5 and at night time with the intent to commit a crime
6 therein.

7 There's also case law in this state that talks
8 about the intent to commit a crime therein. I'm going
9 to represent to you that if you go in somebody's house
10 at night time, you didn't go in there looking for
11 cake. You didn't go in there and clean it up for them
12 as a surprise, if you didn't have consent in the
13 house. You may go in there with consent and go do
14 some stuff. But if you go in somebody's house without
15 consent, arguably, you could assume they intent to do
16 a crime therein.

17 I believe when the judge charges you, he's not
18 going to use the exact language. But you can infer
19 that from what he's saying, because it's pretty close.
20 If he doesn't use the word night time and things of
21 that nature, he's the boss when it comes to the law.
22 Whatever he says goes.

23 But I suggest to you that going into somebody's
24 house at night time infers the intent to commit a
25 crime therein. Y'all came in with a tool bag, is what

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1 a lot of attorneys like to call it. Common sense. My
2 mom's always telling me that common sense is not very
3 common. You know, but everybody is smart enough to
4 know what's going on in this case.

5 Dwelling: that was a big issue in this case,
6 whether this is a dwelling. Did she intend to come
7 back? She said she did. Her aunt says she did.
8 Those are two of the owners of the house. I believe
9 we met the burden beyond a reasonable doubt. There
10 was no -- one of the guys that -- Ricky Sauls, who
11 broke into their house, said, I don't think she meant
12 to come back. Of course you would say that. You
13 don't want to be charged with burglary in the first
14 degree. Because if it wasn't a dwelling, they get an
15 opportunity to bring it down to one of the lesser
16 ones.

17 It was a dwelling. There's furniture there.
18 There's lights. I don't know anyone's house -- if I
19 wasn't going to live there, I wouldn't keep the lights
20 on. I'm not paying any bills somewhere that I'm not
21 intending to stay. Why do you have lights on in the
22 house? Why do you have a bed in there? Why do have
23 food in the refrigerator? Because I don't live -- no.
24 Common sense says if you have food in the house,
25 electricity, furniture, and you're in this area on a

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1 regular basis taking care of business, you intend to
2 stay there when you're in town. There's going to be
3 arguments that it wasn't a dwelling. I submit to you
4 it was a dwelling.

5 There was an allegation from Mr. Sauls that he
6 had been drinking; matter of fact, we all had been
7 drinking; when they came to pick us up, we had been
8 drinking. But then later on he said, I wasn't that
9 drunk, you know. I believe he was as truthful as his
10 mind can be. But that should not be a reason to
11 negate their actions. I don't care if you're so drunk
12 to the point where you're toppling over. If you
13 commit a crime, you're responsible for that crime. In
14 the United States of America, intoxication that you do
15 yourself -- now, if somebody slips you a Mickey or a
16 Ruffie, you didn't ask for that. But if you decide to
17 get drunk and you slap me, we've got a -- we've got a
18 problem. You don't, oh, he's drunk, let him -- no.
19 If you commit a crime while you're intoxicated, you're
20 responsible for your actions.

21 So I ask that you give them no leniency because
22 they may or may not have been drunk. That's what Mr.
23 Sauls said. If you believe that they were drunk, I
24 say they're still responsible for their actions.

25 I submit to you that burglary first degree is

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1 found at South Carolina Section Code 16-11-311 and
2 it's defined, as it pertains to this case, as the
3 entering the dwelling of another, belong to these
4 ladies here on the front row, without consent -- the
5 two of the three who testified said they didn't give
6 consent -- with the intent to commit a crime therein.

7 Intent can be inferred from being night time.
8 Ain't nothing good going on at night if you in
9 somebody else's house.

10 Mr. Sauls admitted that he took some stuff,
11 there's evidence that Ms. McAlhaney took some stuff,
12 and there's evidence that Mr. Travis Hair had an
13 opportunity to take some stuff, and that there was
14 stuff in the other house. Mr. Sauls I believe trying
15 to cover for his buddy. They've been cell mates since
16 they got arrested.

17 MS. SMART-GITTINGS: Objection, Your Honor.

18 May we approach?

19 THE COURT: All right.

20 MR. PLEXICO: For the record, I join in that
21 objection.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 MR. WRIGHT: Disregard --

25 MS. SMART-GITTINGS: Your Honor, I move to

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1 strike --

2 MR. WRIGHT: -- the last minutes --

3 MS. SMART-GITTINGS: -- that comment.

4 MR. WRIGHT: -- what I just said.

5 MR. WRIGHT: All right. In closing, when you go
6 in the back, and not until you go in the back --
7 because the judge will tell you don't talk about the
8 case until you go in the back and we finish up any
9 arguments we have. But when you get a chance, you're
10 going to get a verdict form. And under Roman Numeral
11 I, which is I, is that, we, the jury, unanimously find
12 Tonya McAlhaney guilty of burglary first degree. I
13 assert to you that, beyond a reasonable doubt,
14 evidence has been presented that Tonya McAlhaney is
15 guilty of burglary in the first degree. And I request
16 that you mark that on that one, and then get the
17 foreperson to sign it, and then move on to Mr. Hair.
18 Under I, the same response, that we unanimously find
19 that Mr. Travis Hair is guilty of burglary in the
20 first degree. And I request that you mark that he's
21 guilty of that. They both entered into a dwelling
22 with the intent to commit the crime therein at night
23 time.

24 Thank you for your time, for your attentiveness.
25 Hopefully, this wasn't too painful being here all day

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1 yesterday and all day today -- or most of the day
2 yesterday. But please consider what I said and find
3 both of these defendants guilty of burglary in the
4 first degree. Thank you.

5 THE COURT: Thank you, Mr. Wright.

6 Mr. Plexico?

7 MR. PLEXICO: Do you want to go first?

8 MS. SMART-GITTINGS: Your Honor, may I go first?

9 THE COURT: You certainly may.

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CLOSING ARGUMENT

MS. SMART-GITTINGS: Ladies and gentlemen of the jury, thank you so much for your attentiveness during the course of this trial.

Just a few things. I'll be before you shortly. Three things that I want you to think about when you deliberate. The judge is going to charge you that for a burglary to occur, they had to enter into a dwelling, without consent, with the intent to do a crime therein. And the State's burden is to prove to you beyond a reasonable doubt that all three of those elements were present. If any of those elements were not present, the State has not met its burden beyond a reasonable doubt.

So just to recap the -- and this is very confusing. And I told you at the beginning that it was going to be confusing because you have two defendants, you have two attorneys. It's everyone cross-examining each other and you have to discern what's going on through the midst of all the cross-examination.

So this investigation began because someone called law enforcement and said that someone was in the house and they didn't think anyone should be in the house. So this was on the morning of the 24th.

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1 Law enforcement responded to the house and apprehended
2 Ms. McAlhaney. As a result of that apprehension, they
3 went to Ms. McAlhaney's house. Major Bolton testified
4 that Mr. Hair was in the house and he asked Mr. Hair
5 to come outside, he went inside, and he questioned Mr.
6 Sauls. That was his testimony. He did not tell you
7 at any time did he question my client regarding that
8 burglary. All the information that came to you came
9 to you as a result of Tonya McAlhaney and her fiancé,
10 Mr. Sauls, not Mr. Travis Hair.

11 Then when Sargent Drawdy testified, I
12 specifically asked him, because he entered the
13 information into evidence, regarding the eyewitness
14 that their police department had. There was an
15 eyewitness who spoke to Lieutenant Cook and told
16 Lieutenant Cook he saw two people coming out of the
17 house. That was clear. But Lieutenant Cook was not
18 brought here today. Nor was that eyewitness brought
19 here today. They weren't here. The person who saw
20 this reported it to the police department, was not
21 brought into court today for you to hear what they had
22 to say.

23 I submit to you that when I asked Sargent Dowdy
24 was Travis Hair one of the two people that the
25 eyewitness saw coming out of the house with bags, was

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1 it Mr. Hair; he said no. So you have an eyewitness
2 who told Hampton Police Department that they saw two
3 people coming out of the house. But Mr. Hair was not
4 one of the two people. They didn't bring the
5 eyewitness, and they didn't bring the officer here who
6 took that report. He's still employed by Hampton PD.
7 But the solicitor, who's responsible for proving this
8 case to you, chose not to bring him. And if you
9 wonder and if it would have been helpful to you to
10 hear from that eyewitness, then I submit to you that
11 that is a hesitation on your part to act, because it
12 was his burden to bring the witnesses here.

13 Second, the only other person who testified
14 today, regarding Mr. Hair, was Mr. Sauls. And if you
15 believe any of Mr. Sauls' testimony, or some of Mr.
16 Sauls' testimony, Mr. Sauls said that Mr. Hair, if you
17 believe that Mr. Hair was present and if you believe
18 that Mr. Hair was in the house, the only other person
19 said that Mr. Hair went to sleep. He went in the
20 house and he went to sleep, that he had to wake him up
21 when they were leaving the house.

22 And he -- and Mr. Plexico I believe specifically
23 asked him what did he take, what did Mr. Hair take.
24 Nothing. When he asked what was taken, he said that
25 he took the liquor, that he took the knives, but he

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1 didn't know what Tonya took, but he knows that Mr.
2 Hair didn't take anything and that he was asleep. He
3 was asleep. So he didn't implicate Travis Hair as
4 taking anything from that house.

5 But the question is, is he credible? Is he
6 credible enough for you to believe that Travis Hair
7 went into that house and took something from there, or
8 intended to take something there -- from there. Or,
9 or, is the one witness who saw it, and not charged
10 with this crime, would that witness be credible?
11 Would the information provided in the Hampton Police
12 Department's police report, is that information
13 credible? And if you believe that that information is
14 credible, then I submit to you that you have no other
15 choice but to find Travis Hair not guilty.

16 The other issue that we kept harping on was the
17 issue of the dwelling. Like, why are they asking
18 those people whether or not they live in that house?
19 The judge is going to charge you the definition of a
20 dwelling. The reason why we asked all of those
21 question about did you live there, did you intend to
22 come back, was because if that house was vacant, if,
23 in fact, the last person who lived in that house had
24 intended to return to that house was dead, then that
25 house was not a dwelling. If you believe Mr. Sauls,

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1 who said that they were taking everything out of the
2 house, then you will have to believe that they didn't
3 intend to return. And if nobody intended to return to
4 live in that house, then that is not a dwelling and
5 the State has not met its burden of proof or proven to
6 you that they entered a dwelling. So that is why we
7 asked all of those questions.

8 And of course, of course, Ms. Brown wants you to
9 believe that she was staying in that house. Of course
10 she does. Because if you don't believe that, then
11 you're going to find both of them not guilty. So of
12 course she's going to come in and say, oh, I took my
13 kids out of school and I came back down here to run
14 the business.

15 Well, what did Sargent Drawdy say? He didn't
16 know. He was patrolling. After Ms. Deloach died, the
17 family asked to patrol the house because it was
18 vacant. The family requested that they patrol, and
19 they did. And he did not see anyone at that house.
20 He didn't see anyone. He doesn't have anything to
21 lose, he doesn't have anything to gain, about who
22 lives in that house. But he testified as to what he
23 saw. But he did not see anyone at that house.

24 Does Ms. Brown have a motive to say that she was
25 planning to live in that house? And Mr. Plexico went

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1 on and on about where is her husband and where are the
2 kids in school. Well, she said that one kid had a
3 dentist in Greenville but the other kid had a dentist
4 locally. Well, why do you think she said that?
5 Because she wants you to believe that she intends to
6 move from Greenville and live in that house. That's
7 what she was trying to get you to believe, that she
8 was living in that house.

9 Well, did you think it was important that when
10 the person called law enforcement and notified that
11 there was a burglary, they didn't call Ms. Brown?
12 They didn't call her and say, someone just broke into
13 your house. They called I believe the sister-in-law
14 or the niece-in-law for that person to get in touch
15 with someone else. But they did not go directly to
16 her.

17 And I believe Ms. Muller testified to that, that
18 she received a call from someone and then she called
19 Amanda Brown. But Amanda Brown wants you to believe
20 that she was living in that house, that she and her
21 three children, after her father died -- because we
22 believe that she came down -- you can believe some of
23 what she said, you can believe all of what she said.
24 It's quite reasonable, quite reasonable, and quite
25 expected, that the only child would move in to take

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1 care of their father. That is quite expected. But
2 what happens? In your life experiences, what happens
3 when that person dies? Do you leave your husband, do
4 you leave your house, do you leave your lifestyle in
5 Greenville and move back to Hampton to stay in the
6 heirs' property home, or do you go back home to your
7 husband where your family is? But, of course, of
8 course, you will have to believe that she was staying
9 back here in the family home, even though law
10 enforcement didn't see her there. But she wants you
11 to believe that.

12 And that's why at the beginning of this case I
13 told you that you could believe some of the witness'
14 testimony, you could believe all of the witness'
15 testimony, or you don't have to believe anything. You
16 don't have to believe anything Mr. Sauls said, you
17 don't have to believe anything Ms. Brown said, you
18 don't have to believe -- or you can believe all of it.

19 Each of you, all twelve of you, individually,
20 have a voice. Your voice. Your vote. And if you
21 believe someone and your other eleven jurors don't
22 agree with you, stand firm to your conviction.
23 Whatever that conviction is, that is your conviction.
24 And we chose you because we felt like you would make
25 the right decision.

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1 So I submit to you that if you have to
2 deliberate until midnight, if you have to deliberate
3 until midnight, that is your right. Will it be an
4 inconvenience? Absolutely. Do you want to go home?
5 Absolutely. But do not rush to judgment because it's
6 late in the afternoon. Do not rush to judgment
7 because it's uncomfortable. Do not rush to judgment
8 because everybody else is ready to go home. Stand
9 firm to your conviction. Thank you.

10 MR. PLEXICO: Pleases, the Court, Mr.
11 Solicitor, Madam Gittings.

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CLOSING ARGUMENT

MR. PLEXICO: I want to thank y'all for all your time today. Cover some points. I think they're really important.

Now, y'all have a very, very important responsibility. My client and Ms. Smart's client is not going to get another chance for a trial, for a determination of the facts. The State had a duty to come in here with credible evidence. And that's credible evidence.

You have heard the testimony of some of the evidence. And they've chose not to bring you everything. But there was the evidence of the witness who saw two people leaving, carrying two bags was the way I understood it. They're not in here. So who are the two people?

Now, what happened? Remember, my client is not charged with burglary on 11/24. That was the day of her arrest. She's not charged with burglary on 11/24. She's charged with burglary on 11/23. So that has nothing to do with it. They claim they load her all up, oh, she dropped a watch. Over here in a bag were some watches that belonged to Ricky Sauls and his partner. Okay? But not a leather-banded watch that the office testified to. So that didn't have anything

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1 to do with it, but that just clouded the picture.

2 Now, when you go out and you arrest a bunch of
3 people and then you all -- you sit down, you look at
4 the evidence, and there's an eyewitness that says, I
5 saw two people running out and those two people, we
6 know from their testimony, he can't get out of it,
7 Ricky Sauls -- he can't completely get out of

8 it. And what do thieves do? Thieves get
9 together, they steal. Then they're going to steal
10 \$100. Then they're going to fight over who gets forty
11 or who gets sixty or fifty-five or is it forty-five,
12 is it thirty, is it seventy. No honor among thieves.
13 Who fought? Who did he testify he was fighting with?
14 Larry Crosby. Who's not even in the courtroom? Larry
15 Crosby. Okay.

16 Now, think about it. You have Ricky Sauls,
17 Larry Crosby. Okay? You have got other people they
18 have arrested. Who do you have? You've got a big
19 mess. So how do you cover all of this? How do you
20 take care of it? Well, you have a trial, you throw in
21 items like a watch that doesn't have anything to do
22 with the case because y'all aren't smart, you might
23 get confused, you might not know what you're doing,
24 you might look in that bag and think it's the wrong
25 watch because you don't have the leather band. What

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1 is that? Smoke and mirrors.

2 But this is a courtroom. Y'all have a duty.
3 They have a responsibility. We don't have to put up
4 any proof. They have to prove beyond a reasonable
5 doubt. Let me tell you. People want to explain what
6 that is. But for 200 years, we founded this country
7 -- for over 200 years. Okay? The common man, the
8 common woman, does not need an explanation for what
9 guilt beyond a reasonable doubt is, because we've all
10 got enough sense to know what a reasonable doubt is.
11 You don't need an explanation, because you know what
12 it is. It's part of our culture. This is something
13 we --

14 Now, you've got a crook. You've got somebody
15 who started off saying -- and remember when I was
16 cross-examining. He wanted you to think he was up
17 here being an angel. Well, he's already said he
18 wasn't. Okay? I'm not getting anything for this. He
19 knows how to play the game from his past experience.
20 What he testified to under direct, from the solicitor,
21 his past twenty years of burglaries. And you don't
22 tell me he doesn't know how to play the system, he
23 don't know how to tell them what they want to hear,
24 that he's going to go off, and he expects to walk out
25 of this. And you know that's what he expects. And

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1 how -- you know, if you don't -- if he's not given a
2 firm deal, then what he gets, logically speaking, and
3 which he finally agreed to, depends upon his
4 performance as an actor. If he acts really well,
5 he'll get -- performed well, he'll be highly
6 compensated. If he doesn't act, then he won't be as
7 compensated.

8 Well, what does that mean? If you find these
9 two people guilty, okay, that means the only person
10 left to punish is the person who said, I'm the one
11 that went in and got this stuff. When they went to
12 Tonya's trailer -- and there's no testimony -- that's
13 his fiancé. That's what his testimony was, and he
14 can't testify because what he says isn't evidence.

15 Now, when they go there, who's inside? Who's
16 got the bag? Travis Hair comes out. And who's inside
17 with the bag of loot that they've gotten? The State's
18 star witness.

19 Now, she testified I live there. Okay. She's
20 left her husband, for all practical reasons, if she's
21 got that kind of schedule. Well, it just doesn't take
22 that much time to close up shop on a five-room house.
23 I mean, it's just not that much there. Now -- and I
24 have -- and we all knew and loved Charles Deloach.

25 Now, the problem here is is whether or not it's

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1 a dwelling. And a dwelling requires -- it's a matter
2 of logic. A dwelling: now, is she a dweller? Or
3 does she dwell in Spartanburg with her husband? I
4 would submit to you that this is not a dwelling. It
5 cannot be a burglary first. Burglary first: entry,
6 at night, without consent, to a dwelling. Dwellings
7 have dwellers.

8 Now, there's no telling. My client is not in
9 here at night. Okay? Now, if she said she secured
10 the place, part of that is turning off the lights. He
11 never said, I went in and turned on the lights. When
12 would it logically be? At day time. Now, if you're
13 not given a choice of having a daytime burglary -- but
14 he never testified, I went in, we turned on the
15 lights, and this is what we did. Well, that means
16 they're stumbling around in the dark. And that's not
17 logical. That's not believable. It's not credible
18 testimony from Mr. Sauls, who stood right in that
19 chair and talked to y'all. The world doesn't work
20 that way.

21 Now, why wouldn't he have known -- if I'm
22 framing an innocent person, those two people sitting
23 over there, if I'm framing them into a burglary, why
24 couldn't I testify to what room they went in, what
25 they touched, what they did, what they got, if I'm not

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1 right here? Well, of course, the police can go back
2 and check. They can get fingerprints. They can get
3 DNA. None of that was there. I can be proven a liar.
4 So what do I do? I take this stand and say, oh, I was
5 busy getting my knives and liquor; I don't know what
6 they were doing. I didn't see that. Then I think --
7 and I wrote it down. The only honest, credible thing
8 that I think Mr. Sauls said -- and I'll quote him. He
9 said: I wasn't in there with her. You heard it.
10 That was the grain of truth that came out: I wasn't
11 in there with her; I wouldn't know what she was doing
12 if she was in there at night.

13 Now, the next day is a whole different matter.
14 But they want to pollute this and pollute the
15 evidence. Okay. Fine. They went out, they leave the
16 crook. Now they've got to clean up the mess and
17 they're dumping it in your lap to clean up their mess.
18 And that's not right.

19 There is reason to hesitate. There is reason to
20 go, what am I doing? Am I sure about this? Do I have
21 a reasonable doubt? Well, if I'm going to convict Ms.
22 McAlhaney, they're going to base it on the next day.
23 It doesn't matter to me. The indictment doesn't
24 include that. Oh, no. I'll be lax on my job. And
25 you can't do that.

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1 What evidence is there on that day, aside from
2 Sauls, who went in and doesn't know who went in first,
3 doesn't know what they were doing inside. And how
4 couldn't he know, if he was there? Oh, he was
5 sleeping. What kind of reason is that? We were there
6 for a brief period of time. Oh, he went in and went
7 to sleep. That's just not reasonable. But that
8 covers it up. It clovers it up him not knowing why.
9 It was him and his bud, Larry, fighting over the loot,
10 and thieves fighting. They always fight over the
11 loot. That's what happens. And who's not even --
12 who's getting a break and who's not even in the
13 courtroom? And they call this justice? This is an
14 outrage. This is an outrage.

15 Now, he says the house wasn't even secured.
16 Sargent Drawdy is going by. He doesn't see anybody
17 there. He doesn't say there's any evidence anybody
18 lives there. That takes it out of being dwelling. If
19 it's not involving at night, you don't have a choice
20 of a dwelling in the day time, of a dwelling. All
21 those are gone. That leaves a building. And y'all
22 believing, hook, line and sinker, what he's had to
23 say, when you know, you know, he has misled you.

24 And what do men go in and steal? Come on. Look
25 at this. Guns, knives, liquor, money, and jewelry.

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1 Right? What's in his possession? Jewelry, liquor,
2 knives. Okay? Is this a crime that men do? Look at
3 what's taken. Go in, steal jewelry, steal weapons.
4 Does that say man, man, man, man? Yes. All right.
5 And why doesn't he know what you did when you went in
6 there if you're his bud? Okay, if you're his bud?
7 Why wouldn't they know? Because you weren't there.
8 But he's got to have somebody to sell out. Bad people
9 cut the deal, they walk free, and then innocent people
10 get punished -- this is just -- this is really wrong.

11 If there's ever a case where there is doubt.
12 Look at the who, who did it. Just like -- what have
13 our teachers taught us? Who, what, who? Who did it?
14 We know it was him and who else? Two people. They've
15 failed in their duty to bring the evidence, bring in
16 the eyewitness who saw who could have said who it was.
17 Why? It messes up their case. And the police aren't
18 covered for arresting these people, so the State just
19 rolls. Don't ask them any questions. Who cares about
20 eyewitnesses?

21 If you've got a case that failed to bring in an
22 eyewitness that's going to clear the whole matter up,
23 why wouldn't you do it, unless it disagreed with what
24 their testimony was? If it disagreed, that's going to
25 make them look foolish. So they can't bring -- what

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1 other reason could it be? They didn't want to do
2 justice? If they didn't want to do justice, set these
3 people free if they don't want to do justice, because
4 they're coming in here and they're supposed to do
5 justice. Set these people free, because that's not
6 right. We expect that.

7 They're in there -- my clients were in there?
8 Not a hair, not a fingerprint, nothing, nothing on my
9 client, nothing on Mr. Hair. This is an outrage.
10 They could have done their jobs. They could have
11 brought in the witnesses. They didn't bring in the
12 officer that took the statements. How could you in
13 good conscience overlook all this, unless he had
14 something to say, they didn't want you to hear, that
15 would hurt their chances of getting a conviction? And
16 we know this is wrong. This is wrong. Don't let this
17 happen in Hampton County.

18 But remember these are separate cases. There
19 are two lives here at stake, Mr. Hair's and my client,
20 Ms. McAlhaney.

21 I think I've covered everything. And I'm sorry
22 that there was a theft from the late Mr. Deloach's
23 former home. I'm sorry. And this is -- you know,
24 they're going to be dividing things up. And I know
25 they're hurt and they want somebody punished. And I

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1 feel for the family, too. But this isn't about
2 emotions. This is about facts, facts you can trust,
3 facts you can rely on. And they have failed in their
4 job. And if they fail in their job, you have no
5 choice except to bring back verdicts of not guilty of
6 burglary first and not guilty of burglary second.
7 One, they claim it's a dwelling. But there's no
8 credible evidence.

9 It all goes back to him, or the lack of the
10 eyewitness who can say who it was. Bring him in. Let
11 the truth come out. Why be afraid, if you're the
12 powerful State? It makes no sense. If the evidence
13 makes no sense and the State has a duty to provide
14 credible evidence and they leave it wanting, they
15 leave you wanting and you needing to hear more, that
16 by itself is a reasonable doubt.

17 What if the eyewitness came in? What if?
18 Because it's their duty to provide the evidence. And
19 if they don't have that, this case is over. And I'm
20 asking you to bring back a verdict of not guilty on
21 both counts. Thank you.

22 THE COURT: Thank you, Mr. Plexico.

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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I remind you that the fact that these defendants were indicted and charged and arrested is not evidence in this case and cannot be considered by you. The fact that these indictments were issued do not create an presumption or any inference of guilt. The defendant -- each of the defendants have pled not guilty to these indictments and their plea puts the burden upon the State to prove the defendants guilty. A person charged with committing a criminal offense in South Carolina is never required to prove themselves innocent.

I charge you and tell you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven that satisfies you of that guilt beyond a reasonable doubt. The presumption of innocence does not end when you begin your deliberations but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on the evidence that satisfies you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of a defendant which remains with the

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1 defendant until it has been stripped from the defendant by
2 evidence that satisfies you of a defendant's guilt beyond
3 a reasonable doubt. The presumption of innocence is not
4 mere legal theory. It is not just a legal phrase. It is
5 a substantial right to which every defendant is entitled
6 unless you, the jury, are satisfied from the evidence of a
7 defendant's guilt beyond a reasonable doubt.

8 Reasonable doubt is the kind of doubt that would
9 cause a reasonable person to hesitate to act. Some of you
10 may have served as jurors in civil cases where you were
11 told it was only necessary to prove that a fact is more
12 likely true than not true, such as by the greater weight
13 or the preponderance of the evidence. But in criminal
14 cases, the State's proof must be more powerful than that.
15 It must be beyond a reasonable doubt. Proof beyond a
16 reasonable doubt is proof that leaves you firmly convinced
17 of its guilt. Of course, there are very few things in
18 this world that we know of with absolute certainty. And
19 in criminal cases, the law does not require proof that
20 overcomes every possible doubt. If based on your
21 consideration of the evidence you're convinced that the
22 defendant is guilty of the crime charged, you must find
23 the defendant guilty. On the other hand, if you think
24 there is a real possibility that the defendant is not
25 guilty, you must give the defendant the benefit of the

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1 doubt and find the defendant not guilty.

2 I remind you that during this trial you and I
3 have had different duties to perform. As the trial judge,
4 it has been my responsibility to preside over the trial.
5 I've also had the duty to rule on the admissibility of
6 evidence. I tell you that you are only to consider the
7 competent evidence before you and if there was any
8 testimony ordered stricken from the record, you must
9 disregard that testimony. You are to consider only the
10 testimony presented from this witness stand and any
11 exhibits which have been made part of the record in this
12 case. I also have the additional duty to charge you about
13 the law that applies to this case. As the presiding
14 judge, I am the sole judge of the law in this case and it
15 is your duty, ladies and gentlemen, as jurors, to accept
16 the law as I now state it to you. If you already have any
17 idea of what the law is or what the law should be and it
18 differs from what I tell you, you must put that out of
19 your mind because under your oath you're obligated to
20 accept the law as I state it to you. In every case tried
21 in this court before a jury, the jury becomes the sole and
22 exclusive judge of the facts of the case. A trial judge
23 such as myself cannot intimate, state, comment on, or make
24 any statement to a trial jury about the facts of the case.
25 Since you, the jury, are the sole judges of the facts in

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1 this case, you are not to infer from anything I've done or
2 said during these proceedings that I have an opinion about
3 the facts of this case. As I told you earlier, the law
4 doesn't permit me to have an opinion about the facts of
5 the case. This is a matter solely for you.

6 It is your duty to determine the effect, the
7 value, the weight, and the truth of the evidence presented
8 during the trial. Typically speaking, there are two types
9 of evidence generally presented during a trial: direct
10 evidence and circumstantial evidence. Direct evidence, of
11 course, is testimony of a person who claims to have actual
12 knowledge of the facts, such as an eyewitness. It is
13 evidence which immediately establishes the main fact to be
14 proved. Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be inferred.
18 Circumstantial evidence is based on inference, not on
19 personal knowledge or observation. The law, though, makes
20 no distinction between the weight or the value to be given
21 to either direct or circumstantial evidence, nor is a
22 greater degree of certainty required with circumstantial
23 evidence than of direct evidence. You should weigh all of
24 the evidence in this case. After weighing all of the
25 evidence if you're not convinced of the guilt of the

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1 defendant beyond a reasonable doubt, you must find the
2 defendant not guilty.

3 Ladies and gentlemen, necessarily, you must
4 determine the credibility of the witnesses who have
5 testified. This simply means the believability. It
6 becomes your duty as jurors to analyze and evaluate the
7 evidence and determine which evidence convinces you of its
8 truth. In determining the believability of the witnesses
9 who have testified, you may believe one over several or
10 several over one. You may believe part of the testimony
11 of a witness and reject the remaining part of the
12 testimony of that very same witness. You may believe the
13 testimony of a witness in its entirety or reject the
14 testimony of a witness in its entirety. And you may
15 consider whether any witnesses exhibited to you any
16 interest, any bias, any prejudice, or any other motive in
17 this case.

18 As you've been told, each defendant is charged
19 with first degree burglary. The State must first prove
20 beyond a reasonable doubt that the defendant entered a
21 dwelling without consent. I tell you that a dwelling is
22 any building or a portion of a building in which a person
23 ordinarily sleeps. A building constructed as a dwelling
24 that has never been occupied cannot be considered a
25 dwelling for the purposes of burglary. But a building is

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1 a dwelling, even if the residents are temporarily absent
2 from the building.

3 The State must also prove -- excuse me. The
4 State must next prove beyond a reasonable doubt that the
5 defendant intended to commit a crime, either a felony or a
6 misdemeanor, at the time of entry into the dwelling. The
7 mere entry into a dwelling without consent is not
8 burglary. If the intent to commit a crime is formed after
9 the entry, it is not a burglary. On the other hand, if
10 the defendant intended to commit a crime at the time of
11 the entry, it is a burglary even if the intent -- if the
12 intent was abandoned after the entry. It doesn't matter
13 whether the intended crime was ever committed. Intent may
14 be shown by acts and conduct of the defendant and other
15 circumstances from which you may naturally and reasonably
16 infer intent.

17 And, finally, the State must prove beyond a
18 reasonable doubt that the defendant entered or remained in
19 the dwelling in the night time. Of course, night time is
20 the period of time between sunset and sunrise during which
21 there is not enough daylight to recognize a person's face
22 except by artificial light or by moonlight. If you find
23 that the State has failed to prove beyond a reasonable
24 doubt that the defendant committed first degree burglary,
25 you may consider whether the State has proved beyond a

State vs. McAlhaney and Hair
Charge of the Court
February 4, 2014

1 reasonable doubt that the defendant committed second
2 degree burglary. Second degree burglary includes all of
3 the elements of first degree burglary except that the
4 entry was into a building and not a dwelling.

5 Ladies and gentlemen, in just a few moments
6 you'll retire to the jury room and you'll begin your
7 deliberations. For there to be a verdict, all twelve of
8 you must agree. In other words, the verdict must be
9 unanimous and all twelve of you must agree. You'll be
10 given a verdict form for each defendant and the forms are
11 basically identical as to each defendant. There are three
12 Roman Numerals here.

13 And I'll ask our foreperson if, on behalf of the
14 jury when the jury does reach a verdict, if she would
15 complete the verdict form on behalf of the jury and sign
16 the verdict form as foreperson.

17 Roman Numeral I asks you to consider whether the
18 defendant is guilty of first degree burglary. If you find
19 the defendant is guilty of first degree burglary, then
20 that -- you would stop, not go any further. But I would
21 ask you to put a checkmark beside Roman Numeral Number I.
22 If you find the State has failed to prove beyond a
23 reasonable doubt that the defendant is guilty of first
24 degree burglary, then you may consider Roman Numeral
25 Number II that deals with the issue of second degree

State vs. McAlhaney and Hair
Charge of the Court
February 4, 2014

1 burglary. If you find the State has proved beyond a
2 reasonable doubt the defendant is guilty of second degree
3 burglary, you check -- put a checkmark out beside Roman
4 Numeral Number II. If you find the State has failed to
5 prove beyond a reasonable doubt that the defendant is
6 guilty of second degree burglary or first degree burglary,
7 then you should then check III which would be, we find the
8 defendant not guilty. Once again, you consider each of
9 these indictments separately, of course, as to each
10 defendant. Therefore, you have a verdict form for each
11 defendant.

12 Now, I'm going to ask you to step into the jury
13 room, including our two alternate jurors. Do not begin
14 deliberations until I send to the jury room the verdict
15 forms and the exhibits. When that occurs, I'll ask --
16 that will be the cue for our two alternate jurors to step
17 back out of the courtroom -- back out of the jury room
18 into the courtroom and for the remaining twelve jurors to
19 begin deliberations. Knock on the door when you have
20 reached a unanimous verdict.

21 So ladies and gentlemen, if you would please
22 retire to the jury room, all of you, including our two
23 alternates.

24 [Whereupon, the jury exits the courtroom at
25 4:16 p.m.]

State vs. McAlhaney and Hair
Charge of the Court
February 4, 2014

1 THE COURT: Exceptions?

2 MR. WRIGHT: I only renew my request that you
3 read to the jury McNeely v. State, intent to commit
4 crime therein, element of burg can be inferred but act
5 of trespassing in the night time. Other than that, no
6 other addition.

7 THE COURT: Okay. Anything from the defense?

8 MR. PLEXICO: No, Your Honor.

9 MS. SMART-GITTINGS: Nothing, Your Honor.

10 THE COURT: All right. Well, let's go ahead and
11 -- we've got all of the exhibit? Does everyone agree
12 we have the exhibits right here?

13 MR. WRIGHT: Yeah.

14 Let me package them back up the way they
15 were.

16 MR. PLEXICO: Were there only the two packages?

17 MR. WRIGHT: Yeah, it's two. I broke them into
18 two.

19 [Off the record momentarily]

20 MR. WRIGHT: This is one. This is two.
21 Everybody's good to go?

22 MR. PLEXICO: I don't see anything remaining.

23 THE COURT: Let's send those, along with the two
24 verdict forms, to the jury room.

25 [Whereupon, evidence goes out to the jury at

State vs. McAlhaney and Hair
Charge of the Court
February 4, 2014

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4:18 p.m.]

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[Whereupon, a recess is taken from 4:18 p.m. to

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5:10 p.m.]

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State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

NOTE FROM THE JURY

MR. PLEXICO: Could we have our defendants,
Ms. McAlhaney and Mr. Hair?

[Whereupon, Ms. McAlhaney and Mr. Hair enter the
courtroom at 5:13 p.m.]

THE COURT: All right. Gentlemen, I've been
handed -- folks, not just gentlemen -- a note I guess
from the foreperson. It reads as follows, but I'll be
glad to let each of you look at it: can it become
trespassing, being that there's not enough information
on Travis' evidence. Can it become trespassing, being
that there's not enough information on -- it may be
information and evidence on Travis' -- I'll let you
look at it, if you would like.

I'll make it a Court's exhibit, get that marked.

[Whereupon, Court's Exhibit Number 2 is marked
by the court reporter]

MR. WRIGHT: Do you infer that -- I'm sorry. Do
you infer they're asking can he be charged with
trespassing, or his verdict be set aside -- I'm not
sure.

THE COURT: Well, I'll let you look at it. You
can draw your own conclusions.

MR. WRIGHT: Okay. Is that the kind of question
you can answer? It's a law question, I guess, so I

State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

1 guess --

2 THE COURT: I think the only response I can give
3 -- and my thoughts are this and y'all, of course, can
4 give me yours. But my thoughts are bring the jury in,
5 tell them that the only charges against either
6 defendant that they can consider are the charges that
7 we have already instructed them on and that are
8 referred to on the sentence sheets. Y'all tell me.

9 MR. WRIGHT: That's if -- I think that cures it
10 if that's one way the question is interpreted.

11 The question is if he was trespassing, can they
12 go to crime therein. If it's that, then maybe need to
13 repeat that part of your charge or potentially add in
14 the charge that I suggested.

15 MS. SMART-GITTINGS: Your Honor, I object to
16 adding any charges at this point.

17 I believe that the jury -- it is my opinion the
18 jury believes there is not enough evidence to convict
19 Travis Hair of burglary and they want to know if a
20 lesser included offense is trespass. And if that is
21 the case --

22 THE COURT: That's what I think is --

23 MS. SMART-GITTINGS: -- I don't think that the
24 Court can --

25 THE COURT: That's the way I read it.

State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

1 It says can it become trespassing. Can it
2 become trespassing.

3 MR. WRIGHT: Can we do both of them? Just do
4 you read --

5 MS. SMART-GITTINGS: I object to that, Your
6 Honor.

7 MR. WRIGHT: -- agree with the part of the jury
8 charge that --

9 Can I finish, please?

10 Can you reread the part of your charge -- you
11 won't need to add anything in but just the part, you
12 know, you said you would use your standard as opposed
13 to what I suggested. And also tell that -- either way
14 because I can't really question as to what they meant
15 by their question or explain their question. I think
16 that way, regardless of what they meant, it's covered.

17 Rereading that part of your charge and then
18 explain the other part, the other way, that he can't
19 be -- he can't be found guilty of trespassing, as
20 opposed to burglary, if that's the question. If the
21 question is can trespass qualify his actions to be
22 burglary, then you can reread your part of the charge
23 that says that.

24 MS. SMART-GITTINGS: Your Honor, I think at this
25 point the Court -- it is my opinion that the Court

State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

1 should instruct the jury that they can only take what
2 is already into evidence and the charge that you've
3 already charged them, and that they have to use what's
4 in evidence and the law that you've already charged
5 them and base their opinion based on that.

6 But to add anything else to the charge that
7 they've already been charged and deliberating on, I
8 don't believe that it would be fair or just for the
9 Court to add any other charges, any additional
10 charges, to the jury.

11 THE COURT: I agree with that part.

12 [Whereupon, the Court reviews documents]

13 THE COURT: All right. Here's what I'm inclined
14 to do, and that is I'm going to tell them -- I think I
15 understand their question, but I'm not sure. Here's
16 how I'm going to try to answer what I believe their
17 question is, and that is by saying this: that neither
18 defendant can be charged or found guilty of any
19 violations of the law except those referred to on the
20 sentence sheets that they have. If that doesn't
21 answer their question and they wish to be instructed
22 on the law again, let me know and I'll bring them back
23 in and re-charge the law.

24 MR. WRIGHT: Thank you, Your Honor.

25 MS. SMART-GITTINGS: No objection, Your Honor.

State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

1 THE COURT: Let's bring the jury in.

2 MR. PLEXICO: Your Honor, if you could add you
3 can only find guilty or not guilty of to that
4 statement.

5 THE COURT: Charge found guilty or not guilty.

6 MR. PLEXICO: Or not guilty. Thank you, Judge.

7 THE COURT: Bring the jury in.

8 [Whereupon, the jury enters the courtroom at
9 5:19 p.m.]

10 THE COURT: Welcome back, ladies and gentlemen.

11 I have a note from the jury and I believe, but
12 I'm not positive, that I understand what the note
13 means. I'll try to answer you. If I don't answer
14 you, I'm going to ask you to let me know and we'll do
15 something else. But the note I have says can it
16 become trespassing if there's not enough information
17 on Travis' evidence.

18 I need to tell you this: that neither of these
19 defendants can be charged with or found guilty of, or
20 not guilty of, any violations of the law except as to
21 those that are referred to on the sentencing sheets
22 that you have before you.

23 If that doesn't answer your question and you
24 want me to re-charge you or tell you about the law
25 that applies again, send me a note and we'll give you

State vs. McAlhaney and Hair
Note From The Jury
February 4, 2014

1 a -- we'll charge you about the law, unless our
2 foreperson knows now.

3 THE FOREPERSON: We know now.

4 THE COURT: Do you think we need to tell you
5 about the law or do --

6 THE FOREPERSON: No, sir.

7 THE COURT: -- you think you understand?

8 I've answered your question, you think?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Okay. Great. Thank you.

11 Will you please resume your deliberations.

12 [Whereupon, the jury exits the courtroom at

13 5:21 p.m.]

14 THE COURT: All right. We'll be at ease.

15 [Whereupon, a recess is held from 5:25 p.m. to

16 5:37 p.m.]

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State vs. McAlhaney and Hair
Verdict
February 4, 2014

VERDICT

THE COURT: All right. Let's bring the jury in.

[Whereupon, the jury enters the courtroom at
5:37 p.m.]

THE CLERK OF COURT: Madam Forelady, have you
reached a verdict?

THE FOREPERSON: Yes, we have.

[Whereupon, the foreperson proffers documents to
the Court]

THE COURT: Please publish the verdict.

THE CLERK OF COURT: The State of South
Carolina, County of Hampton, State vs. Tonya McAlhaney
in indictment number 2013-GS-25-433, we, the jury,
unanimously find the defendant, Tonya McAlhaney,
guilty of first degree burglary. Signed by the
foreperson February the 4th, 2014.

State of South Carolina, The State of South
Carolina vs. Travis Hair, indictment number 2013-GS-
25-434, we, the jury, unanimously find the defendant,
Travis Hair, guilty of first degree burglary. Signed
by the foreperson February the 4th of 2014.

THE COURT: Anything before the jury is
discharged? From the plaintiff? From the State. I'm
sorry.

MR. WRIGHT: Nothing further, Your Honor.

State vs. McAlhaney and Hair
Sentencing of Ms. McAlhaney
February 4, 2014

1 Solicitor, anything else you wanted to say?

2 MR. WRIGHT: Nothing further, Your Honor.

3 THE COURT: Your two probation cases, I find you
4 willfully violated the terms of your probation, revoke
5 both, and terminate those probation cases.

6 PROBATION AGENT: Your Honor, also, one of her
7 cases, on the Hampton County case, she does have
8 restitution. May we have a civil judgment for that,
9 as well as the fine?

10 THE COURT: Convert any monies of the civil
11 judgment.

12 Those sentences will be concurrent with the
13 sentence I'm about to impose. As you understand it,
14 there's a mandatory minimum of fifteen years on it.

15 MS. MCALHANEY: Yes, sir.

16 THE COURT: And that's what I sentence you to,
17 Ms. McAlhaney. You get credit for any time served.
18 Once again, it's concurrent with your probation
19 violation. Good luck to you.

20 MR. PLEXICO: Thank you, Your Honor.

21 MR. WRIGHT: Thank you, Your Honor.

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WITNESSES

iford Drawdy

ARREST WARRANT NUMBER

2013A2520300111

Date of Arrest: November 23, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: *[Signature]*

DEC 16 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS2500433

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

December Term 2013

THE STATE

vs.

Tonya Mcalhaney

Indictment for

**Burglary / Burglary (After June 20, 1985) –
First Degree**

SC Code: 16-11-0311

CDR Code:0079

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT
2013GS2500433

At a Court of General Sessions, convened on December 16, 2013, the Grand Jurors of Hampton County present upon their oath:

Burglary / Burglary (After June 20, 1985) – First Degree

That in Hampton County, on or about November 23, 2013, the Defendant, Tonya Mcalhaney, did enter the dwelling located at [REDACTED] Town of Hampton, County of Hampton, State of South Carolina, that was being utilized by Amanda Deloach Brown as a local residence, at night without consent and with the intent to commit a crime therein in violation of Section 16-11-311 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.

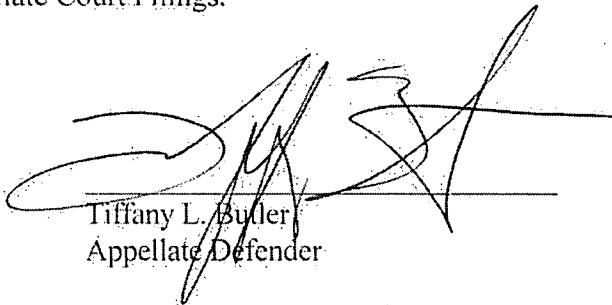


Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 24, 2015



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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

Appellant.

APPELLATE CASE NO. 2014-000255

**SUPPLEMENTAL
RECORD ON APPEAL**

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Testimony of Roma Muller
Direct Examination by Mr. Wright
February 4, 2014

ROMA MULLER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. Ms. Muller, where do you live?

A. I live -- my mailing address is Post Office Box
Fourteen One in Lexington and my physical address is 422
Tom Draft Circle [phonetic], Gilbert.

Q. Okay. Do you own any property here in Hampton
County?

A. Yes, sir.

I'm part owner of 108 Plywood Street. That was
my mother, Beatrice Deloach's, home and my father's, Aiken
Deloach's. When he passed away in 1970, it was my mom's
from then on.

And my brother, Charles Deloach, lived with my
mother. And my mother passed away two years ago, January
25th. My brother had cancer at the time and she had a
massive heart attack. His son had lived with them. He
finished raising his son, Chuck Deloach, who died with
cancer this coming weekend will be five years ago. And
then my brother was very sick there, and he stayed at 108
Plywood Street.

And I retired, June a year ago, to come help my

MIA PERRON, CVR-CM-M

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Testimony of Roma Muller
Direct Examination by Mr. Wright
February 4, 2014

1 brother. I was executive secretary, bookkeeper, at the
2 school and so I started helping him pay his bills and all.

3 Q. Okay.

4 A. And I didn't really answer your question. I'm
5 sorry.

6 My mother left the home, in her will, to us
7 three children, my brother, my sister and I. So we've not
8 probated that because my brother had cancer and he was
9 sick and we just didn't want him to have to deal with all
10 that, because it was enough to deal with my mom's passing.

11 So that's still in probate. But I do own a
12 third of that home.

13 Q. Was anybody using the house as a place to stay
14 overnight at the time of this incident?

15 A. Yes, sir.

16 My niece, my brother's only living child, has
17 three children. And because of my brother's situation, us
18 having to care for him, she had changed her children to
19 home schooling before he passed away. She lives in
20 Campobello and so he -- she couldn't just come at the drop
21 of a hat or take the children out of school, so she
22 changed them to home school. And so she would come and
23 stay. And my sister and I would stay.

24 And when my brother passed away, he still had
25 his business running and my niece stayed for several weeks

Testimony of Roma Muller
Direct Examination by Mr. Wright
February 4, 2014

1 after he passed away. And he passed away September 16th,
2 2013. And she stayed two weeks straight. And then she
3 went home to get some things and then she came back.

4 And she was back and forth because she was the
5 one having to deal with running the business. It was
6 still open and she had people helping her. But she was
7 able to stay during the week or the weekend, or however
8 long, because she was home-schooling her children. And
9 she did that with them there. She would come with those
10 three children.

11 Q. Okay. So as one of the owners of the property,
12 was it your understanding that in November of 2013, most
13 specifically on the 23rd, that the house was still being
14 used as a dwelling by your niece? Was that your
15 understanding?

16 A. Yes, sir. Yes, sir.

17 It was hers off and on because she was
18 responsible for my brother's everything because she's his
19 only living child.

20 Q. Does she have electricity in the house?

21 A. Yes, sir.

22 It's still there. The electricity is still on.

23 Q. Water?

24 A. Yes, sir.

25 Q. Does she have furniture in the house?

Testimony of Roma Muller
Direct Examination by Mr. Wright
February 4, 2014

1 number that Jessica said to call and it was a police
2 officer. And I explained to him where I was. And he said
3 he would meet me at the house if I would call and let him
4 know that I was within thirty minutes of the home, and
5 that they would meet us. And they did. And they had the
6 items in their vehicle.

7 Q. Do you remember some of the items that they had?

8 A. Yes, sir.

9 One of my mom's broaches was in the items, and
10 some knives that were my brother's, and belt buckles, and
11 some Christmas ornaments.

12 I can't think right now what else but --

13 Q. I'm going to --

14 A. -- all of the items they had belonged in the
15 home.

16 MR. WRIGHT: Permission to approach, Your Honor?

17 THE COURT: Sure.

18 A. And they had one paper that they had taken the
19 papers out of the hospital bag that we took my brother to
20 the hospital with. And the people that had made the
21 robbery were trying to burn those papers. And they had a
22 piece of it, which I recognized because I took my brother
23 to the doctor at MUSC all the time for treatments.

24 Q. [Mr. Wright] Yes, ma'am.

25 A. And it was burnt, but it still had my brother's

Testimony of Roma Muller
Direct Examination by Mr. Wright
February 4, 2014

1 name on it.

2 Q. Yes, ma'am.

3 MR. WRIGHT: I'm going to put this bag here.

4 And if you could, we need to identify the items that
5 you pull out. So you'll have to bear with me. We're
6 going to put some tags on them as you --

7 THE WITNESS: Okay.

8 MR. WRIGHT: -- identify them.

9 So, you know, if you could, look in the bag. If
10 you don't -- if you don't recognize the item, please
11 do not pull it out of the bag but only if you
12 recognize the item as something that was shown to you
13 after the incident and that belonged in the house.
14 Okay?

15 THE WITNESS: Should I stand?

16 MR. WRIGHT: Yes, ma'am. If you don't mind.

17 A. This was my brother's watch and --

18 Q. [Mr. Wright] Slow down.

19 A. Sorry.

20 MR. WRIGHT: Would it be better, Your Honor, to
21 identify the whole bag of items or each -- I don't
22 think it's necessary to do every particular item. We
23 can do the whole bag as one exhibit, if it's okay with
24 everybody.

25 THE COURT: It depends on whether there's an

Testimony of Roma Muller
Continued Direct Examination by Mr. Wright
February 4, 2014

CONTINUED DIRECT EXAMINATION

BY MR. WRIGHT:

Q. I think we were almost done. I had a couple other questions for you.

Specifically, you said you remembered the items that you looked at; correct?

A. Yes, sir.

Q. I'm going to bring to you what's been previously marked for identification purposes as Plaintiff's -- State's Exhibit 1. I would like for you to look at these items. And, first, tell me if you recognize the items contained in here. Don't pull anything out. Just look in there and see. Do you recognize those items?

A. Yes, sir.

MR. WRIGHT: All right. At this time, Your Honor, I would like to move these items into the record as Plaintiff's [sic] Exhibit 1.

It's previously been shown to defense counsels.

And this person, this witness, says that she recognizes those items as items that were taken out of -- were submitted to her from law enforcement as items taken out of the house.

THE COURT: Is that what she said?

MR. WRIGHT: Well, earlier we did before we --

THE COURT: All right.

Testimony of Roma Muller
Continued Direct Examination by Mr. Wright
February 4, 2014

1 MS. SMART-GITTINGS: No objection from this
2 defendant, Your Honor.

3 MR. PLEXICO: No objection.

4 THE COURT: All right. Defendant 1 [sic] is
5 admitted without objection.

6 [Whereupon, State's Exhibit Number 1 is admitted
7 into evidence by the Court]

8 MR. WRIGHT: Can she have permission to publish
9 them to the jury and show them what they are and how
10 she recognizes them?

11 THE COURT: Sure.

12 MR. WRIGHT: Please just --

13 THE WITNESS: Do I --

14 MR. WRIGHT: If you can put this on the floor
15 and then show -- or put it here on -- stand here. Put
16 them on the chair and just stand up here and show them
17 to the jury.

18 THE WITNESS: Okay.

19 A. This was my brother's container.

20 And these were his keys.

21 And these are belt buckles that he had in his
22 room. He had several, lot's of, the belt buckles. And he
23 had -- this was one of his that he put on his belt.

24 This is -- this is some of his medicine. As I
25 said, I retired and stayed with him a lot. He had cancer.

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Testimony of Roma Muller
Continued Direct Examination by Mr. Wright
February 4, 2014

1 And this was part of the medicine. There was a lot of
2 medicine. There was a whole lot of medicine in his room
3 that was taken. That's some of it. Because we -- he had
4 just passed away and we hadn't gotten everything cleaned
5 out.

6 And these are two of his watches.

7 This was from my mom's room.

8 And this had a little wallet thing that was his.

9 And we carried a bag to the doctor every time we
10 went for his treatments or for his doctor appointments so
11 that if I was taking him, or my niece and my sister, we
12 knew what the last record was. And we kept it in like a
13 Ziplock-bag thing with all of his records in there. And
14 we kept -- because he threw up a lot, we kept the bags and
15 a change of clothes and that kind of stuff.

16 And they had taken everything out of that bag,
17 all of his medical papers. And the police showed me these
18 that had burned. They had tried to burn the papers. But
19 some of it had his name and his numbers on it. They
20 showed us that.

21 And this is one of my mom's broaches that they
22 had taken. They had dumped all this stuff out of her top
23 drawer and threw her Bible on the floor. And the Bible
24 was open --

25 MR. PLEXICO: Objection, Your Honor. That would

Testimony of Romà Muller
Continued Direct Examination by Mr. Wright
February 4, 2014

1 be inadmissible -- to emotion, Judge.

2 THE COURT: Overruled. Go ahead.

3 A. And they took some of his mail. This was his
4 envelope that was in part of that. Hopewell Baptist
5 Church sent him a get-well card just about every week from
6 their Wednesday night group, and that was in that.

7 This is one of his medical records that they
8 took. It has his name from the hospital.

9 And this little picture is a picture of my
10 nephew, my sister's baby. He's the baby grandchild. My
11 brother dearly loved him. He's twenty-one now, plays the
12 guitar. And my brother thought that was just wonderful.

13 Q. [Mr. Wright] That's the bulk of those items?

14 A. Sir?

15 Q. And that's everything that's in there?

16 A. Yes, sir, that's everything that's in here.

17 Q. All right. I'm going to show you another
18 exhibit in a second, but let me ask you a couple of
19 questions while you're putting that -- when you get done.
20 You can go ahead and put it back in there.

21 A. [Witness complies]

22 Q. And when you answer this next question, please
23 don't give me any type of description or character. I
24 just want you to answer the question the way I ask it. Is
25 that okay?

Testimony of Roma Muller
Continued Direct Examination by Mr. Wright
February 4, 2014

1 MR. WRIGHT: All right. Put them back.

2 THE WITNESS: [Witness complies]

3 MR. WRIGHT: Madam Court Reporter, I'm going to
4 put them over here, just to be out of your way.

5 THE COURT REPORTER: Thank you.

6 Q. [Mr. Wright] I believe you said that you knew
7 Travis Hair and Tonya McAlhaney. Did you give them
8 permission, as one of the owners of the house, to go to
9 your house?

10 A. No, sir.

11 MR. WRIGHT: Court's indulgence.

12 Please answer any questions that defense
13 attorneys have for you.

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Testimony of Amanda Deloach Brown
Direct Examination by Mr. Wright
February 4, 2014

AMANDA DELOACH BROWN,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. 108 Plywood Street, Hampton County, South
Carolina. Did you stay there on a regular basis?

A. Yes.

Q. Please explain to the jury what you mean by
that.

A. My father had been fighting cancer for several
years. Originally, that was the home my father, my
grandmother and my brother and I lived in.

When my brother passed away, my grandmother and
father were still there. And then my grandmother passed
away while my dad was battling cancer. So I was the only
one left to take care of him, so I pretty much moved in
with him.

Once his cancer took a turn for the worse and we
got back from clinical trials, I took my kids out of
school and started home-schooling so I could stay down
here full time and only went home one or two days to see
my husband.

So I was living in the house with my children so
that I could run the business, once daddy passed away, so

MIA PERRON, CVR-CM-M

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Testimony of Amanda Deloach Brown
Direct Examination by Mr. Wright
February 4, 2014

1 that I could keep the station open --

2 Q. In close proximity to November 23rd, 2013, were
3 you still staying in the place --

4 A. Yes.

5 Q. -- on a regular basis?

6 A. I lived there that week, with the children,
7 spending the night.

8 And I left I believe it was Tuesday, the 19th.
9 And I was going to be gone for a few days. And that was
10 known to the business that I was running. The employees
11 knew that I would be gone for a few days, and I guess that
12 information was used.

13 Q. Explain what you mean information was used,
14 employees.

15 A. Mr. Larry Crosby and Mr. Travis Hair both --
16 now, Mr. Larry Crosby did not work for me. But he did
17 come up to the store and he knew a lot of people in
18 Hampton and hung out at the store, at the business, during
19 the day. And they heard -- they were there when I -- I'm
20 sorry.

21 Q. Let's stay away from character -- I don't want
22 to stumble across anything --

23 A. What was the --

24 Q. -- that may be objectionable.

25 Just you said that Travis Hair and Larry

Testimony of Amanda Deloach Brown
Direct Examination by Mr. Wright
February 4, 2014

1 Crosby --

2 A. Knew.

3 Q. -- may -- knew. Explain --

4 A. They knew.

5 Q. -- that part.

6 A. They knew. They -- I told my other associate in
7 front of them that I had to be out of town for a few days,
8 consistently, because my son had a dental appointment, he
9 had to have some teeth removed, so I believed I would be
10 gone for that time frame.

11 Q. So this defendant, Travis Hair, over -- was
12 there when you told someone else that?

13 A. Yes.

14 Q. All right. The other big question. Were you
15 moving out of the house?

16 A. No.

17 Q. Explain what was being moved, because I think it
18 was alleged today something was being moved. What was
19 going on?

20 A. Yeah. My grandmother passed away while my dad
21 was still sick, so my -- we never divided my grandmother's
22 things up from her room. And we weren't using her room,
23 we were using the back bedroom my brother and I used, and
24 my father's room, the other room. So there was a china
25 cabinet that my grandmother had left me, you know, and I

MIA PERRON, CVR-CM-M

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Testimony of Amanda Deloach Brown
- Direct Examination by Mr. Wright
February 4, 2014

1 was taking that out because my grandmother's things had
2 been divided but my -- the whole rest of the home was left
3 in place. All -- my kids had a bedroom and I had a
4 bedroom. All the beds and everything else was left. So
5 it was just a couple of pieces of antique furniture that I
6 was taking.

7 Q. Okay. Who helped you move that?

8 A. Mr. Travis Hair and Mr. Larry Crosby.

9 Q. So they were inside the home?

10 A. Yes. They were both inside the home.

11 Q. Did you give them consent to go in the house
12 whenever they wanted to?

13 A. Absolutely not.

14 Q. On November 23rd, 2013, did they have consent
15 from you to go into the home?

16 A. No, they did not.

17 Q. Where exactly is this home? I said 108 Plywood
18 Street. But tell the jury exactly where it's at. Which
19 county and things of that nature?

20 A. It's Hampton County.

21 It's down the road from my dad's service
22 station, Deloach Service Station. It's just right across
23 from Malamar [phonetic].

24 Q. So 108 Plywood Street, Hampton, South Carolina,
25 is in Hampton County?

MIA PERRON, CVR-CM-M

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Testimony of Amanda Deloach Brown
Direct Examination by Mr. Wright
February 4, 2014

1 A. Oh, yes.

2 Q. Okay. So what you're telling the jury, as
3 pertains to the residence at 108 Plywood Street, that it
4 was still being occupied? You just happened to not be
5 there that day; correct?

6 A. Yeah.

7 My children's bikes were on the front porch. We
8 had been riding our bikes. The beds were all made.

9 Q. Was there food in the refrigerator?

10 A. Food in the fridge. I mean, TV with DVDs for
11 the kids.

12 Q. Electricity?

13 A. Fully occupied. You know, home-school stuff.
14 Everything was in there.

15 Q. Running water? Electricity?

16 A. Running water, electricity. And I always
17 secured the locks, so --

18 Q. So did you leave the back door open for them to
19 come in?

20 A. No, I did not.

21 MR. WRIGHT: Please answer any question -- I
22 apologize. Beg the Court's indulgence.

23 THE COURT: All right, sir.

24 MR. WRIGHT: Please answer any questions that
25 defendants' attorneys have for you.

Testimony of Amanda Deloach Brown
Cross-Examination by Mr. Plexico
February 4, 2014

1 dental appointment at?

2 A. Pardon me?

3 Q. Where did your child have a dental appointment
4 at?

5 A. In Greenville.

6 Q. All right. And is this the dentist for your
7 other two children?

8 A. No.

9 Q. Okay. Who's the dentist for your other two
10 children?

11 A. The local doctor here. Doctor --

12 Q. All right. Now, so you -- what is the name of
13 the town that you have a home in? Compobello?

14 A. Campobello.

15 Q. All right. And that is in what county?

16 A. That's in Spartanburg County.

17 Q. Okay. And your husband is there?

18 A. Yes, he is.

19 Q. And your regular place of abode is there?

20 A. I'm sorry?

21 Q. Your regular place of abode, where you dwell, is
22 normally there; is that correct?

23 A. Well, actually, this past year it was more here.

24 I was -- if you count the days, I was here more
25 this year than I was at home because of my father's

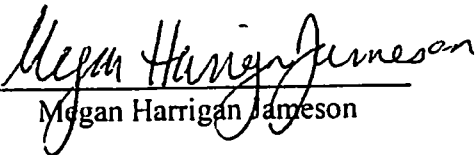
Certificate Of Counsel

The undersigned certifies that this Supplemental Record On Appeal complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

May 5, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

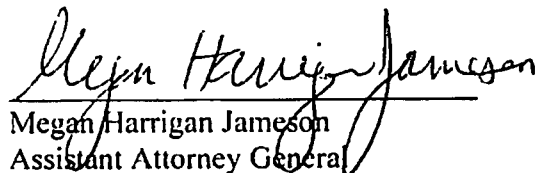
Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Supplemental Record On Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 5th day of May, 2015.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TONYA MCALHANEY,

APPELLANT

APPELLATE CASE NO. 2014-000255

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to exclude evidence of Appellant's November 24, 2013 burglary arrest in her trial for the November 23, 2013 burglary, under the common scheme or plan and identity exceptions to Rule 404(b), SCRE, because the burglary on November 24th was not part of a common scheme or plan, was not necessary to establish Appellant's identity, and was unfairly prejudicial, which denied Appellant a fair trial?

STATEMENT OF THE CASE

On December 16, 2013, a Hampton County grand jury indicted Appellant for burglary, first degree. R. 300. The matter proceeded to a jury trial before the Honorable Brooks Goldsmith on February 3, 2014. Steve Plexico represented Appellant and Kelvin Wright represented the State. R. 2.

After a two-day trial, the jury found Appellant guilty. R. 298, lines 11- 16. Judge Goldsmith sentenced her to fifteen years imprisonment. R. 299, lines 12 – 19. This brief follows.

ARGUMENT

The trial judge erred in failing to exclude evidence of Appellant's November 24, 2013 burglary arrest in her trial for the November 23, 2013 burglary, under the common scheme or plan and identity exceptions to Rule 404(b), SCRE, because the burglary on November 24th was not part of a common scheme or plan, was not necessary to establish Appellant's identity, and was unfairly prejudicial, which denied Appellant a fair trial.

Motion to Exclude the November 24, 2014 Burglary

Defense counsel for Appellant moved to quash the indictment for the November 24, 2013 burglary on the grounds that all of the elements of burglary were not included in the language in the indictment. R. 38 – 43. The trial judge granted the motion. R. 43, lines 15 – 16.

Defense counsel then moved to exclude any evidence of that alleged burglary from coming in the back door through a purported Lyle¹ exception. R. 90 – 92. Counsel argued that the evidence was not relevant and would be unduly prejudicial to his client. He explained that the burglary on November 24th and the burglary on November 23rd, for which Appellant was on trial, were two separate incidents with a different set of facts and circumstances, and different individuals involved. R. 90 – 92. He argued that it would not be fair to bring in evidence from an indictment that had been quashed, and to do so would be prejudicial and would violate Rule 404(b), SCRE. R. 95.

The assistant solicitor argued that the evidence of the burglary on November 24th would come in under the common scheme or plan and identity exceptions to Rule 404(b),

¹ State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923).

SCRE. He explained that because there was one big investigation and Appellant gave consent to search her home, Appellant's "acts were all connected." R. 92, lines 4 – 5.

The trial judge agreed with the assistant solicitor's reasoning and denied defense counsel's motion to exclude. R. 97, lines 7 – 11. Counsel renewed his objection when the evidence was presented. R. 127, lines 21 – R. 128, line 9. The judge gave no limiting instruction.

Motion for a Continuance

When the assistant solicitor called Appellant's case earlier, he read both indictments to the jury. R. 23, lines 1 – 6. However, later, based on defense counsel's motion to quash, the trial judge quashed the indictment for the November 24th burglary. R. 43, lines 15 – 16. Counsel then moved for a continuance based on the fact that "members of the jury who were in the jury venire at the time [knew] that she [had] been indicted on two separate charges." R. 98, lines 17 – 21. He argued that having both indictments read to the jury panel "unduly prejudiced [his] client." R. 98, line 12.

The trial judge denied the motion for a continuance and gave a curative instruction to the jury to disregard what the assistant solicitor had previously said at the call of the case. R. 44, lines 12 – 13; R. 50, lines 20 – 22. Defense counsel, however, asserted that the prejudice could not be erased or overcome. R. 98, lines 21 – 23.

Relevant Facts at Trial

Appellant and her codefendant, Travis Hair, were on trial together. Neither defendant chose to testify.

The State's first witness was Sgt. Bradford Drawdy of the Hampton Police Department. R. 125. Over defense counsel's objection, Sgt. Drawdy testified that on the

morning of November 24, 2013, he and Officer Ginn received a call from dispatch that a white female had broken into the residence of 108 Plywood Street in Hampton County. R. 127, line 21 – R. 128, line 9. He and Officer Ginn responded to the home and heard movement inside. R. 128, lines 21 – 24. They called the Varnville Police Department for backup. R. 129, lines 1 – 2. Once backup arrived and the perimeter of the house was secure, Sgt. Drowdy and Officer Ginn went inside and found Appellant in one of the bedrooms. R. 129, lines 8 – 20.

Officer Ginn arrested Appellant and drove her to the police station. R. 130, lines 3 – 22. Appellant chose to exercise her right to remain silent but gave police consent to search her home. R. 137, lines 14 – 25; R. 141, line 24 – R. 142, line 1. When officers arrived at Appellant's home, they went inside and found items that were later identified as items that were taken from 108 Plywood Street. R. 138, lines 1 – 5. Major James Bolton spoke to Ricky Sauls who was at Appellant's home when police arrived. R. 148, lines 1 – 2. Sauls admitted to burglarizing 108 Plywood Street with Appellant and Hair on November 23, 2014. R. 140, lines 15 – 24. After being arrested and taken to the police station, he gave a written statement.

Sauls testified that on November 23, 2014, he and Appellant called Larry Crosby to take them to the CVS in town. R. 156, lines 17 – 23. On the way back, Crosby stopped by 108 Plywood Street to look at a truck that he was supposed to buy from Amanda Brown who resided there. R. 157, lines 1 – 5. Crosby told Sauls and Appellant that he had helped Brown move out of the house and that there were pills inside. R. 157, lines 6 – 9.

Sauls stated that he had been drinking that night but remembered that he, Appellant, and Hair all went inside of the house. R. 158, line 3. He admitted to taking knives and

liquor but could not remember whether Appellant took anything. R. 159 – 161. They had been inside the house for ten minutes. R. 165, lines 5 – 7. When they were ready to leave, Sauls called Crosby to come pick them up. R. 165, lines 13 – 23. Sauls explained that it was Crosby’s idea for them to go into the house because pills were in there. R. 166, lines 2 – 23. Sauls did not see Appellant come out with pills, however. R. 166, line 25.

Discussion

The trial judge erred in failing to exclude evidence of the November 24, 2013 burglary because those facts were inadmissible under Rule 404(b), SCRE, and unfairly prejudicial, which denied Appellant a fair trial.

Evidence of prior bad acts is inadmissible to show propensity to commit the specific crime charged. Rule 404(b), SCRE. Such evidence may, however, be admissible to establish a motive, intent, absence of mistake, common scheme or plan, or identity of the perpetrator. Rule 404(b), SCRE; see also State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008); State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923). Where those acts are not the subject of a conviction, they must first be proven by clear and convincing evidence. State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007). Before evidence of prior bad acts can be admitted, “it must be put to a rather severe test.” State v. Brooks, 335 S.C. 140, 142, 515 S.E.2d 764, 765 (Ct. App. 1999). The “acid test of admissibility is the logical relevancy of the other crimes.” State v. Timmons, 327 S.C. 48, 52, 488 S.E.2d 323, 325 (1997). Even if such evidence is clear and convincing and falls within a Rule 404(b) exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; see also State v. Gore, 283 S.C. 118, 322

S.E.2d 12 (1984) (“When . . . the previous alleged bad act is strikingly similar to the one for which [defendant] is being tried, the danger of unfair prejudice is enhanced.”)

In cases where evidence of other crimes is offered to prove a common scheme or plan, a court must analyze the similarities between the crime charged and the bad act evidence. State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). A “general similarity” between offenses is not enough. Timmons, 327 S.C. at 52, 488 S.E.2d at 325 (citing State v. Stokes, 279 S.C. 191, 193, 304 S.E.2d 814, 815 (1983)). There must be “a close relationship” between the prior bad act and the crime charged. State v. Ford, 334 S.C. 444, 451, 513 S.E.2d 385, 388 (Ct. App. 1999). The common scheme or plan and identity exceptions to Rule 404(b), SCRE, “are interrelated, as evidence of a common scheme or plan essentially goes to prove the identity of the perpetrator.” State v. Kennedy, 339 S.C. 243, 247, 528 S.E.2d 700, 702 (Ct. App. 2000). To prove identity, the bad act “must logically relate to the crime with which the defendant has been charged.” State v. Beck, 342 S.C. 129, 135, 536 S.E.2d 679, 682-83 (2000); State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009). The evidence introduced must be “necessary” to establish the perpetrator’s identity. State v. Carter, 323 S.C. 465, 467-68, 476 S.E.2d 916, 918 (Ct. App. 1996).

In State v. Timmons, 327 S.C. 48, 488 S.E.2d 323 (1997), the Supreme Court held that evidence that the defendant committed a prior armed robbery as a common scheme or plan was inadmissible. In that case, the defendant admitted to committing an armed robbery on April 9, 1993, but denied participating in the robbery on February 27, 1993. The defendant was tried on the February robbery. Id. at 52, 488 S.E.2d at 325. At trial, the State introduced extensive evidence of the April 9th robbery to prove a common scheme or plan.

Id. The State introduced evidence that there were shots fired during both robberies, both occurred in the Cayce/West Columbia area, and they were five weeks apart. Id. at 53, 488 S.E.2d at 326. The State argued that “there was the use of some same elements of clothing . . . the ski mask, the hat, and bandanna.” Id.

The Supreme Court, however, found “the only point of similarity with any merit is the alleged similar clothing worn by the robbers”. Id. at 53, 488 S.E.2d at 326. Witnesses testified that during the February 27th robbery, one robber wore a ski mask and the other robber wore a bandana over his face. Id. at 53, 488 S.E.2d at 326. Witnesses who testified about the April 9th robbery were inconsistent in their description of the clothing worn by the robbers. Id. There was no “definite identifying article of clothing” worn by the robbers on both nights. Id. Because there was insufficient similarity between the two crimes, the Court did not find a common scheme or plan and deemed the evidence inadmissible.

In State v. Carter, 323 S.C. 465, 476 S.E.2d 916 (Ct. App. 1996), this Court held that evidence of a prior drug transaction that led to the arrest of the defendant was inadmissible under the identity and common scheme or plan exceptions. Carter, 323 at 466, 476 S.E.2d at 917. In that case, police stopped Gary Stamps for speeding and found crack cocaine in his possession. Id. Stamps told police that he had just purchased the crack from the defendant. Id. Four days later, the police fitted Stamps with audio surveillance equipment and sent him back to defendant’s house to buy more crack. Id. The defendant was arrested based on the second drug transaction.

At trial, the State introduced testimony of the defendant’s prior drug sale to Stamps. The State argued that both transactions were “substantially similar” and established a “common scheme or plan of how drugs were sold.” Carter, 323 at 466, 476 S.E.2d at 918.

Further, the evidence of the prior drug sale was necessary to prove the defendant's identity. Id.

This Court disagreed and found the prior drug sale "was not necessary to establish [the defendant's] identity" in the second transaction. Id. Stamps "indicated no uncertainty as to who sold him the drugs" and there was testimony from other officers of the second transaction. Id. This Court further explained that "testimony of a prior drug sale using a similar sales technique is not relevant to prove a single charge of distribution." Id.

Here, the trial judge erred in admitting evidence of the November 24th burglary. This evidence does not fall under the common scheme or plan or identity exceptions to Rule 404(b), SCRE and is unfairly prejudicial.

The Appellant was arrested inside the house at 108 Plywood Street during the morning of November 24th and was alone. R. 127 – 139. There was testimony from Randy Sauls that three people went into the house on November 23rd at "about seven o'clock." R. 158, line 11. There was no evidence presented that the house was entered into in any distinctive manner. There was no evidence that similar items were taken during both burglaries. The only common element is that Appellant was found inside the house on November 24th and was alleged to have been inside the house on November 23rd.

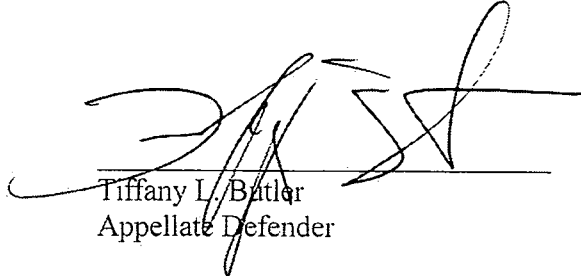
Evidence from the November 24th incident was not necessary to prove Appellant committed the burglary on November 23rd. The testimony from Sauls alone identified Appellant as participating in the November 23rd burglary. The fact that Appellant's November 24th arrest led to evidence of her involvement in the November 23rd burglary was not relevant to prove that she committed the November 23rd burglary.

Hearing that Appellant was arrested inside of the same house for which she was on trial for burglarizing, without a limiting instruction from the judge, allowed the jury to make the impermissible inference that because Appellant committed the burglary on November 24th, she committed the burglary on November 23rd. The jury panel had already heard the assistant solicitor read two indictments for burglary before the judge granted defense counsel's motion to quash the indictment. The November 24th burglary had absolutely no probative value and should not have been admitted into evidence. Even if it did have probative value, it was outweighed by its unduly prejudicial effect. Because this evidence was admitted, Appellant was unfairly prejudiced and denied a fair trial.

CONCLUSION

For the foregoing reasons, Appellant Tanya McAlhaney requests this Court to reverse her conviction and sentence and remand her case for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Tiffany L. Butler
Appellate Defender

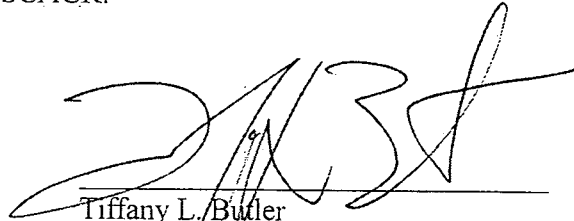
ATTORNEY FOR APPELLANT

This 13th day of May, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

May 13th, 2015

A large, stylized handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line.

Tiffany L. Butler
Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

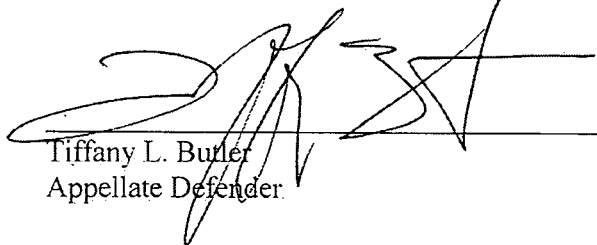
V.

TONYA MCALHANEY,

APPELLANT

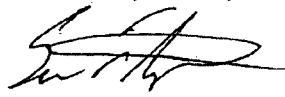
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of May, 2015.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of May, 2015.



_____(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,.....Respondent,

vs.

TONYA MCALHANEY,.....Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not abuse its discretion in admitting evidence of Appellant's November 24, 2013 arrest for second-degree burglary during her trial for the November 24, 2013 first-degree burglary, where the evidence was relevant and admissible under the res gestae theory and as motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, even assuming the trial court erred in admitting the challenged evidence, any error was harmless in light of the overwhelming evidence conclusively establishing Appellant's guilt.

STATEMENT OF THE CASE

Appellant was indicted during the December 2013 term of the Hampton County Grand Jury for first-degree burglary (2103-GS-25-0435) and second-degree burglary ((2013-GS-25-0434). Appellant was represented by Steve Plexico, Esquire. On February 3, 2014, Appellant proceeded to a jury trial before the Honorable Brooks P. Goldsmith alongside co-defendant Travis Hair, who was represented by Stephanie Smart-Gittings, Esquire. The State was represented by Assistant Solicitor Kelvin Wright. Before the jury was sworn, Appellant moved to quash the indictment for second-degree burglary, which the trial court granted. On February 4, 2014, the jury convicted Appellant and Hair as indicted for first-degree burglary. Judge Goldsmith sentenced Appellant and Hair to fifteen years imprisonment. Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On the evening of November 23, 2013, the Hampton Police Department received a complaint regarding a burglary in progress at the home of Charles DeLoach located at 108 Plywood Street in Hampton, South Carolina. (R. pp. 205, 210). DeLoach had passed away in September, 2013 and his daughter and other family members frequently stayed at the home while tending to DeLoach's affairs and closing his estate. (R. pp. 126-129; Sup.R. pp. 11-12). Lt. Cook from the Hampton Police Department completed an incident report and listed that multiple suspects were seen leaving the home with bags. (R. p. 210).

The following morning, November 24, 2013, law enforcement with the Hampton Police Department received another complaint regarding a home invasion at the DeLoach residence. (R. p. 128). Sergeant Bradford Drowdy responded to the home and heard movement inside. (R. p. 128). Drowdy requested backup from the Varnville Police Department. (R. p. 128). When back-up arrived, Drowdy let the occupant of the home know that law enforcement was on the scene and would be gaining entry into the home. (R. p. 129). One of the officers noticed that a rear door was open and law enforcement made entry through the opened door. (R. p. 129). Once inside, law enforcement found Appellant in a rear bedroom. (R. p. 129). She was taken into custody, read her rights, and placed in handcuffs. (R. pp. 129-30). As she was being cuffed, a men's watch fell out of her pocket. (R. p. 130). She was transported to the police station. (R. pp. 129-30).

Once at the station, Appellant was interviewed by Assistant Chief James Bolton. (R. p. 204). Bolton read Appellant her rights and she signed a waiver of rights acknowledgment. (R. pp. 204-05). Bolton noticed a bottle of prescription medication sticking out from Appellant's blouse and asked her what it was. (R. p. 205). Appellant replied that it was her medication, but upon closer inspection, Bolton noted that the

medicine was cough syrup prescribed to DeLoach. (R. p. 205). Bolton asked for permission to search Appellant's home and she gave consent. (R. p. 205). She memorialized her consent in by signing a consent to search form. (R. p. 205).

After receiving Appellant's consent, law enforcement proceeded to her home at 510 Bobwhite Trail. (R. p. 206). Appellant accompanied law enforcement and unlocked the door. (R. p. 206). Hair and Ricky Sauls were present at Appellant's home. (R. p. 206). Law enforcement asked Sauls where the items taken from DeLoach's residence were located. (R. p. 206). Sauls assisted law enforcement in recovering a bag, which contained mail addressed to DeLoach, jewelry, medication prescribed to DeLoach, Christmas decorations, and other household items. (R. pp. 206-07). Sauls also showed law enforcement where knives and liquor taken from DeLoach's home was located. (R. p. 207). Law enforcement also found more of DeLoach's mail that had been burned or attempted to be burned. (Sup. R. 4). Thereafter, Hair, Appellant, and Sauls were indicted for first-degree burglary in connection with the November 23, 2013, home invasion. Appellant was also indicted for second-degree burglary from the November 24, 2014, home invasion.

Appellant and Hair proceeded to a joint trial before the Honorable Brooks P. Goldsmith and a jury. Before the jury was selected, the State moved to amend to amend Appellant's second-degree burglary indictment, arguing that the omission of "without consent" from the indictment's language was a scrivener's error. (R. pp. 38-39). In response, Appellant argued that failure to include a necessary element of the offense that must be contemplated by the grand jury and could not be a scrivener's error. (R. pp. 39-40). Appellant moved to quash the second-degree burglary indictment on this basis. (R. pp. 39-40). The Court granted Appellant's motion to quash the second-degree burglary

indictment. (R. p. 43). Appellant then moved for a continuance, arguing that because the State had already read both indictments to the venire, she was prejudiced as to the remaining indictment for first-degree burglary (R. p. 42). The trial court denied Appellant's motion to continue, but instructed the jury to disregard the earlier statements made by the State as to what indictments were being called for trial. (R. pp. 44, 50-51).

Appellant then moved to exclude any evidence or reference to the quashed second-degree burglary, arguing that it was not relevant and unduly prejudicial. (R. pp. 90-92, 94-95). Appellant argued that introduction of such evidence would also violate Rule 404(b), SCRE. The State replied that both indictments stemmed from one investigation that was interconnected and it would hamper the State's ability to prove its case if the relevant evidence from the second-degree burglary was excluded. (R. pp. 91-93). The trial court denied the motion, finding that the evidence was admissible under the common scheme or plan exceptions to Rule 404(b), SCRE.

Co-defendant Sauls testified as a State's witness against his two co-defendants. Sauls testified he was with Appellant, Hair, and Larry Crosby on the evening of November 23, 2013. (R. p. 156). Hair and Crosby worked for DeLoach's daughter and had been helping her move items out of the 108 Plywood Street residence. (R. p. 157; Sup. R. pp. 12-14). Larry Crosby informed the group that there were pills in the home and asked them to go into inside to retrieve prescription medications. (R. p. 157). Sauls testified he was romantically involved with Appellant and asked her not to participate. (R. p. 157). However, Appellant, Hair, and Sauls all entered DeLoach's home at approximately 7 p.m. (R. pp. 157-58, 177). Sauls testified Hair went to sleep inside the home, but testified that all three took items from the home. (R. pp. 159, 165-66, 200). He elaborated that all three, including Hair, were "plundering" the home for items to take.

(R. p. 200). He testified they took knives, liquor, medications, Christmas ornaments, documents, and other sundries from the home. (R. p. 159). Sauls testified that they knew they did not have permission to be in the home. (R. p. 202). After the "plundering" concluded, the three called Crosby to pick them up. (R. p. 165).

DeLoach's daughter, Amanda DeLoach Brown, also testified for the State. She testified that she and her children had been primarily living at her father's home since his passing so that she could manage his business and other affairs while closing his estate. (Sup. R. pp. 11-12, 16). She testified that the house was fully furnished with operation utilities and there was food in the refrigerator and clothing in the closets. (Sup. R. p. 15). She testified that she had been moving some of her grandmother's things out of the home, but the house was not being vacated. (Sup. R. p. 13). She testified that she left the home on Tuesday, November 19, 2013 to take her son to a dental appointment in Greenville and let employees, including Hair and Crosby, know she would be out of town for a few days. (Sup. R. pp. 12-13). She testified she intended to return to the home shortly. (Sup. R. p. 12). She did not give Appellant, Hair, Sauls, Crosby, or anyone else permission to be in the home. (Sup. R. p. 14). She testified that she secured the home as she always did when leaving. (Sup. R. p. 15).

DeLoach's sister, Roma Muller, also testified for the State. She testified that the 108 Plywood Street home was originally her mother's home and DeLoach had lived there alone after her mother's passing. (Sup. R. pp. 1-3). She testified that the house was used by various members of the family, but as of recent, was primarily used by DeLoach's daughter Amanda. (Sup. R. pp. 2-3). She testified that the house was currently in probate and she was a partial owner. (Sup. R. pp. 1-3). She was able to identify various

belongings taken from the DeLoach home. (Sup. R. pp. 4-5, 6-9). She testified that she did not give any of the co-defendants permission to be in the home. (Sup. R. p. 10).

At the conclusion of the State's case, Hair moved for a directed verdict, arguing that the State failed to establish that Hair had the intent to commit a crime when he entered the residence. (R. pp. 221-22). The State replied that intent can be inferred from his entry into the home at nighttime through a closed door without permission. (R. pp. 222-24). The Court denied Hair's motion and submitted the case to the jury. (R. pp. 224-25). Hair elected not to present a defense. The jury convicted Hair and Appellant of first degree burglary as indicted.

ARGUMENT

- I. The trial court did not abuse its discretion in admitting evidence of Appellant's November 24, 2013 arrest for second-degree burglary during her trial for the November 24, 2013 first-degree burglary, where the evidence was relevant and admissible under the res gestae theory and as motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, even assuming the trial court erred in admitting the challenged evidence, any error was harmless in light of the overwhelming evidence conclusively establishing Appellant's guilt.

Appellant contends the trial court committed reversible error when it permitted testimony regarding Appellant's November 24, 2013 arrest for second-degree burglary at the same residence she was on trial for burglarizing the evening before. Appellant maintains that evidence of the burglary for the following morning was irrelevant and unfairly prejudicial. Furthermore, Appellant contends that "[t]here was no evidence that similar items were taken during both burglaries." (FBOA p. 11). Contrary to Appellant's contentions, the trial court properly admitted evidence regarding the November 24, 2013 second-degree burglary arrest because the evidence was relevant and admissible under the res gestae theory and as a motive or a common scheme or plan under Rule 404(b), SCRE. Furthermore, assuming arguendo that the trial court erred in admitting the contested evidence, any error was harmless in light of the overwhelming evidence establishing Appellant's guilt. Appellant's conviction should be affirmed.

A. Admissibility of Evidence Regarding the November 24, 2013 Arrest

Only evidence that is relevant should be admitted during trial. Rule 402, SCRE. "Evidence is relevant if it tends to establish or make more or less probable some matter in issue upon which it directly or indirectly bears." State v. Alexander, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); see Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the

determination of the action more probable or less probable than it would be without the evidence.”). Evidence which could assist the jury in arriving at the truth of an issue is relevant and should be admitted during trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 403 (1986).

However, pursuant to Rule 404(b), SCRE, “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” “This is so because under our system of justice, a conviction must be based upon evidence of the offense for which the accused is on trial rather than upon prior criminal or immoral acts.” State v. Hough, 319 S.C. 104, 107, 459 S.E.2d 863, 865 (Ct. App. 1995). Evidence of a defendant’s prior crimes or bad acts is limited to establish motive, intent, the absence of mistake or accident, the existence of a common scheme or plan, or the identity of the perpetrator. State v. Martucci, 380 S.C. 232, 251-252, 669 S.E.2d 598, 608 (Ct. App. 2008).

Furthermore, evidence of a defendant’s prior crimes or bad acts may also properly be admitted if those acts form part of the res gestae of the charged offense. Anderson v. State, 354 S.C. 431, 435, 581 S.E.2d 834, 836 (2003). The res gestae theory recognizes that evidence of other bad acts may be an integral part of a charged crime or may be necessary to aid the fact finder in understanding the context in which the crime occurred. State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005). To constitute part of the res gestae of an offense, it is important that the prior bad acts have a close temporal proximity to the charged crime. Martucci, 380 S.C. at 258, 669 S.E.2d at 612. In State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-371 (1996), the Supreme Court explained the res gestae theory:

One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’ ” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . .’ [and is thus] part of the res gestae of the crime charged.” And where evidence is admissible to provide this “full presentation” of the offense, “[t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “res gestae.”

(citations omitted and alteration in original). Thus, where a prior bad act is “inextricably intertwined” with a charged offense, the evidence of the prior bad act is admissible as part of the res gestae of the crime. Id. at 122, 470 S.E.2d at 371.

Significantly, “[a] trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for a prejudicial abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury’s verdict.” State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011).

In the case at bar, the evidence presented regarding Appellant’s November 24, 2013 arrest was an integral part of the offense for which she was on trial and was

necessary to aid the jury in understanding the context in which the burglary occurred. Appellant was arrested mere hours after the initial nighttime burglary at 108 Plywood Street. DeLoach's watch fell out of her pocket when she was taken into custody. Medication prescribed to DeLoach was also partially concealed in her blouse at the time of her arrest. Both medications and jewelry were the primary focus of the November 23, 2013 burglary according to the testimony of Sauls, which was corroborated by the search of Appellant's home subsequent to her November 24, 2013 arrest. Appellant's claim that "[t]here was no evidence that similar items were taken during both burglaries" is completely inaccurate and a gross mischaracterization of the record. Appellant was arrested with both prescription medications and jewelry on her person, the very items taken from the home the prior evening and found at her residence following her arrest. The testimony regarding her November 24, 2013 is highly pertinent to the charged crime of first degree burglary. Thus, the testimony was relevant to Appellant's case by helping to explain the circumstances and context of the crime and was necessary for a full presentation of the case. Accordingly, the challenged evidence was admissible as part of the res gestae of Appellant's crime. The trial court did not abuse its discretion in admitting the challenged evidence.

Furthermore, evidence of Appellant's November 24, 2014 arrest was admissible under Rule 404(b), SCRE, to establish motive or a common scheme or plan. Evidence of Appellant's November 24, 2013 arrest and the discovery of stolen jewelry and prescription medications on her person established her motive behind the home invasions. The jury could infer that her motive in entering the 108 Plywood Street residence was to steal medications and jewelry based on this evidence. The trial court properly admitted the challenged evidence to establish motive pursuant to Rule 404(b), SCRE.

Additionally, the evidence was also properly admitted to show a common scheme or plan. "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." State v. Wallace, 384 S.C.428, 433, 683 S.E.2d 275, 277-78 (2009). In Appellant's case, the striking similarities between the two burglaries are abundant. Both involve the invasion of the same residence within mere hours with a primary objective of taking prescription medication and jewelry. Both jewelry and prescription medications were stolen during each burglary. The only difference between the two crimes (other than the obvious temporal difference) is that Appellant was alone when the second burglary was committed. The similarities in this case certainly outweigh the slight difference of being arrested alone rather than with co-defendants. The trial court properly admitted the evidence of her November 24, 2013 arrest under a common scheme or plan pursuant to Rule 404(b), SCRE.

B. Harmlessness of Any Error in the Admission of the Evidence

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). "When guilt has been conclusively proven by competent evidence such that no

other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented or when erroneously admitted evidence is merely cumulative to other properly admitted evidence, any trial error may be harmless. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (“[I]n view of the overwhelming evidence of appellant’s guilt, we hold any error harmless beyond a reasonable doubt.”); State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (“Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence.”).

In Appellant’s case, the challenged evidence on appeal was regarding her November 24, 2013 arrest for second-degree burglary at the same residence she was indicted for burglarizing the night before. This testimony included her arrest at the residence and that she had a stolen men’s watch and prescription medications for Charles Deloach on her person when she was taken into custody. This testimony had no bearing on the outcome of Appellant’s trial in light of the overwhelming evidence of her guilt. Appellant’s co-defendant Sauls testified that she actively participated in the burglary the night prior. Furthermore, an unchallenged search of Appellant’s home conducted with her consent and cooperation yielded bags of items stolen from the 108 Plywood Street residence.

Viewing the challenged testimony in relation to the other evidence of Appellant’s guilt presented during trial, any error that possibly could have resulted by virtue of the introduction of evidence pertaining to her November 24, 2013 arrest was entirely harmless. Most significantly, Appellant’s co-defendant testified in detail about Appellant’s involvement in the November 23, 2013 evening burglary, which was

corroborated by a search of Appellant's house, during which both of her co-defendants were present, resulting in the discovery of bags of stolen items from the 108 Plywood Street residence. This evidence alone overwhelmingly and conclusively established Appellant's guilty for first-degree burglary. Therefore, the November 24, 2013 arrest evidence was inconsequential when considered in relation to the other evidence presented during trial. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (erroneous admission of evidence is harmless beyond a reasonable doubt if its impact is minimal in the context of the entire record); see also State v. Forney, 321 S.C. 353, 358, 468 S.E.2d 641, 644 (1996) ("Evidence of the expressed threat to kill Beth Ann is of minimal impact in the context of the properly admitted evidence of appellant's use of a deadly weapon during the North Carolina armed robbery. Accordingly, even if evidence of the expressed threat was improper, its impact was minimal in the context of the entire record and any error is harmless beyond a reasonable doubt.").

Furthermore, the evidence of Appellant's November 24, 2013 arrest was cumulative to the other unchallenged evidence establishing Appellant's guilt. Sauls testified that the three entered the home with the intent to steal prescription medications and prescription medications were found during the search of Appellant's home. Additionally, Sauls testified that jewelry was stolen from the 108 Plywood Street residence and jewelry was found at a subsequent search of Appellant's home. Therefore, any evidence regarding Appellant's November 24, 2013 arrest was merely cumulative to the other evidence presented. Accordingly, assuming the evidence regarding the November 24, 2013 arrest was admitted in error, the challenged evidence was entirely cumulative to other properly admitted evidence. See State v. Oglesby, 384 S.C. 289, 293,

681 S.E.2d 620, 622 (Ct. App. 2009) (“[T]he admission of improper evidence is deemed harmless if it is merely cumulative to other evidence.”).

In light of the cumulative and inconsequential nature of the challenged evidence when viewed in relation to the other evidence presented during trial conclusively establishing Appellant’s guilt, any error in the admission of the November 24, 2013 evidence was entirely harmless and could have had no impact on the ultimate outcome of Appellant’s trial. See State v. Garner, 389 S.C. 61, 68, 697 S.E.2d 615, 618 (Ct. App. 2010) (“An insubstantial error is harmless when guilt is proven by competent evidence such that no other rational decision could be reached or when the evidence is merely cumulative of other evidence.”). Even assuming the trial court abused its discretion in admitting the challenged evidence, Appellant’s conviction should not be reversed based on such an insignificant error. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) (“[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result.”). Appellant’s conviction should be affirmed.

CONCLUSION

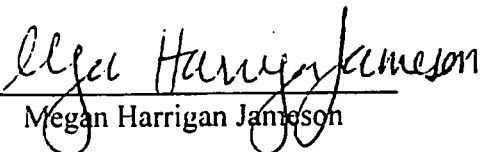
For all the foregoing reasons, Respondent respectfully submits that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

May 5, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000255

THE STATE,

Respondent,

vs.

TONYA MCALHANEY,

Appellant.

CERTIFICATE OF COUNSEL

Respondent agrees with the Designation of the Matter to be Included in the Record on Appeal set forth by Appellant. The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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Attorney General

MEGAN HARRIGAN JAMESON
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May 5, 2015

STATE OF SOUTH CAROLINA
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APPEAL FROM HAMPTON COUNTY
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THE STATE,

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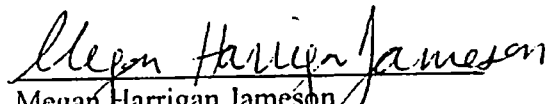
Appellant.

PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 5th day of May, 2015.


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