

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Oconee County
Honorable Brooks P. Goldsmith, Circuit Court Judge S.C. SUPREME COURT

DAVID LEE COWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001358

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF OCONEE) 10TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 07-GS-37-1835
DAVID LEE COWARD,) 07-GS-37-1836
DEFENDANT.)

JANUARY 26 & 27, 2009
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY JUDGE; AND A
JURY.

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

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ATTORNEY FOR THE STATE

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RICHARD WARDER, ESQUIRE
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CIRCUIT COURT REPORTER

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(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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1 Monday January 26, 2009

2 THE COURT: Ladies and gentlemen, this is a term of
3 General Sessions Court, sometimes called criminal court. Its
4 purpose is to resolve questions of alleged criminal conduct
5 arising between the State of South Carolina and the
6 defendants, and do so in a fashion which will ensure that
7 justice under the law is accomplished.

8 The trial of a case begins with the selection of a
9 jury. Both the State and the defendants are entitled to
10 jurors who approach a case with an open mind. The trial jury
11 must be free as humanly possible from any bias, prejudice or
12 sympathy for either side and free from any preconceived ideas
13 on the facts of the case or the law of the case, therefore
14 certain questions will be asked of you, the petit jury panel.
15 The questions which will be asked are designed to ensure each
16 side a fair and impartial jury.

17 Now, I might note, further, if any person should
18 talk with you or attempt to talk with you about any case
19 scheduled for this term of court it would be your solemn duty
20 to immediately report that matter to the Court.

21 And we'll begin the selection of the first jury for
22 the first trial.

23 Now, Mr. Solicitor, if you would, please, call your
24 first case.

25 MR. WAGNER: Your Honor, first up for trial this

1 week is 2007-1835 charging David Lee Coward with 1st degree
2 burglary, and 2007-1836 charging David Lee Coward with petty
3 larceny.

4 THE COURT: Now, ladies and gentlemen of the jury
5 panel, we are about to commence with the trial of the case --
6 excuse me, selection of a jury in the case of The State vs.
7 David Lee Coward. Now, the State is represented by
8 Mr. Wagner.

9 Mr. Wagner, if you would, please, stand, introduce
10 yourself and anyone else who will be assisting you in the
11 trial of this case.

12 MR. WAGNER: I'm David Wagner. I'm one of the
13 solicitors here in Oconee County. I work for Chrissy Adams,
14 your elected solicitor. Seated with me today is Scott Arnold.
15 He's a detective with the sheriff's office. He's the
16 principal officer in this case.

17 THE COURT: All right. Very good. Thank you.

18 Now, the defendant, Mr. David Lee Coward, is
19 represented this morning by Mr. Warder. He will also be
20 represented by Mr. Ball.

21 But, Mr. Warder, if you would, please, stand and
22 introduce yourself and your client.

23 MR. WARDER: Thank you, Your Honor.

24 I'm Richard Warder. I practice law in Greenville
25 and Pickens. Dallas Ball is an attorney who will actually be

1 trying the case. He has his principal office in Pickens. And
2 this is our client, David Lee Coward. It's our privilege to
3 be representing him here today.

4 THE COURT: Very good. Thank you very much, sir.

5 Now, ladies and gentlemen of the jury panel, I now
6 direct the following questions to each of you. Is there any
7 member of the jury panel related by blood or marriage, now or
8 formerly, close personal friend or business associate of the
9 defendant, David Lee Coward? If so, please stand at this
10 time. Any member of the jury panel related by blood or
11 marriage, now or formerly, or close personal friend or
12 business associate of the defendant, David Lee Coward. If
13 you'd please stand at this time.

14 (There was no response)

15 THE COURT: Now, was any member of the jury panel a
16 member of the grand jury that returned the indictments in
17 these cases, indictment 2007-GS-37-1835 charging burglary in
18 the 1st degree, and indictment 2007-GS-37-1836 charging petty
19 larceny? Any member of the jury panel a member of the grand
20 jury that returned those indictments against Mr. David Lee
21 Coward? If so, please stand at this time.

22 (There was no response)

23 THE COURT: Now, I'm going to read a list of
24 potential witnesses in this case. Now, when I say potential
25 witnesses these are witnesses who may be called but do not

1 have to be called during the trial of the case.

2 And if they happen to be in the courtroom at this
3 time if they would please stand and look upon the jury.

4 Now, the reason I ask individuals to do that, it's
5 my experience that we might know somebody by their face or
6 recognize them even if we don't know their name.

7 So again, if the witnesses or potential witnesses
8 are in the courtroom if they would please stand as their names
9 are called.

10 Sergeant Scott Arnold of the Oconee County Sheriff's
11 Department.

12 Thank you, sir. Well, you've looked upon the jury
13 before. You hadn't changed.

14 Deputy Brandon Long of the Oconee County Sheriff's
15 Department.

16 Thank you, sir.

17 Deputy Derek Pace of the Oconee County Sheriff's
18 Department; Ms. Juliana Sims; Patrick McKenzie; Ms. Debra
19 Miller; Mr. Jeremy Miller; Ms. Josie Medlin; Mr. Russell
20 Rogers; Mr. Dennis Coward; Mr. Larry Medlin.

21 Now, is there any member of the jury panel related
22 by blood or marriage or close personal friends of any of the
23 potential witnesses in this case, Sergeant Scott Arnold of the
24 Oconee County Sheriff's Department; Deputy Brandon Long of the
25 Oconee County Sheriff's Department; Deputy Derek Pace of the

1 Ocone County Sheriff's Department; Ms. Juliana Sims;
2 Mr. Patrick McKenzie; Ms. Debra Miller; Mr. Jeremy Miller;
3 Ms. Josie Medlin; Mr. Russell Rogers; Mr. Dennis Coward;
4 Mr. Larry Medlin? Any member of the jury panel related by
5 blood or marriage or close personal friends of any of the
6 potential witnesses in this case? If so, if you'd please
7 stand at this time.

8 All right. And again, when you stand I'm going to
9 ask you to identify yourselves. The reason for that is even
10 though you respond to more than one question the court
11 reporter takes down everything that is said in the courtroom.
12 We need to know who is speaking at the time so the record will
13 be complete.

14 Your name, please, sir?

15 POTENTIAL JUROR: Matthew Bryant.

16 THE COURT: Yes, sir.

17 MR. BRYANT: Personal friend of some of the
18 witnesses.

19 THE COURT: A personal friend of whom?

20 MR. BRYANT: Patrick McKenzie.

21 THE COURT: All right, Patrick McKenzie. And who
22 else?

23 MR. BRYANT: Larry Medlin.

24 THE COURT: And Larry Medlin. Would that in any way
25 interfere with your ability -- if they were witnesses, would

1 that in any way interfere with your ability to give both the
2 State of South Carolina and the defendant, Mr. Coward, a fair
3 and impartial trial?

4 MR. BRYANT: Probably not, but I'd rather not try.

5 THE COURT: Very good. I'm going to excuse you on
6 the trial of this case. Just remain with us but you will not
7 be considered for the trial of this case.

8 Now, the reason I ask that question is twofold.

9 First, of course, the defendant and the State are entitled to
10 a fair and impartial jurors, as far as the case is concerned.

11 But just as important, none of you asked to be here
12 today, and so if you're going to be asked to serve on a jury I
13 don't want to in any way interfere with your service or in any
14 fashion compromise your service. So if you are not
15 comfortable with a particular case let me know so that I might
16 make the proper decision.

17 Yes, sir? Your name, please?

18 POTENTIAL JUROR: Josh Barker.

19 THE COURT: Yes, sir.

20 MR. BARKER: Close personal friend of Derek Pace.

21 THE COURT: If he was a witness in this case would
22 that interfere with your ability to give both the State and
23 the defendant --

24 MR. BARKER: I would like to think not but.

25 THE COURT: Very well. I'll go ahead and excuse you

1 on the trial of this case. Again, as I say, it has to be a
2 certain answer that you could give both the State and the
3 defendant. Very good. I'm going to excuse you, but do remain
4 with us, if you would, please.

5 Anyone else?

6 (There was no response)

7 THE COURT: Is there any member of the jury panel
8 who believes that the defendant must prove his innocence in
9 this case? If so, please stand.

10 (There was no response)

11 THE COURT: I would instruct the jury that serves on
12 this case that, of course, the presumption of innocence is a
13 presumption that follows the defendant throughout the trial
14 and he does not have any duty or responsibility or burden of
15 proof. It's all upon the State to prove his guilt beyond a
16 reasonable doubt. But is there any member of the jury panel
17 who believes that the defendant must prove his innocence in
18 this case? If so, please stand.

19 (There was no response)

20 THE COURT: Does any member of the jury panel not
21 understand that it is the responsibility and burden of the
22 State to prove the defendant's guilt beyond a reasonable doubt
23 on every element of all of the offenses charged and the
24 defendant has no burden to prove his innocence? Is there
25 anyone who does not understand that or does not agree with

1 that, if you'd please stand at this time.

2 (There was no response.)

3 THE COURT: Does any member of the panel know of any
4 personal or have any religious, social or business
5 associations with any of the prosecuting witnesses or the
6 prosecutor in this case, or any law enforcement official or
7 other persons involved in this case? If so, please stand.

8 (There was no response)

9 THE COURT: Is there any member of the jury panel or
10 members of their immediate family ever been a victim of a
11 crime? If so, please stand.

12 (There was no response)

13 THE COURT: Is there any member of the jury panel
14 who is related by blood or marriage to any law enforcement
15 officer, state constable, or any other person having authority
16 to enforce laws of this state, county or any municipalities in
17 the area? If so, please stand. Any member of the jury panel
18 related by blood or marriage to any law enforcement officers,
19 state constable, or any or person having authority to enforce
20 the laws of this state, or county, or municipalities, if you
21 would please stand.

22 (There was no response.)

23 THE COURT: Is there any member of the jury panel
24 undergone any type of police training --

25 Oh, yes, sir? Your name, please?

1 POTENTIAL JUROR: Tyler Nix.

2 THE COURT: Yes, sir. You're related to a law
3 enforcement officer?

4 MR. NIX: I'm related to Detective Gregg Reed.

5 THE COURT: All right, sir. And by reason of that
6 relationship could you still give both the State and the
7 defendant a fair and impartial trial?

8 MR. NIX: Yes.

9 THE COURT: Very good. Thank you, sir. Mr. Nix, is
10 that right? Tyler Nix?

11 MR. NIX: Right.

12 THE COURT: Mr. Tyler Nix.

13 Anyone else?

14 (There was no response)

15 THE COURT: Has any member of the jury panel
16 undergone any type of police training? If so, please stand.

17 (There was no response)

18 THE COURT: Has any member of the jury panel formed
19 or expressed an opinion about this case or anything that might
20 be involved in this case? If so, please stand.

21 (There was no response)

22 THE COURT: Is any member of the jury panel aware of
23 any interest, bias or prejudice towards either the defendant
24 or the State of South Carolina? If so, please stand.

25 (There was no response)

1 THE COURT: Does any member of the panel know of any
2 reason why he or she could not give both the State of South
3 Carolina and the defendant a fair and impartial trial? If
4 not, please stand.

5 (There was no response)

6 THE COURT: All right. Any additional questions or
7 further questions from the State?

8 MR. WAGNER: No, sir.

9 THE COURT: From the defendant?

10 MR. WARDER: No, Your Honor.

11 THE COURT: Very good.

12 Ladies and gentlemen of the jury panel, the way that
13 we draw a jury in this Court is that --

14 Are we still using the capsules?

15 THE CLERK: Yes, sir, for the next couple of months.

16 THE COURT: And this is the way we've been doing it
17 for over a hundred and something years, but the thing is, as
18 you'll note the clerk is preparing capsules that have -- each
19 capsule has one name, and one of your names in it, and then
20 she's going to put it in the drum that's in front of her.

21 She'll turn the drum and then she will draw a
22 capsule from the drum and read the name. If that happens to
23 be your name -- or rather read the name, and when your name is
24 called if you would, please, come forward to the front of
25 courtroom. The bailiff will show you where to stand, and look

1 back towards the back of the courtroom so the attorneys can
2 see you.

3 All right. In the trial of the case the State goes
4 first on the jurors. So if you come forward, the State will
5 either say excuse the juror or present the juror. Then the
6 defendant will be able to consider the juror and will either
7 say swear the juror or to excuse the juror.

8 We'll draw 13 jurors here, 12 on the jury and 1
9 alternate. This is 10 and 5; is that correct?

10 MR. WARDER: Yes, sir.

11 MR. WAGNER: Yes, sir.

12 THE COURT: Very good. All right. As soon as we
13 have the drum prepared we'll begin.

14 The reason the drum was not prepared earlier, of
15 course, is I had to go through all of these questions to be
16 sure that -- and of course, some jurors were excused. So we
17 couldn't prepare the drum until we finished the qualification
18 of the jury panel.

19 Also, I might note that our clerk is performing
20 about 2 or 3 jobs this morning. The other staff are in
21 training so Ms. Burton is having to do what normally is done
22 by several people.

23 [PAUSE]

24 What I'm going to do is give you a very short break.
25 Let's say just about 15 minutes, which brings up to about 25

1 after. So I'm going to let you stand up, stretch and excuse
2 yourselves, then if you would, please, come back in -- well,
3 let's just say 10:30. That will give us plenty of time. Come
4 back and just sit in this part of the courtroom where you're
5 sitting. You don't have to sit in the same place but just the
6 same area.

7 Everyone else, though, remain seated while the jury
8 retires from the courtroom.

9 It will be 11:30 rather than 10:30. Thank you very
10 much.

11 (WHEREUPON, a brief recess was taken.)

12 THE COURT: Is the State prepared to draw a jury?

13 MR. WAGNER: Yes, sir.

14 THE COURT: The defense?

15 MR. WARDER: Yes, Your Honor.

16 THE COURT: Very good.

17 Madam Clerk, give us a jury.

18 And the strikes are 5 and 10?

19 MR. WAGNER: Yes, sir.

20 MR. WARDER: Yes, sir.

21 THE COURT: Very good.

22 THE CLERK: Ladies and gentlemen, as I call your
23 name, if you would, please come forward, stand at the podium
24 and face the audience.

25 Number 102, Marie Pusey.

1 THE COURT: And if you would, please, bring anything
2 you might have with you.

3 (A white female came forward.)

4 THE CLERK: What say the State?

5 MR. WAGNER: What number was that again? I'm sorry.

6 THE CLERK: Number 102.

7 MR. WAGNER: Present the juror.

8 THE CLERK: What sayeth the defense?

9 MR. WARDER: Please excuse the juror from the trial
10 of this matter.

11 THE CLERK: Ma'am, you have been excused from this
12 case. You may be seated.

13 Number 21, Joseph Carter.

14 (A black male came forward.)

15 THE CLERK: What sayeth the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What sayeth the defense?

18 MR. WARDER: Please seat the juror.

19 THE CLERK: Sir, if you would, please take a seat in
20 the jury box.

21 Number 57, David Holbrooks.

22 (A white male came forward.)

23 THE CLERK: What sayeth the State?

24 MR. WAGNER: Present the juror.

25 THE CLERK: What sayeth the defense?

1 MR. WARDER: Please seat the juror.

2 THE CLERK: Sir, if you would, please take a seat in
3 the jury box.

4 Number 120, Samantha Tapia.

5 (A white female came forward.)

6 THE CLERK: What sayeth the State?

7 MR. WAGNER: Please excuse the juror on this case.

8 THE CLERK: Ma'am, you have been excused from this
9 case. You may be seated.

10 Number 90, Bobby Nix.

11 (A white male came forward.)

12 THE CLERK: What sayeth the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What sayeth the defense?

15 MR. WARDER: Please seat the juror.

16 THE CLERK: Sir, if you would, please take a seat in
17 the jury box.

18 Number 81, Julia Miller.

19 (A white female came forward.)

20 THE CLERK: What sayeth the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What sayeth the defense?

23 MR. WARDER: Please seat the juror.

24 THE CLERK: Ma'am, if you would, please take a seat
25 in the jury box.

1 Number 104, Sonja Reed.

2 (A white female came forward.)

3 THE CLERK: What sayeth the State?

4 MR. WAGNER: Present the juror.

5 THE CLERK: What sayeth the defense?

6 MR. WARDER: Please seat the juror.

7 THE CLERK: Ma'am, if you would, please take a seat
8 in the jury box.

9 Number 23, David Cicimurri.

10 (A white male came forward.)

11 THE CLERK: What sayeth the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What sayeth the defense?

14 MR. WARDER: Please excuse the juror from the trial
15 of this matter.

16 THE CLERK: Sir, you have been excused from this
17 case. You may be seated.

18 Number 110, Patti Seyller.

19 (A white female came forward.)

20 THE CLERK: What sayeth the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What sayeth the defense?

23 MR. WARDER: Please excuse the juror from the trial
24 of this matter.

25 THE CLERK: Ma'am, you have been excused from this

1 case. You may be seated.

2 Number 113, Jessica Smith.

3 (A white female came forward.)

4 THE CLERK: What sayeth the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What sayeth the defense?

7 MR. WARDER: Please swear the juror.

8 THE CLERK: Ma'am, if you would, please take a seat
9 in the jury box.

10 Number 86, Cindy Narr.

11 (A white female came forward.)

12 THE CLERK: What sayeth the State?

13 MR. WAGNER: Present the juror.

14 THE CLERK: What sayeth the defense?

15 MR. WARDER: Please excuse the juror from the trial
16 of this matter.

17 THE CLERK: Ma'am, you have been excused from this
18 case. You may be seated.

19 Number 142, Patricia Emmert.

20 (A white female came forward.)

21 THE CLERK: What sayeth the State?

22 MR. WAGNER: Present the juror.

23 THE CLERK: What sayeth the defense?

24 MR. WARDER: Please swear the juror.

25 THE CLERK: Ma'am, if you would, please take a seat

1 in the jury box.

2 Number 55, Patricia Hilla.

3 (A white female came forward.)

4 THE CLERK: What sayeth the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What sayeth the defense?

7 MR. WARDER: Please excuse the juror from the trial
8 of this matter.

9 THE CLERK: Ma'am, you have been excused from this
10 case. You may be seated.

11 Number 83, Kristopher Morrison.

12 (A white male came forward.)

13 THE CLERK: What sayeth the State?

14 MR. WAGNER: Please excuse the juror from this case.

15 THE CLERK: Sir, you have been excused from this
16 case. You may be seated.

17 Number 127, Karen Vissage.

18 (A white female came forward.)

19 THE CLERK: What sayeth the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What sayeth the defense?

22 MR. WARDER: Please swear the juror.

23 THE CLERK: Ma'am, if you would, please take a seat
24 in the jury box.

25 Number 125, James Vetter.

1 (A white male came forward.)

2 THE CLERK: What sayeth the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What sayeth the defense?

5 MR. WARDER: Please excuse the juror from the trial
6 of this matter.

7 THE CLERK: Sir, you have been excused from this
8 case. You may be seated.

9 Number 138, Jerolyn Young.

10 (A black female came forward.)

11 THE CLERK: What sayeth the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What sayeth the defense?

14 MR. WARDER: Please swear the juror.

15 THE CLERK: Ma'am, if you would, please take a seat
16 in the jury box.

17 Number 6, Anna Baxley.

18 (A white female came forward.)

19 THE CLERK: What sayeth the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What sayeth the defense?

22 MR. WARDER: Please excuse the juror from the trial
23 of this matter.

24 THE CLERK: Ma'am, you have been excused from this
25 case. You may be seated.

1 Number 49, Steve Hammond.

2 (A white male came forward.)

3 THE CLERK: What sayeth the State?

4 MR. WAGNER: Please excuse the juror on this case.

5 THE CLERK: Sir, you have been excused from this
6 case. You may be seated.

7 Number 149, Nancy Schwery.

8 (A white female came forward.)

9 THE CLERK: What sayeth the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What sayeth the defense?

12 MR. WARDER: Please seat the juror.

13 THE CLERK: Ma'am, if you would, please take a seat
14 in the jury box.

15 Number 51, Robert Harden.

16 (A white male came forward.)

17 THE CLERK: What sayeth the State?

18 MR. WAGNER: Present the juror.

19 THE CLERK: What sayeth the defense?

20 MR. WARDER: Please excuse the juror from the trial
21 of this matter.

22 THE CLERK: Sir, you have been excused from this
23 case. You may be seated.

24 Number 133, Doyle Wilbanks.

25 (A white male came forward.)

1 THE CLERK: What sayeth the State?

2 MR. WAGNER: Please excuse the juror from the case.

3 THE CLERK: Sir, you have been excused from this
4 case. You may be seated.

5 Number 103, James Ramey.

6 (A white male came forward.)

7 THE CLERK: What sayeth the State?

8 MR. WAGNER: Present the juror.

9 THE CLERK: What sayeth the defense?

10 MR. WARDER: Please swear the juror.

11 THE CLERK: Sir, if you would, please take a seat in
12 the jury box.

13 Number 62, Thomas Jerard.

14 (A white male came forward.)

15 THE CLERK: What sayeth the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What sayeth the defense?

18 MR. WARDER: Please swear the juror.

19 THE CLERK: Sir, if you would, please take a seat in
20 the jury box.

21 THE COURT: Let's have 1 alternate, 2 and 1.

22 THE CLERK: And for the alternate, number 79, Keith
23 McAlister.

24 (A white male came forward.)

25 THE CLERK: What sayeth the State?

1 MR. WAGNER: Present the juror.

2 THE CLERK: What sayeth the defense?

3 MR. WARDER: Please swear the juror.

4 THE CLERK: Sir, if you would, please take a seat in
5 the jury box.

6 THE COURT: Is there any reason this jury cannot be
7 sworn for the trial of this case, from the State?

8 MR. WAGNER: No, sir.

9 THE COURT: From the defense?

10 MR. WARDER: No, Your Honor.

11 THE COURT: Very well.

12 Ms. Smith, you're sitting in the foreperson's chair,
13 so I'm going to ask you to serve as foreperson of this jury.

14 At this time, I'm going to ask you to go with the
15 bailiff and he'll show you the jury room that you'll be using
16 during the trial of the case, as the jury.

17 Now, my instruction is going to be the same
18 throughout the trial of the case, and that is you are not to
19 discuss this case even among yourselves, and particularly
20 you're not to have anyone discuss it with you. I'll go
21 further on those instructions.

22 The reason for that, of course, is a trial follows a
23 certain order of things, and you don't know what part of the
24 trial is going to impress you the most. It might be the
25 opening statements by the attorneys, the first witness or last

1 witness, closing arguments by the attorney, the charge on the
2 law. So you need to keep an open mind throughout the trial of
3 the case. So, therefore, do not even discuss personalities or
4 anything else.

5 With that, I'm going to ask you to go with the
6 bailiff. He'll show you the jury room that you'll be using.
7 It will be just a few minutes, but I need to take up some
8 matters with the attorneys and the balance of the jury panel.

9 Again, do not undertake discussion of the case among
10 yourselves in any way.

11 Everyone else remain seated while the jury retires
12 from the courtroom.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 11:50 a.m.)

15 THE COURT: All right. Those who were not drawn on
16 the jury of the trial of the case I'm going to excuse you for
17 the balance of the day. Also, this case will probably not be
18 started until tomorrow so I won't ask you to call in but
19 tomorrow night, Tuesday night, which would be January the
20 27th, I want you to call the telephone number.

21 Do they have the number with them, Madam Clerk?

22 THE CLERK: Yes, sir. It was on the top of the
23 letter in boldfaced print that was given to them as they
24 walked into the courtroom.

25 THE COURT: All right. Now, the number is 718-1058.

1 Does everyone have that number? If you do not have the number
2 see if we can give them another copy of the number. Anyone
3 that doesn't have the number raise your hand and we'll get you
4 one.

5 Anyone else that does not have the number?

6 All right. That is an answering machine, and it
7 will be on all night. As I say, don't call it tonight because
8 it won't have anything on it. But tomorrow night after 6
9 o'clock a message will be placed on the machine that will
10 either say call in, come in Wednesday morning or to call back
11 Wednesday afternoon, or it might say that your service will
12 not be needed any further this week.

13 But the fact is that you must call that number after
14 6 o'clock, and it's an answering machine so it will be on all
15 night. If you don't get through the first time keep calling
16 until you finally get through. I regret that if you do not
17 get a message from the machine you'll have to get it from me
18 at 8:30 Wednesday morning, but I think you'd rather have a
19 message from the machine.

20 Now, is there any questions? First of all, does
21 everybody have the number, 718-1058? Is there any question
22 about what you need to do? Call that number after 6 o'clock
23 Tuesday, January the 27th, 2009, and do what the message says.

24 Your clerk of court provides this so that you do not
25 have to be here all the time but only those times when the

1 presence of the jury is absolutely necessary. But when you
2 are requested to be here it's essential that you are here. Do
3 you have any questions?

4 (There was no response.)

5 THE COURT: Very good. I look forward to working
6 with you this week, and I do appreciate your patience with the
7 Court this morning. With that, you're excused until you get
8 the message tomorrow night. Very good.

9 Everyone else remain seated while the jury retires
10 from the courtroom.

11 (WHEREUPON, the jury venire leaves the courtroom.)

12 THE COURT: As I understand, this case will start in
13 the morning?

14 MR. WAGNER: Yes, sir.

15 THE COURT: What time do you want to start, 10:00?

16 MR. WAGNER: Ten will be fine, Judge.

17 THE COURT: Is that correct, Mr. Warder?

18 MR. WARDER: Ten will be fine.

19 THE COURT: Well, you are speaking for Mr. Ball,
20 right?

21 MR. WARDER: Yes, sir.

22 THE COURT: I will not swear the jury until we start
23 the trial. So Mr. Coward is on bond now?

24 MR. WARDER: Yes, sir.

25 THE COURT: He'll remain on bond.

1 Mr. Coward, do you understand the jury has been
2 selected in your case? In fact, if you would, please raise
3 your right hand.

4 DAVID LEE COWARD, after having been duly sworn,
5 testified as follows:

6 THE COURT: Mr. Coward, do you understand the jury
7 has been sworn in this case but we'll not start the trial of
8 this case until 10 o'clock tomorrow morning, which will be
9 Tuesday, January the 27th, 2009? We'll be trying this case in
10 the courtroom where you are right now; do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If for any reason you do not appear at
13 10 o'clock in the morning with your attorney ready to go to
14 trial and you're not -- in other words, if you are absent the
15 trial will go forward in your absence; do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And that will be in this courtroom
18 tomorrow morning at 10 o'clock, Oconee County Courthouse,
19 Walhalla, South Carolina, Main Street. If you fail to be here
20 when the case is tried and you're convicted in your absence
21 you'll be sentenced in your absence; do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Any questions about that?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Your bond continues while

1 you are waiting for the trial to begin; do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Anything from the State?

4 MR. WAGNER: No, sir.

5 THE COURT: All right. Anything further,
6 Mr. Warder?

7 MR. WARDER: No, Your Honor.

8 THE COURT: All right. You all do remain with us
9 until we dismiss the jury for the day.

10 MR. WARDER: Thank you, sir.

11 THE COURT: Ask the jury to join us, please.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 12:00 p.m.)

14 THE COURT: Madam Forelady, ladies and gentlemen of
15 the jury, we will not try to start the trial of the case until
16 tomorrow morning at 10 o'clock. So I'll excuse you for the
17 balance of the day, but at 10 o'clock if you would come back
18 to the jury room that you were just in. The bailiff will show
19 you how to get back to that room in the morning.

20 Well, I usually tell the jury this is the most
21 difficult part of the trial for you because you are going home
22 and somebody is going to ask you what are you doing. And
23 you're going to say I've been drawn on a jury to try a case,
24 and they are going to say what is it about.

25 Well, obviously you haven't heard any of the facts

1 or anything else about the case. But more importantly, no one
2 who is not sitting in that jury box where you are now will be
3 in that jury room where you'll decide the case can help you.
4 They will never hear any of the evidence or see any of the
5 witnesses, and so they can't help you.

6 The decision that you'll have to make in this case
7 will be entirely up to you based solely on the testimony from
8 the sworn witnesses on this stand and the exhibits and other
9 evidence introduced in this courtroom. So therefore, the
10 person who is not in that position as you will be cannot help
11 you but they can only interfere with the proper resolution of
12 the case.

13 I think you all understand this is an important case
14 to everybody involved and needs to be resolved in an orderly
15 fashion. So therefore, if somebody asks you about the case
16 you say you can't discuss it.

17 They'll probably say well, why not? You're going to
18 tell them because the Judge said so. And they'll probably say
19 well, that's ridiculous. Well, you tell them I'll be here at
20 8:30 in the morning and I'll be glad to explain it to them,
21 but we are not going to interfere with your duties as jurors
22 in the General Sessions Court of Oconee County.

23 So with that, you will be excused and I'll see you
24 -- oh, by the way, one other thing. The only reserve seats in
25 the jury box -- now, you do sit in those seats that you are in

1 now. The only reserve seats, everybody else can sit where
2 they want in those seats, is for the foreperson and the
3 alternate.

4 So you'll always sit in that seat, Ms. McAlister.

5 And, Ms. Smith, you always sit in the foreperson
6 seat in the front row.

7 All right. With that, you'll be excused, and I look
8 forward to working with you. See you at 10 o'clock in the
9 morning.

10 Everyone else remain seated while the jury retires
11 from the courtroom.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 12:03 p.m.)

14 THE COURT: All right. Mr. Coward, you'll be
15 excused.

16 Mr. Warder, unless there is other business?

17 MR. WARDER: This will be it for today.

18 THE COURT: Very good. I'll see those involved in
19 the case of South Carolina vs. David Lee Coward in the morning
20 at 10 o'clock.

21 I would ask if you'd mention it to Mr. Ball to try
22 to get here a little bit earlier than 10:00 in the event that
23 there's anything I need to consider before we start the trial.
24 I'd like to start at 10 o'clock.

25 MR. WARDER: All right, sir.

1 THE COURT: Very good. So you all will be excused.
2 (WHEREUPON, the trial of this case was recessed for
3 the day.)

4 Tuesday, January 27, 2009

5 (WHEREUPON State's Exhibit Numbers 1 and 2 were
6 marked for identification only.)

7 THE COURT: All right. We're back on the case of
8 The State of South Carolina vs. David Lee Coward on
9 indictments 2007-GS-37-1835, burglary in the 1st degree, and
10 2007-GS-37-1836, petty larceny. The State is represented by
11 Mr. Wagner, and the defendant is represented by Mr. Ball and
12 Ms. Foster.

13 MR. BALL: She's just an assistant.

14 THE COURT: Just an assistant. All right.

15 Is there anything from the State before we bring in
16 the jury?

17 MR. WAGNER: Your Honor, just at the appropriate
18 time we'll have some issues -- I think probably a Jackson V.
19 Denno. We've got one witness to address that, and we're
20 prepared to go forward with that just at any time. I've
21 actually got a few witnesses we can call before that issue
22 comes up.

23 THE COURT: Before any reference or mention of the
24 statement we will have a hearing on that admissibility.

25 All right. Mr. Ball, anything from the defendant?

1 MR. BALL: Yes, sir. We would move to sequester the
2 witnesses, and also the same with the Jackson V. Denno at the
3 appropriate time.

4 THE COURT: To suppress the statement?

5 MR. BALL: Yes, sir.

6 THE COURT: Motions are noted. The Court will grant
7 the motion to sequester the witnesses. Now, of course, the
8 State is entitled to not only have its investigating officer
9 but also the victim is entitled to be present during the
10 trial, and all other witnesses will be sequestered.

11 Now, have you got a place for them to congregate?
12 The State has a place for its witnesses?

13 MR. WAGNER: Your Honor, they normally just go out
14 in the hall out there.

15 THE COURT: Well, that's it, just wherever. How
16 many witnesses does the State have?

17 MR. WAGNER: Your Honor, we've got 8 witnesses on
18 the list. I don't know. Some of them will be duplicates.
19 Everybody, I believe, is here. The victim is here, our chief
20 officer is here, too. I think this over here is a witness for
21 the State. He will have to be sequestered. There is another
22 witness out there that's already out in the hall.

23 THE COURT: All right. Just remember, you need to
24 keep up with your witnesses so that if some of them come in
25 that they are immediately removed from the courtroom until

1 they do testify.

2 Defense witnesses?

3 MR. BALL: We'll have none, Judge.

4 THE COURT: All right. Now, please understand, any
5 witnesses that testify if they remain or come back into the
6 courtroom after their testimony they will not be permitted to
7 be recalled or used on rebuttal; is that understood,
8 Mr. Wagner?

9 MR. WAGNER: Yes, sir.

10 THE COURT: Is that understood, Mr. Ball?

11 MR. BALL: Yes, sir.

12 THE COURT: All right. Anything else?

13 MR. WAGNER: Your Honor, if I could, could I tell
14 everybody?

15 THE COURT: One thing too. Now, the witnesses can
16 stay in the courtroom during opening statements, but as soon
17 as the opening statements are concluded, both the State and
18 the defense, then the witnesses must leave the courtroom
19 except the ones being called to the stand first.

20 So in other words, if somebody wants to during the
21 opening statement refer to a witness or something like that
22 they can do that, however that witness cannot remain in the
23 courtroom after the opening statements. They just have to
24 leave. So make sure they understand that. Take a few minutes
25 to be sure your witnesses understand that.

1 (WHEREUPON, all witnesses were sequestered.)

2 MR. WAGNER: Thank you, Judge.

3 THE COURT: All right. Anything else from the
4 State?

5 MR. WAGNER: No, sir.

6 THE COURT: From the defense?

7 MR. BALL: Nothing.

8 THE COURT: All right. Ask the jury to join us.
9 And, Madam Clerk, please swear the jury.

10 (WHEREUPON, the jury enters the courtroom at
11 approximately 10:14 a.m.)

12 THE COURT: Let the record reflect the jury and
13 alternate are in the jury box.

14 Madam Clerk, if you would, please swear the jury.

15 (WHEREUPON, the jury was sworn.)

16 THE COURT: Madam forelady, ladies and gentlemen of
17 the jury, I'm sure each of you now fully appreciates that this
18 Court, the Court of General Sessions for Oconee County, exists
19 for the purpose of resolving questions of alleged criminal
20 conduct arising between the State of South Carolina and the
21 defendant.

22 It is a guaranteed right of every citizen that a
23 charge of criminal conduct be presented in open court
24 according to certain rules of procedure. The State not only
25 has an equal right but the duty to present a charge of

1 criminal conduct in open court according to the same rules of
2 procedure.

3 Each of the parties therefore, both the State and
4 the defendant, then have an equal right to the opportunity of
5 this judicial proceeding and have you, as the jury, selected
6 and now sworn for the trial of this case.

7 One of the most important aspects of your duty as
8 the jury lies essentially in the oath that you have now taken
9 to well and truly try and determine the facts of this case.
10 That oath in a very essential way says that you are the sole
11 judges of the facts of this case.

12 Obviously, any case tried in court will involve a
13 question about what happened or how something came to happen
14 or whom if anyone did anything in a particular occurrence or
15 circumstance. From this point forward then no one concerned
16 with this trial has the right to decide any question of fact
17 in this trial or the truth of it except you, the jury.

18 The facts then are for your resolution and your
19 decision and yours alone, and after you hear all of the
20 evidence in the case then it will be your duty by your mutual
21 and joint discussions to determine the truth of this case by
22 deciding the weight and the believability of each part of the
23 evidence and by applying the law of the case thereto.

24 As trial judge, I am the judge of the law in the
25 case. It is also my responsibility, among other duties, to

1 preside over this trial, to rule on the admissibility of
2 evidence offered during the progress of the trial, and to
3 state to you, the jury, the law applicable to this case.

4 The Constitution of South Carolina mandates that I,
5 as the trial judge, cannot directly or indirectly comment
6 about the facts of this case.

7 The process of a verdict then is simply that you,
8 the jury, first determine what is the truth of the facts and
9 then apply to that true state of facts that principle of law
10 applicable and by that process determine and report to this
11 Court your final verdict in the case, speaking the truth of
12 the case as you determine it.

13 The Court will more fully and completely state to
14 you the principles of law applicable to the issues in this
15 particular case before it is submitted to you for your
16 decision. However, there are certain principles of law
17 applicable to the framework of every case in General Sessions
18 Court. First, the defendant has entered a plea of not guilty
19 to the charges contained in the indictments.

20 An indictment in this case is not evidence, and it
21 is simply the written instrument that contains the charge or
22 charges against the defendant, and it serves as the formal
23 document by which this case is processed into this Court.

24 The plea of not guilty places upon the State the
25 burden of proof in this case. As to what is meant by the term

1 burden of proof, the defendant is presumed in law innocent of
2 all charges contained in the indictment.

3 The burden of proof requires the State to prove
4 guilt beyond a reasonable doubt, and therefore, consistent
5 with that burden, the defendant or the accused party shall be
6 presumed to be innocent, and that presumption of innocence is
7 sufficient to compel a verdict of not guilty or a verdict of
8 acquittal unless you, the jury, conclude that the State has
9 satisfied its obligation to prove the defendant guilty beyond
10 a reasonable doubt.

11 The term reasonable doubt means the kind of doubt
12 that would cause a reasonable person to hesitate to act.

13 Now, this case will be opened by the solicitor,
14 after which the same opportunity will be afforded to the
15 defendant to make an opening statement. When all of the
16 evidence has been received by the Court counsel for the State
17 and counsel for the defendant will state to the jury their
18 respective positions, after which the Court will fully state
19 the law applicable to this case.

20 Obviously, all parts of the case are important. You
21 do not know which witness in a case will most impress you,
22 whether it will be the first witness or the last witness.

23 In reaching your final conclusion you will need the
24 guidance of the judgment of the other jurors. You will need
25 the guidance of the principles of law that will be stated to

1 you by the Court.

2 For all these reasons then if we have any recess
3 periods when you retire to your jury room or during an
4 overnight or meal recess I instruct you that you must not
5 undertake to discuss this case among yourselves until the case
6 is finally given to you for your deliberation, nor are you to
7 discuss this case with anyone or permit anyone else to discuss
8 this case with you. If they should attempt to do so you are
9 to report them so I might take the appropriate action.

10 Now, the verdict in this case must be the unanimous
11 verdict of all 12 jurors.

12 A few other additional comments I'll make before the
13 case begins. First, as I mentioned earlier, although I am the
14 only person who can tell you what the law is you are the only
15 ones that can determine the facts. I do not have the right to
16 indicate how I might feel about the evidence presented, and
17 throughout this trial my intention will be to act impartially
18 towards each party.

19 Second, from time to time an attorney may object to
20 some bit of testimony or evidence which the other side is
21 seeking to present. As in sports, business or any other
22 structured activity there are certain rules that both sides
23 must obey in presenting evidence. These rules have a definite
24 purpose. They ensure that the information you receive is the
25 most trustworthy and reliable evidence available.

1 An objection is a procedural term we use for an
2 attorney to call a possible violation of the rules to the
3 judge's attention. For this reason you should not hold an
4 attorney's objection against his client, nor should you
5 conclude from my ruling on the objections that I favor one
6 side or the other.

7 Finally, I would ask that you pay the closest
8 attention possible to the evidence presented to you. And I
9 will ask that you do not make notes. For if the note taker
10 makes an error those notes can be more detrimental than
11 helpful during the deliberation. The time-tested system is
12 for each of you to listen carefully, and I'm sure each of you
13 will do that.

14 Now, I suggest that you do not take notes. The
15 reason for that, of course, if we take notes we have a
16 tendency to concentrate on the note. In other words, we be
17 sure we write down what we think we hear as well as your
18 spelling and things of that nature, and by doing that we are
19 distracted from what we're supposed to be doing, which is
20 watching the witnesses as the witness testifies or the
21 evidence that's presented in the courtroom. You need to
22 concentrate on that.

23 Moreover, as I say, if the note taker makes an error
24 then those notes might be more detrimental, in fact harmful
25 than helpful, and I use one example. If you just miss one

1 word it can change the meaning all together. In other words,
2 I use the word not. If you leave the word not out of a
3 statement it changes it entirely. So it's better to rely on
4 the collective recall of all 12 members of the jury in
5 deciding what the testimony was.

6 Again, if somebody has a note that note becomes more
7 important than, what is it, I've got it written down, where
8 you might write it down in error, and that's just human
9 frailty. So that's why I suggest that you not take notes.

10 Now, having said that, I do take notes. It's not
11 one of those things do as I say not as I do. The fact is that
12 we have different purposes in this courtroom. You, and you
13 alone, are the only ones that can decide the facts in this
14 case, the truth of the testimony.

15 I am not concerned about the weight or the value of
16 the testimony and evidence. I'm only concerned whether things
17 are done that are required to be done under our procedures.
18 So I'm just jotting down what happens not the significance of
19 it. That is for you to decide.

20 So with that, we'll now begin the trial and I'll
21 recognize the solicitor for his opening statement.

22 MR. WAGNER: Thank you, Judge.

23 Back on July 26, 2007, the night of the 26th into
24 27th, Debra Miller, the victim, was living out on
25 in the Salem area of Oconee County, South Carolina. She

1 worked 7 days a week, she worked nightshift.

2 She had a son that lived there with her. Her son
3 was into some trouble. He was actually locked up in the
4 county jail. So she was there alone.

5 She left to go to work. She went to the nightshift.
6 She left sometime -- she's going to tell you sometime around
7 10:00, 10:30. She wasn't feeling well. She came home early,
8 in the early morning hours of the 27th of July.

9 And I think she will tell you that when she got home
10 she noticed her dog was shot dead laying out in the driveway.
11 Her house had been broken into. Her house was in disarray.
12 There was some stuff strewn all over the place. Her
13 television set was knocked over. The plants by the window
14 were knocked over onto the ground.

15 She called the law immediately. The sheriff's
16 office came out there. I think initially she is going to tell
17 you she wasn't sure what was missing because she came home, it
18 was late, she wasn't sure what was gone.

19 She checked everything the next morning and she
20 found out she was missing a 30-30 rifle, and a 38 pistol, as
21 well as an Xbox game thing, a bunch of Xbox games and things
22 like that that belonged to her son. She reported all this to
23 sheriff's office.

24 The sheriff's office investigated, ended up charging
25 3 boys, 2 of which you'll probably hear from here today as

1 witnesses for the State that were involved in it. They went
2 over there, broke into her house, or went into her house,
3 stole the things and they left. One of them shot the dog on
4 the way out.

5 Burglary first, petty larceny is what the defendant
6 is charged with, and there's different degrees of burglary in
7 this State, burglary first, second and third. Burglary first
8 always involves a dwelling or somebody's house where they
9 live, which is what this case is about. The lady, the victim
10 lived there, her house was broken into.

11 Certain things aggravate a burglary that up it to a
12 first degree. One of those of which is what this defendant is
13 charged with which is that he armed himself with a deadly
14 weapon during the commission of the crime, which means if you
15 go in there and steal somebody's rifle or somebody's 38 pistol
16 out of their drawer you are armed during the commission of
17 that burglary which aggravates the burglary up to what they
18 call a first degree burglary versus a second degree.

19 A third degree would be essentially going into
20 somebody's out-building or a storage shed during the daylight.
21 That would be a third. A second is somewhere in between with
22 some of the same things.

23 But essentially, this case is going to be very
24 similar for you as far as what the law is that was broken, and
25 essentially the defendant is charged with going into the

1 victim's house without her consent with the intent to commit a
2 theft, and the theft was committed.

3 Petty larceny is actually when somebody steals
4 something worth less than a thousand dollars, and she had less
5 than a thousand dollars worth of things taken so he's charged
6 with the larceny as well.

7 I anticipate this being a fairly quick case. I
8 think we'll probably be done with it today. I'd appreciate
9 you giving everybody your utmost attention, both sides.

10 My name is David Wagner. I'm a prosecutor on the
11 case. I'm essentially stationed here in Oconee County. With
12 the solicitor's office, we have two counties in the tenth
13 circuit, Anderson and Oconee, and I'm here full-time.

14 So we'll try to get -- you'll hear from the -- I'm
15 going to call the co-defendants that were there. You'll hear
16 from Scott Arnold, the chief detective, and you'll hear from
17 the victim, maybe one or two other officers that responded to
18 the seen. But we'll try to move it along as best we can, and
19 we appreciate you being here.

20 MR. BALL: If the Court please?

21 THE COURT: Mr. Ball.

22 MR. BALL: Mr. Foreman, ladies and gentlemen of the
23 jury, I'm Dallas Ball. I was not here when you were drawn
24 yesterday. I had a hearing in Pickens, and Mr. Warder
25 selected you folks for our jury. We're very appreciative that

1 you're here, and I'm glad you're here.

2 All I ask of you is to listen very carefully to the
3 facts and then weigh very heavily the credibility of these
4 witnesses. I think you're going to see that this whole crowd
5 is not somebody that you would send someone to prison on their
6 testimony.

7 The plants that were knocked over, I believe the
8 evidence will show, was marijuana plants growing in the lady's
9 house. There was a pipe bomb in the house that belonged to
10 apparently to her son, but she was there. She knew all this
11 stuff was going on.

12 My client is just a young kid who had a serious drug
13 problem and would go down there and actually smoke meth,
14 marijuana and all with the so-called victim in this case.

15 All I ask you to do is just listen very carefully
16 and weigh, is this the type of stuff that you want to send
17 somebody away on?

18 The Judge will tell you that they have the burden --
19 well, he's already told you that. They have the burden of
20 proof. My client does not have to prove anything. I'd just
21 ask you to listen very carefully. Thank you.

22 THE COURT: Mr. Wagner, you may call your first
23 witness.

24 MR. WAGNER: We call Debra Miller.

25 DEBRA MILLER, after having been duly sworn,

DEBRA MILLER - DIRECT BY MR. WAGNER

1 testified as follows:

2 THE CLERK: Please be seated in the witness box.

3 (WHEREUPON, the witness was seated in the witness
4 box.)

5 THE COURT: If you would, please, ma'am, give us
6 your full name for the record, please.

7 THE WITNESS: Debra Gaye Miller.

8 THE COURT: Very good. Thank you, ma'am.
9 You may proceed.

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q. Debra, can you spell your last name for the record,
13 please.

14 A. Spell my last name?

15 Q. Yes, ma'am.

16 A. Miller, M-i-l-l-e-r.

17 Q. Where did you live back on July 26th, 27th of last
18 year?

19 A. At in Salem.

20 Q. You still living there today?

21 A. Yes, sir. Yes, sir.

22 Q. And who lived there at the time with you, who still
23 lives there?

24 A. Me and my son.

25 Q. All right. Are you married?

DEBRA MILLER - DIRECT BY MR. WAGNER

- 1 A. I'm divorced.
- 2 Q. How old is your son?
- 3 A. Twenty-five.
- 4 Q. What's his name?
- 5 A. Jeremy Miller.
- 6 Q. And do you all both live there currently today?
- 7 A. Yes.
- 8 Q. Back on the 26th and 27th of July of last year --
- 9 well, were you working at the time?
- 10 A. Yes, I was.
- 11 Q. And where did you work?
- 12 A. Kendall.
- 13 Q. What do you all do there at Kendall?
- 14 A. Make hospital sleeves, hospital products.
- 15 Q. And where is the Kendall plant that you were working
- 16 at?
- 17 A. It's out on 28 going towards Seneca.
- 18 Q. Your address on , is it a residence?
- 19 A. Yes, sir.
- 20 Q. And is that in Oconee County?
- 21 A. Yes, sir.
- 22 Q. Back on the 28th what shift were you working and how
- 23 many days a week were you working?
- 24 A. Third shift, 7 days a week.
- 25 Q. What time did you go in?

DEBRA MILLER - DIRECT BY MR. WAGNER

1 A. I left the house at 10:15, and I came back at 1:30.

2 Q. What was your normal shift? When were you normally
3 gone?

4 A. Eleven p.m. to 7:00 a.m.

5 Q. And why did you come home early on that particular
6 day?

7 A. I wasn't feeling well.

8 Q. When you got home what, if anything, did you see?

9 A. When I pulled up in yard my dog was in the driveway
10 shot, and when I went to open the door the door handle had
11 been kicked. I went in, everything was knocked over in the
12 house. There was plants and stuff, my house plants was
13 knocked over. I couldn't tell if anything was missing at that
14 time, but the house was in disarray.

15 Q. What kind of dog did you have?

16 A. A Lemon Spot Beagle.

17 Q. And how big was it?

18 A. About this big (indicate).

19 Q. Was he a vicious dog?

20 A. No, sir.

21 Q. Was he dead when you were there?

22 A. Yes..

23 Q. Could you tell immediately that he had been shot?

24 A. Uh-huh.

25 Q. All right. Did you go in the house by yourself?

DEBRA MILLER - DIRECT BY MR. WAGNER

1 A. Yes.

2 Q. Was it dark?

3 A. No, the lights were on.

4 Q. Had you left the lights on?

5 A. No, sir.

6 Q. Was the door wide open or was it closed?

7 A. It was closed.

8 Q. But you said there was some damage to it?

9 A. Yes, sir. I had to replace the door handle.

10 Q. These plants that were in there, were they marijuana

11 plants?

12 A. No, sir.

13 Q. What kind of plants were they?

14 A. Little house plants, like Wondering Jew plants.

15 Q. Where had you had them, on your floor? Where were

16 they?

17 A. There was a desk by the window, and they were on the

18 desk.

19 Q. And what condition was that desk in?

20 A. Everything had been knocked off of it.

21 Q. Okay. Was that window open?

22 A. Yes, it was.

23 Q. Had it been open?

24 A. I don't think so.

25 Q. And describe your house again. You say it was in

DEBRA MILLER - DIRECT BY MR. WAGNER

1 disarray. Explain to us what you mean. What was your
2 reaction. What did you see?

3 A. The TV was knocked off the TV stand, and stuff was
4 -- there was a mirror broken in my bedroom, trash thrown all
5 over everywhere where they had, I guess went through the
6 drawers of my bedroom and stuff.

7 Q. What did you immediately do?

8 A. I called the police.

9 Q. Did the sheriff's office come out?

10 A. Yes, sir.

11 Q. And did they take a report?

12 A. Yes, sir.

13 Q. Did they look at these plants or was anything out of
14 array or anything strange in the house that they found?

15 A. They found a pipe bomb that my son had there.

16 Q. And when you talk about a pipe bomb, what is it?
17 Did you know about it? What did they do?

18 A. I didn't know about it. Like I say, I worked all
19 the time. I wasn't home a lot. But the sheriff's office
20 called out the A. T. F. and they come out.

21 Q. And how big was this so-called pipe bomb?

22 A. Like a big firecracker.

23 Q. Okay. What had your son been doing with it?

24 A. He told me that him and his friends had been making
25 them just to play with.

DEBRA MILLER - DIRECT BY MR. WAGNER

1 MR. BALL: Judge, I'd object to hearsay.

2 THE COURT: Sustained.

3 Q. Okay. But did you know anything --

4 THE COURT: Just a moment.

5 Madam Forelady, ladies and gentlemen of the jury,
6 when I mentioned there are certain rules about evidence and
7 testimony, an objection has been made as to the testimony
8 being hearsay. Now, hearsay is just like the term implies,
9 that somebody is testifying as to what they think they hear.
10 And the reason that it's not admitted is because, again, it's
11 like taking notes. It's what we hear or think we hear.

12 And without the person that actually made the
13 statement so they might be questioned as to what was the
14 context of the statement, where was it made, why was it made
15 or, something of that nature then it doesn't rise to that
16 reliability that I talked about before, that evidence that you
17 need to make a decision has to be based on something that is
18 trustworthy and reliable. Now, these rules of evidence apply
19 not only to the State but also to the defendant.

20 You may proceed.

21 BY MR. WAGNER:

22 Q. But you didn't know your son was may making these
23 things?

24 A. No, sir, I did not.

25 MR. BALL: Leading, Judge. Objection.

DEBRA MILLER - DIRECT BY MR. WAGNER

1 THE COURT: All right. Very good. Again, you're
2 getting a very quick -- sustained. You're getting a very
3 quick lesson in evidence and law. Another rule we have is
4 that a question cannot be leading.

5 A leading question is a question that suggests an
6 answer. So in effect what you have with a leading question is
7 the lawyer is testifying and only asking the witness to agree.
8 In other words, the lawyer is the one testifying.

9 Now, when the witness is your witness you can't lead
10 the witness. You want to hear the witness testify to what
11 that witness knows, not what the lawyer wants the witness to
12 agree to. And now on cross-examination, in other words, when
13 the other side gets up, this applies both to the State and the
14 defense, the other side can lead the witness.

15 In other words, if it's somebody else's witness then
16 you can lead on cross-examination. But only when it's your
17 witness and you put the witness up we want to hear from the
18 witness and not from the lawyer. Again, as I say, leading
19 questions are -- rules against leading questions apply to both
20 the State and the defendant.

21 All right. You may proceed.

22 BY MR. WAGNER:

23 Q. Let me rephrase the question. Did you know anything
24 about these explosive devices that your son was making?

25 A. No, sir, I did not.

DEBRA MILLER - DIRECT BY MR. WAGNER

1 Q. When was the first you heard of it?

2 A. When the officers were there searching the house, or
3 going through the house.

4 Q. And who did they call in to look at this device?

5 A. A. T. F. from Anderson.

6 Q. Okay. Did anybody charge anybody in your house with
7 any drug charges or anything else?

8 A. No, sir.

9 Q. Your son, Jeremy, where was he on the night your
10 house was broken into and your stuff was stolen?

11 A. Oconee County Jail.

12 Q. And what was he in jail for?

13 A. I think it was stealing plants, shrubberies from a
14 nursery.

15 Q. Okay. Has he since done his time and finished up --
16 finished those cases up? Is he finished with those?

17 A. Yes, sir.

18 Q. Is he currently out working?

19 A. Yes, sir.

20 Q. When did you decide -- when did you figure out what
21 you had missing, and how did you go about doing that?

22 A. The next morning I went into his room. He called me
23 from jail and asked me to go in and see if his guns were still
24 there, and they were not.

25 Q. And what guns were missing?

DEBRA MILLER - DIRECT BY MR. WAGNER

1 A. A deer rifle, a 30-30 with scope; a 38 Special with
2 long barrel; an Xbox; a Playstation; a digital camera.

3 Q. And how much were these things worth?

4 A. Less than a thousand dollars.

5 Q. Okay. Did you report all that to the sheriff's
6 office?

7 A. Yes, sir.

8 Q. Did you ever find out where your stuff went?

9 A. Yes, sir.

10 Q. And where did it go?

11 A. To David's parent's house.

12 Q. And how do you know that?

13 A. David's mother called me and told me that --

14 MR. BALL: Judge, again, this would be hearsay

15 THE COURT: Restate your question.

16 BY MR. WAGNER:

17 Q. You testified that you think your stuff went to the
18 defendant's parent's house?

19 A. Yes, sir.

20 Q. The Coward's house. Okay. And why do you think
21 that?

22 A. Because David's mother called me and told me that --

23 MR. BALL: Again, Judge.

24 THE COURT: Again, she can testify that that's her
25 belief, but she doesn't know for a fact other than that's her

DEBRA MILLER - DIRECT BY MR. WAGNER

1 belief, and why is it her belief, because she received a call
2 from his mother, and that's not hearsay. It's hearsay when
3 she recites what her mother says.

4 Go ahead ask the question, or restate the question.

5 BY MR. WAGNER:

6 Q. Based on what his mother told you, where did you
7 think your stolen property was?

8 A. At David's parent's house.

9 Q. Okay. And based on that, what did you do?

10 A. I called Scott Arnold and reported it to him.

11 Q. Okay. You told Scott Arnold that's where the stuff
12 was?

13 A. I told him that's what David's mother had said.

14 Q. Did you ever find anything else besides the stuff
15 that you listed today? Was anything else that turned up
16 missing later?

17 A. Not that -- no, sir.

18 Q. The guns and the Xbox and all the games, they had
19 been there when you went to work that night?

20 A. Yes.

21 Q. They were gone when you came home?

22 A. Yes.

23 Q. Have you ever gotten any of the stuff back?

24 A. No, sir.

25 Q. Any of it ever recovered, to your knowledge?

DEBRA MILLER - CROSS BY MR. BALL

1 A. No, sir.

2 Q. You ever seen any of it again?

3 A. No, sir.

4 MR. WAGNER: Thank you, ma'am. That's all the
5 questions I have.

6 THE COURT: Cross-examine.

7 CROSS-EXAMINATION

8 BY MR. BALL:

9 Q. Just a few questions, Ms. Miller. Do you know this
10 young man?

11 A. Yes, sir, I do.

12 Q. What's his name?

13 A. David Coward.

14 Q. How long have you known him?

15 A. Probably 5 years, 6 years.

16 Q. As a matter of fact, he was a very frequent visitor
17 to your house?

18 A. Yes, he was.

19 Q. Actually lived down there for a while, right?

20 A. Yes, he did.

21 Q. He's been coming to your house since he was 15 years
22 old, right?

23 A. Probably.

24 Q. And you furnished him drugs many times?

25 A. No, sir, I did not.

DEBRA MILLER - CROSS BY MR. BALL

1 Q. You deny that?

2 A. I did not.

3 Q. Now, these guns that you were talking about that
4 were gone, they didn't belong to you, did they?

5 A. They were my son's.

6 Q. They belonged to Jeremy. So you can't really claim
7 they were stolen from you, can you?

8 A. They were stolen from my house.

9 Q. And is Jeremy a convicted felon?

10 A. Yes, he is.

11 Q. He's not even supposed to have that pistol, is he?

12 A. He was not a convicted felon at the time.

13 Q. And the solicitor kept asking you and telling you
14 that this thing happened last year. That's not true, is it?

15 A. Two years ago.

16 Q. That's right. Where was the bomb found?

17 A. On top of a mini refrigerator under a bunch of
18 stuff, papers and stuff.

19 Q. And you didn't have any idea it was there?

20 A. No, sir, I did not.

21 Q. And you didn't have any idea that there was any
22 drugs in the house?

23 A. No, sir, I did not.

24 Q. Have you ever had any drugs in the house?

25 A. Marijuana, yes, I have.

DEBRA MILLER - CROSS BY MR. BALL

1 Q. Did you smoke it?

2 A. In the past I have.

3 Q. And as a matter of fact, you furnished it to him,
4 too, didn't you?

5 A. No, sir, I did not furnish it to him.

6 Q. He didn't come down there from time to time and
7 smoke meth and marijuana with you?

8 A. No, sir, he did not.

9 Q. As a matter of fact, when you made the report to the
10 police you told them there was no property damage and no
11 theft, right?

12 A. No, sir.

13 Q. No is that?

14 A. No, sir, I did not tell them that.

15 Q. So if the officer had that on his report then he'd
16 just be mistaken or lying, right?

17 A. Why would he have it on his report? There was
18 damage, obvious damage there.

19 Q. Okay. You didn't report anything missing until a
20 month later, did you?

21 A. No, sir. I talked to Scott Arnold on that Monday.
22 Apparently, it was that Friday I think I called him.

23 Q. Did you give a statement in this case?

24 A. Yes, I did.

25 Q. Do you remember the date of that statement?

DEBRA MILLER - CROSS BY MR. BALL

1 A. No, I don't. I know it was two or three months
2 after the fact, but I did call Scott and tell him what was
3 missing.

4 Q. The statement you gave though indicates that you
5 didn't know that there was anything missing until the date
6 that you gave the statement, right?

7 A. No, sir, that's not true.

8 Q. The Xbox that the solicitor mentioned, which you
9 didn't happen to mention of your own, who did that belong to?

10 A. Jeremy, my son.

11 Q. It belonged to him, didn't it (indicated)?

12 A. No, sir.

13 Q. Was there any items that were taken up there that
14 belonged to you?

15 A. My camera, yes. A digital camera.

16 Q. What kind of camera what that?

17 A. It was a Kodak EasyShare camera.

18 Q. Do you know a young man by the name of Rogers?

19 A. I know of him. I don't personally know him.

20 Q. Russell Rogers?

21 A. Yes, sir.

22 Q. Better known as Rusty?

23 A. I don't know him. I mean, I know of him.

24 Q. How did you know him?

25 A. He hung around with David.

DEBRA MILLER - CROSS BY MR. BALL

1 Q. And they hung around with Jeremy, right?

2 A. Yes, but --

3 Q. At your house, right?

4 A. Russell did not come to my house.

5 Q. He did not?

6 A. Unless I was gone or something. I never seen him
7 there.

8 Q. Haven't you been convicted for shoplifting?

9 MR. WAGNER: Objection, Judge.

10 MR. BALL: Well, let me get the dates and so forth.

11 THE COURT: Well, in fact, you are going to have the
12 dates. You know the rule.

13 MR. BALL: You overruled his objection?

14 THE COURT: No. I'm going to find out if it meets
15 the rule.

16 Madam Forelady, ladies and gentlemen of the jury, if
17 you'd retire to the jury room for a moment. I need to take up
18 a matter of law with the attorneys. Do not discuss the case
19 among yourselves in any way.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 10:46 a.m.)

22 THE COURT: All right.

23 BY MR. BALL:

24 Q. All right, Ms. Miller. On 9-12-83 were you
25 convicted of shoplifting?

DEBRA MILLER (IC) - CROSS BY MR. BALL

1 A. Yes, sir.

2 THE COURT: What was the sentence?

3 MR. BALL: Beg your pardon?

4 THE COURT: What was the sentence? Shoplifting,
5 what is the?

6 MR. BALL: Oh.

7 BY MR. BALL:

8 Q. And you got 1 year suspended on 30 days and 1 year
9 probation, right?

10 A. Yes, sir.

11 Q. And then on 4-6-85 you were convicted for
12 shoplifting again, right, 2nd offense?

13 A. The 2nd offense I got the 30 days.

14 Q. And you got a 1 year probation and a thousand
15 dollars suspended, right?

16 A. Right.

17 THE COURT: In '85, did you say?

18 MR. BALL: Yes, sir.

19 MR. WAGNER: In '83 and '85.

20 THE COURT: That's a little more than 10 years,
21 isn't it?

22 MR. BALL: Beg your pardon?

23 THE COURT: A little more than 10 years.

24 MR. BALL: A little.

25 THE COURT: Well, then it's not admissible.

DEBRA MILLER (IC) - CROSS BY MR. BALL

1 MR. BALL: All right.

2 THE COURT: Evidence of a conviction under this rule
3 is not admissible if a period of more than 10 years has
4 elapsed.

5 BY MR. BALL:

6 Q. How about in 1999?

7 A. No, sir.

8 Q. Did you get convicted of a fraudulent check?

9 A. Yes, I did.

10 MR. BALL: And that's within the 10 year time.

11 THE COURT: Okay. Well, that's fine. That's why we
12 have these rules.

13 BY MR. BALL:

14 Q. And your sentence was what?

15 A. I paid the check off.

16 Q. Did you get any time out of that?

17 A. No, sir.

18 THE COURT: Was it in magistrate's court?

19 MR. WAGNER: Yes, sir.

20 THE COURT: Wouldn't be a year then, would it?

21 MR. BALL: That's all.

22 THE COURT: Well, the check, if it's in magistrate
23 court, it's not in excess of a year.

24 MR. BALL: But it's --

25 THE COURT: Pardon?

DEBRA MILLER (IC) - CROSS BY MR. BALL

1 MR. BALL: A fraudulent check goes to the
2 credibility, Judge. That's a lie. It doesn't have to be the
3 1 year to be.

4 THE COURT: What do you say, Mr. Wagner?

5 MR. WAGNER: Your Honor, I think number 1, it's
6 almost 10 years remote, too. I think the prejudice outweighs
7 the probative value on this. I think he's intentionally
8 trying to mislead the jury that she's a shoplifter based on
9 some 25 years ago which he knows the rules. He knows that's
10 not admissible.

11 THE COURT: Well, I think he's right on the evidence
12 that any witness has been convicted of a crime shall be
13 admitted if it involved dishonesty or false statement
14 regardless of the punishment. I think the fraudulent check
15 does by definition meet that. And that's a '99?

16 MR. BALL: Yes, sir, '99.

17 THE COURT: All right. That's the only one you'll
18 be able to use.

19 MR. BALL: All right, sir.

20 THE COURT: Anything else from the State?

21 MR. WAGNER: No, sir. Just, Your Honor, I would
22 ask, there's other witnesses. They will have some things they
23 can be impeached on but I would ask it be limited to stuff
24 that --

25 THE COURT: Well, at this time I think with this

1 experience, Mr. Ball, before you ask any impeaching questions
2 you will approach, give the Court what you are relying on.

3 MR. BALL: All right, sir.

4 THE COURT: Very good. Thank you.

5 All right. Anything else from the State?

6 MR. WAGNER: No, sir.

7 THE COURT: Anything from the defendant?

8 MR. BALL: No, sir.

9 THE COURT: All right. Ask the jury to join us.

10 (WHEREUPON, the jury enters the courtroom at
11 approximately 10:50 a.m.)

12 THE COURT: All right. Let the record reflect the
13 jury and alternate are in the jury box.

14 Madam forelady, ladies and gentlemen of the jury, we
15 have certain rules that apply whenever we try to impeach a
16 witness' testimony, and one of those things we can do is if
17 they have convictions for certain crimes.

18 Now, because it is more important that the
19 testimony is reliable rather than just something that would
20 undermine the individual we have limitations on it, and
21 something that is over 10 years old doesn't apply. If it
22 doesn't amount to anything serious or a sentence in excess of
23 a year it doesn't apply.

24 The law says that sort of thing is more -- well,
25 it's just more harmful than helpful. So therefore, we don't

DEBRA MILLER - CROSS BY MR. BALL

1 permit those sort of questions. And in this case I've
2 sustained objections to things that might have occurred back
3 in '83 and '85 as being more prejudicial than helpful in
4 determining the value of the testimony. However, if we have
5 any other question as to matters that might be within the
6 rules I'll admit it.

7 MR. BALL: All right. I do.

8 BY MR. BALL:

9 Q. On June 30, '99, were you convicted of fraudulent
10 check?

11 A. Yes, I was.

12 Q. Do you know who shot your dog?

13 A. No, sir, I don't.

14 Q. Do you remember this statement that we talked about
15 earlier that you gave a month or so after the incident? The
16 last sentence in that says Russell --

17 MR. WAGNER: Objection, Judge.

18 THE COURT: Well --

19 MR. BALL: It's her statement.

20 THE COURT: You know how to impeach on a prior
21 inconsistent statement.

22 BY MR. BALL:

23 Q. You are Debra G. Miller?

24 A. Yes, sir.

25 Q. Is that your signature on that statement?

DEBRA MILLER - CROSS BY MR. BALL

1 A. Yes, sir, it is but --

2 Q. Read the last line.

3 A. Okay. Russell Rogers killed my dog.

4 Q. And that was given on the 22nd of August of '07,
5 right?

6 A. Right.

7 Q. So as a matter of fact you do know who shot your
8 dog?

9 A. No, sir. I do not know that for sure.

10 Q. Why did you put it in your statement then?

11 A. Because that's who I thought it was.

12 Q. Did you tell the jury that the door had been kicked
13 in?

14 A. The doorknob was pushed over, kicked over.

15 Q. So there was damage to the door?

16 A. Yes.

17 Q. No indication of any entrance through a window or
18 anything, right?

19 A. Yes. Yes, sir, there was.

20 Q. Oh, there was?

21 A. Yes.

22 Q. Okay. Was there property damage to the window,
23 also, as well as the door?

24 A. No, sir.

25 Q. Was the window just up?

DEBRA MILLER - REDIRECT BY MR. WAGNER

1 A. (Nodded).

2 MR. BALL: That's all?

3 THE COURT: All right. Re-examine?

4 REDIRECT EXAMINATION

5 BY MR. WAGNER:

6 Q. So the defendant and these other boys, at least one
7 or two of the others ones used to come to your house to see
8 your son?

9 A. Yes, sir.

10 Q. And were they there when you were there?

11 A. Yes, sir.

12 Q. Were they there when you weren't there? You may not
13 know that. Do you know if they came to visit your son when
14 you weren't home?

15 A. Yes, sir.

16 Q. But if your son was locked up in the county jail, if
17 you were at work, did any of them have consent to come in your
18 house?

19 A. No, sir.

20 MR. BALL: Judge I didn't go into that.

21 THE COURT: Well, yes, sir. You asked about
22 visitation. So I'm going to overrule the objection.

23 You may answer the question.

24 BY MR. WAGNER:

25 Q. Did any of them have consent to come into your house

DEBRA MILLER - REDIRECT BY MR. WAGNER

1 when you were not there, when your son was not there?

2 A. No, sir.

3 Q. Now, this statement that Mr. Ball showed you, let me
4 hand up a copy of that. Is this your statement?

5 A. Yes, sir. Yes, sir, it is.

6 Q. Now, did you say anything else in that statement
7 that didn't have to do with the dog?

8 A. Would you repeat your question, please.

9 Q. Okay. What was that statement -- when was it given
10 and who did you give it to?

11 A. On August 7th, and I gave it to Scott Arnold.

12 Q. And what did you say in your statement? What did
13 you tell Scott Arnold?

14 A. I told him that Cindy had called me telling me that
15 David had come home with some of my guns. And I didn't find
16 out until later that the camera and the Xbox and the
17 Playstations were gone. Cindy said David was really high,
18 messed up drunk. And she told me that David, Russell and
19 Patrick were driving around in Patrick's Sister's car and they
20 came to her house.

21 Q. And who is Cindy?

22 A. David's mother.

23 Q. The defendant's mother?

24 A. Yes.

25 Q. And David would be the defendant?

DEBRA MILLER - RECROSS BY MR. BALL

1 A. Right.

2 Q. Okay. Is that what you told Scott Arnold a week or
3 so after the burglary?

4 A. Yes.

5 Q. When you found out?

6 A. Uh-huh.

7 Q. You based your thought that Russell had killed your
8 dog based on what Cindy told you?

9 A. Right.

10 Q. And that's what you gave in that statement?

11 A. Yes, sir.

12 Q. Do you know anything different from that since to
13 this day?

14 A. No.

15 MR. WAGNER: Okay. Thank you. That's all the
16 questions I have.

17 RECROSS-EXAMINATION

18 BY MR. BALL:

19 Q. What did you say the date of that statement was?

20 A. August 7th.

21 Q. Beg your pardon?

22 A. Oh, excuse me, 22nd.

23 Q. There you go.

24 A. I was looking at the year.

25 Q. So a month after the so-called incident?

DEBRA MILLER - RECROSS BY MR. BALL

1 A. Right.

2 Q. As a matter of fact, Cindy Coward called you to ask
3 you to stop giving drugs to her son, didn't she?

4 A. No, sir. No, sir.

5 Q. And didn't he live there at your place for a while
6 at one time?

7 A. He stayed at my house for a little bit, yeah.

8 Q. For how long?

9 A. I'm not sure. He was in and out.

10 Q. Three months?

11 A. I'm not --

12 Q. Or more?

13 A. Not three months all at one time, no.

14 Q. And at that time that he was living there he had
15 consent to come and go as he pleased?

16 A. No, he did not.

17 Q. Well, if he's living there why wouldn't he?

18 A. Because my husband was living with me at the time.
19 He was disabled and he never left the house. There was
20 somebody always there.

21 Q. But that didn't keep him from coming and going?

22 A. There was somebody at my house. He wasn't there --
23 permitted to be there without one of us being at home.

24 Q. And your husband was bedridden or just --

25 A. No, sir. He has bipolar disorder.

DEBRA MILLER - RECROSS BY MR. BALL

1 Q. And I believe you told the jury that you had smoked
2 marijuana there in the house?

3 A. Yes, I have.

4 Q. How long ago was that?

5 A. It's been probably a year ago.

6 Q. But since this incident you've actually smoked pot
7 there, right?

8 A. No, two years ago. I have -- yes, I have smoked pot
9 there since then but it's been over a year since I've smoked
10 pot.

11 Q. But it's been since the incident, right?

12 A. Yes, sir.

13 Q. Who was there with you when you were smoking?

14 A. I was by myself. My son was in prison.

15 Q. Nobody else there with you?

16 A. No.

17 Q. Did you grow the stuff?

18 A. No.

19 Q. But you did possess it, right?

20 A. One joint, yeah.

21 Q. You had it, right?

22 A. Yeah, one joint.

23 MR. BALL: That's all.

24 MR. WAGNER: Nothing further, Your Honor.

25 THE COURT: All right. You may step down. Thank

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 you.

2 MR. WAGNER: I call Russell Rogers.

3 RUSSELL ROGERS, after having been duly sworn,
4 testified as follows:

5 THE COURT: If you would, please give us your full
6 name for the record, spelling your last name.

7 THE WITNESS: Russell Howard Rogers, R-o-g-e-r-s.

8 THE COURT: Thank you, sir.

9 DIRECT EXAMINATION

10 BY MR. WAGNER:

11 Q. Mr. Rogers, where do you live?

12 A. Sable, South Carolina.

13 Q. You know the defendant, David Coward?

14 A. Yes, sir.

15 Q. Are you friends with him?

16 A. Not any more.

17 Q. Were you friends with him back in July of '07?

18 A. Yeah.

19 Q. Were you hanging out with him on a regular basis?

20 A. Yeah.

21 Q. The 26th or 27th of July, what were you all doing?

22 Did you end up -- let me rephrase that. Did you end up at the
23 victim, Debra Miller's house?

24 A. Yes, sir.

25 Q. Why did you go there?

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 A. To break in.

2 Q. To what?

3 A. To break in.

4 Q. Did you know nobody would be home?

5 A. Not until we got there.

6 Q. Well, did you know Jeremy --

7 A. Yes.

8 Q. -- her son? And did you know where he was at the
9 time?

10 A. No, sir.

11 Q. Did you know where Debra was?

12 A. David told me she must have been at work when we got
13 there because her car wasn't there or nothing.

14 Q. Had you ever been there before?

15 A. Yes, sir.

16 Q. Okay. And why were you there before?

17 A. Just to hang out, and they'd have, like, parties
18 down there and we'd all sit around the fire. That's basically
19 it.

20 Q. When had been the last time you'd been down there
21 prior to this night?

22 A. Probably about a month or so before.

23 Q. So on the night of the 26th, 27th of July 2007, I
24 keep thinking it's last year but I realize it's 2009, what
25 were you all doing earlier that evening? What were you doing?

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 A. We were at a party at a couple of our friends'
2 house.

3 MR. BALL: Could you ask him to speak up just a
4 little, Your Honor.

5 THE COURT: You might want to sit closer to the
6 microphone, please.

7 A. We were at a party at one of our friend's house.

8 Q. And when you say we, who was we?

9 A. David, Patrick and me.

10 Q. Three of you all?

11 A. Yes.

12 Q. And whose car were you in?

13 A. Patrick's, the Ford 500. I don't know if it's his
14 sister's car.

15 Q. Who was driving?

16 A. Patrick.

17 Q. What point in time did you all decide to go to Debra
18 Miller's house?

19 A. On the way back to Salem. We -- David mentioned
20 that -- I guess we just followed along with him and --

21 Q. What did David mention? What did he say?

22 A. I had a ring tone on my phone. It was of the song
23 that's called Let's Plan a Robbery, and when it come on David
24 was like, let's go to Jeremy's. It was all like, F him. So
25 we went over there.

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 Q. It was like what now? You do need to speak up. I'm
2 having trouble hearing you.

3 A. It was called Let's Plan a Robbery, the song on my
4 phone. And David was like, let's go over to Jeremy's and see
5 if he's there. If not, let's break in. And he was all like,
6 F Jeremy, all that, just getting pissed off.

7 Q. So what did you all do?

8 A. When we arrived there we noticed that his mom's car
9 wasn't there. There was no lights on in the house. So we
10 went to the trailer, looked through the windows to see if we
11 saw any signs of anybody in there.

12 David popped the screen off. Me and Patrick helped
13 him up through the window. David went to the door and let me
14 and Patrick in. And when we got in there we just started
15 taking everything, and David ended upcoming out with a rifle.
16 Patrick had a pistol when he come out. And I had Xbox and a
17 bunch of games for it and stuff.

18 Q. So the defendant here had the rifle?

19 A. Yes, sir.

20 Q. Patrick had the pistol?

21 A. Yes, sir.

22 Q. You had the Xbox and games and things?

23 A. Yes, sir.

24 Q. Then what did you all do?

25 A. We all got back out to the car except for Patrick.

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 Me and David were back out at the car. Patrick come out and
2 had the pistol. And he handed it to David, I guess, and then
3 I heard a gunshot. When I heard the gunshot I looked over and
4 there was a dog running across the yard, and I watched David
5 shoot and empty the whole gun at that dog and then it fell and
6 just started shaking.

7 Q. Then what did you all do?

8 A. We got in the car, took David home. David's mother
9 -- when we got there he went around behind the house to hide
10 the gun under the house. David's mother come out asking him
11 what he was doing. She found the gun, and I guess she called
12 Jeremy Miller's momma and told her.

13 Q. Is her name Cindy?

14 A. Yeah.

15 Q. And then what did you do? Did you leave David
16 Coward there at the house?

17 A. Yes, sir. He went in and me and Patrick went back
18 to my house.

19 Q. Did you all keep any of the stuff yourself?

20 A. Uh-uh.

21 Q. Why not?

22 A. Just to not have it around us, get rid of it.

23 Q. So it all stayed at his house, his mother's house?

24 A. All the Xbox and stuff come to my house.

25 Q. You kept the Xbox then?

RUSSELL ROGERS - DIRECT BY MR. WAGNER

1 A. Well, I kept it at my house down in the woods then
2 Patrick ended up selling it to somebody and he gave me half
3 the money back for it.

4 Q. Okay. Now, that same week -- this was the night of
5 July the 26th and 27th of 2007. That same week you were
6 actually up here in court and pled guilty to another count of
7 burglary 2nd degree, possession of cocaine and you got
8 probation for that.

9 A. Yes, sir.

10 Q. You're a convicted felon, too, are you not?

11 A. Yes, sir.

12 Q. Are you currently still on probation for that?

13 A. Yes, sir.

14 Q. And I believe that you actually were convicted on
15 that after you did this burglary we're talking about here
16 today?

17 A. Yes, sir.

18 Q. Okay. Are you still on probation for that?

19 A. Yes, sir.

20 Q. Okay. You being offered anything to testify here
21 today?

22 A. No, sir. I'm just trying to get all this off of me.
23 I want to start my life and everything, and I'm through with
24 all this. And, I mean, what's happened has happened. There's
25 no use trying to hide it. Just might as well get it over with

. RUSSELL ROGERS - CROSS BY MR. BALL

1 and move on.

2 Q. Is everything you've said here today, is it the
3 complete truth?

4 A. Yes, sir.

5 MR. WAGNER: Thank you. I don't have any further
6 questions.

7 THE COURT: Cross-examine.

8 CROSS-EXAMINATION

9 BY MR. BALL:

10 Q. Mr. Rogers, you say you had been to a party that
11 night?

12 A. Yes, sir.

13 Q. What kind of party?

14 A. Just like a little gathering at one of our buddy's
15 house.

16 Q. Was there drugs involved?

17 A. No, sir.

18 Q. No drugs?

19 A. There was alcohol.

20 Q. When you said you used to hang out at Debra Miller's
21 house and party there, what kind of parties would you have
22 there?

23 A. I'd just drink and -- I mean, everybody would be
24 drinking but there would be people off doing their own things.
25 I don't know what they were doing.

RUSSELL ROGERS - CROSS BY MR. BALL

1 Q. Drugs involved?

2 A. Yeah.

3 Q. Did Debra ever help -- join in the party?

4 A. No.

5 Q. Never?

6 A. I've never seen her.

7 Q. How much had you had to drink that night?

8 A. Not a lot. Maybe three, four beers.

9 Q. Explain this ring tone. I didn't catch all that.

10 A. There's a ring tone that's called Let's Plan a
11 Robbery.

12 Q. Called Let's Plan a Robbery?

13 A. Yes, sir.

14 Q. And that's on your phone?

15 A. It was on my old phone.

16 Q. Well, I mean, it was your phone at the time, right?

17 A. Yes, sir.

18 Q. So you were playing that and decided to rob this
19 house?

20 A. No. It come on when my mother tried to call me. It
21 started playing, and David gets the idea to go to Jeremy's and
22 rob his house.

23 Q. So your ring tone gave him the idea to go rob her
24 house; is that what you are saying?

25 A. Yes, sir.

RUSSELL ROGERS - CROSS BY MR. BALL

1 Q. You are denying shooting that dog?

2 A. Yes, sir.

3 Q. You are charged with it, aren't you?

4 A. Yes, sir.

5 Q. And I believe you had another charge also, didn't
6 you, within the past year or past ten years?

7 Shall we approach, Judge?

8 THE COURT: Yes, sir.

9 (WHEREUPON, a bench conference was had.)

10 THE COURT: All right. You may proceed.

11 BY MR. BALL:

12 Q. How old are you?

13 A. Nineteen.

14 Q. So how old were you in July of '07?

15 A. Seventeen.

16 Q. Seventeen. And you were drinking?

17 A. Yes, sir.

18 Q. Where did you get the beer when you would go down to
19 Debra's house? Did she furnish it?

20 A. No, sir. Most of the time David would get one of
21 his friends to buy it or something.

22 Q. David would get it for you?

23 A. Yeah. He has a way at this little -- there's a
24 store in Salem called Jake's, and even before he was 21 he
25 could go in there and buy beer.

RUSSELL ROGERS - CROSS BY MR. BALL

1 Q. Do you know how old he is?

2 A. No, sir.

3 Q. So he was 15 or 16 years old and he's buying beer
4 for you; is that what you're telling this jury?

5 A. I mean, I know he's 20, 21 years old at least.

6 Q. Now?

7 A. And he was under age buying beer for me, yes.

8 MR. BALL: That's all.

9 THE COURT: Re-examine?

10 MR. WAGNER: Nothing further, Your Honor, for this
11 witness.

12 THE COURT: All right. You may step down.

13 MR. WAGNER: Your Honor, we're going to have that
14 issue. There's going to be a matter of law we may need to
15 take up.

16 THE COURT: I think this will be a good time to take
17 the morning break. I'm going to ask you to retire to the jury
18 room, and this will be your morning break. I've got some
19 things I do need to take up with the attorneys, so while I'm
20 doing that if you -- and if you've got any smokers have
21 somebody to go with them. Very good.

22 Again, do not undertake discussion of the case among
23 yourselves in any way.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 11:14 a.m.)

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 THE COURT: Let's take a short break while you get
2 your witnesses. You got one witness?

3 MR. WAGNER: Yes, sir.

4 THE COURT: Very good. We'll stand at ease for a
5 few minutes.

6 (WHEREUPON, a brief recess was taken.)

7 THE COURT: The State ready?

8 MR. WAGNER: Yes, sir.

9 THE COURT: Anything from the defense before we
10 begin the Jackson V. Denno? And the defense did ask the Court
11 about whether or not the defendant testifies in the hearing on
12 Jackson V. Denno, that that does not in any way affect his
13 right to testify or not testify at trial.

14 MR. BALL: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. WAGNER: Your Honor, we'd call Scott Arnold.

17 SCOTT BRADLEY ARNOLD, after having been duly
18 sworn, testified as follows:

19 THE COURT: All right. If you would, please, sir,
20 give us your full name for the record, spelling your last
21 name.

22 THE WITNESS: Scott Bradley Arnold, A-r-n-o-l-d.

23 DIRECT EXAMINATION

24 BY MR. WAGNER:

25 Q. Who do you work for?

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 A. Oconee County Sheriff's Office.

2 Q. And how long have you worked for the sheriff's
3 office?

4 A. With the sheriff's office, been about 11 years.

5 Q. Back in 2007, in July, what were your job duties
6 with the sheriff's office back then?

7 A. I was a property crimes investigator.

8 Q. Are you still basically doing the same thing?

9 A. Yes, I am.

10 Q. And as a property crimes investigator did you get
11 assigned the burglary case at Debra Miller's house in Salem?

12 A. Yes, I did.

13 Q. And did you develop any suspects from your
14 investigation?

15 A. Yes, I did.

16 Q. And who were they?

17 A. David Coward, Russell Rogers, and Patrick McKenzie.

18 Q. And what did you base -- what brought their names up
19 and what led you to talk to the defendant?

20 A. I had spoke with the victim and she had stated that
21 -- she had stated that she thought that the individuals were
22 involved.

23 Q. And did you talk to David Coward about this case?

24 A. Yes, I did.

25 Q. And where was that?

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 A. At the Oconee County Detention Center.

2 Q. And when was that?

3 A. October the 26th, I believe.

4 Q. Let me show you what's been marked as State's
5 Exhibit Number 1 for identification.

6 A. I spoke with him October the 26th, 2007.

7 Q. Okay. And where again did you talk to him?

8 A. At the law enforcement center, detention center.

9 Q. Was he in custody at the time?

10 A. Yes, he was.

11 Q. Did you go down and talk to him about this
12 particular case?

13 A. Yes, I did.

14 Q. And did you read him his Miranda rights?

15 A. Yes, I did.

16 Q. And how did you do that?

17 A. Read them to him verbally. I read each line to him.

18 Q. Off State's Exhibit Number 1?

19 A. Yes, I did.

20 Q. State's Exhibit 1 there, is it fairly and accurately
21 and does it still depict the form as it was the day that you
22 used it?

23 A. Yes, it is.

24 Q. Has it been altered or tampered with in any manner?

25 A. No, it's not.

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 Q. And is it still in the same condition as it was that
2 day?

3 A. Yes, it is.

4 Q. Has it been in your custody since then?

5 A. Yes, it has.

6 Q. Tell us exactly what you read the defendant and how
7 you advised him of his constitutional Miranda rights.

8 A. I went down to the law enforcement center, had him
9 pulled out. We went into the little interview room right
10 there next to the control room and I told David that I was
11 working on this case, and I told him before I get started I
12 would have to read him his rights. I documented the time at
13 14:29 hours and I read the Miranda rights to him.

14 I said before I can ask you any question you must
15 understand your rights. You have the right to remain silent.
16 Anything you say can be used against you in court. You have
17 the right to talk to a lawyer for advice before we ask you any
18 questions and to have him with you during questioning. If you
19 can not afford a lawyer one will be appointed for you before
20 any questions, if you wish. If you decide to answer any
21 questions now with that lawyer present you still have the
22 right to stop answering at any time. You also have the right
23 to stop answering any time until you talk to a lawyer.

24 Then I advised him of his waiver of rights. I have
25 read these statements of my rights. I understand what my

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 rights are. I'm willing to make a statement and answer
2 questions. I do not want a lawyer at this time. I understand
3 and know what I'm doing. No promises or threats have been
4 made to me, no pressure, coercion of any kind have been used
5 against me.

6 Then I asked him did he understand them. He said
7 yes. And I asked him would he initial by each line that I
8 read him. Then he signed it down at the bottom. I witnessed
9 it, and the time is 14:30 hours.

10 Q. Okay. So he initialed it. Each one of those rights
11 that you read him did you read them to him as verbatim as on
12 that form?

13 A. Yes, I did.

14 Q. State's Exhibit Number 1?

15 A. Yes.

16 Q. And he initialed each one that he understood?

17 A. Yes.

18 Q. Now, during your time at law enforcement have you
19 had an opportunity to observe people that have been under the
20 influence of alcohol or drugs or any kind of mind altering
21 substance?

22 A. Yes, I have.

23 Q. And did he appear to you to be under the influence
24 of anything that day?

25 A. No.

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 Q. Did he answer your questions and did he speak to you
2 coherently?

3 A. Yes, he did.

4 Q. Did he seem to understand what you were asking him?

5 A. Yes, he did.

6 Q. And what you were reading to him?

7 A. Yes.

8 Q. Now, to the best of your knowledge could he read or
9 write?

10 A. Best of my knowledge I think he could.

11 Q. But you read them to him?

12 A. I read them to him.

13 Q. Okay. And then he read them and signed them?

14 A. Yes.

15 Q. Okay. And did he agree on the form -- State's
16 Exhibit Number 1 for I. D., did he agree to waive those
17 rights?

18 A. Yes, he did.

19 Q. And talk to you?

20 A. Yes.

21 Q. Let me show you State's Exhibit Number 2 for
22 identification. Now, after he agreed to talk to you and
23 signed State's Exhibit Number 1, did you all talk about what
24 had happened or did he just immediately -- did you give him a
25 form? What did you do next?

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 A. I told him that I had been investigating the case
2 and had some other statements and his name had been mentioned.
3 And, you know, I pretty well told him I knew what had happened
4 and the other co-defendants were cooperating, or the other
5 co-defendant was cooperating with me. And he and I just --
6 needed him to come clean with me because I knew what had
7 happened. And after speaking with him about it he said he'd
8 tell me the truth.

9 Q. Okay. Did you ever threaten him in any manner?

10 A. No, I did not.

11 Q. Did you make him any promises or hold out any hope
12 or reward for him to give you a statement?

13 A. No, I did not.

14 Q. Did you threaten his family, his friends, did you
15 ever use any physical violence or just threats or
16 intimidation, anything like that to get him to give you a
17 statement?

18 A. No, I did not.

19 Q. And best of your knowledge was his statement freely
20 and voluntarily given by him?

21 A. Yes, it was.

22 Q. Did you give him a Miranda form and did you go over
23 his rights again on that form?

24 A. After I spoke with him I asked him to give me a
25 voluntary statement. He said he would, and he filled the top

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 out. And I asked him to read the Miranda rights that was on
2 the voluntary statement. I said if you would, read them and
3 initial by each line, which he did.

4 Q. Okay. And can you read those as it appears on that
5 statement, how he read them that day.

6 A. Before answering any questions or making any
7 statements Scott Arnold, investigator, identified himself as
8 -- he erased. He put his name and he erased through it, duly
9 warned and advised me that I know and understand that I have
10 the following rights.

11 That I have the right to remain silent. I do not
12 want a lawyer. I do not have to answer any questions or to
13 make any statements at all. That any statement I make can and
14 will be used against me in court or courts for law for the
15 offense or offenses concerning which the following statement
16 is here and after made.

17 I have the right to consult with a lawyer of my own
18 choice before or any time during any questions or statements I
19 make. That if I can not afford to hire a lawyer I may request
20 to have a lawyer appointed for me for the proper authority
21 before or any time during any questions or statements that I
22 make without costs or expense to me but I can stop answering
23 any questions or making any statements any time that I choose
24 and call for the presence of a lawyer to advise me before
25 continuing for any more questioning or making any more

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 statements whether or not I have already answered some
2 questions or made statements.

3 I do not want to talk to a lawyer. I hereby
4 knowingly and purposely waive my right to remain silent and
5 have my right to have a lawyer present while I make the
6 following statement to the aforesaid person knowing I have the
7 right and privilege to terminate any interview to any,
8 hereafter, to have a lawyer present with me before answering
9 any questions or making any more statements, if I choose to do
10 so.

11 I declare that the following voluntary statement is
12 made of my own free will without promise or hope of reward,
13 without fear or threat or physical harm, without coercion,
14 favor or offer of favor, without leniency or offer of leniency
15 by any person or persons whoever.

16 Q. Okay. And did he initial each line of that
17 statement?

18 A. Yes, he did. Everything I read he initialed.

19 Q. Did he read it back to you?

20 A. No, he did not.

21 Q. I mean --

22 A. I asked him to read that.

23 Q. Did he read it? I mean, when you say read it, not
24 reading it out loud?

25 A. I gave him a moment to read, and I said when you

SCOTT ARNOLD (IC) - DIRECT BY MR. WAGNER

1 read it you initial by it.

2 Q. Okay.

3 A. I knew I had read them to him before and I asked him
4 just to read it to himself.

5 Q. And did he go ahead and give you a statement?

6 A. Yes, he did.

7 Q. What did he say?

8 A. He said drove up, parked on side of road. Me and
9 Russell went in the house. I crawled through window, went in
10 and got my Xbox. Went to Jeremy Miller's dresser. Russell
11 grabbed a 38 pistol, and left. Russell shot the dog sometime
12 while leaving. Patrick McKenzie sat in car. End of
13 statement. And he gave that at 2:59.

14 Q. And then any time while you were questioning him did
15 you ever promise him anything or threaten him or try to coerce
16 him to give you a statement in any manner?

17 A. No, I did not.

18 Q. To the best of your knowledge was this statement and
19 his rights waiver freely and voluntarily given by the
20 defendant, David Coward?

21 A. Yes, it was.

22 MR. WAGNER: Your Honor, that's the only thing we
23 have on this issue.

24 THE COURT: Cross-examine.

25 CROSS-EXAMINATION

SCOTT ARNOLD (IC) - CROSS BY MR. BALL

1 BY MR. BALL:

2 Q. Officer Arnold, did Cindy Coward's name come up at
3 any time during this interview?

4 A. Yes, it did.

5 Q. And did you tell him that if he didn't sign this
6 statement that you were going to arrest his momma for
7 receiving stolen goods?

8 A. No, I did not.

9 Q. Did you make any reference whatsoever to that?

10 A. No, I did not.

11 Q. Did you ask him about any guns or so forth that
12 might be up at Cindy's?

13 A. I asked him where the guns were, and to my knowledge
14 he didn't tell me.

15 Q. But Cindy's situation did come up?

16 A. Yeah, I mentioned her name.

17 Q. In what capacity? How did that come up?

18 A. I told him that his mother's name had been mentioned
19 and I felt like that -- you know, I knew she didn't commit the
20 crime and I told him I don't think anyone else needs to get in
21 trouble over this because his mother's name had been mentioned
22 in a capacity where she had knew -- she knew some things and I
23 felt like, you know, that she didn't -- nobody else needed to
24 get in trouble except the ones that committed this crime.

25 MR. BALL: That's all.

DAVID LEE COWARD (IC) - DIRECT BY MR. BALL

1 THE COURT: Reexamine?

2 MR. WAGNER: I don't have anything further, Your
3 Honor.

4 THE COURT: All right. You may step down.

5 MR. BALL: We call David Coward.

6 Are you finished?

7 MR. WAGNER: Yes.

8 THE COURT: You may call him. The State rests on
9 the presentation?

10 MR. WAGNER: Yes, sir.

11 DAVID LEE COWARD, after having been duly sworn,
12 testified as follows:

13 THE COURT: If you would, please, give us your full
14 name, spelling your last name for the record.

15 THE DEFENDANT: David Lee Coward, C-o-w-a-r-d.

16 THE COURT: Thank you, sir.

17 DIRECT EXAMINATION

18 BY MR. BALL:

19 Q. Now, David, speak up so I can hear you and then
20 everyone else can.

21 Do you remember the date this statement was given?

22 A. No, sir. Probably sometime in October.

23 Q. How long had you been in jail?

24 A. About a month.

25 Q. Tell the Court about this statement, how that came

DAVID LEE COWARD (IC) - DIRECT BY MR. BALL

1 about.

2 A. Well, Scott Arnold had come and got me out of my
3 cell wanting to talk to me, and he asked me if I would talk to
4 him. And I said yeah, I'll tell you -- I mean, I won't tell
5 you but I'll go to the office with you and talk to you. And
6 when we got in there his exact words was shit hit the fan.

7 Q. Was what?

8 THE COURT: Just a minute. Let's find other
9 expressions to use. We don't need to -- if you're quoting
10 somebody that's one thing but let's just don't voluntarily --

11 MR. BALL: What did he say?

12 THE COURT: He used an expression about hitting the
13 fan, which I don't find appropriate.

14 MR. BALL: Okay.

15 A. Well, anyway, he had told me that he had heard --
16 had heard our names in the crime or whatever and told me that
17 he had heard my momma's name and said that if I couldn't write
18 a statement admitting to the crime that he had enough evidence
19 or whatever to arrest my mom. And he said that he didn't want
20 to get her in any trouble, so if I did that that, you know,
21 everything would be fine. So I just filled out a statement.

22 Q. So he said that he was going arrest your momma?

23 A. Yeah. He said he could, yeah.

24 Q. Did he ever tell you that if you didn't sign it he
25 would?

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 A. Yes, sir.

2 Q. Did he give you a copy of that statement after you
3 made it?

4 A. Yes, sir.

5 MR. BALL: That's all.

6 THE COURT: All right. Cross-examine?

7 MR. WAGNER: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. WAGNER:

10 Q. Mr. Coward, you were convicted back -- I believe the
11 same week that you were charged for doing this burglary. On
12 the 30th day of August 2007 you were convicted of burglary 2nd
13 degree and petty larceny; is that correct?

14 A. Yes, sir.

15 Q. So when you were talking to Scott Arnold, had you
16 talked to him before previously a few weeks prior to that?

17 A. I'm not sure, sir.

18 Q. I mean, you were locked up in jail on a different
19 burglary, were you not?

20 A. Oh, yes. Yes, sir.

21 Q. And you gave Scott Arnold a statement on that case,
22 too, did you not?

23 A. Yes, sir.

24 Q. So you were well aware of your rights and what --
25 you know, what he had to read to you, what he had to tell you

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 and you had to waive those rights, were you not? I mean, did
2 you give a rights waiver or did you give a voluntary
3 statement, or did you give a statement on that other case?

4 A. Yes, sir.

5 Q. So you had talked to Scott Arnold before. You were
6 familiar with his procedures?

7 A. I have talked to him before, yes.

8 Q. And when he came and got you out of the cell to talk
9 to you about this particular charge he took you right in right
10 next to the thing there where it's an open area. There's
11 windows, places that people are walking by the door?

12 A. Right next to the fingerprint room.

13 Q. Right. So it's a public area, is it not?

14 A. No, sir, it's an office.

15 Q. Okay. But there are people walking by? I mean,
16 there's people around there; is that not correct?

17 A. He shut the door. It's a room. It's an office
18 right next to the fingerprint room.

19 Q. In a public building where there are lots of people?

20 A. Yes, in the jail. Yes.

21 Q. And he read you your Miranda rights, did he not?

22 A. Yes, sir.

23 Q. Let me show you State's Exhibit Number 1. Are those
24 your initials by each one of those rights and is that your
25 signature down at the bottom?

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 A. Yes, sir.

2 Q. Okay. And did you read that, he read them to you
3 and you understood when he was reading them? What was going
4 on?

5 A. I wasn't paying attention, sir.

6 Q. You weren't paying attention?

7 A. I mean, after he told me that I was just getting
8 things done so my momma couldn't get in trouble.

9 Q. Okay. And did you, in fact, take these guns to your
10 momma's house?

11 A. No, sir, I did not.

12 Q. So there would be no reason -- if you didn't take
13 these guns to your momma's house and your momma didn't have
14 them there would be no reason supposedly for him to try to get
15 your mother in trouble, would he?

16 A. I don't know cops.

17 Q. I mean, if you didn't do anything.

18 A. I mean, I'm not sure how things work around.

19 Q. If you are saying he threatened your mother and
20 that's the only reason you just didn't pay attention so you --

21 A. He didn't say what he had. He didn't say what it
22 was against my mother that he could arrest her for. He just
23 said he had things on my mother that he could.

24 Q. Okay. And that because of that that's why you felt
25 like you had to take the time to initial each one of those

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 rights and then sign it?

2 A. Yes, sir.

3 Q. Okay. And then he went through it again with you on
4 what I'll show you, State's Exhibit Number 2. Now, is that
5 your handwriting there? Is that your signature at the bottom
6 of that?

7 A. Yes, sir.

8 Q. Okay. Did he ever use any kind of physical force on
9 you, did he ever hit you, did he ever threaten any violence on
10 you?

11 A. No, sir.

12 Q. And did he ever promise you anything?

13 A. No, sir.

14 Q. Okay. But your testimony here today as a convicted
15 felon is that he said he might lock your momma up?

16 A. Yes, sir.

17 Q. Single her out?

18 A. Yes, sir.

19 Q. But you had no idea what for?

20 A. I mean, he -- no, sir.

21 Q. Nothing. But I believe you testified earlier
22 something about the stolen guns. Am I mistaken on that? Did
23 you not say that?

24 A. Did I testify? No, sir.

25 Q. That Scott Arnold said something about that?

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 A. No.

2 Q. Scott told you charge your momma with receiving
3 stolen goods?

4 A. I did not say that, no.

5 Q. And did you ever know your mom to be doing illegal
6 things?

7 A. No, sir.

8 Q. Okay. And you are saying Detective Arnold just
9 comes out of the blue I'm going to go charge your momma, and
10 so you felt like you had to give that statement?

11 A. No, sir. I'm saying that he -- I figured that
12 people had said things about -- I knew what happened. So I'm
13 saying he -- somebody must have said that he called -- I don't
14 know, sir, honestly.

15 Q. So if he mentioned your momma --

16 A. I mean, I don't understand what you're asking.

17 Q. If he mentioned your momma in the context of your
18 momma called the victim, said you had the guns down at her
19 house so we know you were involved, you turned that around
20 into he threatened your momma?

21 A. No, sir, that's not what I did.

22 Q. Okay. But it is your signature on both of those
23 sheets of paper?

24 A. Yes, sir.

25 Q. And your testimony today is he didn't threaten you

DAVID LEE COWARD (IC) - CROSS BY MR. WAGNER

1 and he didn't beat you or anything. The only thing he did was
2 said that he might have to lock your momma up?

3 A. Yes, sir.

4 Q. And that's the reason you gave the statement?

5 A. Yes, sir.

6 Q. Okay. But you also gave a voluntary -- gave a
7 statement and signed another rights waiver a few weeks prior
8 to that on the other burglary that you were charged with that
9 you were in custody with and he didn't threaten your momma on
10 that one, did he?

11 A. No, sir.

12 Q. Okay. But if threatening your momma is what it took
13 to get this one --

14 A. My mother was not ever brought up in that case.

15 Q. Okay. But if he wanted you to give a statement
16 you're saying that he could have just threatened your momma on
17 that one too and you would have given a statement?

18 A. Would not have.

19 Q. But he didn't threaten your momma on that, did he?

20 A. No.

21 Q. And you gave a statement on that one?

22 A. Yes, sir.

23 Q. So a statement on one was given with no threats at
24 all but you wouldn't give a statement again on the other one
25 unless he threatened your momma?

DAVID LEE COWARD (IC) - REDIRECT BY MR. BALL

1 A. Well, the other one -- I mean, I was guilty of the
2 other one. So I just was getting that done.

3 Q. But you are well aware that the victim died on that
4 other case?

5 A. Yeah, I heard while I was away in Florence.

6 Q. So you're well aware that the other case you're
7 saying that you're guilty of the victim died on that?

8 A. Yes, sir.

9 Q. But you are on trial for this case?

10 A. Yes, sir.

11 MR. WAGNER: Okay. I don't have anything further,
12 Your Honor.

13 MR. BALL: Just a couple.

14 REDIRECT EXAMINATION

15 BY MR. BALL:

16 Q. Do you have a copy of that statement up there with
17 you?

18 A. Yes, I do.

19 Q. And up at the top it says I, the undersigned, David
20 L. Coward, right, second line?

21 A. Hang on.

22 THE COURT: Now, this is State's Exhibit Number 2?

23 MR. BALL: It's the statement.

24 A. Are you reading the statement or --

25 Q. The statement itself. Look at the statement itself.

DAVID LEE COWARD (IC) - REDIRECT BY MR. BALL

1 A. Okay. I, the undersigned, yeah.

2 Q. Did you ever sign it?

3 A. My name is here, yes, sir.

4 Q. But the statement itself, I undersigned, you did not
5 ever sign that statement, did you?

6 A. It's not --

7 Q. Let me see what they've offered you.

8 You never signed that, did you?

9 A. No, sir.

10 MR. BALL: That's all.

11 THE COURT: Recross-examine?

12 MR. WAGNER: I don't have anything further, Your
13 Honor.

14 THE COURT: You may step down.

15 All right. Anything else from the defendant?

16 MR. BALL: Judge, we would just move that it be kept
17 out. He never signed it.

18 THE COURT: Am I missing something? We're talking
19 about State's Exhibit Number 2?

20 MR. WAGNER: Your Honor -- I'm sorry. I didn't mean
21 to interrupt. I think I can clear this up quickly.

22 THE COURT: Well, all right.

23 MR. WAGNER: The copy that I have and that Mr. Ball
24 has, that statement is folded up where his signature was, was
25 folded up. I don't think it got on my copy or on his copy but

1 it's on the actual original. It's there.

2 THE COURT: Well, I'm looking at State's Exhibit
3 Number 2 and it has signature of person giving voluntary
4 statement, David L. Coward.

5 MR. BALL: It's not on ours.

6 THE COURT: Well, that's not --

7 MR. WAGNER: Your Honor, that's what I'm saying.
8 The copy that I have and Mr. Ball has, we don't have it on
9 there because that thing was folded up, which it just dawned
10 on me that that was folded up. It's a long statement and they
11 had to fold it.

12 MR. BALL: Well, what was furnished to him and us
13 does not have a signature on it, Judge.

14 THE COURT: Well, come and look at it.

15 MR. BALL: It was on that but he never was furnished
16 that.

17 MR. WAGNER: Well, it was folded up.

18 THE COURT: It says -- he's got his initials down
19 there that he was. I certify I have received a copy of this
20 statement D. L. C.

21 All right. Anything else from the defendant?

22 MR. BALL: No, sir, but I would just point out that
23 what we were furnished under Brady did not have that.

24 THE COURT: Well, I'm not sure if I see the
25 prejudice in as much as Mr. Coward acknowledged at the time

1 that the statement was done that he received a copy of the
2 statement.

3 MR. BALL: I understand.

4 THE COURT: All right. Anything from the State?

5 MR. WAGNER: Your Honor, at this time we would move
6 to admit State's Exhibit Number 1 and Number 2. And I think
7 that Detective Arnold established that he Mirandized and read
8 the defendant his constitutional rights at least 2 times, once
9 off the rights form where the defendant initialed each one and
10 then signed it and agreed to talk to him, a second time when
11 they went through it at the top of the voluntary statement
12 form, which is State's Exhibit Number 2, that he said he
13 understood it, that he freely and voluntarily went ahead and
14 gave him that statement, signed it and he got a copy of it.

15 I'd also ask the Court to take a look, I know he
16 says his mother was threatened but he by his own admission
17 gave a voluntary statement on another burglary case that he
18 was currently at the time this statement was given was locked
19 up on and Officer Arnold had not done anything to make him
20 give a statement on that case. I believe Officer Arnold's
21 testimony is credible. I believe the defendant with prior
22 convictions and a prior violent felon on trial for this case
23 is not credible.

24 THE COURT: Anything further from the defendant?

25 MR. BALL: No, sir.

1 THE COURT: All right. I notice that on State's
2 Exhibit Number 1 that the last statement on the waiver of
3 rights, no promises or threats have been made to me and
4 pressure or coercion of any kind has been used against me, and
5 that's initialed, in addition to the signature of the
6 defendant.

7 I also notice that the defendant said he didn't --
8 he, meaning the officer, didn't say what he had on his mother.
9 I figured people had said things. I knew what happened.

10 Considering the totality of the statements I find
11 that statement was valid as given, and having considered all
12 of the evidence I'm convinced by a preponderance of the
13 evidence that statement was -- that the defendant was fully
14 advised of his rights under the 6th and 5th Amendment,
15 including the right to remain silent, that any statement can
16 and will be used against him in a court of law, his right to
17 have an attorney, and if he couldn't afford one one would be
18 appointed for him, the right to consult with his attorney, the
19 right to interrupt and terminate the interrogation at any time
20 and had the further right to stop answering questions at any
21 time.

22 Moreover, the defendant was advised that the
23 interrogation would cease until he was provided an attorney
24 and given an opportunity to consult with that attorney prior
25 to further interrogation.

1 Also, the Court finds that the defendant knowingly
2 and intelligently waived his rights under the 5th and 6th
3 Amendments, as indicated by his signature, and that the
4 statement or confession was freely and voluntarily given
5 without duress, without coercion, without undue influence,
6 without reward, without promise or hope of reward, without
7 promise of leniency, without threat of injury and without
8 compulsion or inducement of any kind, that such alleged
9 incriminating statement or confession was the voluntary
10 product of free and unconstrained will of the defendant.

11 I do find all of these conclusions beyond a
12 reasonable doubt and will admit the statement. The motion to
13 suppress is denied.

14 MR. BALL: Thank you, Judge.

15 THE COURT: Anything else from the State?

16 MR. WAGNER: No, sir.

17 THE COURT: All right. Let's see, I'm still trying
18 -- is this 10 of 12:00 now. I was just looking at the clock
19 back there. It's about an hour off.

20 Would counsel approach. Let's find out what we're
21 going to do here.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: Anything further from the State before
24 we bring the jury back?

25 MR. WAGNER: No, Your Honor.

BRANDON LONG - DIRECT BY MR. WAGNER

1 THE COURT: From the defense?

2 MR. BALL: No, sir.

3 THE COURT: All right. Very good. Ask the jury to
4 join us, please.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 12:00 p.m.)

7 THE COURT: All right. Let the record reflect the
8 jury and alternate are in the jury box.

9 You may proceed, Mr. Wagner.

10 MR. WAGNER: The State would call Brandon Long.

11 BRANDON LONG, after having been duly sworn,
12 testified as follows:

13 THE COURT: If you would, please, give us your full
14 name for the record, spelling your last name.

15 THE WITNESS: It's Brandon Long, L-o-n-g.

16 THE COURT: Very good. Thank you, sir.

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q. Officer Long, tell us what you do for a living, who
20 you work for and what your current job duties are.

21 A. Yes, sir. I work for Oconee County Sheriff's
22 Office. I'm a sergeant in narcotics investigation.

23 Q. So you are what people would refer to as narc?

24 A. Yes, sir.

25 Q. Narc agent. Back on July 26th, into the morning of

BRANDON LONG - DIRECT BY MR. WAGNER

1 the 27th, 2007, what were your job duties then and what
2 basically were you doing?

3 A. I was corporal on nightshift, basically assistant
4 supervisor.

5 Q. Did you get called out to Debra Miller's house up in
6 Salem?

7 A. Yes, sir.

8 Q. On ?

9 A. Yes, sir, I did.

10 Q. What was the purpose of you going out there?

11 A. We originally went out there on a burglary.

12 Q. Did you also go out there with Derek Pace?

13 A. Yes, sir.

14 Q. Is he currently still working third shift?

15 A. Yes, sir.

16 Q. So it's not easy for him -- as easy for him to be
17 here as it would for you to come?

18 A. Yes, sir.

19 Q. But you were out there with him?

20 A. Yes, sir.

21 Q. You had an opportunity to review the report?

22 A. Yes.

23 Q. From that evening?

24 A. Yes, sir.

25 Q. Basically, what's your memory? And I know you all

BRANDON LONG - DIRECT BY MR. WAGNER

1 work a lot of cases, but what did you see when you went out
2 there? What did the scene look like, what happened?

3 A. When we arrived we seen a dog. I want to say it's
4 like a beagle dog, something, a smaller dog in the driveway
5 that had been shot. We went inside. Basically, we looked
6 around the residence, and upon being in there I seen what
7 turned out to be a pipe bomb. And at that time, we backed
8 everybody out and called the Anderson Bomb Squad.

9 Q. What kind of condition was the house in?

10 A. It was kind of scattered around like.

11 Q. Did it appear to you like it had been ransacked?

12 A. Yes, sir.

13 Q. Or was it just messy?

14 MR. BALL: Now, Judge, he's leading his witness.

15 THE COURT: Well, again, that's true. Restate your
16 question.

17 BY MR. WAGNER:

18 Q. Tell us what it looked like. Did it appear that --
19 had anything occurred there?

20 A. It was consistent with a burglary, like somebody had
21 been going through their stuff and just threw it.

22 Q. Did you see any plants on the floor?

23 A. You're referring to marijuana plants?

24 Q. Uh-huh.

25 A. No. No marijuana plants in that residence.

BRANDON LONG - DIRECT BY MR. WAGNER

1 Q. Okay. Did you see any other illegal drugs or
2 anything like that in the residence?

3 A. We did find some -- what's commonly used as
4 marijuana smoking pipes, had residue in them. I mean, there
5 was no large amount of drugs or anything like that in the
6 residence, no.

7 Q. But there were no marijuana plants growing in the
8 house?

9 A. No.

10 Q. When you saw this, we're calling it a pipe bomb, but
11 describe it. What did it look like? How big was it?

12 A. It was basically a metal pipe, probably this big
13 around, about that long (indicated). One end of it had a
14 metal cap on the end of it. The other end had a metal cap
15 with two wires running out of it.

16 Q. When you saw that what did you all do again?

17 A. We -- I got everybody out of the house and we called
18 the bomb squad, somebody that knew what to do with it. I
19 wasn't going to take no chances.

20 Q. And did they come out that night?

21 A. Yes, sir.

22 Q. Do you have any knowledge as to who the pipe bomb
23 belonged to?

24 A. Derek Pace interviewed Jeremy Miller, and he stated
25 that Jeremy claimed that the pipe bomb was his.

BRANDON LONG - DIRECT BY MR. WAGNER

1 Q. Okay. Had you ever had any contact with Debra
2 Miller prior to this?

3 A. No, sir.

4 Q. In the report I believe it was referred to initially
5 there was no theft or no damage. Do you know -- did you
6 understand what was going on with the victim that night, as
7 far as that goes?

8 A. Oh, she was upset. I mean, she was very upset about
9 her dog. I remember that. Apparently, she was pretty close
10 with her dog.

11 Q. Is it common for people to not know what's
12 missing --

13 A. Yeah, I mean --

14 Q. -- initially when they come home?

15 A. The house, like I said, everything had been
16 scattered out in the house. I mean, it would be kind of hard
17 to say okay, this is missing, this is missing.

18 Q. So if the report reflected there was nothing taken
19 that night, would that be unusual?

20 A. No, sir.

21 Q. Would you say that that's common?

22 A. Pretty much, yeah.

23 Q. In your experience as a police officer do you find
24 that it's common for people to find things later on, a day, a
25 week, a month later that are missing that they did not know?

BRANDON LONG - CROSS BY MR. BALL

1 A. Oh, yeah.

2 MR. WAGNER: Thank you. That's all the questions I
3 have.

4 THE COURT: Cross-examine.

5 CROSS-EXAMINATION

6 BY MR. BALL:

7 Q. How long were you there before you discovered the
8 bomb?

9 A. I would estimate 5 to 10 minutes. Something like
10 that.

11 Q. And the way you described it, the way I look at it
12 certainly wouldn't have been described as like a firecracker,
13 would it?

14 A. Oh, it definitely wasn't a firecracker.

15 Q. Okay. And where exactly was it?

16 A. When you walked -- when you pulled down Ms. Miller's
17 driveway you walk in the door that was right there and it was
18 like a refrigerator, one of these -- can I stand up to show
19 about the height of it?

20 THE COURT: Sure.

21 A. One of the smaller refrigerators, probably that high
22 (indicated). From here (indicated). And it was sitting on
23 top of it with some other stuff. I don't remember what else
24 was on there. It was just --

25 Q. Was it in plain view when you walked in? You saw it

BRANDON LONG - CROSS BY MR. BALL

1 without any problem?

2 A. Well, I mean, after I'd been looking. I didn't go
3 digging for it, but when we was looking around the residence I
4 noticed it. The first time I walked right by it.

5 Q. But it wasn't covered up and hidden?

6 A. No, sir.

7 Q. Because you weren't looking for a bomb, were you?

8 A. No.

9 Q. And once it was discovered that ended the
10 investigation of the other stuff, right?

11 A. Of course. Our safety was first priority when we
12 see a bomb up in a place.

13 Q. So everybody then cleared out?

14 A. Yes, sir.

15 Q. Did you see any shell casings around or anything in
16 the yard?

17 A. I remember seeing -- I want to say it was a vehicle
18 that had been shot, or something had been target practice. I
19 remember seeing bullet holes. Like I said, this is back in
20 '07. I'm trying to pull this from my memory.

21 Q. And you don't know when or how those bullet holes
22 were made?

23 A. No. I can't sit here and say how they got there.

24 Q. How many times was the dog shot? Did you look?

25 A. No, I didn't want to mess with it.

BRANDON LONG - CROSS BY MR. BALL

1 Q. How far away is the closest house -- is this a
2 mobile home that you are talking about?

3 A. Yes, sir, it's a double-wide trailer.

4 Q. And did you see any damage to the door?

5 A. Best of my recollection, no.

6 Q. No damage to the door?

7 A. No, sir.

8 Q. And what's the closest house to that?

9 A. It kind of sits off in a hole by itself. I mean, it
10 ain't no -- just an estimated guess I'd say a good quarter to
11 a half a mile. I mean --

12 Q. So it's isolated off?

13 A. Yeah. It's pretty much isolated to itself.

14 Q. Did you check all the plants, or once you spotted
15 the bomb everybody got out of there, didn't they?

16 A. Well, I mean, I already walked through the entire
17 house. I felt 100 percent sure there wasn't no marijuana
18 plans growing in there or I would have noticed.

19 Q. You did find pipes where somebody has been smoking
20 marijuana, right?

21 A. Yes, sir.

22 Q. What does a narcotics officer do if someone gets on
23 the stand and swears that they've been smoking pot? Can you
24 use that?

25 A. Use it as to?

BRANDON LONG - REDIRECT BY MR. WAGNER

1 Q. Charge them.

2 A. No. I got to have some evidence to charge them
3 with.

4 MR. BALL: That's all.

5 REDIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q. If somebody had shot that dog with a revolver, if a
8 revolver was stolen out of the residence and used to kill that
9 dog would you expect to see shell casings laying around the
10 yard, if a revolver?

11 A. If a revolver was used, no.

12 Q. And why would that be?

13 A. Because the shell stays in the revolver until you
14 unload it, manually unload it.

15 MR. WAGNER: Okay. Thank you.

16 THE COURT: Any further questions?

17 RECROSS-EXAMINATION

18 BY MR. BALL:

19 Q. Did you look at the dog, other than just seeing it
20 laying out there?

21 A. Well, I mean, I walked by it. I didn't really get
22 down and observe it but I mean --

23 Q. Could you tell where it was shot?

24 A. It seems like it was the chest. I can't promise
25 but, like I said, the best of my recollection from two years

BRANDON LONG - RECROSS BY MR. BALL

1 ago it seems like it was shot right through in here

2 (indicated).

3 Q. Was it just one hole?

4 A. The best of my recollection, yes.

5 MR. BALL: That's all. Nothing further.

6 THE COURT: All right. You may step down.

7 MR. WAGNER: Your Honor, we'd ask that Officer Long
8 could be excused.

9 THE COURT: All right.

10 Madam forelady, I'm going to suggest that this be a
11 good time to take the lunch break. Now, my problem is that
12 clock back there is not accurate. I think it's about an hour
13 off. I think it's 12 o'clock rather than 11 o'clock.

14 I'm advised that there's a computer on this bench
15 that has 10 after 12:00. But regardless, it's after 12:00.
16 How long do you think you might need for lunch? I would
17 suggest either an hour or an hour and a half. You all know
18 more about what's available and all that.

19 Tell you what, madam forelady. This is going to be
20 your first duty. Check with the jurors, your fellow jurors
21 and find out how much time they would like to have. And this
22 will be a consensus. It's not a unanimous verdict, but you
23 can just check in the box an hour, hour and a half.

24 THE FORELADY: One hour.

25 THE COURT: One hour. Well, let's say 1:15, and

1 that will give you a little bit more.

2 Again, do not undertake discussion of the case among
3 yourselves. Don't permit anybody to discuss it with you, and
4 I'll see you back at 1:15. Just come back to the jury room
5 you've been using. Everyone else remain seated while the jury
6 retires from the courtroom.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 12:13 p.m.)

9 THE COURT: All right. Is there anything else from
10 the State before we take a break?

11 MR. WAGNER: No, Your Honor.

12 THE COURT: From the defendant?

13 MR. BALL: Can my client remain --

14 THE COURT: That's what I was going to ask. What
15 sort of bond is he on?

16 MR. BALL: A 35,000 dollar bond.

17 THE COURT: Surety?

18 MR. BALL: Surety.

19 THE COURT: Who's the surety?

20 MR. BALL: Sid somebody.

21 THE COURT: Sid Hawk.

22 MR. WAGNER: Your Honor, my take on that would be I
23 think once the jury has been sworn his bond is off.

24 THE COURT: That's true and also if Mr. Hawk will
25 continue on the bond I could consider it. But it's a new bond

1 once the jury is called.

2 MR. BALL: I understand, Judge.

3 THE COURT: All right. Looks like he'll be in
4 custody then.

5 Very good. We'll stand at ease until 1:15.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: Anything from the State before we bring
8 the jury back?

9 MR. WAGNER: No, sir.

10 THE COURT: For the defense?

11 MR. BALL: I'm sorry?

12 THE COURT: Anything from the defense before we
13 bring the jury in?

14 MR. BALL: No, sir.

15 THE COURT: All right. Ask the jury to join us.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 1:26 p.m.)

18 THE COURT: Let the record reflect the jury and
19 alternate are in the jury box.

20 You may call your next witness.

21 MR. WAGNER: Thank, Judge. We call Scott Arnold.

22 SCOTT BRADLEY ARNOLD, after having been duly
23 sworn, testified as follows:

24 THE COURT: Have a seat. Give us your full name for
25 the record, spelling your last name.

SCOTT ARNOLD - DIRECT BY MR. WAGNER

1 THE WITNESS: My name is Scott Bradley Arnold,
2 A-r-n-o-l-d. I'm employed at the Oconee County Sheriff's
3 Office.

4 DIRECT EXAMINATION

5 BY MR. WAGNER:

6 Q. Mr. Arnold, Detective Arnold, what do you do in your
7 job duties as an employee at the Oconee County Sheriff's
8 Office? What do you do and explain to the jury kind of work
9 you do on a daily basis, that sort of thing.

10 A. I'm a property crimes investigator. I work the
11 Walhalla, Salem, Mountain Rest area, any burglaries or grand
12 larceny cases are assigned to me.

13 Q. Were you working in that capacity back in July of
14 2007 --

15 A. Yes, I was in.

16 Q. -- when this occurred?

17 How many on just an average month? How many reports
18 do you get assigned to investigate? Can you give us a guess
19 on how many you get in?

20 A. It averages 40 to 50 a month, cases that are
21 assigned to me. Last year I had 326 cases assigned to me last
22 year. I mean, this one particular month this case came in it
23 was tough because I had a lot of copper thefts up in the Salem
24 area around the Cliffs area. I had a lot more that month.

25 Q. So when you got assigned this case were you able to

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1 initially start working on it that very second or did you have
2 other things going that you had to work on, too?

3 A. I was working -- like I say, I was working on those
4 -- I had a large amount of copper thefts up at the Cliffs,
5 some large major thefts, construction, houses under
6 construction thefts. I had called her days after I got this
7 report.

8 Q. Called her? Who's her?

9 A. Debra Miller.

10 Q. Okay. The victim?

11 A. Yeah.

12 Q. When you talked to her did you develop any -- as far
13 as anybody, did you develop a suspect and what did you talk to
14 her about?

15 A. Yeah, I talked to her and told her that I had her
16 case and I will be working on it. I advised her my caseload
17 and she said well, you know, she had -- that Cindy Coward had
18 called her and told her that -- you know, that David and them
19 had broken into her house. And I said well --

20 MR. BALL: Judge, all that's hearsay upon hearsay.
21 I object to all of that.

22 THE COURT: All right. Do this. He can testify
23 about his investigation, who he talked to and as a result of
24 who he talked to did he do anything.

25 MR. WAGNER: Yes, sir.

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1 BY MR. WAGNER:

2 Q. As a result of talking to the victim did you go and
3 find David Coward and talk to him?

4 A. No, I did not.

5 Q. Okay.

6 A. Not right then I did not.

7 Q. Did you later, a few weeks or so, you know, a month
8 or 2 later did you talk to David Coward?

9 A. Yes, I did.

10 Q. When you talked to him did you have him in custody?

11 A. He was in custody.

12 Q. Did you talk to him about this case?

13 A. Yes, I did.

14 Q. When you talked to the defendant did you use
15 anything to advise him of his rights, his Miranda rights, as
16 most people refer to them as constitutional rights?

17 A. Yes, I did.

18 Q. Let me show you what's been marked State's Exhibit
19 Number 1. Do you recognize that?

20 A. Yes, I do.

21 Q. And what is that?

22 A. It's a Miranda rights form we use, and it's the one
23 I used when I spoke with David.

24 Q. Okay. Where did you talk to him?

25 A. At the Detention Center at Oconee County.

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1 Q. Okay. And did you read him his rights off of that
2 sheet?

3 A. Yes, I did.

4 Q. Could you read them exactly how and tell us how you
5 went about advising him of his rights before you talked to
6 him.

7 A. Okay. The date was October the 26th, 2007. I spoke
8 with him at 2:29 p.m., advised him that, you know, I was
9 working on a case and his name had been mentioned, and that I
10 was going to have to read his rights to him before I spoke to
11 him.

12 I said before I ask you any questions you must
13 understand your rights. You have the right to remain silent.
14 Anything you say can be used against you in court. You also
15 have the right to talk to a lawyer for advice before I ask you
16 any questions, have him with you during questioning.

17 If you can not afford a lawyer one will be appointed
18 for you for any questions, if you wish. If you decide to
19 answer questions now without a lawyer present you still have
20 the right to stop answering at any time. You also have the
21 right to stop answering any time until you talk to a lawyer.

22 Then I advised him of his waiver of rights, and I
23 read this to him. I have read this statement of my rights. I
24 understand what my rights are. I'm willing to make a
25 statement and answer questions. I do not want a lawyer at

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1 this time. I understand and know what I'm doing. No promises
2 or threats have been made to me, and pressure or coercion of
3 any kind has been used against me.

4 I read those to him and I asked him to initial by
5 each line, which he did. He initialed by each line, and he
6 signed it down here where it says signature. I signed it and
7 put the time of 4 -- 14:30, which is 2:30 p.m. on that date.

8 Q. And at any time did you -- well, let me ask you
9 this. Did he go ahead and decide to give you a statement and
10 talk to you?

11 A. Yes, he did.

12 Q. Let me show you what's been marked State's Exhibit
13 Number 2. Do you recognize that?

14 A. Yes, I do.

15 Q. What is that?

16 A. It's a voluntary statement that he gave me after I
17 read him his Miranda rights.

18 Q. Both State's Exhibits Number 1 and Number 2, are
19 those the exact forms that you used that day when you talked
20 to him?

21 A. Yes, I did.

22 Q. Have they been altered or tampered with in any
23 manner?

24 A. No, they haven't.

25 Q. Are they still in the condition that they were the

SCOTT ARNOLD - DIRECT BY MR. WAGNER

1 day that you helped and he signed them and you all filled them
2 out, and they've still been in your custody ever since?

3 A. Yes, they have.

4 Q. What did he tell you and how did -- did you
5 re-Mirandize him again off that form, or how did you do it?

6 A. After I spoke with him, told him that his name had
7 been mentioned in this case, I told him I had some statements
8 from other people that had mentioned him and, you know, I felt
9 like based on my investigation he did have something to do
10 with this, and I felt like -- I told him he needed to come
11 clean with me, and he did.

12 I asked him would he give me a voluntary statement
13 and actually write it down, and he agreed to it. So he filled
14 out the top and about middle ways down on this statement I
15 asked him to read the Miranda rights. And I said after you
16 read them initial by each line that you understand them, and
17 that's what he done.

18 Q. Okay. And what did he say?

19 A. After he read the Miranda rights and he initialed by
20 each line here he said drove up, parked on side of road. Me
21 and Russell went in house. I crawled through window, went in,
22 got my Xbox, went to Jeremy Miller's dresser. Rustle grabbed
23 a 38 pistol and left. Rustle shot the dog sometime while
24 leaving. Patrick McKenzie sat in the car. End of statement,
25 and he signed it at the bottom.

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1 Q. Based on your investigation in the case did you feel
2 like the three people that he mentioned in his statement were
3 the three that were involved in it?

4 A. Yeah. Based on my investigation David, and Russell,
5 and Patrick was involved in it.

6 Q. And at any time did you ever promise him, the
7 defendant, anything to give you a statement?

8 A. No, I did not.

9 Q. Did you ever threaten him or try to coerce him or
10 intimidate him into giving you a statement?

11 A. No, I didn't.

12 Q. Did you ever threaten anybody in his family to give
13 you a statement?

14 A. No, I didn't.

15 Q. To the best of your knowledge, did he freely and
16 voluntarily give you that statement when you confronted him
17 that there was evidence against him?

18 A. Yes, he did.

19 Q. And can you explain to us why -- again, why the time
20 lapse in between the end of July and now you're looking, at
21 the end of October before you finally cracked the case,
22 so-to-speak? Is that unusual in your line of work for there
23 to be a delay like that in working these kinds of cases?

24 A. Well, some cases take more time than others,
25 especially if it's a big case involving multiple defendants,

SCOTT ARNOLD - CROSS BY MR. BALL

1 and especially with the cases that I was involved in. It was
2 in June and July. It was just like everybody was stealing
3 copper, pulling copper out from under houses and I was just
4 slammed with cases, and I working on this case as I had time.
5 And once I got toward the end of it I started getting more
6 statements and it all came together.

7 MR. WAGNER: Thank you. That's the only questions I
8 have.

9 MR. BALL: Are you finished?

10 MR. WAGNER: Yes.

11 THE COURT: Yes. Cross-examine.

12 CROSS-EXAMINATION

13 BY MR. BALL:

14 Q. Officer Arnold, when you were investigating this
15 incident it took place, what, on July 26th and 27th of '07?

16 A. Yes, it did.

17 Q. And did you interview the complainant?

18 A. The victim?

19 Q. Ms. Miller.

20 A. Ms. Miller?

21 Q. Yes.

22 A. Yeah, I've spoken to her several times.

23 Q. And when did you take her statement? Was that on
24 August the 22nd?

25 A. I think it was August the 22nd.

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1 Q. So that's almost a month before she gives you a
2 statement, is it?

3 A. Yeah.

4 Q. And did you see any damage to the door or anything
5 when you went out there?

6 A. I didn't go out there.

7 Q. Oh, you didn't?

8 A. No.

9 Q. Okay.

10 A. With my caseload I wish I could go to everybody's
11 house but with my caseload I'm unable to.

12 Q. Well, when you did the case report -- is this a copy
13 of your case report?

14 A. Yeah. I think this is an incident report that
15 Officer Owens done.

16 Q. This is not your report?

17 A. Uh-uh.

18 Q. That states no property damage nor theft was
19 reported, right?

20 A. At this time, according to that report there.

21 Q. And he got out there right away, did he?

22 A. Do what, sir?

23 Q. Do you know about when he went out there? Did he go
24 right away? Was he among the first officers that went out
25 there?

SCOTT ARNOLD - CROSS BY MR. BALL

1 A. According to this report, yeah, he was out there.

2 Q. And the report says no property damage nor theft was
3 reported by complainant, right?

4 A. According to this report, yeah. The first initial
5 report that I spoke with her she told me -- you know, she gave
6 me a statement and then she --- after she got settled down and
7 was able to review -- go through her stuff she found that the
8 guns were missing, and her Xbox and stuff was missing. When I
9 spoke with her on the phone several times she was real upset
10 about her dog. She was having a hard time with it.

11 Q. As a matter of fact, that was the whole thing,
12 wasn't it? If they hadn't shot her dog we wouldn't even be
13 here today, would we?

14 MR. WAGNER: Objection, Judge.

15 THE COURT: He can answer if he knows it, but
16 otherwise it would be speculation.

17 A. She was upset about the whole situation.

18 Q. Whose name is that right there?

19 A. That's my name. That's where I printed off under my
20 name, but I didn't do that report.

21 Q. That's not your report?

22 A. Uh-uh.

23 Q. Even though your name is on it?

24 A. That's where I logged in on my name and made a copy
25 of it.

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1 Q. Okay. So you really didn't know anything about it
2 until August the 22nd when you took her statement?

3 A. No, I had talked to her several times. She was very
4 upset, and I explained to her, I told her she needed to be
5 patient with me, that I was running as hard as I could. My
6 caseload was real heavy and I was doing all I can and I would
7 get to her. You know, when my cases come in I'm working on a
8 lot of cases and you just have to get in line, single line.

9 During that time it was a lot of thefts was going on
10 with the construction, houses under construction up at the
11 Cliffs and around. I mean, the housing market was booming and
12 people were stealing a lot of stuff.

13 Q. Now, you took her statement on August the 22nd, I
14 believe; is that right?

15 A. That's correct.

16 Q. And in that statement did she implicate David?

17 A. Yes. She mentioned David's name, that's correct.

18 Q. And yet it was October, end of October before you
19 ever interviewed him?

20 A. Yeah, it was October the 26th.

21 Q. Right. So from August the 22nd until October 26th
22 you didn't see fit to ask him his version of it, huh?

23 A. It was an ongoing investigation.

24 Q. I see.

25 A. And it just took time.

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1 Q. Has any property ever been recovered?

2 A. No.

3 Q. Was any of those so-called guns that were stolen
4 registered to her in any way to identify that she may have
5 actually had them?

6 A. I have no idea.

7 Q. Do you have any proof?

8 A. I have no serial numbers of those guns.

9 Q. She didn't have any serial numbers of any of them?

10 A. No.

11 Q. Nothing to prove ownership?

12 A. All I've got is a written statement and what she's
13 told me, that the guns were at her house.

14 Q. Did she describe the guns?

15 A. She described it as a revolver, like a 38 revolver,
16 and 30-30 rifle.

17 Q. Is that all?

18 A. That's it.

19 Q. So these other guns and so forth, she never even
20 reported those, did she?

21 A. Which gun are you talking about?

22 Q. The others that was claimed to have been stolen?

23 A. Two is all she said was taken.

24 Q. Was anything ever recovered?

25 A. No.

1 MR. BALL: That's all.

2 MR. WAGNER: Nothing further, Your Honor.

3 THE COURT: All right. You may step down.

4 MR. BALL: No objection to excusing him.

5 MR. WAGNER: Thank you, Judge. Your Honor, we
6 previously put in State's Exhibit Number 1 and Number 2 into
7 evidence. If they are into evidence -- if they are not into
8 evidence I'd move them into evidence at this time. Assuming
9 that they are in evidence, if that's the case, then we would
10 rest.

11 MR. BALL: You've rested?

12 THE COURT: No, he's moving for the admission of --

13 MR. BALL: Of course, we objected.

14 THE COURT: State's Exhibit 1 and 2, and subject to
15 the Court's prior rulings they will be admitted.

16 MR. BALL: All right, sir.

17 THE COURT: But over --

18 MR. BALL: Over our objections.

19 THE COURT: Based on the prior ruling.

20 (WHEREUPON, State's Exhibit Numbers 1 and 2 were
21 admitted into evidence.)

22 THE COURT: All right. State's Exhibits 1 and 2 are
23 admitted. State's Exhibit 1 is the waiver of Miranda rights
24 and State's Exhibit 2 is the statement made by the --
25 allegedly made by the defendant.

1 Madam forelady, ladies and gentlemen of the jury,
2 there's been admitted into the record in this case two
3 statements allegedly to have been made by the defendant.
4 Before you may consider these statements as evidence for any
5 purpose you must determine four questions.

6 First, did the defendant make the statement; second,
7 was the defendant warned of his constitutional rights; third,
8 did the defendant knowingly intelligently waive his
9 constitutional rights; and fourth, was the statement given
10 voluntarily.

11 The fact that the Court has admitted a statement
12 into evidence should not be considered by you as any evidence
13 whatsoever that the defendant made such a statement or that
14 the required constitutional safeguards were, in fact, provided
15 and waived by the defendant or that the statement was
16 voluntarily given because these issues are for you, the jury,
17 to determine.

18 The State must prove beyond a reasonable doubt each
19 of the four requirements I have just stated to you before you
20 may consider the statement as evidence for any purpose. If
21 you conclude that the defendant did not make the statement you
22 must then completely and totally disregard the statement.

23 Second, was the defendant warned of his
24 constitutional rights, was he warned that these rights are
25 that he had the right to remain silent, that any statement

1 that he does make can and will be used against him in a court
2 of law, that he has the right to select a lawyer of his choice
3 but if he does not have the money or resources to employ a
4 lawyer the Court will appoint and provide a lawyer to
5 represent him without cost or expense to him if he so desires,
6 that he has the right to consult a lawyer before answering any
7 questions or making any statement, that he has the right to
8 have his lawyer present with him at all times during the
9 interviews and all interrogations.

10 If you determine that these constitutional warnings
11 were not given to the defendant prior to the interrogation and
12 the taking of the statement or that the defendant was not
13 afforded the opportunity to exercise these you must completely
14 disregard the statement, and in that event you cannot consider
15 the statement as evidence in any manner whatsoever.

16 Now, did the defendant knowingly, intelligently
17 waive his constitutional rights? If you find that the
18 defendant did not knowingly, intelligently waive his
19 constitutional rights then any answer given by him or any
20 statement made by him cannot be used against him and you must
21 completely disregard all of the testimony concerning any such
22 answers or alleged statement.

23 Now, the fourth requirement was, was the statement
24 given voluntarily. A statement is not voluntary and may not
25 be used against the defendant unless it is a product of an

1 essentially free and unconstrained choice of its maker. The
2 true test to be applied is whether a statement is freely,
3 voluntarily and understandingly made without compulsion or
4 inducement.

5 With regard to the alleged statement of the
6 defendant, the State must prove by evidence each and every
7 requirement about which I have instructed you beyond a
8 reasonable doubt before you may consider the alleged statement
9 as evidence in this case. Absence of any one of these
10 requirements about which I have instructed you the alleged
11 statement must be disregarded completely, and in that event
12 you will accord no evidentiary weight whatsoever to it or any
13 part of it.

14 If you find beyond a reasonable doubt that the
15 defendant made the statement, the defendant was given the
16 required constitutional warnings before interrogation and that
17 the defendant knowingly, intelligently waived his
18 constitutional rights and thereafter gave a voluntary
19 statement the statement may be considered by you together with
20 all other evidence in the case and given such weight and such
21 value and such effect to which you conclude it is entitled.

22 All right. As I understand it, the State has
23 rested?

24 MR. WAGNER: Yes, sir.

25 THE COURT: All right. I do need to take up some

1 matters with the attorneys. I'm going to ask you to retire to
2 the jury room just for a few minutes then we'll return and
3 continue with the case.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 1:48 p.m.)

6 THE COURT: All right. Is there anything further
7 from the State?

8 MR. WAGNER: No, Your Honor.

9 THE COURT: Anything from the defendant?

10 MR. BALL: Judge, I would have a motion for a
11 directed verdict. Taking all the testimony and all the
12 credibility and everything in the light most favorable to the
13 State we would submit to the Court that they have failed
14 beyond a reasonable doubt to prove that he is guilty, and we
15 therefore move for a directed verdict.

16 THE COURT: What does the State say?

17 MR. WAGNER: Your Honor, I think with the witnesses
18 we've called we've established that the defendant went into
19 the victim's house without her consent and was involved in the
20 theft of firearms which would, I believe, qualify as a
21 burglary first degree under the statute. I think taking in
22 the light most favorable to the State with the testimony as
23 it's been presented I think there's evidence to submit it to
24 the jury.

25 THE COURT: Anything further from the defendant?

1 MR. BALL: No, sir.

2 THE COURT: Pursuant to Rule 19(a) in ruling on a
3 motion for directed verdict the trial judge shall consider
4 only the existence or nonexistence of the evidence and not its
5 weight. In other words, I'm only to consider whether or not
6 evidence viewed in the light most favorable to the opposing
7 party, being the State, is sufficient to support a verdict not
8 whether -- not its weight. I do find there's sufficient
9 evidence to go forward on burglary first degree and petty
10 larceny as charged in the indictment. Motion for directed
11 verdict denied.

12 Now, how does the defendant wish to proceed?

13 MR. BALL: Judge, we're not going to put up any
14 testimony. I would like for you to voir dire him.

15 THE COURT: Yes, sir.

16 Mr. Coward, if you would, please stand. I think
17 you're under oath already; you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: This morning during the proceedings you
20 were put under oath so you do not have to be put under oath
21 now; do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: At this time, I'm going to explain to
24 you certain of your rights. If you do not understand anything
25 I say, please let me know. If you want me to explain anything

1 in more detail, please let me know. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We have now reached or are approaching
4 the stage of the trial where you may present your defense.
5 You have the right to claim the protections given to you by
6 the Fifth Amendment to the Constitution of the United States.
7 This amendment states in part no person shall be compelled in
8 any criminal case to be a witness against himself. This means
9 that you can not be required to testify in the case.

10 You have the right to testify on your own behalf.
11 However, no one can make you testify. This is a personal
12 right and no one can waive this right except you. If you
13 decide to testify you will be subject to the same rules that
14 govern other witnesses and you may be examined and
15 cross-examined on any relevant issue in this case.

16 In addition, if you have any convictions involving
17 dishonesty or false statement or for crimes punishable by
18 imprisonment for more than one year and this Court determines
19 that the probative value of admitting this evidence outweighs
20 its prejudicial effect to you the solicitor will be able to
21 introduce your record to attack your credibility.

22 If you decide to testify this decision on your part
23 must be freely, voluntarily and intelligently made with the
24 knowledge of protections given to you by the Fifth Amendment
25 and the consequences of your decision to testify.

1 If you decide not to testify I will instruct the
2 jurors that they can not give the fact that you did not
3 testify any consideration whatsoever and that there is to be
4 absolutely no prejudice to you because you did not testify.
5 It is left entirely up to you whether or not you do testify.
6 You may talk with your attorney, your family and friends or
7 anyone else but the final decision will be left entirely up to
8 you. Do you understand what I've explained to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions about what
11 I've explained to you?

12 THE DEFENDANT: No, sir.

13 THE COURT: As I said, the constitution provides you
14 protections of not having to testify against yourself, offer
15 evidence against yourself or in any way assisting in the
16 prosecution of the cases against you.

17 However, at the same time, you also are permitted
18 the opportunity to give testimony if you decide to do so.
19 However, that is your decision to either testify or not
20 testify and no one else can make that decision.

21 Have you discussed with your lawyer whether you
22 should testify or not testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you wish to talk to your lawyer any
25 more about that matter at this time?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you wish to testify?

3 THE DEFENDANT: No. No, sir.

4 THE COURT: Do you have any questions of the Court
5 about your decision to testify or not testify?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you satisfied with Mr. Ball's
8 counsel and advice in this matter?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Very good. All right. You may be
11 seated. Thank you.

12 Do you have any other --

13 MR. BALL: No other witnesses.

14 THE COURT: The defense rests as well?

15 MR. BALL: The defendant rests.

16 THE COURT: All right. It's, what, quarter to 2:00?
17 You all ready to go to the jury?

18 MR. WAGNER: Yes, sir. Can we break for about 5
19 minutes?

20 THE COURT: Certainly. At this time, is the
21 defendant ready to go?

22 MR. BALL: We're ready, Judge.

23 THE COURT: All right. As you know, of course,
24 defense not having put up any -- or defendant not having put
25 up any testimony or evidence he's entitled to closing

1 argument. The State will open fully and then the defendant
2 will argue.

3 MR. WAGNER: Yes, sir.

4 THE COURT: You understand that from the State?

5 MR. WAGNER: Yes, sir.

6 THE COURT: From the defense?

7 MR. BALL: Yes, sir.

8 THE COURT: All right. It's about 10 until they
9 tell me. So let's wait about 10 minutes, 2 o'clock, and we'll
10 go to the jury at this time. The State will argue, then the
11 defense. And if you have any special requests, please advise
12 the Court.

13 All right. We'll stand at ease for a few minutes.

14 (WHEREUPON, a brief recess was taken.)

15 THE COURT: All right. Are we ready to forward to
16 the jury?

17 MR. WAGNER: Yes, Your Honor.

18 THE COURT: I'll address the question. In this
19 case, indictment 2007-GS-37-1835 charges burglary in the 1st
20 degree. A motion has been made to a lesser included of
21 burglary 2nd degree but the Court finds that under the
22 testimony in this case there is no question that it was a
23 dwelling, and in that case burglary 1st would be the only one
24 that would be applicable.

25 And then, of course, it has to have aggravating

1 circumstances, and in this case I understand aggravating
2 circumstances is being armed with a weapon while in the
3 premises or leaving the premises. Now, that's the only
4 aggravation that we have other than the nighttime --

5 MR. WAGNER: Yes, sir.

6 THE COURT: -- and the dwelling. No, we don't have
7 nighttime.

8 MR. BALL: No, we don't have nighttime.

9 THE COURT: No, we don't. Only the aggravation is,
10 what is it, being armed. But as far as burglary 2nd, there it
11 can be a building with aggravation as well as dwelling but
12 there's no testimony or evidence of this being anything but a
13 dwelling. So the only one that would be applicable would be
14 burglary 1, which is limited to dwellings. And then, of
15 course, petty larceny.

16 Anything else?

17 MR. BALL: Nothing from the defendant.

18 THE COURT: All right. Very good. And I will
19 instruct the jury, of course, that they cannot consider for
20 any purpose the defendant's decision to exercise his right
21 under the 5th Amendment.

22 Okay. All right. Is there anything from the State
23 before we bring the jury back?

24 MR. WAGNER: No, sir.

25 THE COURT: Anything from the defense?

1 MR. BALL: No, sir.

2 THE COURT: All right. When the jury comes in I'll
3 recognize Mr. Ball, and then you'll announce that you have
4 rested, and I'll instruct the jury about the defendant's
5 exercise of his rights.

6 MR. BALL: Thank you.

7 THE COURT: All right. And then we'll go straight
8 into argument, with the State going first and the defense
9 closing.

10 All right. Any questions, State?

11 MR. WAGNER: No, sir.

12 THE COURT: Defense?

13 MR. BALL: Nope.

14 THE COURT: Very good. Ask the jury to join us.

15 (WHEREUPON, the jury enters the courtroom at
16 approximately 2:16 p.m.)

17 THE COURT: Let the record reflect that the jury and
18 alternate are in the jury box.

19 I will now recognize Mr. Ball.

20 MR. BALL: Your Honor, the defense rests.

21 THE COURT: Very well. Madam forelady, ladies and
22 gentlemen of the jury, a defendant has a constitutional right
23 to remain silent, to put up no evidence and require the State
24 to meet its burden of proof beyond a reasonable doubt.

25 The assertion of the constitutional right not to

1 testify or present evidence must not be considered by you in
2 your deliberations. Under the oath you took you are to draw
3 no conclusion whatsoever from the fact that the defendant in
4 this case did not testify or put up evidence.

5 As I've stated, the defendant is not required to
6 prove his innocence and the burden of proof remains upon the
7 State to prove guilt beyond a reasonable doubt.

8 With that, I'll recognize the solicitor for his
9 closing argument.

10 MR. WAGNER: Thank you, Your Honor.

11 Burglary 1st and petty larceny are what we're here
12 for today. That's the only 2 charges you are going to have to
13 consider when you go back in the jury room here.

14 And the only time you're going to hear from me is
15 right now. So I'm going to try to cover basically what I
16 think you need know about the law.

17 The Judge is going to charge you on the law when
18 we're all done here and you need to take it as he charges it
19 to you, but basically we're here because the defendant
20 committed burglary 1st and petty larceny.

21 As I told you in opening statement, burglary 1st is
22 when you go into somebody's dwelling. It's got to be their
23 house or where they live, which in this case there's only
24 evidence that's what it was. The victim lived there. It was
25 her house, so going into a dwelling without her consent, which

1 she testified she gave no consent.

2 Even though the defendant had been in the house
3 before with her consent when her son is locked up and there's
4 nobody home she didn't want him there. He had no consent to
5 go in through her window and steal her stuff.

6 So the defendant went into her residence without
7 consent with the intent to steal something. Now, how do we
8 know he went in there with intent? Well, Russell Rogers, the
9 co-defendant who testified, told the whole story with no
10 deals, no nothing. He got up, cleared the air today about
11 what they did.

12 They were taking about the song came on the radio,
13 the robbery whatever song, and they said let's go break in and
14 steal his stuff. So they knew Jeremy Miller. They knew
15 Jeremy was locked up in the county jail. They knew she went
16 to work 7 nights a week at 10:30, 11:00 on the nightshift out
17 there working and they knew nobody would be home.

18 So they pulled up and there was nobody there. They
19 went and checked in the window just to make sure. Went in
20 through the window, knocked over the stuff. Went and looted
21 what they could out of the house and they carried it off and
22 stole it. So you basically have the defendant going into her
23 dwelling without her consent with the intent to commit a crime
24 in the building, that crime being the theft, and that's where
25 petty larceny comes in because it's a theft less than a

1 thousand dollars worth of stuff.

2 The pipe bomb in the thing I submit to you is not
3 the issue here. It's got nothing to do with this burglary
4 case. Why Jeremy Miller chose to make a pipe bomb and risk
5 blowing himself up or something, I don't know. I don't think
6 anybody knows. It's got nothing to do with whether or not
7 David Coward broke in that house with Russell Rogers and that
8 other boy and stole this lady's stuff. It's thrown out there
9 to, you know, take away your eyes from essentially what
10 actually occurred here.

11 The defendant admitted it himself, as the officer
12 told you. Once he got around to getting in 30, 40 cases a
13 month every month, the cases are rolling in with thefts and
14 burglaries and stuff, he's trying to stay on top of it. It
15 took him almost two months to finally make the arrest and make
16 the charge here, but he did, and he got the right guy.

17 How do we know he got the right guy? Well, one of
18 them got on the stand today and admitted that he did it.

19 This defendant gave a statement saying -- and after
20 he had been Mirandized, and you'll have a chance to look at
21 this back in the jury room. Detective Arnold went through and
22 read him these rights. Those are the rights he has to do by
23 law for a freely and voluntary statement to be given. He has
24 to understand that he's got a right not to talk to the
25 officer, but he did.

1 And when Scott Arnold confronted him with the
2 evidence that they had against him, he read him his rights,
3 and he initialed every single one and signed that he wanted to
4 waive those rights, so he chose to give the statement.

5 He said that they drove up, parked on the side of
6 the road. Me, Russell Rogers went in house. I crawled
7 through window, went in, got my Xbox, went to Jeremy Miller's
8 dresser. Russell grabbed a 38 pistol and left. Russell shot
9 the dog sometime while leaving. Patrick McKenzie sat in car.
10 End of statement. He signed it, dated it, gave that
11 statement. He admitted going in there and then taking the
12 pistol.

13 Now, on something like that we know from the
14 victim's statement that there was a rifle stolen, there was a
15 pistol stolen, and there was an Xbox with these games and
16 things like that that they took out of there.

17 Even taking his statement at face value if Russell
18 Rogers is the one that takes the pistol they are still in
19 there in the house together. They are still committing the
20 crime together. It doesn't matter necessarily which one
21 steals the pistol. If one steals the pistol they are both
22 guilty of it, just like if one took it, one or the other.

23 I submit to you in this case the truth is it doesn't
24 matter from that standpoint because there was two rifles or
25 two weapons stolen. He's the one that took the rifle out,

1 according to what Russell Rogers said, which I submit to you
2 has some weight. But just because he may or may not have been
3 the one that actually carried the pistol out doesn't absolve
4 him of the burglary where they broke in with the intent to
5 commit that crime, which was they armed themselves during the
6 commission of that crime with a deadly weapon, a pistol.

7 The Judge will tell us a pistol, a rifle, a knife,
8 those are deadly weapons. So if any one of these boys who
9 broke into her house was involved in it, was armed during the
10 commission of this burglary they are all guilty, technically,
11 of burglary first degree. That's the way the law is. It's
12 called the hand of one is the hand of all. He can't just
13 because he says he was not the one to carry the pistol out
14 doesn't absolve him of what he did.

15 And I submit to you whoever shot the dog, he says
16 Russell Rogers shot it, Russell Rogers says he shot it, it's
17 despicable that they shot the dog, no reason for it, but they
18 are both guilty of it, both guilty of what happened here a
19 year and a half ago.

20 These days it's hard. You know, a lot of people
21 watch this C. S. I. show, and things like that on TV. You
22 expect to come in here and expect to see fingerprints and
23 D. N. A. evidence, and all kinds of stuff on every case.

24 I submit to you that it's just not possible. A lot
25 of that is Hollywood, a lot of that is -- potentially you can

1 have evidence like that but when officers get 30, 40 thefts
2 and burglaries a month they don't have time to run
3 fingerprints, they don't have time to run D. N. A. on every
4 single theft. It's just not feasible.

5 In this case, had they fingerprinted the house, or
6 something like that, they might have gotten David Coward's
7 fingerprints, but I submit to you what would that have shown,
8 because he'd been in the house before? So it would not
9 necessarily prove that he went in there that night without her
10 consent and stole her firearms, but his D. N. A. may or may
11 not have been in there because he had been in the house
12 before.

13 But things like that, I'm just mentioning that to
14 you now because I can't rebut what's said after I sit down. I
15 submit to you, things like that, it would be nice to have all
16 that evidence in a lot of cases but it's just not physically
17 possible, but I think in this case you have a lot of tools to
18 work with.

19 I'd submit to you Russell Rogers was credible. I
20 submit to you the victim is credible. And it matters not, I
21 submit to you, whether or not she had a shoplifting charge in
22 1993, or she wrote a bad check in 1999. The lady works 7
23 nights a week on nightshift, and she's busting her tail, and
24 she's out working and he is breaking in her house and stealing
25 her stuff.

1 Now, whether she smoked a joint at home last year,
2 that's not relevant anyway. She's a good lady, she's the
3 victim in this case and she deserves justice and deserves a
4 fair hearing just like the defendant does with his trial
5 today, and I ask you to consider all of that.

6 I submit to you, don't get hung up on maybe what the
7 State doesn't have or wasn't presented to you. In this case
8 you have a lot of evidence, including the defendant's own
9 statement that says he committed the crime and he was involved
10 in it. And I'd ask you to return a verdict that speaks the
11 truth, which is what verdict means in Latin. It means to
12 speak the truth. A verdict in this case that speaks the truth
13 will be guilty of burglary first degree and guilty of petty
14 larceny. Thank you.

15 MR. BALL: If the Court please?

16 THE COURT: Mr. Ball.

17 MR. BALL: Madam forelady, ladies and gentlemen of
18 the jury, again I thank you for your kind attention.

19 This is the piece of paper that brought up here
20 today. It's called an indictment. And it says that David Lee
21 Coward did in Oconee County on or between July 26th, '07 and
22 July 27th willfully and unlawfully enter the dwelling of Debra
23 Miller without consent.

24 Now, I submit to you that he had been living down
25 there back and forth over a period of three years, and for

1 three months at one time. He had implied consent to go into
2 that house. And they are pointing to this statement here
3 about him going in and so forth. He went in to get his Xbox,
4 which she denies it was his. Said it was Jeremy's, but in his
5 statement he said it's his Xbox. Everybody had conceded it is
6 his. The only thing that was ever proven to have been stolen
7 out of there was his Xbox.

8 And Russell, the guy that's up there now being so
9 good and testifying against him and all, said he had it down
10 in the woods at his house. So he's the one that took it, to
11 commit a crime. Going in and get your own stuff that you've
12 been invited to over the years is not a crime.

13 And the aggravating circumstance was the defendant
14 was armed with a deadly weapon. If you will read this
15 statement that they put in evidence that Russell grabbed the
16 pistol and left, and then Russell later on shot the dog
17 outside. Everybody says Russell was the one that shot the
18 dog. Yet he gets up there and tells you not me, no, uh-uh,
19 David is the one that shot him.

20 Credibility. That's the whole thing about this.
21 Here you got a lady that he's pointing out that she's a nice,
22 good lady and all that. She's so nice and good that even
23 after this incident she's smoking pot down there in her house.
24 That's illegal, and it goes to her credibility.

25 When they went down there to investigate this thing

1 they found -- didn't find any pot plants like was first
2 thought but they found pipes where people had been smoking
3 pipe -- or pot, with residue still in them. Big parties go
4 down there. Everybody says we're going down and partying here
5 and partying there, and she's part of it.

6 Mr. Wagner tells you that the bomb has nothing to do
7 with this. It goes straight to credibility. She said that
8 she didn't even know it was there yet this officer walks in,
9 walks past it one time, turns around and comes back, and low
10 and behold. And it's not a firecracker like she's trying to
11 have you believe. It's this long and this big around
12 (indicated). A big pipe bomb, for whatever reason I don't
13 know, but it was certainly in her house and she knew it or
14 should have known it, along with a lot of other things that
15 was going on there.

16 He was not armed with a deadly weapon. The weapon
17 was taken outside, left with it, then the guy shot the dog
18 with it. I submit to you that if a dog hadn't been shot we
19 wouldn't be here. That would make anybody mad.

20 She reported it on the 27th, and the report says no
21 property damage and no items missing, and that was in the
22 report that the officer read to you. Then a month later she's
23 coming up and saying all this stuff is missing, yet she could
24 not identify any of the items in there. They were all
25 somebody else's. The only thing that she claimed was a

1 camera. She didn't own those guns. So how could they be
2 stolen from her?

3 Russell Rogers, the star witness, you saw what he
4 is, his records and so forth and all. They pointed them out.
5 He is not to be believed. She is not to be believed. She'd
6 finally admitted that she had a conviction for bad checks,
7 which is lying.

8 This whole thing, defendant was armed with a deadly
9 weapon, that is absolutely not true. They put the statement
10 in. Read it. This is his statement, given down in jail under
11 duress and all that, but it's his statement. And he says that
12 he went through the window to get his Xbox. Can't be
13 convicted of stealing your own stuff. And that Russell
14 grabbed a 38 pistol out of the drawer and left. He was gone,
15 and then later on he shoots the dog. Couldn't have been armed
16 in there. My client has never had his hands on a gun. No
17 evidence whatsoever in this record of that.

18 This whole thing, if you just look at the
19 credibility of the witnesses that the State has put up adds up
20 to zero, and I ask you to bring back a verdict of not guilty.
21 Thank you.

22 THE COURT: Madam Forelady, ladies and gentlemen of
23 the jury, as jurors in this case you have certain functions
24 and responsibilities to perform which are entirely separate
25 and distinct from those of mine as the trial judge.

1 I am prohibited by the Constitution of this State
2 from charging you on the facts of this case. I am also
3 prohibited from discussing the facts of the case with you or
4 in any way intimating what my feelings, if any, or about the
5 facts of the case. It is your responsibility, and yours
6 alone, to pass upon all issues of fact presented in the case.

7 I would therefore charge you that if during the
8 course of the trial or during my charge you've been given or
9 left with the impression or feeling that I do have a personal
10 feeling about the facts of this case I would specifically
11 instruct you to disregard that feeling or impression.

12 Moreover, you are the sole judges of what the
13 testimony was and not the argument of counsel.

14 It is also your duty, and yours alone, to weigh that
15 testimony and evidence in the case and pass upon the
16 credibility or believability of the witnesses. In this
17 connection you have the right to believe all that a witness
18 tells you or to disbelieve all that a witness tells you. You
19 have the right to believe a part of what a witness tells you
20 and disbelieve a part of what a witness tells you.

21 You have the right to take into consideration any
22 bias, or prejudice, or interest you feel a witness might have
23 in the case. I say this merely to emphasize that the weight
24 you see fit to give to the testimony or to the credibility of
25 the witnesses as well as all issues of fact are for your sole

1 consideration and determination.

2 As judges of the facts you are the sole judges of
3 the credibility, that is the believability of the witnesses
4 who have testified in this case.

5 In passing upon their credibility you may take into
6 consideration many things, such as the appearance and manner
7 of the witness on the stand, sometimes referred to as the
8 demeanor of the witness. Was the witness forthright or
9 hesitant? Was the witness's testimony consistent or did it
10 contain discrepancies? What was the ability of the witness to
11 know the facts about which he or she testified? Did the
12 witness have a cause or reason to be bias and prejudiced in
13 favor of the testimony he or she gave? Was the testimony of
14 the witness corroborated and made strong by other testimony
15 and evidence, was it made weak or impeached by such other
16 testimony and evidence?

17 As jurors, you have the right to believe a small
18 portion of a witness's testimony and discard the larger, or
19 vice versa. You may believe all of a witness's testimony or
20 none. Throughout this entire process you have but one single
21 objective and that is to seek the truth regardless of from
22 where the witness testimony may have come.

23 Now, by the same constitution and law that makes you
24 the finders of the fact and the evidence, as I have discussed
25 with you, I am, as the Judge, made the sole and only

1 instructor of the law. You must accept as correct the law
2 which I charge and apply to it the evidence as you find it and
3 reach your verdict.

4 If I should make an error in the law as I instructed
5 it to you there's another time and place that error can be
6 considered, and if necessary corrected, but for the purposes
7 of this case today you must accept the law as I charge it to
8 you to be the correct law.

9 Now, the defendant has pled not guilty to the
10 indictments, and that plea puts upon the State the burden of
11 proving the defendant guilty. A person charged with
12 committing a criminal offense in South Carolina is never
13 required to prove himself innocent.

14 I charge you that it is an important rule of law
15 that a defendant in a criminal trial, no matter what the
16 seriousness of the charge may be, will always be presumed
17 innocent of the crime for which the indictment was issued
18 unless guilt has been proven by evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 This presumption of innocence does not end when you
21 begin your deliberations but it accompanies the defendant
22 throughout the trial until you reach a verdict of guilt based
23 upon evidence satisfying you of that guilt beyond a reasonable
24 doubt.

25 Presumption of innocence is like a robe of

1 righteousness placed about the shoulders of the defendant
2 which remains with the defendant until it has been stripped
3 from the defendant by evidence satisfying you of the
4 defendant's guilt beyond a reasonable doubt.

5 Presumption of innocence is not a mere legal theory,
6 it's not just a legal phrase. It is a substantial right which
7 every defendant is entitled to unless you, the jury, are
8 satisfied from the evidence of the defendant's guilt beyond a
9 reasonable doubt. Now, reasonable doubt is the kind of doubt
10 that would cause a reasonable person to hesitate to act.

11 There are two types of evidence which are generally
12 presented during a trial, direct evidence and circumstantial
13 evidence. Direct evidence is the testimony of a person who
14 claims to have actual knowledge of a fact, such as an
15 eyewitness. It is the evidence which immediately establishes
16 the main fact to be proved.

17 Circumstantial evidence is a proof of a chain of
18 facts and circumstances indicating the existence of a fact.
19 It is evidence which immediately establishes collateral facts
20 from which the main fact may be inferred.

21 Circumstantial evidence is based on inference not on
22 personal knowledge or observation. It is proof that does not
23 actually establish the fact in question but that asserts or
24 describes something else for which you may either reasonably
25 infer the truth of the fact or at least reasonable infer an

1 increase in the probability that the fact is true.

2 For circumstantial evidence to be sufficient to
3 warrant the finding of a fact circumstances must lead to that
4 fact with reasonable certainty. The facts and circumstances
5 should be considered in light of ordinary experience and
6 common sense. The existence of a fact can not be based on
7 speculation, surmise or conjecture.

8 The law makes absolutely no distinction between the
9 weight or value to be given to either direct or circumstantial
10 evidence, nor is a greater degree of certainty required of
11 circumstantial evidence than of direct evidence. You should
12 weigh all of the evidence in this case. After weighing all of
13 evidence if you are not convinced of the guilt of the
14 defendant beyond a reasonable doubt you must find the
15 defendant not guilty on that charge.

16 I charge you that suspicion, however strong, is not
17 enough to sustain a conviction. The evidence presented by the
18 State must be substantial evidence that tends to prove the
19 guilt of the defendant beyond a reasonable doubt.

20 Now, criminal intent is a state of mind that
21 operates jointly with an act or omission in the commission of
22 a crime. Criminal intent is a mental state. Criminal
23 liability is normally based upon the concurrence of two facts,
24 an evil meaning mind and an evil doing hand. Proof of one's
25 intent necessarily rests on inference from conduct.

1 In order to establish criminal liability criminal
2 intent is required. Criminal intent must be proven by the
3 State beyond a reasonable doubt. Criminal intent is always a
4 matter that must be determined by the jury from the
5 circumstances surrounding the situation.

6 There is no way to prove intent to a mathematical
7 certainty. There is no way medical science can dissect a
8 person's brain and determine what the person had in mind. So
9 the law says that criminal intent may be inferred from the
10 circumstances surrounding or that have shown to have existed.
11 This is how you make a determination whether or not the
12 element required criminal intent -- requiring intent was
13 present.

14 It's not necessary to establish intent by direct
15 and positive evidence but intent may be established by
16 inference in the same way as any other fact by taking into
17 consideration the acts of the parties and all other facts and
18 circumstances of the case.

19 Criminal intent is a mental state, a conscious
20 wrongdoing. It is up to you to determine what the defendant
21 intended to do based on the circumstances shown to have
22 existed.

23 The indictments charge the defendant with burglary
24 in the first degree and petty larceny. I remind you that the
25 fact that the defendant was arrested, charged and indicted in

1 this case is not evidence in this case and cannot be
2 considered by you as evidence of guilt in this case, nor does
3 it create any inference of guilt. This document is simply the
4 formal written instrument which contains the charge made
5 against the defendant. It is a formal document by which this
6 case is brought into court.

7 The indictments in this case allege 2 separate
8 offenses against the defendant. The charges are indictment
9 number 1, 2007-GS-37-1835, burglary in the 1st degree; and
10 indictment 2, 2007-GS-37-1836, petit larceny.

11 Each indictment charges a separate and distinct
12 offense. You must decide each indictment separately on the
13 evidence and the law applicable to it uninfluenced by your
14 decision as to any other indictment. The defendant may be
15 convicted or acquitted of either or both of the offenses
16 charged. You will be asked to write a separate verdict of
17 guilty or not guilty for each indictment.

18 Now, the defendant has been charged with 1st degree
19 burglary. The State must first prove beyond a reasonable
20 doubt that the defendant entered a dwelling without consent.
21 Now, a dwelling is any building or portion of a building in
22 which a person ordinarily sleeps.

23 A building constructed as a dwelling that has never
24 been occupied can not be considered a dwelling for purposes of
25 burglary, but a building is a dwelling even if the residents

1 are temporarily absent from the building.

2 Next, the State must prove beyond a reasonable doubt
3 that the defendant intended to commit a crime, either a felony
4 or misdemeanor at the time of entry. The mere entry into a
5 dwelling without consent is not burglary. If the intent to
6 commit a crime is formed after the entry it is not burglary.

7 On the other hand, if the defendant intended to
8 commit a crime at the time of the entry it is a burglary even
9 if intent was abandoned after the entry. It does not matter
10 that the intended crime was not committed -- completed.
11 Excuse me. It does not matter that the intended crime was not
12 completed.

13 Intent may be shown by acts and conduct of the
14 defendant and other circumstances from which you may naturally
15 and reasonably infer intent.

16 Finally, the State must prove beyond a reasonable
17 doubt that when entering or while in the dwelling, or even
18 fleeing, the defendant or an accomplice was armed with a
19 deadly weapon.

20 A deadly weapon is any article, instrument or
21 substance which is likely to cause death or great bodily harm.
22 Whether an instrument has been used as a deadly weapon depends
23 on the facts and circumstances of each case.

24 The following are examples of instruments which may
25 be deadly weapons; a pistol, a shotgun, a rifle, a dirk, a

1 dagger, a knife, a slingshot, metal knuckles, razor, gasoline,
2 a fire bomb or Molotov cocktail, and lighter fluid. A gun may
3 be a deadly weapon even if it is not operating.

4 The defendant is also charged with the crime of
5 petty larceny. Pursuant to South Carolina Code Annotated
6 16-13-30, petty larceny is defined as the felonious taking and
7 carrying away by any person of the personal goods or things of
8 another valued at \$1,000 or less with the intent to
9 appropriate them to one's own use and to deprive the owner
10 permanently of his property. This taking and carrying away
11 must be with the felonious intent to permanently deprive the
12 owner of his property and convert it to the taker's own use.

13 The term felonious intent means that there is no
14 color or right or excuse by the person taking the goods.

15 Larceny is a crime against possession and not
16 against property. To constitute larceny there must be a
17 taking and carrying away. For an essential element of the
18 crime is the taking and possession of goods by the thief.

19 This element of the offense is complete when the
20 accused has assumed control over the goods and has actually
21 carried them away, no matter how short the distance. The
22 taking and carrying away must be without the consent or
23 against the will of the owner of the property.

24 In order to establish the crime of larceny the State
25 must prove that the one taking the goods or money must be and

1 at the time of the taking and carrying away have the intent to
2 steal. That is the defendant must have the intent to
3 feloniously and permanently deprive the owner of the property.
4 Therefore, there can be no conviction for larceny if there's a
5 bonafide claim of right by the person taking the property.

6 The State has the burden of proof and must establish
7 each element of a charge against -- of a charged offense
8 beyond a reasonable doubt. If you as jurors have a reasonable
9 doubt as to whether the State has met its burden of proof and
10 has shown all of the elements of the crime you must find the
11 defendant not guilty under that indictment.

12 You should never enter your verdict on each
13 indictment -- or excuse me. You should enter the verdict on
14 each indictment based on whether or not you are satisfied the
15 State has established beyond a reasonable doubt all of the
16 elements of this offense.

17 Now, I instruct you and emphasize that the fact that
18 the defendant did not testify or put up evidence is not a
19 factor to be considered by you in any way in your deliberation
20 and in your consideration of the question of whether the State
21 has proven the defendant is guilty or not guilty on the
22 charges in the indictments. It must not be considered by you
23 in any manner whatsoever.

24 A defendant has a constitutional right to remain
25 silent and the assertion of this right must not be considered

1 by you in your deliberations.

2 I repeat, under your oath you took you are to draw
3 no conclusion whatsoever on the fact that the defendant in
4 this case exercised his rights and did not testify or present
5 evidence. The fact that the defendant did not testify should
6 not even be discussed by you in the jury room.

7 The burden of proof, as I have stated to you, is on
8 the State. The defendant is not required to prove his
9 innocence and the burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 Now, Madam Forelady, ladies and gentlemen of the
12 jury, you've been selected as fair and impartial jurors sworn
13 to impartially try and determine the facts of this case. Now,
14 when you comply with your oath to do so then no one will have
15 the right to criticize your verdict and you will have fully
16 discharged your duty as jurors.

17 You should not be influenced by opinions or
18 expressions of opinions, if any, which you may have heard on
19 the outside, but you are to decide this case according to the
20 testimony that you have heard from the lips of the sworn
21 witnesses along with other evidence that may have been
22 introduced.

23 As to those questions to which an objection was
24 sustained, you must not speculate as to what the answer may
25 have been or might have been or as to the reason for the

1 objection.

2 You must not consider any purpose of any offer of
3 evidence that was rejected or any evidence that was stricken
4 by the Court. Such matter is to be treated as though you have
5 never known it.

6 You must never speculate to be true any insinuations
7 suggested by a question asked of a witness. The question is
8 not evidence and may be considered only as it supplies meaning
9 to the answer.

10 No alleged confession or admission on the part of a
11 defendant may be considered as any evidence in the case
12 against the defendant making it unless the State has satisfied
13 you beyond a reasonable doubt that the same was freely and
14 voluntarily made without any threats or inducements addressed
15 to hope or fear.

16 In other words, before an alleged confession can be
17 considered by you, the jury, as evidence it must not have been
18 induced for promises nor extorted by fear but must be free and
19 voluntary in every respect, and even then it must be believed
20 by you, the jury.

21 As I said earlier, you are the judges of the facts
22 in this case and you are to determine only if this defendant
23 is guilty or not guilty based upon the testimony and evidence
24 presented in the trial, and after applying the law as I've
25 given it to you. If from the evidence you have a reasonable

1 doubt as to whether or not the defendant is guilty it is your
2 duty to acquit him and write the two words not guilty.

3 Under the oath you took you swore to try this case
4 based only and solely on the testimony, evidence and law
5 presented and heard in this courtroom. It is your duty to lay
6 aside all bias, or prejudice, or sympathy you may have in
7 reaching your verdict. You have no friends to reward or
8 enemies to punish in this case.

9 The word verdict, I might note, is taken from the
10 term veridictum, which is the Latin term for to speak the
11 truth. Abide by your oath and return a verdict which does
12 speak the truth.

13 Now, Madam Forelady, I have prepared a verdict form
14 for you to use in your deliberations.

15 Now, again, you all, I do remind you that whatever
16 verdict you reach on each of these indictments or these
17 charges must be a unanimous verdict. That means all 12
18 members of the jury have to agree to the verdict.

19 And as you will note, it says indictment number
20 2007-GS-37-1835, burglary in the 1st degree. We, the jury,
21 unanimously find that the defendant, David Lee Coward, is
22 either guilty of burglary in the 1st degree or not guilty.

23 Whichever is the unanimous verdict of the jury,
24 Madam Forelady, you will check the appropriate blank.

25 And as to indictment number 2007-GS-37-1836, petty

1 larceny, again, we, the jury, unanimously find that the
2 defendant, David Lee Coward, is either guilty of petty larceny
3 or not guilty.

4 Whichever is the unanimous verdict of the jury you
5 will check the appropriate blank.

6 Once the verdict form has been completed, sign on
7 the line above your name and date it and knock on the door and
8 we'll receive your verdict.

9 Now, if you'll return the verdict form to me 1 more
10 time. I'm going to ask you to retire to the jury room without
11 beginning your deliberations. I need to take some matters up
12 with the attorneys. It will just be a minute or 2. At that
13 time I'll send in the verdict form together with the exhibits.
14 Once you receive the verdict form and the exhibits begin your
15 deliberations.

16 Again, if you would, please retire to the jury room.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 2:52 p.m.)

19 THE COURT: Any requests or exceptions from the
20 State?

21 MR. WAGNER: No, Your Honor

22 THE COURT: From the defense?

23 MR. BALL: No further requests nor exceptions.

24 THE COURT: Very good. Thank you. Again, I think
25 we only have 2 exhibits; is that right?

1 MR. WAGNER: Yes, sir.

2 THE COURT: Be sure those are the only 2 that go
3 back, and here is the verdict form.

4 (WHEREUPON, the alternate enters the courtroom.)

5 THE COURT: All right. I think you understand why
6 you were selected, that was in the event that something
7 happen. This case didn't go but 2 days, and if it had been
8 necessary for you to sit in there that would be what we would
9 have to do.

10 Although it looks like I'm doing everything else in
11 the world up here except paying attention I have developed a
12 certain knack of keeping up with what's going on in the
13 courtroom, and I noticed throughout the trial of this trial
14 you paid very careful and close attention. So I know if you
15 had been called on to sit with the rest of the jury that you
16 would have done an excellent job, and I thank you for that.

17 Now, I wish I could do something for you but I think
18 we're going to have -- anyway, I'm going to give you a number
19 to call tonight after 6 o'clock. It's an answering machine
20 and it will tell us what we need to do tomorrow. It will
21 either be to call back tomorrow or come in in the morning at a
22 certain time.

23 If you'd like, you can either stay or leave, and
24 then 718-1058, jury call in after 6:00. And as I say, there
25 will be a message on it. Very good. And thank you, sir, and

1 I appreciate your service and look forward to working with you
2 later this week. You are excused now. Thank you.

3 (WHEREUPON, the alternate leaves the courtroom.)

4 THE COURT: All right. I do want to thank both
5 counsel. You tried a very professional case. It had its
6 moments but it was very well tried, and I thank you for doing
7 that.

8 MR. WAGNER: Thank you, Judge.

9 THE COURT: And it's in the jury's hands now. We'll
10 see. Yes, sir, we'll stand at ease. If you leave do give the
11 bailiff a number you can be reached and back in 5 minutes.
12 All right. We'll stand at ease. Thank you very much.

13 (WHEREUPON, the jury was instructed to begin
14 deliberations at approximately 2:55 p.m., and court was
15 recessed while awaiting a verdict from the jury.)

16 THE COURT: It's my understanding the jury has a
17 verdict.

18 Anything from the State before we bring the jury
19 back?

20 MR. WAGNER: No, Your Honor.

21 THE COURT: From the defense?

22 MR. BALL: No, Your Honor.

23 THE COURT: All right. Ask the jury to join us,
24 please.

25 (WHEREUPON, the jury enters the courtroom at

1 approximately 4:12 p.m.)

2 THE COURT: Madam Forelady, I understand the jury
3 has reached a verdict?

4 THE FORELADY: Yes, sir.

5 THE COURT: If you would, please, hand it up.

6 The defendant will please rise.

7 State of South Carolina vs. David Lee Coward,
8 indictment number 2007-GS-37-1835, we, the jury, unanimously
9 find that the defendant, David Lee Coward, is guilty of
10 burglary in the 1st degree.

11 Indictment number 2007-GS-37-1836, we, the jury,
12 unanimously find that the defendant, David Lee Coward, is
13 guilty of petty larceny. Signed Jessica C. Smith, foreperson,
14 Walhalla, South Carolina, January 2009.

15 Madam Forelady, ladies and gentlemen of the jury, is
16 that the jury verdict, is it still your verdict so say you
17 all. If so, indicate by raising your right hand.

18 Let the record reflect all members of the jury
19 affirmed the verdict.

20 All right. Is there anything from the State before
21 I dismiss the jury?

22 MR. WAGNER: No, sir.

23 THE COURT: From the defense?

24 MR. BALL: No, sir.

25 THE COURT: Madam Forelady, ladies and gentlemen of

1 the jury, the Court's never interested in a verdict, only how
2 that verdict is reached. Although it seems I'm doing
3 everything up here except paying attention, as I mentioned to
4 the alternate earlier, that I develop a certain ability or
5 knack to be able to keep up with what's going on in the
6 courtroom to a degree.

7 And I noticed in this particular case all of you
8 paid very careful and close attention not only to the
9 testimony and the exhibits but also the argument of counsel,
10 and followed the process very astutely. And for that reason,
11 and having reached a verdict in accordance with your
12 conscience, as you have served well as jurors here in Oconee
13 County, and I thank you for your service.

14 I know that none of you asked to be here, none
15 wanted to be where you've been today and having been selected
16 yesterday but because you did we were able to have our system
17 of justice work in a fashion that is admired everywhere in the
18 world because we have citizen participation. Not somebody
19 telling us what to do but for citizens to bring to the
20 decisions as to what should be done in particular
21 circumstances, and for that reason I thank you.

22 In fact, I think it was a prime minister of Britain,
23 Great Britain during World War II, Winston Churchill sooner
24 said that no greater service can a citizen perform in
25 peacetime than that as jurors because that is the foundation

1 of our system of justice, and I thank you.

2 I wish I could do something for you. The only thing
3 I can note is that yesterday when I qualified the entire jury
4 panel I asked how many had served on a jury in the last 3
5 years, so at least you won't have to serve for another 3
6 years. But I hope your service has not been without benefit
7 because, as I say, our system, our society benefits from your
8 service.

9 I might have 1 other little thing that will help
10 you. We have been able to provide for the balance of the week
11 so this will complete your service for this term as well. So
12 you will be finished not only today but for the next 3 years,
13 at least.

14 But the reason for that is because you were here and
15 the other members of the jury panel. Human nature being what
16 it is we have a tendency to put off doing things until we have
17 to, and it's when we have 12 members empanelled into a jury
18 box will make the decision that we have been able to reach.
19 It's usually when people come together.

20 So we're going to be able to dispose of about 50
21 cases this week, and you can imagine how long this case took,
22 and this is one of those cases that had to be tried because of
23 there were differences that needed to be resolved. But if we
24 had to try every case we couldn't have done it. So the fact
25 is you all were here, and the other members of the panel who

1 weren't selected are being available, if necessary, were going
2 to be able to do work that would not otherwise be done.

3 With all of that, I do want to thank you very much
4 for your service. It's been a privilege to work with you.

5 Madam Clerk, do you have anything for them?

6 (WHEREUPON, the clerk spoke briefly with the jury in
7 reference to their jury service.)

8 THE COURT: All right. Very good. Madam Forelady,
9 I do need to see you for a moment though, please.

10 Again. Thank you so much, and you will be excused.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 4:18 p.m.)

13 THE COURT: Is the State ready?

14 MR. WAGNER: Yes, sir.

15 THE COURT: Defendant, come around.

16 Solicitor?

17 MR. WAGNER: Your Honor, he's got a prior record.
18 He was actually, I think, in court on August the 30th, which
19 was just a few days after this burglary in this case today
20 happened and he pled to burglary 2nd degree and petty larceny
21 for those charges, and I believe he's still on probation. He
22 got 2 years probation.

23 MR. BALL: No. You're off probation, aren't you?

24 He's off of probation, Judge.

25 MR. WAGNER: He's also got another burglary pending.

1 I don't know if we'll be able to do anything with it. The
2 victim is deceased in a car wreck. He did confess to that
3 burglary. There's not been a conviction.

4 THE COURT: It has not been processed?

5 MR. WAGNER: Well, the victim got killed in a car
6 wreck. So he was charged with it and I think -- perceive
7 witness problems on that case with not having a victim, but he
8 did confess to it, you know. It's another burglary pending
9 that will probably have to be dismissed because of that.

10 THE COURT: All right. So the only -- he's had 1
11 conviction?

12 MR. WAGNER: One, yeah, General Sessions, Your
13 Honor. That's back in 2007.

14 THE COURT: What was it, burglary?

15 MR. WAGNER: Burglary 2nd degree and petty larceny,
16 and he received a 2-year probationary sentence on that.

17 THE COURT: What was the suspended sentence?

18 MR. WAGNER: It looks to me like 3 years, I believe
19 suspended on 2 years.

20 THE DEFENDANT: It was 2 years suspended on 1.

21 THE COURT: Two years suspended to 1 year?

22 THE DEFENDANT: Yes.

23 THE COURT: One year of probation or 1 year active?

24 MR. BALL: No. One year probation.

25 THE COURT: One year probation.

1 MR. WAGNER: And he's also got a breach of the peace
2 and some other smaller type offenses.

3 THE COURT: That was the only General Sessions
4 offense?

5 MR. WAGNER: Yes, sir. I think he's only 20.

6 THE COURT: All right. Mr. Ball?

7 MR. BALL: Judge, David is 21 years old. You heard
8 all the people that testified and so forth and all. He had
9 had a really serious drug problem but he went down to Florence
10 at the Owl's Nest, that program down there. Went down there
11 and spent 90 days, worked, paid his own way and all, and he's
12 come out and he's been clean since. I would ask that you give
13 him the bare minimum, Judge.

14 THE COURT: We do know that burglary 1st degree is a
15 15-year to life sentence.

16 MR. BALL: Yes, sir, but I believe that you have the
17 authority to suspend some of that.

18 THE COURT: Well, I'm not sure it's a mandatory 15
19 years, but we'll see.

20 Also, what is the maximum sentence on petty larceny?

21 MR. WAGNER: Is 30 days or \$500.

22 THE COURT: What does the State say?

23 MR. WAGNER: Your Honor, my concern with him, I just
24 don't see a whole lot of remorse in him. I understand wanting
25 a trial and he was entitled to that.

1 THE COURT: Well, let's assure you no one is ever
2 going to be any way treated differently if they ask for a
3 trial because that's what the law provides. But there is one
4 thing that happens during a trial. On a plea, obviously, I
5 only hear what's necessary to support the plea, but sometimes
6 you hear more about the facts during a trial on a particular
7 case.

8 MR. WAGNER: My concern is, Judge, the lady was at
9 work and she came home late. She very possibly could have
10 come in and surprised these guys. They obviously armed
11 themselves leaving the house and killed her dog. And, you
12 know, that combined with the fact that he's got another
13 burglary pending that he did confess to. I realize it's not a
14 conviction and not trying to present it as one, and the fact
15 that he was convicted in court of burglary 2nd the week this
16 occurred concerns me.

17 THE COURT: All right. Mr. Ball?

18 MR. BALL: That's about all we can offer.

19 THE COURT: Does anybody like to say anything on
20 behalf of Mr. Coward?

21 MR. BALL: Here's his mother and his father.

22 THE DEFENDANT'S MOTHER: I'd just like to say that
23 he did do his 90 day's at Owl's Nest. He stayed an additional
24 20 days and sponsored the next person. He stayed there on his
25 own. It's been very important to David to get back right, and

1 he has showed remorse and he would never, ever, ever have hurt
2 Debra Miller. None of us ever wanted anything like that to
3 ever happen to her.

4 And that our sons, we've fussed on the phone and
5 we've prayed for each other's kids because they were both into
6 the same things. And like it was mentioned, it was a party
7 house for them. And, you know, that doesn't excuse what David
8 did but David never would have hurt her, never would have hurt
9 her, and he is sorry for what happened.

10 THE COURT: One thing that's been mentioned during
11 the trial of this case, that these were essentially property
12 crimes. Both petty larceny as well as burglary are not
13 property crimes. They are crimes against the person because
14 they violate a person's rights to be left without interference
15 in their home or dwelling, as well as in their person as to
16 have things taken from them.

17 Anyone else?

18 Mr. Coward, anything you'd like to say?

19 THE DEFENDANT: I'm just --

20 THE DEFENDANT'S FATHER: I know the jury made --

21 THE COURT: I'm sorry. The father, Mr. Coward, can
22 we have your name, please, for the record, please.

23 THE DEFENDANT'S FATHER: Dennis Coward.

24 THE COURT: Yes, sir.

25 THE DEFENDANT'S FATHER: David Dennis Coward. I

1 know the jury made the decision of guilty but the evidence of
2 the guns and the stuff never was -- I mean, it's not -- it's
3 like Dallas said, it's hearsay. There is no evidence of David
4 ever having a gun when he left that house. I haven't seen
5 that proven in this case.

6 THE DEFENDANT'S MOTHER: And what we've seen out of
7 David since then has been a complete change. It's just he's
8 not even the same person that he was then. I mean, you can't
9 excuse it all away with drugs and things I know but he's not
10 the same person he was.

11 THE DEFENDANT: And I just want to apologize to
12 Debra Miller. I mean, that woman was like a mother to me for
13 a couple years. And, I mean, she took me in. I mean, we did
14 party there and stuff but she was good friend, and I never
15 meant to hurt her.

16 THE COURT: How far have you gone to school,
17 Mr. Coward?

18 THE DEFENDANT: I went to the 9th grade, sir.

19 THE COURT: Have you gotten your GED?

20 THE DEFENDANT: I was working on it.

21 THE COURT: What sort of work have you done?

22 THE DEFENDANT: I've done Sheetrock, like fast
23 foods, then I worked at regular restaurants. I did brick
24 masonry sometimes, landscaping.

25 THE COURT: What was the last job you had?

1 THE DEFENDANT: Landscaping. Actually, last job was
2 IHOP when I was in Florence working, but then I did some
3 landscaping after that, a little bit.

4 THE DEFENDANT'S MOTHER: The guy that he works for
5 in the landscaping business, it's the down season for him so
6 he didn't have anything for him to do right now. And
7 actually, the guy my husband is working for has told him that
8 when they start their jobs that he's got a position there.
9 It's just a hard time. Even his dad has gone through
10 unemployment, and he's always had a job so.

11 THE COURT: Let me read from the statute that sets
12 out the elements of 1st degree burglary, Section 16-11-311.

13 The defendant is charged with 1st degree burglary.
14 The State must first prove beyond a reasonable doubt the
15 defendant entered a dwelling without consent. Finally, the
16 State must prove beyond a reasonable doubt that when entering,
17 while in the dwelling or when fleeing the defendant or an
18 accomplice was armed with a deadly weapon.

19 Not only on the testimony or evidence in the case is
20 unrefuted -- or not unrefuted but it's uncontradicted in the
21 sense that it seems to be established that weapons were taken
22 and used.

23 All right. Anything else?

24 MR. BALL: Nothing further, Your Honor.

25 THE COURT: Indictment number 2007-GS-37-1836, the

1 sentence of the Court that the defendant, David Lee Coward, be
2 committed to the State Department of Corrections for a term of
3 30 days plus pay the costs and assessments as applicable.

4 Indictment number 2007-GS-37-1835, burglary in the
5 1st degree. How much time has the defendant served?

6 MR. BALL: How long did you do on your stay in jail?

7 THE DEFENDANT'S MOTHER: For 90 days for 1.

8 THE DEFENDANT: I think I did a little over 4
9 months.

10 THE COURT: Four months?

11 THE DEFENDANT: Yeah, I think.

12 THE COURT: Does that sound about right, solicitor?

13 MR. WAGNER: Your Honor, I'm sorry. I wish I knew
14 that answer because I don't know. We can check and find out
15 from the jail real quick, but I don't know off the top of my
16 head.

17 THE COURT: I'll just check that it be provided,
18 that calculated and applied by the State Department of
19 Corrections.

20 Indictment number 2007-GS-37-1835, the sentence of
21 the Court that the defendant, David Lee Coward, be committed
22 to the State Department of Corrections for a term of 15 years,
23 plus pay the costs and assessment as applicable.

24 The sentences are to run concurrent and the
25 defendant be given credit for time served pursuant to South

1 Carolina Code Section 24-13-40, to be calculated and applied
2 by the State Department of Corrections.

3 Restitution in the amount of \$750 will be made to
4 the victim, Debra Miller.

5 Special conditions, the defendant is to obtain his
6 GED, undergo drug and alcohol testing and treatment, substance
7 abuse counseling as directed. Good luck.

8 MR. BALL: Can you suspend any of that, Judge?

9 THE COURT: I don't think so. I was looking at it
10 and the fact -- well, the thing is in burglary 1st degree it
11 was determined that the minimum would be 15 years. In fact,
12 it's a life sentence except it's provided that the Court in
13 its discretion may give the mandatory 15. It's a serious
14 offense.

15 MR. BALL: Yes, sir.

16 THE COURT: It's an offense against a person. And
17 not only is it dangerous to anybody that might be in that home
18 but also the individual who enters that home, as could have
19 await for them. No, I think the sentence is appropriate.

20 MR. BALL: Thank you, Your Honor.

21 THE COURT: Good luck to you, sir.

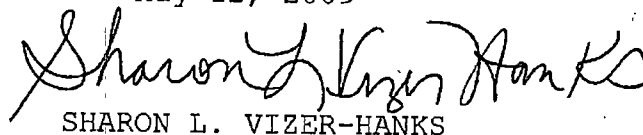
22 (WHEREUPON, the hearing was concluded.)
23
24
25

C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 10th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 26th and 27th day of January 2009.

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

May 12, 2009



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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MAR 02 2010

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID LEE COWARD,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the trial judge err in admitting Coward's statement to police when the police, admittedly, threatened to incarcerate Coward's mother if he did not give the statement?

STATEMENT OF THE CASE

David Lee Coward was indicted by the Oconee County grand jury of Burglary 1st degree (2007-GS-37-1835) and petty larceny (2007-GS-37-1836). He was tried by the Honorable Alexander S. Macaulay and a jury on January 26th and 27th, 2007. He was represented by Dallas Ball, Esquire. He was convicted, and sentenced to 15 years incarceration.

This appeal timely follows.

ARGUMENT

The trial judge erred in admitting Coward's statement to police when the police, admittedly, threatened to incarcerate Coward's mother if he did not give the statement.

The victim's house was robbed at nighttime by friends of her son. Her son, at the time, was incarcerated on theft charges. Three co-defendants, including Coward, were arrested in connection with the crime, and were charged with burglary and petty larceny. One of the co-defendants shot and killed the victim's dog.

During a Jackson v. Denno¹ hearing held during the trial, the lead investigator in the case, Scott Arnold, testified to his extracting an inculpatory statement from Coward. On cross-examination, defense counsel asked about statements made relating to Coward's mother, Cindy:

Q: But Cindy's situations did come up?

A: Yeah, I mentioned her name.

Q: In what capacity? How did that come up?

A: I told him that his mother's name had been mentioned and I felt like that—you know, I knew she didn't commit the crime and I told him I don't think anyone else needs to get in trouble over this because his mother's name had been mentioned in a capacity where she had knew – she knew some things and I felt like, you know, that she didn't—nobody else needed to get in trouble except the ones that committed the crime.

ROA p. 14, ll. 15-24.

In fact, it was Coward's mother who initially informed the victim that her son had stolen items from her house, so it is extremely unlikely that she would have had any legal exposure in this case. ROA p. 1, l. 8- p. 2, l. 10; ROA p. 3, ll. 14-24.

¹ 378 U.S. 368 (1964).

Coward testified that the only reason he gave a statement to Arnold was because Arnold was threatening to arrest his mother. ROA p. 19, ll. 19-23; ROA p. 22, ll. 1-5.

Trial counsel asked that the statement be excluded from trial. ROA p. 24, ll. 16-17. The State, during its argument to allow the statement to be introduced, seemingly conceded that the threats had, indeed, occurred:

I'd also ask the Court to take a look, I know he says his mother was threatened but he by this own admission gave a voluntary statement on another burglary case that he was currently at the time this statement was given was locked up on and Officer Arnold had not done anything to make him give a statement on that case.

ROA p. 26, ll. 15-20.

The judge ruled that the statement was admissible. ROA p. 27, l. 1- 28, l. 13.

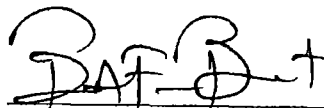
When the statement was introduced at trial, defense counsel renewed its objection. This was error, and the statement should have been excluded.

As this Court had acknowledged before: veiled threats against family members can render a confession involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992). And see State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). The introduction of an involuntary statement at trial is a violation of Miranda v. Arizona, 384 U.S. 436 (1966), and U.S.C.A. 5 and 14. Arnold's statements about possibly implicating Coward's mother in these crimes and having her arrested rendered Coward's statement involuntary. But for Arnold's actions, Coward would not have given a statement to law enforcement. Because Coward's right to due process was violated by the use of his statement at trial which was rendered involuntary by Arnold's threats against his family, Coward respectfully asks this Court to reverse his convictions.

CONCLUSION

For the preceding reason, Coward respectfully asks this Court to reverse his convictions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'EAF-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 2nd day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 2, 2010

A handwritten signature in black ink, appearing to read 'EAFB' with a small 'A' to the right, written over a horizontal line.

ELIZABETH A. FRANKLIN-BEST
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

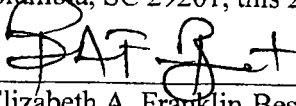
V.

DAVID LEE COWARD,

APPELLANT

CERTIFICATE OF SERVICE

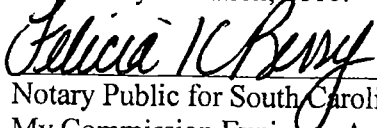
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of March, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 2nd day of March, 2010.



(L.S.)
Notary Public for South Carolina
My Commission Expires. August 15, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

DAVID LEE COWARD,

Appellant.

FINAL BRIEF OF RESPONDENT

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<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966)	4,5
<u>State v. Davis</u> , 309 S.C. 326, 422 S.E.2d 133 (1992)	4, 5
<u>State v. Dye</u> , 384 S.C. 42, 681 S.E.2d 23 (2009)	3, 4, 7
<u>State v. Franklin</u> , 299 S.C. 133, 382 S.E.2d 911 (1989)	4
<u>State v. Goodwin</u> , 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009)	4, 8
<u>State v. Miller</u> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007)	3, 4
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	3, 4
<u>State v. Washington</u> , 296 S.C. 54, 370 S.E.2d 611 (1988)	4

STATEMENT OF ISSUE ON APPEAL

Did the trial judge correctly allow Appellant's confession in evidence when it was freely and voluntarily given?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent concurs with the Statement of the Case provided by Appellant.

ARGUMENT

The trial judge correctly allowed Appellant's confession in evidence when it was freely and voluntarily made.

The Respondent submits Appellant's confession was freely and voluntarily given after he had been fully advised of his rights. The Respondent submits the trial judge did not err and that he was in the best position to judge the demeanor and credibility of the witnesses presented during the Jackson v. Denno¹ hearing and that his ruling is supported by the record.

In criminal cases, this Court will review errors of law only. State v. Dye, 384 S.C. 42, 46, 681 S.E.2d 23, 26 (2009). This Court is bound by the circuit court's factual findings unless they are clearly erroneous. Id. On review, the circuit court's conclusions on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. Id.; State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). This Court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the circuit court's ruling is supported by any evidence. State v. Dye, supra.

To determine the voluntariness of a statement, the circuit court must first conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. State v. Dye, at 47, 681 S.E.2d at 26; State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 448 (Ct. App. 2007). During this hearing, the circuit court must examine the totality of circumstances surrounding the statement and determine whether the State has carried its burden of proving the statement

¹378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

was given voluntarily. State v. Dye at 47, 681 S.E.2d at 26. If the circuit court finds the statement was given voluntarily, it is then submitted to the jury where its voluntariness must be established beyond a reasonable doubt. Id.; State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988). On appeal, the circuit court's decision as to the voluntariness of the statement will not be reversed unless so erroneous as to demonstrate an abuse of discretion. State v. Dye, at 47, 681 S.E.2d at 26; State v. Miller, 375 S.C. at 378, 652 S.E.2d at 448.

If a defendant was advised of his Miranda rights, but nevertheless chose to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990).

The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement. Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000); State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009). The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused. State v. Franklin, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989).

The question of whether law enforcement complied with the requirements of Miranda is for the court, not the jury. State v. Davis, 309 S.C. 326, 342, 422 S.E.2d 133, 143 (1992), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). "Once the court determines that a defendant received and understood his rights, the court allows a confession into evidence." State v. Davis, 309 S.C. at 342, 422 S.E.2d at 143. "It

then is for the jury ultimately to decide whether the confession was voluntary.” Id.

The Respondent submits that the trial judge in the case at bar committed no error when he found the confession was voluntarily given. He further correctly instructed the jury that while he had made an initial determination, it was up to the jury to ultimately decide whether or not the statement was voluntarily made. (ROA.p.31). The Respondent submits the evidence in the record clearly supports the trial judge’s determination and that no error was committed.

Scott Arnold, Property Crimes Investigator with the Oconee County Sheriff’s Office, testified that he was assigned to the burglary case at issue here. He spoke with the victim, who indicated that she believed certain individuals, including Appellant, were involved in the burglary. Arnold went to talk to Appellant who was in the county detention center at the time. Arnold testified that he read Appellant his Miranda² rights, that Appellant stated he understood his rights, that Appellant initialed each right indicating he understood, and that he then signed the bottom of the form. Arnold testified that Appellant did not appear to be under this influence of drugs or alcohol, that Appellant answered questions and spoke coherently to Arnold, and that Appellant appeared to be able to understand the questions. (ROA.pp.4-8).

Arnold testified that he then told Appellant that other co-defendants were cooperating with law enforcement and that he needed Appellant to “come clean” about what happened. Appellant then told Arnold about his involvement in the burglary. Arnold testified that he did not threaten Appellant’s family or friends and that he did not use physical violence to

² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

induce Appellant's statement. Arnold further testified that he did not promise Appellant anything, nor did he threaten Appellant or try to coerce Appellant into giving a statement. Arnold testified that he believed Appellant's statement had been given freely and voluntarily. (ROA.pp.9-13).

On cross-examination, Arnold testified that he did not tell Appellant that he would arrest Appellant's mother (Cindy) for receiving stolen goods and that he did not make any reference to such a possibility. Arnold testified that Cindy's name came up in that he told Appellant her "name had been mentioned in a capacity where she had knew - - she knew some things and I felt like, you know, that she didn't - - nobody else needed to get in trouble except the ones that committed this crime." (ROA.p.13, lines 18-24).

Appellant testified that Arnold told him if he did not write a statement admitting to the crime, that he had enough evidence to arrest Cindy. So he wrote the statement. (ROA.pp.15-16). Appellant also testified that he was in the detention center on other charges at the time Arnold came to see him and that he had given a statement to Arnold in reference to the other case. He testified that he had to waive his rights when he gave the prior statement and that he understood the procedure. Appellant testified that he did not know what Arnold had on his mother and that he only gave the statement to keep her out of trouble. (ROA.pp.17-23).

The court found that Appellant's statement was freely and voluntarily given. The court noted that Appellant signed the waiver of rights form and that he initialed where it stated "no promises or threats have been made to me and no pressure or coercion of any kind has been used against me. . ." The court noted that Appellant testified that he did not know

what Arnold may have had on his mother, Appellant just said he figured people had said things. (ROA.p.27).

The court found, considering the totality of the circumstances, the statement was valid as given and that the Appellant was fully advised of his rights under the 5th and 6th Amendments, and that Appellant was advised that the interrogation would cease if he wished to consult an attorney. The court further found that Appellant knowingly and intelligently waived his rights as indicated by his signature and that the statement was freely and voluntarily given without duress, coercion, or undue influence, and without any promises of reward or leniency, without threat of injury, and without compulsion or inducement of any kind. The court thus found the statement was the voluntary product of the free and unconstrained will of Appellant. (ROA.pp.27-28).

The Respondent submits the trial court did not err. The court considered the totality of the circumstances and found that based upon his signature and initials on the waiver form and the statement itself, along with his testimony that he did not know what Arnold may have had on his mother, that the confession was freely given. Appellant initialed his name next to each right and indicated he understood those rights. In addition, prior to giving this statement, he had given another statement in an unrelated case to the same officer. He clearly understood the procedure. The trial judge was in the best position to determine the demeanor and credibility of the witnesses at the hearing; he found the statement was voluntarily given. The Respondent submits the trial court did not abuse its discretion in so finding. State v. Dye, supra. The judge instructed the jury that it was up to them to determine whether the confession was given voluntarily without any threats or inducements.

The Respondent submits the trial court did not err in finding the statement voluntary and in sending it to the jury for the ultimate decision as to its voluntariness. State v. Goodwin, supra.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

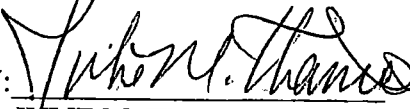
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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JULIE M. THAMES
Assistant Attorney General

CHRISSEY ADAMS
Solicitor, Tenth Judicial Circuit

BY:


JULIE M. THAMES

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ATTORNEYS FOR RESPONDENT

February 5, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

DAVID LEE COWARD,

Appellant.

CERTIFICATE OF COUNSEL

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

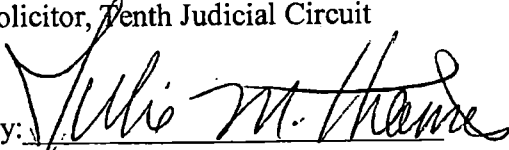
HENRY DARGAN McMASTER
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Chief Deputy Attorney General

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Solicitor, Tenth Judicial Circuit

By: 

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ATTORNEYS FOR RESPONDENT

February 5, 2010.

STATE OF SOUTH CAROLINA
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Appeal From Oconee County
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THE STATE,

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vs.

DAVID LEE COWARD,

Appellant.

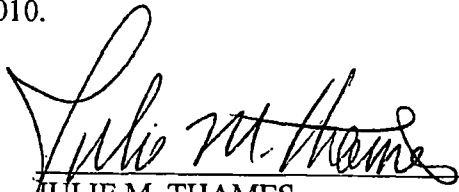
PROOF OF SERVICE

I, Julie M. Thames, certify that I have served the within Final Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best
SC Commission on Indigent Defense
Appellate Division
P.O. Box 11589
Columbia, SC 29211

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

This 5th day of February, 2010.


JULIE M. THAMES
Assistant Attorney General

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

2011 WL 11736356

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

The STATE, Respondent,

v.

David Lee COWARD, Appellant.

No. 2011-UP-583.

Submitted Dec. 1, 2011.

Decided Dec. 21, 2011.

Appeal from Oconee County; Alexander S. Macaulay,
Circuit Court Judge.**Attorneys and Law Firms**Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, and Assistant Attorney General
David Spencer, all of Columbia; and Solicitor Christina
T. Adams, of Anderson, for Respondent.**Footnotes**

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

Opinion

PER CURIAM.

*1 David Lee Coward appeals his convictions for first-degree burglary and petit larceny, arguing the circuit court erred in admitting his confession because the officer who obtained the confession coerced Coward by threatening Coward's mother. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: *State v. Dye*, 384 S.C. 42, 46, 681 S.E.2d 23, 26 (Ct. App.2009) ("In criminal cases, this [c]ourt will review errors of law only."); *id.* ("This [c]ourt is bound by the circuit court's factual findings unless they are clearly erroneous."); *id.* ("This [c]ourt does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the circuit court's ruling is supported by any evidence."); *id.* at 47, 681 S.E.2d at 26 ("On appeal, the circuit court's decision as to the voluntariness of the statement will not be reversed unless so erroneous as to demonstrate an abuse of discretion.").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

All Citations

Not Reported in S.E.2d, 2011 WL 11736356

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

DAVID LEE COWARD,

APPELLANT

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2011-UP-583

PETITION FOR REHEARING

Petitioner respectfully asks this Court, pursuant to SCAR, Rule 221(a) to rehear his case. Petitioner submits this Court has overlooked or misapprehended points necessary to the proper resolution of this case. Specifically, the Court overlooked the fact that petitioner's statement to police, in which he implicated himself in this crime, was induced by a threat and was therefore involuntary. The Court errs when it holds, in its unpublished opinion, that the trial court's decision to admit the statement was not "clearly erroneous."

RELEVANT FACTS

The victim's house was robbed at nighttime by friends of her son. Her son, at the time, was incarcerated on theft charges. Three co-defendants, including Coward, were arrested in connection

with the crime, and were charged with burglary and petty larceny. One of the co-defendants shot and killed the victim's dog.

During a Jackson v. Denno¹ hearing held during the trial, the lead investigator in the case, Scott Arnold, testified to his extracting an inculpatory statement from Coward. On cross-examination, defense counsel asked about statements made relating to Coward's mother, Cindy:

Q: But Cindy's situations did come up?

A: Yeah, I mentioned her name.

Q: In what capacity? How did that come up?

A: I told him that his mother's name had been mentioned and I felt like that—you know, I knew she didn't commit the crime and I told him I don't think anyone else needs to get in trouble over this because his mother's name had been mentioned in a capacity where she had knew — she knew some things and I felt like, you know, that she didn't—nobody else needed to get in trouble except the ones that committed the crime.

ROA p. 14, ll. 15-24.

In fact, it was Coward's mother who initially informed the victim that her son had stolen items from her house, so it is extremely unlikely that she would have had any legal exposure in this case. ROA p. 1, l. 8- p. 2, l. 10; ROA p. 3, ll. 14-24.

Coward testified that the only reason he gave a statement to Arnold was because Arnold was threatening to arrest his mother. ROA p. 19, ll. 19-23; ROA p. 22, ll. 1-5.

Trial counsel asked that the statement be excluded from trial. ROA p. 24, ll. 16-17. The State, during its argument to allow the statement to be introduced, seemingly conceded that the threats had, indeed, occurred:

I'd also ask the Court to take a look, I know he says his mother was threatened but he by this own admission gave a voluntary statement on another burglary case that he was currently at the time this statement was given was locked

¹ 378 U.S. 368 (1964).

up on and Officer Arnold had not done anything to make him give a statement on that case.

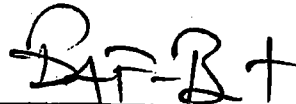
ROA p. 26, ll. 15-20.

The judge ruled that the statement was admissible. ROA p. 27, l. 1- 28, l. 13.

When the statement was introduced at trial, defense counsel renewed its objection. This was error, and the statement should have been excluded.

As this Court had acknowledged before: veiled threats against family members can render a confession involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992). And see State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). The introduction of an involuntary statement at trial is a violation of Miranda v. Arizona, 384 U.S. 436 (1966), and the United States Constitution, Amendments 5 and 14. Arnold's statements about possibly implicating Coward's mother in these crimes and having her arrested rendered Coward's statement involuntary. But for Arnold's actions, Coward would not have given a statement to law enforcement. Because Coward's right to due process was violated by the use of his statement at trial which was rendered involuntary by Arnold's threats against his family, Coward respectfully asks this Court to grant his petition for rehearing. The trial court judge's decision to admit the statement was clearly erroneous, and this Court should ultimately reverse and remand petitioner's case for a new trial.

Respectfully submitted,



Elizabeth A. Franklin-Best
Appellate Defender

This 4th day of January, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

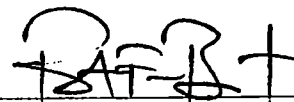
V.

DAVID LEE COWARD,

APPELLANT

CERTIFICATE OF SERVICE

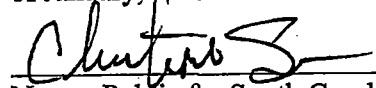
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie M. Thames, Esquire, this 4th day of January, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of January, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021.

The South Carolina Court of Appeals

The State,

Respondent,

v.

David Lee Coward,

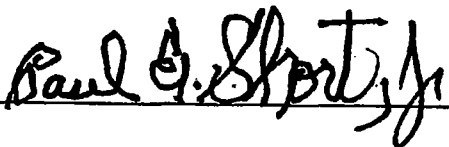
Appellant.

The Honorable Alexander S. Macaulay
Oconee County
Trial Court Case No. 2007-GS-37-01835
2007-GS-37-01836

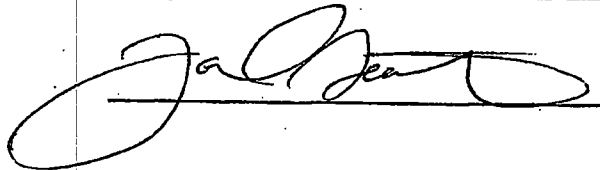
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Short

 J. Williams

 J. Geathers

cc: Appellate Defender Elizabeth A. Franklin-Best
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Julie M. Thames
Christina Theos Adams, Esquire

FILED

January 27, 2012

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2011-UP-583 (S.C. Ct. App. filed 12/21/2011)

07-GS-37-1835-36.

RECEIVED

FEB 27 2012

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DAVID LEE COWARD,

APPELLANT

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ELIZABETH A. FRANKLIN-BEST
Appellate DefenderSouth Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 1/27/2012.

QUESTION PRESENTED

Whether the trial judge erred in admitting Coward's statement to police when the police threatened to incarcerate Coward's mother if he did not give the statement?

STATEMENT OF THE CASE

David Lee Coward was indicted by the Oconee County grand jury of Burglary 1st degree (2007-GS-37-1835) and petty larceny (2007-GS-37-1836). He was tried by the Honorable Alexander S. Macaulay and a jury on January 26th and 27th, 2007. He was represented by Dallas Ball, Esquire. He was convicted, and sentenced to 15 years incarceration.

Coward timely filed an appeal, and the South Carolina Court of Appeals affirmed the conviction and sentence by way of an unpublished opinion on December 21, 2011. State v. Coward, Op. No. 2011-UP-583. App. 1-2. The Court of Appeals then denied Coward's petition for rehearing on January 27, 2012. App. 7-8.

This petition for writ of certiorari timely follows.

ARGUMENT

The trial judge erred in admitting Coward's statement to police when the police threatened to incarcerate Coward's mother if he did not give the statement.

The victim's house was robbed at nighttime by friends of her son. Her son, at the time, was incarcerated on theft charges. Three co-defendants, including Coward, were arrested in connection with the crime, and were charged with burglary and petty larceny. One of the co-defendants shot and killed the victim's dog.

During a Jackson v. Denno¹ hearing held during the trial, the lead investigator in the case, Scott Arnold, testified to his extracting an inculpatory statement from Coward. On cross-examination, defense counsel asked about statements made relating to Coward's mother, Cindy:

Q: But Cindy's situations did come up?

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A: I told him that his mother's name had been mentioned and I felt like that—you know, I knew she didn't commit the crime and I told him I don't think anyone else needs to get in trouble over this because his mother's name had been mentioned in a capacity where she had knew – she knew some things and I felt like, you know, that she didn't—nobody else needed to get in trouble except the ones that committed the crime.

ROA p. 14, ll. 15-24.

In fact, it was Coward's mother who initially informed the victim that her son had stolen items from her house, so it is extremely unlikely that she would have had any legal exposure in this case. ROA p. 1, l. 8- p. 2, l. 10; ROA p. 3, ll. 14-24.

¹ 378 U.S. 368 (1964).

Coward testified that the only reason he gave a statement to Arnold was because Arnold was threatening to arrest his mother. ROA p. 19, ll. 19-23; ROA p. 22, ll. 1-5.

Trial counsel asked that the statement be excluded from trial. ROA p. 24, ll. 16-17. The State, during its argument to allow the statement to be introduced, seemingly conceded that the threats had, indeed, occurred:

I'd also ask the Court to take a look, I know he says his mother was threatened but he by this own admission gave a voluntary statement on another burglary case that he was currently at the time this statement was given was locked up on and Officer Arnold had not done anything to make him give a statement on that case.

ROA p. 26, ll. 15-20.

The judge ruled that the statement was admissible. ROA p. 27, l. 1- 28, l. 13.

When the statement was introduced at trial, defense counsel renewed its objection. This was error, and the statement should have been excluded.

Veiled threats against family members can render a confession involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992). And see State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). The introduction of an involuntary statement at trial is a violation of Miranda v. Arizona, 384 U.S. 436 (1966). Arnold's statements about possibly implicating Coward's mother in these crimes and having her arrested rendered Coward's statement involuntary. But for Arnold's actions, Coward would not have given a statement to law enforcement. Because Coward's right to due process was violated by the use of his statement at trial which was rendered involuntary by Arnold's threats against his family, Coward respectfully asks this Court to grant his petition for writ of certiorari and allow full briefing on the issue.

CONCLUSION

For the preceding reason, Coward respectfully asks this Court to grant his petition for writ of certiorari and allow fully briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'E. Franklin-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER.

This 27th day of February, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2011-UP-583 (S.C. Ct. App. filed 12/21/2011)
07-GS-37-1835-36.

THE STATE,

RESPONDENT,

V.

DAVID LEE COWARD,

APPELLANT

CERTIFICATE OF SERVICE

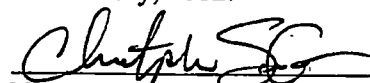
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Julie M. Thames, Esquire, and the S.C. Court of Appeals this 27th day of February, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

JUN - 4 2012

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

S.C. Supreme Court

THE STATE,

Respondent,

vs.

DAVID LEE COWARD,

Appellant.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

ALAN WILSON
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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in finding petitioner's statement to law enforcement admissible.

STATEMENT OF THE CASE

Petitioner David Lee Coward was indicted for Burglary in the First Degree and Petty Larceny. The jury found Coward guilty as charged on January 27, 2007. The Honorable Alexander S. McCauley sentenced Coward to fifteen years imprisonment.

Coward appealed and the Court of Appeals affirmed the conviction. State v. Coward, Op. No. 2011-UP-583. The subsequent petition for rehearing was denied on January 27, 2012.

ARGUMENT

The trial court did not err in finding petitioner's statement to law enforcement admissible.

Coward and two others burglarized victim's home and stole guns and an X-box. One of the accomplices shot victim's dog. Coward's mother called victim and let her know that Coward committed the burglary with the other two while he was drunk and high and that he brought home some of victim's guns. R. p. 3, lines 14-24. Coward claims his statement to police was coerced because they threatened to prosecute his mother unless he cooperated. However, the record supports the trial court's finding that he was not coerced and the plea was freely and voluntarily given.

In criminal cases, this Court will review errors of law only. State v. Dye, 384 S.C. 42, 46, 681 S.E.2d 23, 26 (2009). This Court is bound by the circuit court's factual findings unless they are clearly erroneous. Id. On review, the circuit court's conclusions on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion. Id.; State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). This Court does not reevaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the circuit court's ruling is supported by any evidence. State v. Dye, supra.

To determine the voluntariness of a statement, the circuit court must first conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. State v. Dye, at 47, 681 S.E.2d at 26; State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 448 (Ct. App. 2007).

During this hearing, the circuit court must examine the totality of circumstances surrounding the statement and determine whether the State has carried its burden of proving the statement was given voluntarily. State v. Dye at 47, 681 S.E.2d at 26. If the circuit court finds the statement was given voluntarily, it is then submitted to the jury where its voluntariness must be established beyond a reasonable doubt. Id.; State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988). On appeal, the circuit court's decision as to the voluntariness of the statement will not be reversed unless so erroneous as to demonstrate an abuse of discretion. State v. Dye, at 47, 681 S.E.2d at 26; State v. Miller, 375 S.C. at 378, 652 S.E.2d at 448.

The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement. Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000); State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009). The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused. State v. Franklin, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989).

Investigator Scott Arnold testified that he was assigned to investigate the burglary. Arnold interviewed Victim and Victim advised Arnold that Coward and two others were involved in the burglary. Arnold then spoke to Coward while Coward was in custody at the county detention center. Arnold testified that he read Coward his Miranda¹ rights, that Coward indicated he understood his rights, that Coward initialed each right indicating he understood, and that he then signed the bottom of the form. Arnold testified that Coward did

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966).

not appear to be under this influence of drugs or alcohol, that Coward answered questions and spoke coherently to Arnold, and that Coward appeared to be able to understand the questions. R. pp. 4-8.

Arnold testified that he then told Coward that other co-defendants were cooperating with law enforcement and that he needed Appellant to "come clean" about what happened. Coward told Arnold about his involvement in the burglary. Arnold testified he did not threaten Coward's family or friends. Arnold further testified he did not promise Appellant anything, nor did he threaten Appellant or try to coerce Appellant into giving a statement. Arnold testified he believed Coward's statement was given freely and voluntarily. R. pp. 9-13.

On cross-examination, Arnold explained the following:

Q: Officer Arnold, did Cindy Coward's name come up at any time during this interview?

A: Yes, it did.

Q: And did you tell him that if he didn't sign this statement that you were going to arrest his momma for receiving stolen goods?

A: No, I did not.

Q: Did you make any reference whatsoever to that?

A: No, I did not.

Q: Did you ask him about any guns or so forth that might be up at Cindy's?

A: I asked him where the guns were, and to my knowledge he didn't tell me.

Q: But Cindy's situation did come up?

A: Yeah, I mentioned her name.

Q: In what capacity? How did that come up?

A: I told him that his mother's name had been mentioned and I felt like that – you know, I knew she didn't commit the crime and I told him I don't think anyone else needs to get in trouble over this because his mother's name had been mentioned in a capacity where she had knew – she knew some things and I felt like, you know, that she didn't – nobody else needed to get in trouble except the ones that committed this crime.

R. p. 14, lines 2-24.

The Court of Appeals has noted the following concerning the standard of review concerning the admission of a defendant's statement:

Our role when reviewing a trial court's ruling concerning the admissibility of a statement upon proof of its voluntariness is not to reevaluate the facts based on our view of the preponderance of the evidence. Rather, our standard of review is limited to determining whether the trial court's ruling is supported by any evidence. Thus, on appeal the trial court's findings as to the voluntariness of a statement will not be reversed unless they are so erroneous as to show an abuse of discretion.

State v. Breeze, 379 S.C. 538, 665 S.E.2d 247 (Ct. App. 2008).

In the instant case, probative evidence supports the trial court's ruling as Investigator Arnold testified that he did not threaten Cindy. Certainly, Cindy's name was properly involved during interrogation because she had knowledge of Coward's possession of guns she appeared to realize were Victim's and she was aware of Coward's involvement in the burglary. But Investigator Arnold made clear that he did not think Cindy committed a crime

and did not threaten to charge Cindy with a crime. Accordingly, the trial court's ruling is supported by probative evidence and is not an abuse of discretion. Accordingly, certiorari should be denied.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be denied. If this Court sees fit to grant the petition, Respondent would respectfully request the opportunity to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DAVID SPENCER
Assistant Deputy Attorney General

CHRISSY ADAMS
Solicitor, Tenth Judicial Circuit

BY: 

David Spencer

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

ATTORNEYS FOR RESPONDENT

June 4, 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Oconee County

The Honorable Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAVID LEE COWARD,

PETITIONER.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Appellate Defender Dayne C. Phillips
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

This 4th day of June, 2012


NORMA BIGBEE
LEGAL ASSISTANT

The Supreme Court of South Carolina

The State, Respondent,

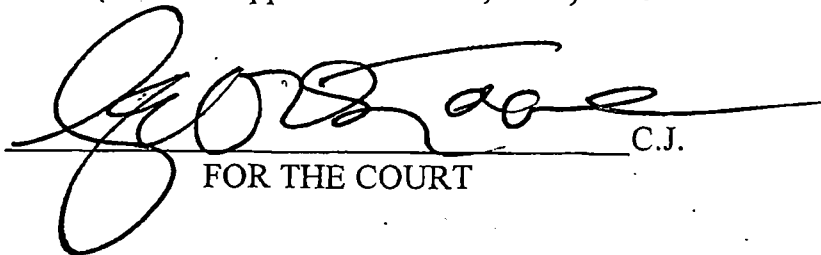
v.

David Lee Coward, Petitioner.

Appellate Case No. 2012-208634

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in *State v. Coward*, Op. No. 2011-UP-583 (S.C. Ct. App. filed Dec. 21, 2011). We deny the petition.


C.J.
FOR THE COURT

Columbia, South Carolina

June 20, 2013

cc:

The Honorable Jenny Abbott Kitchings

Alan McCrory Wilson

Salley W. Elliott

David A. Spencer

John W. McIntosh

Robert Michael Dudek

COUNTY OF Oconee

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

David Lee Coward Plaintiff(s)
#332888

2012 CP-37-404

VS.

STATE OF South CAROLINA
Defendant(s)

(Please Print)

Submitted By: DAVID LEE COWARD

Address: 430 OAKLAWN Rd.
Pelzer, SC 29669

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:

David Coward

Date: 4-25-2012

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
A.D. 1

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS)

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

David Lee Coward #332888)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2012 - CP - 37 -**INSTRUCTIONS - READ CAREFULLY**

2012 MAY - 2 A 10:41

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

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

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

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

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Oconee County
3. Name(s) of co-defendant(s) (if any) Russel Rogers, Patrick McKenzie
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Petit Larceny 16-13-30 (A) (48)
 - (b) Burglary-1st Degree 16-11-311 (079)
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 27, 2009
 - (b) 15 years burglary 1st-30 days concurrent for petit

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Plea of Not Guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal from Oconee County Common Pleas
- ii. Petition for Re-hearing-Court of Appeals
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Unpublished Opinion No.2011-UP-583
- ii. Denied Petition for Rehearing
- iii. _____
- (c) the date of each such result:
- i. Appeal submitted 12-1-2011-filed 12-21-2011
- ii. Rehearing denied 1-27-2012
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Violation of my Due Process and Equal Protection Rights Guaranteed by the United States Constitution.

Revised 3/2003

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Hearsay statement was allowed three (3) times

- (a) in Trial, which clearly influenced jury.
- (b) Applicant got 15 years, Co-defendants got
- (c) probation-one got nothing-Equal Protection.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Appeals Court chose to raise only one issue.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of: yes

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Dallas Ball Pickens County S.C.
 - ii. Elizabeth A. Franklin-Best Appellant Defender
 - iii. 1330 Lady Street, Suite 401 Columbia, SC Box 11589
29211-1589
- (b) the proceedings at which each such attorney represented you:
 - i. Dallas Ball Trial-Direct Appeal
 - ii. - MS. Franklin-Best, Appeal-Petition for-Rehearing
 - iii. _____

19. State clearly the relief you seek in filing this application: The same sentence that Co-Defendants got and or vacate
_____ my sentence and grant a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

2012-CP-37-404

^{David}
I, ~~Coward~~, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Coward

SWORN to and subscribed before me this 17th
day of April, 2012.

Steven M. McLeod (L.S.)
Notary Public

My Commission Expires: November 7, 2016

FILED O'CONNOR, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 MAY -2 A 10:41

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2012 CP 37 404

David
I, Loward, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David Loward
Applicant

SWORN or affirmed to and subscribed before me this
17th day of April, 2012.

Steven T. Mulanly
Notary Public

My Commission Expires: January 7, 2016

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 MAY -2 A 10:41

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
David Lee Coward	)	C.A. No. 2012-CP-37-404
S.C.D.C. No. 332888	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed May 2, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted by the December 2007 term of the Oconee County Grand Jury for burglary, first degree (2007-GS-37-1835) and petit larceny (2007-GS-37-1836). Dallas Ball, Esq., represented Applicant. On January 27, 2009, Applicant proceeded to a trial before the Honorable Alexander Macaulay and a jury. He was found guilty as indicted. Judge Macaulay sentenced Applicant to a term of thirty (15) years imprisonment for burglary, first degree, and to a term of 30 days for petit larceny. The sentences were to be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf. Elizabeth Franklin Best, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Coward, Op. No. 2011-UP-583 (filed

¹ Respondent requests appointment of Counsel to the case.

December 21, 2011). Counsel for Applicant then filed a Petition for Rehearing on January 4, 2012. By Order dated January 27, 2012, the South Carolina Court of Appeals denied the Petition. Counsel for Applicant finally filed a Petition for Writ of Certiorari on February 27, 2012. By Order dated June 20, 2013, the Supreme Court of South Carolina denied the Petition. The Remittitur was issued on June 25, 2013.²

Attached to this return and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, Applicant's records on appeal, and Applicant's application. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Violation of my Due Process and Equal Protection Rights Guaranteed by the United States Constitution. Trial Judge in violation."
 - a. "Hearsay statement was allowed three (3) times in [t]rial, which clearly influenced jury."
 - b. "Applicant got 15 years, co-defendants got probation – one got nothing – equal protection."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

² Although Applicant submitted this Application while the direct appeal was pending, the Court of Appeals ruled on the case before Respondent could file a Return and Motion to Dismiss. Respondent now considers the Application to be timely and proceeds accordingly.

III.

Respondent interprets Applicant's claim as an allegation of due process violations. In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRPC, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

V

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *J. Wall*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

July 30th, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

DAVID LEE COWARD, #332888,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

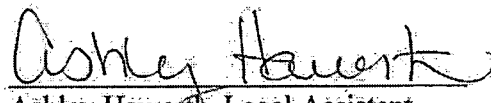
2012-CP-37-0404

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh Wingo Welborn, Esquire
 PO Box 173
 Anderson, SC 29622

DATED this 30th day of July, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

COURT OF COMMON PLEAS

DAVID LEE COWARD

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

TRANSCRIPT OF RECORD
2012-CP-37-0404

FEBRUARY 10, 2016
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.

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

HUGH W. WELBORN, ESQ.
ATTORNEY FOR THE APPLICANT

PATRICK L. SCHMECKPEPER, ASST. ATTORNEY GENERAL
ATTORNEY FOR THE STATE

Vivian Cross
Official Court Reporter

INDEX OF WITNESSES

DAVID LEE COWARD

Direct By Mr. Welborn 11
Cross By Mr. Schmeckpeper 24

* * * * *

* * *

*

EXHIBITS

(No exhibits marked or entered.)

FEBRUARY 10, 2016

(WHEREUPON, Court convened with all parties present,
when the following proceedings were had:)

MR. SCHMECKPEPER: Thank you, Your Honor. May it
please the Court? This is David Lee Coward versus The
State of South Carolina, 2012-CP-37-0404. Mr. Coward was
indicted December of 2007 for burglary first degree and
petit larceny. Received trial January 26 and 27, 2009 in
front of Judge Macaulay. He was convicted as indicted,
sentenced to 15 years imprisonment for burglary, thirty
days concurrent for petit larceny.

His attorney at this point, I believe, has a motion.
Mr. Welborn.

THE COURT: Mr. Welborn?

MR. WELBORN: Please the Court, Your Honor? I
represent Mr. Coward. Mr. Coward told me that he wants
to dismiss me as his lawyer and represent himself.
I don't know why, but that's what I was told a moment
ago. I am prepared to go forward. But he wants to
either represent himself or to have another lawyer. I
have corresponded with him. I have spoken with him by
phone and answered each of his letters. I'll do whatever
the Court wants to do, Your Honor.

THE COURT: Well, let me inquire of Mr. Coward, his
reason. Mr. Coward, you don't want to have an attorney

1 represent you?

2 THE APPLICANT: I don't want him as my attorney. I
3 had a -- I had a hired a lawyer, retained him for \$1,500,
4 a lawyer named Tommy Thomas. He told me that I had
5 several issues to raise he could overturn; that he needed
6 to be given 3,000 more dollars. So when I talked to him,
7 he never would give me the issues. What it was, we
8 didn't pay no money. Next thing I know, I had him as a
9 lawyer.

10 When I talked to him on the phone, he was like,
11 "Well, you don't have any issues. We're just going to
12 put you in there, we're going to run it through. We'll
13 take about 15, 20 minutes, we'll get you in and get you
14 out of there."

15 I don't really feel like he even cares. You know,
16 he's just wanting me in and out. We have got five guys
17 down there. He's the lawyer to every one of them, all
18 from Oconee County. And every one of them says he just
19 wants to spend about 15, 20 minutes. We'll have it in,
20 we'll have it out. We'll have you out of there. I don't
21 feel like he even cares.

22 So I'd like to have time to go back and study some
23 of my options myself because I don't know nothing about
24 the law. I even told him that. I don't know nothing
25 about law. But I know I have issues. Inmates told me I

1 have issues. Other lawyers have told me I have issues.

2 When I was in trial I had that voluntary statement
3 come through the thing where the solicitor, I mean, the
4 investigator had used my mother against me. He used my
5 mother for the statement. That's one of my issues. And
6 I'd like to go back and study into or actually see what I
7 can do or have my family actually get the money up and
8 get me a lawyer.

9 THE COURT: Let me ask you a couple of questions.
10 How long was it ago that you gave this lawyer, the money?
11 The other lawyer that you hired?

12 THE APPLICANT: It's been about eight months.

13 THE COURT: And he says he thinks he can help you --
14 see if I've got this right, now -- that he thinks he can
15 help you but he'll need more money than?

16 THE APPLICANT: Yeah. But when I called his office,
17 it was always -- the lady, the secretary I guess, or
18 whatever, she always answered the phone. But she never
19 would give me the issues. And Tommy would always be out
20 of his office. And we gave the last lawyer, Dallas Ball,
21 we gave a thousand dollars. He took me in there. Best
22 plea he ever got was 20 years.

23 My codefendants ain't served a day in prison. I'm
24 serving 15 years. Both of my codefendants have never
25 even touched the prison yard.

1 THE COURT: Well, your application was filed --
2 let's see if I have got this right.

3 THE APPLICANT: 2014.

4 THE COURT: Was it 2014 or 2012?

5 THE APPLICANT: It might have been 2012. I been
6 locked up seven years, just now doing PCR.

7 THE COURT: What I'm looking at says 2012. Is that
8 a misprint? You've got a return filed by the State in
9 2015.

10 THE APPLICANT: Yeah.

11 THE COURT: But it says that the application was
12 filed 2012?

13 THE APPLICANT: Might have been. I don't remember.
14 I was at Perry when we did it.

15 THE COURT: Mr. Welborn, you looks like you might
16 know something.

17 MR. WELBORN: Your Honor, please the Court? It was
18 filed in 2012. I'm always very honest when I speak with
19 these inmates. I don't give them any false hope when I
20 tell them what I find. He's alleged things in here that
21 I told him I didn't think was going to prevail in court,
22 but I'd be glad to try his case. He's alleged some
23 hearsay violations, which I got aid of the transcript and
24 the Court properly addressed it. And then he said
25 someone got sentenced more than he did. That, in my

1 opinion, is not going to be grounds to prevail for him.
2 You know, you tell them the truth on these things, they
3 don't like what they hear. They want to get somebody
4 that will tell them something else. I'm just being
5 honest with him.

6 I'm ready to go and I'm prepared. But I'm honest
7 with these people, telling the truth what he's got. I
8 don't know that he's got grounds that would prevail.

9 THE COURT: Let me see if I can figure out exactly
10 what Mr. Coward is asking for. He's asking for, if I
11 understand you correctly, Mr. Coward, you don't want to
12 go forward today?

13 THE APPLICANT: No, sir.

14 THE COURT: You want a different lawyer?

15 THE APPLICANT: Yes, sir.

16 THE COURT: So you want postponement. Do you want
17 to hire your own lawyer or do you want the Court to
18 appoint you a lawyer?

19 THE APPLICANT: If I had to continue Mr. Welborn, I
20 will do that later on. But I would like at least a
21 continuance at least go and study my options, study the
22 issues that I have. I think I have, what do you do,
23 reapply the application for different issues? Resubmit
24 the PCR application. See, I didn't do that application.

25 THE COURT: But you don't know what the issues would

1 be if you were to --

2 THE APPLICANT: I know I'm going to attack the
3 voluntary statement, where the investigator used my
4 mother, got a statement out of her. If I can't use the
5 codefendant thing, that's all well and good, there's
6 nothing I can do about it.

7 MR. WELBORN: Your Honor, if he told me what issues
8 he'd like to use, the attorney general's office has
9 always been very gracious and worked with me, allowed me
10 to amend almost at the last moment. So that's -- I don't
11 know what he wants to amend. I haven't heard anything.

12 THE APPLICANT: He only talked to me five minutes,
13 Your Honor.

14 THE COURT: I'm sorry?

15 THE APPLICANT: He only talked to me five minutes on
16 the phone.

17 THE COURT: Well, I suspect that he read your file.
18 I don't know.

19 MR. WELBORN: I read the file and I do speak with
20 them more than five minutes.

21 THE COURT: And you're saying the other issue you
22 wish to address concerns your statement? Was there not a
23 hearing concerning the voluntariness of the statement?

24 MR. WELBORN: I can't address that, Your Honor, if
25 you're addressing me or him?

1 That wasn't an issue he raised. So I don't remember
2 searching for that in the transcript. It may well be in
3 there. I know the whole case was appealed. The appeal
4 was denied.

5 THE COURT: I saw that.

6 MR. WELBORN: It was probably addressed.

7 MR. SCHMECKPEPER: And Your Honor, just for the
8 record, Page 83, there was a Jackson v. Denno hearing in
9 this case.

10 THE COURT: There was?

11 MR. SCHMECKPEPER: Yes, Your Honor. It addressed
12 the issue of whether or not the applicant was coerced
13 into pleading guilty and ought to be incarcerated.

14 THE COURT: All right. So, let me see if I've
15 got -- the State's position on Mr. Coward's motion, two
16 motions: One is, that he get a new lawyer; and, number
17 two, is he wants this case postponed. What's the state's
18 position?

19 MR. SCHMECKPEPER: On number one, as far as number
20 one goes, Your Honor, first off, there's no actual
21 constitutional right to counsel in a PCR proceeding.
22 There's a statutory right but that confers a right to --
23 it doesn't confer a right to counsel of choice,
24 particularly when counsel has been appointed. You have a
25 right to appointed counsel, not appointed counsel of

1 choice. So, Your Honor, we would strenuously object to
2 any new counsel being appointed, particularly where
3 Mr. Welborn's stated he's ready to go, he's reviewed the
4 case, they've talked about it.

5 Concerning the request for a continuance, I would
6 also object on the on the grounds that it's a three-year
7 old case. He's had plenty of time to speak to his
8 attorney, to amend his application. The state's ready to
9 go today.

10 THE COURT: All right.

11 All right, Mr. Coward, I'm going to deny your
12 motion. We'll go forward.

13 Now, then, it sounded as though to me Mr. Welborn
14 wished to make a motion to amend the application to
15 include another issue?

16 MR. WELBORN: No, sir. I was going to tell the
17 Court I think he wanted to amend and make another issue.
18 I have not been told what that was until a moment ago. I
19 think he wanted to say something about a Jackson v. Denno
20 hearing. But I'm not familiar with what it's in regard
21 to.

22 THE COURT: We'll take it up then. Very well.

23 You ready to proceed then?

24 MR. WELBORN: Yes, sir.

25 THE COURT: All right.

1 MR. WELBORN: Your Honor, please the Court? I do
2 represent Mr. Coward. The issues in this would be that
3 there was a violation of my client's due process and
4 equal protection rights as follows: (A) there was a
5 hearsay statement that was allowed three times at trial,
6 which my client says clearly influenced the jury.

7 (B) the applicant got 15 years, codefendants got
8 probation, one got nothing. And so he alleges violation
9 of equal protection in that regard. And at this time I
10 would call my client to the stand.

11 THE COURT: All right. Mr. Coward, come on up.

12 MR. SCHMECKPEPER: And, your Honor, just to protect
13 the record here, as far as applicant's motion to proceed
14 pro se. I would like to --

15 THE COURT: I didn't hear him ask to proceed pro se.
16 He indicated he wished to have a lawyer, that he didn't
17 want to proceed pro se.

18 DAVID LEE COWARD, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WELBORN:

22 Q Please the Court? You're David Lee Coward?

23 A Yes, sir.

24 Q Mr. Coward, you heard a few moments ago where
25 opposing counsel stated your trial and the sentence and

1 the outcome of that trial, that was stated in what we call
2 a return that I sent to you sometime back. Is that
3 correct, what was just stated about your sentence?

4 A I didn't hear what you said, sir.

5 Q Okay. You were found guilty of burglary first degree
6 and petit larceny, what you were indicted on; is that
7 correct?

8 A Yes.

9 Q And you got 15 years -- excuse me, you got 30 years
10 for the burglary and I believe suspended for up to ten.
11 You got 30 days for the petit larceny. This will be
12 served together, concurrent. Is that correct?

13 A No, sir. I got 15 years for -- I didn't have a
14 suspended sentence.

15 Q Okay. You got 15 years.

16 A Yes.

17 Q I misquoted. Thank you. You also had an appeal
18 filed. Your appeal, your conviction, was upheld by the
19 court of appeals; is that true?

20 A Yes, sir. Yeah.

21 Q You've alleged in your application, Mr. Coward, that
22 you had violation of your due process and equal protection
23 rights in that a hearsay statement was allowed three times
24 in trial and that influenced the jury. Now, let's talk
25 about that a little bit.

1 Tell the Court those three hearsay statements. You
2 can do them one at a time, and then tell the Court did
3 your attorney object to those statements and what the
4 ruling of the Court was.

5 A I haven't seen the application, I really don't even
6 know what the issues are in my favor. That's what I told
7 you, I don't know; but I need time to study. I don't even
8 know what's on it. I don't even know what you got in your
9 hand.

10 MR. WELBORN: May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. WELBORN: I'm going to show to you, Mr. Coward,
13 so you can kind of follow along with me. Do you read and
14 write okay?

15 THE APPLICANT: Yes, sir.

16 Q Okay. I'm going to hand them to you right there.
17 Those are the three, or the two things that -- let you
18 review that for just a second. Let me know when you're
19 ready to proceed.

20 A What do you want me to read? The part two?

21 Q Well, I want to know what your grounds are. And you
22 have put in there those grounds are the hearsay that you
23 have stated. And you said it was three times that hearsay
24 was allowed into testimony and that influenced the jury.
25 Do you see that in that application? It's right there in

1 front of you.

2 A I mean, it has codes and all this, but it don't have
3 nothing about what was said in the trial. I don't know
4 what was said in the trial.

5 Q Okay.

6 A This don't have nothing but, like, codes and
7 different cases.

8 Q Mr. Coward, let me ask you a few questions about
9 that. Now, I didn't prepare your application, did I?

10 A No, sir. That's why I asked you to be removed as my
11 lawyer.

12 Q I understand. You prepared the application or
13 someone in your behalf did; is that correct?

14 A Yes, sir.

15 Q Is there any reason why you have not reviewed that
16 before we came in here today?

17 A Because I thought I would have a lawyer that would
18 actually review my case for me.

19 Q Okay. Well, you have in front of you right now, you
20 have that what we call a "return" in front of you. You've
21 got mine, and I've highlighted various parts. And you're
22 telling the Court you do not remember the three hearsay
23 statements that you're objecting to today?

24 A Yes, sir.

25 Q You do not remember it?

1 A (Nonverbal response.)

2 Q All right. Well, I'm going to try to help you a
3 little bit on this, Mr. Coward.

4 And for the Court -- and the first hearsay that I
5 found in your transcript was on Page 52, on Line 1. And
6 to that hearsay, Mr. Ball, your lawyer, objected to some
7 hearsay. And the Court sustained it. Do you know what
8 the word sustained means?

9 A Overruled.

10 Q Well, the Court said, "I agree with Mr. Ball, that's
11 hearsay, and we can't allow that in court."

12 A Okay.

13 Q So you prevailed on that, do you understand that?

14 A Well, but I don't know what was said.

15 Q Okay. Well, let's look at that. I'm going to help
16 you on that.

17 The page before -- Line 24, of the page before -- and
18 I don't know who he is, -- "he told me that him and his
19 friends had been making them just to play with." That's
20 the hearsay your lawyer has alleged. And your lawyer
21 properly says, on the very next line, top of the next
22 page:

23 "Judge, I object to hearsay."

24 And the Court sustained it. In other words, the
25 Court agreed. So somebody on Page 51 was talking about a

1 big firecracker, a pipe bomb. And I don't know who he is.

2 A It was the man who's house that they alleged I broke
3 into.

4 Q Thank you.

5 A They had found a pipe bomb in his house.

6 Q So somebody was --

7 A That was his mother talking.

8 Q Go ahead. I interrupted. Go ahead, sir.

9 A That's the victim talking.

10 Q Okay. That was hearsay. Now, is that one of the
11 ones you're referring to, Mr. Coward, that you think that
12 the jury was prejudiced by that? Is that one of those
13 comments?

14 A I don't know.

15 Q Well, let's try to find another one. Okay. All
16 right.

17 I'm going to direct the Court and opposing counsel to
18 Page 55, Line 13. And I'm going to read that to you, Mr.
19 Coward, since I have got the transcript. It's just a
20 couple of lines. On line 12:

21 "QUESTION: And how do you know that?" Whatever that
22 is

23 "ANSWER: David's mother called me and told me that."

24 And Mr. Ball said, "Judge, again, that would be
25 hearsay."

1 And the Court agreed and said, "Restate the
2 question."

3 Is that one of the areas that you're complaining
4 about that your lawyer didn't handle properly, Mr. Coward?

5 A He could have investigated a little further with the
6 actual, the victim. Because that's where she was trying
7 to say that my mother called her and told her that I had
8 guns or something like that. Which, later on in the trial
9 it come out that none of the stolen property even had come
10 to my house; that Russell Rogers, my codefendant, had took
11 it all to his house. He admitted to that on the stand.

12 Q Well, in this particular part, Page 55, there was an
13 objection to hearsay, and the judge agreed, said to
14 restate the question.

15 Now, let's go a step further. I'm going to try to
16 find another thing. On line 22, the same page -- Line 20:

17 "The Cowards' house. Okay. Why do you think that?"

18 Twenty-two, "ANSWER: Because David's mother called
19 me and told me that."

20 And Mr. Ball said, again, "What he meant by that was
21 it's hearsay."

22 And the Court agrees. "You can testify that's her
23 belief. If she doesn't know for a fact something, she
24 can't testify to it."

25 Is that the hearsay you're talking about, Mr. Coward?

1 A It's with the same issue.

2 Q But your lawyer did object to it, didn't he?

3 A Yes, sir.

4 Q Okay. Let's see if we can find some more hearsay,
5 Mr. Coward. I want to make sure we cover it all.

6 I direct the Court and opposing counsel's attention
7 to Page 121. I'm going to start at Line 15 and go through
8 Line 24. Mr. Coward, here's what the transcript said.

9 "Yeah, I talked to her and told her that I had her
10 case, and I will be working on it. I advised her my case
11 load. And she said, 'Well, you know, she had that Cindy
12 Coward had called her and told her that, you know, that
13 David and them had broke into her house.'"

14 And I said, "Well" -- and Mr. Ball said, "Judge,
15 that's hearsay upon hearsay. I object to all of that."

16 And the Court said, "All right. Do this. He can
17 testify about his investigation, who he talked to, and as
18 a result of who he talked to, did he do anything."

19 And the solicitor, Mr. Wagner, agreed and said, "Yes,
20 sir."

21 Is that the hearsay you're talking about, Mr. Coward?

22 A I guess.

23 Q Okay. Well, those are the three areas that I found
24 hearsay in this transcript. And highlighted it because
25 that's what you said in your application, so I searched

1 it out and found it. Is there any other hearsay besides
2 that that you want to tell the Court about that maybe I
3 missed?

4 A No, sir. I would like to -- there's some issues that
5 I would like to bring up myself, if it's possible.

6 Q I'll let you do it in just a moment. We're getting
7 there, Mr. Coward. But let's take one thing at a time.
8 You alleged hearsay three times in your application and
9 each time your lawyer successfully objected to it. And
10 that's what we talked about on the phone sometime back.
11 Do you remember that conversation?

12 A That was last week.

13 Q Yes, sir. That's correct. Now, you also allege --
14 may I approach again, Your Honor?

15 THE COURT: You may.

16 MR. WELBORN: Thank you. Let me have that again.
17 You also say that you got a 15-year sentence. The
18 codefendants got probation and one got nothing, because
19 of that there was an equal protection violation.

20 THE APPLICANT: Yes.

21 Q Can you expound on that? What do you mean by that?

22 A In South Carolina the hand of one is the hand of all.
23 We all did the same crime. When my codefendant got on the
24 stand, my lawyer asked, "Are you receiving anything for
25 this testimony?"

1 He said, "No." But obviously plea bargained or
2 something. I caught 15 years. Neither one of my
3 codefendants even touched the prison yard. When they all
4 got on the stand and admitted doing the same thing.

5 Q So you think everybody should have the same sentence
6 is what you're saying?

7 A Or I should have got something like that they got, a
8 deal. My best plea bargain was 20 years. And I got less
9 at trial.

10 Q And your lawyer didn't object to you getting a
11 different sentence; is that correct?

12 A Right, sir.

13 Q And so you think this judge ought to correct that
14 wrong as you call it by giving you a new trial; is that
15 correct?

16 A Yes, sir. If it's possible. And also my lawyer,
17 when Russell Rogers was on the stand, he was also already
18 charged with burglary second, possession of cocaine. So
19 it really -- he wasn't even a credible witness on the
20 stand.

21 Q Okay. Now, a moment ago, Mr. Coward, you told me
22 there was some other things you wanted to tell the Court
23 about, about your case. What were those things, Mr.
24 Coward?

25 A That was it.

1 Q That was it. So the Court and I understand, what is
2 "it" again? What did you tell the Court or you want the
3 Court to hear that's not in here?

4 A I just did. He never pressed the issue of him being
5 a credible witness, Russell Rogers, because he already had
6 a burglary. He already had a thing on it. The only
7 reason that made him credible is because it was the
8 solicitor saying he was an honest, good boy. It's
9 somewhere in the transcript that he believes Russell was
10 being honest. Of course he was being honest. He was
11 getting a plea bargain for what he was doing.

12 Q He's a codefendant?

13 A Yes.

14 Q And you-all had a trial all together? Or was it just
15 you?

16 A Just me.

17 Q Just you, wasn't it?

18 A Just me.

19 Q Okay. Is there anything else, Mr. Coward, that you
20 want to tell the Court that you think entitles you to post
21 conviction relief?

22 A If the part where my codefendants not getting nowhere
23 near the time for just telling on me ain't enough to
24 overturn the case and received another trial, I don't know
25 what else is.

1 Q Well, but for those alleged errors of your attorney,
2 if those errors had not occurred, do you think there would
3 have been a different result by the jury that you would
4 have been found not guilty?

5 A Yes, sir, there would have. They wouldn't have had
6 testimony from my codefendant if he wouldn't have been
7 able to testify at trial. And also if I would have got a
8 better deal than a than a 20-year plea, I would have never
9 even went to trial. My lawyer told me to go to trial
10 because he said that I won't receive as much time. I'll
11 receive less time at trial than I will with my 20-year
12 plea bargain.

13 Q Now, you went to trial, didn't you?

14 A Yes, sir. But my told my lawyer told me to go to
15 trial because they give me a 20 year plea. I got less at
16 trial than I 20 year plea bargain.

17 Q Okay. So there was an offer of 20 years?

18 A Yes, sir.

19 Q You turned that down for trial?

20 A Yes, sir.

21 Q And you got 15 years?

22 A Yes, sir.

23 Q Now, let me see if I understand this. You were
24 offered five years more --

25 A Yes, sir.

1 Q -- if you had taken a plea?

2 A Yes, sir.

3 Q And you got five years less by going to trial?

4 A Yes, sir.

5 Q And you want a new trial?

6 A I mean, if the case with Russell Rogers. The if part
7 where Russell Rogers was exed out, he couldn't testify on
8 me again. There's nobody to testify against me. Patrick
9 Kinsey won't even testify against me because he knows what
10 he says in his statements are lies.

11 Q Okay. Are you now saying your lawyer didn't object
12 properly to some cross examination of these other people?
13 Would that be it?

14 A Yes, sir.

15 Q Do you know where in the transcript those objections
16 would have been?

17 A As soon as he got on the stand, he would have asked
18 him, aren't you charged with burglary second? Or haven't
19 you been found guilty of burglary second and possession of
20 cocaine, a CDV, and probably, like -- I think there's two
21 other charges that he's already been charged with before
22 he was even up there. The man's a burglar, a wife beater,
23 a drug dealer; but he's a credible witness?

24 Q All right. Thank you.

25 Answer anything the opposing counsel or the Court may

1 have for you, sir.

2 THE COURT: Mr. Schmeckpeper.

3 MR. SCHMECKPEPER: Thank you, Your Honor. May it
4 please the Court?

5 CROSS EXAMINATION

6 BY MR. SCHMECKPEPER:

7 Q Good morning, Mr. Coward. Just going to ask you
8 about a couple of your issues, starting with -- you
9 mentioned earlier your counsel, or Mr. Ball, didn't
10 actually cross examine Mr. Rogers about his record; is
11 that correct?

12 A Yes, sir.

13 Q Do you have the transcript with you -- Your Honor,
14 may I approach?

15 THE COURT: Sure.

16 Q Just going to hand you this transcript. If you would
17 turn to Page 78.

18 A (Complies.)

19 Q Now, turn your attention to around Line 4 through
20 around Lines 13. And you would agree that on direct
21 examination the solicitor actually elicited testimony from
22 your codefendant that he was a convicted felon; is that
23 correct?

24 A Yes, sir. I see it now.

25 Q And the solicitor actually elicited testimony that he

1 was in court and pled guilty to another count of burglary
2 second degree and possession of cocaine previous to the
3 trial. Is that correct?

4 A Yes.

5 Q So the jury had that information; is that correct?

6 A The that's the solicitor examined him, sir.

7 Q Beg the Court's indulgence.

8 Your Honor, I have no other questions.

9 THE COURT: Any redirect?

10 MR. WELBORN: No, sir.

11 THE COURT: Thank you, sir. You may step down Mr.
12 Coward.

13 MR. WELBORN: Mr. Coward, can you bring that with
14 you? Thank you.

15 THE COURT: You may call your next witness.

16 MR. WELBORN: That's our case, Your Honor.

17 THE COURT: Applicant rest?

18 MR. WELBORN: Yes, sir.

19 THE COURT: Mr. Schmeckpeper?

20 MR. SCHMECKPEPER: Your Honor, the state has no
21 witnesses at this point. Would request relief not be
22 granted.

23 THE COURT: I'll be glad to hear argument on this.
24 Mr. Welborn?

25 MR. WELBORN: Your Honor, if it please the Court, I

1 think we presented a case where my client should be
2 granted post conviction relief and I stand on that
3 testimony.

4 THE COURT: Mr. Schmeckpeper?

5 MR. SCHMECKPEPER: Your Honor, the state's position
6 is that Mr. Coward failed to meet his burden to show
7 sufficient conformance or prejudice in regard to any of
8 his allegations. With regard to hearsay, counsel
9 objected to each one of the instances of hearsay. The
10 judge ruled on those issues in his favor. Concerning the
11 issue of the sentence, the fact he got sentenced to more
12 time than his codefendants, he was sentenced within the
13 law range, Your Honor. Concerning his testimony about
14 counsel should have cross examined the codefendant on his
15 criminal convictions, that information was before the
16 jury and was elicited by the solicitor.

17 Your Honor, if you have any questions, I'll be happy
18 to answer them otherwise.

19 THE COURT: I don't have any questions.

20 Mr. Welborn, I, failed to deny your client's application
21 to post conviction relief. I agree with the statements
22 made by the state, the hearsay that was brought to my
23 attention was all objected to by applicant's attorney.
24 The fact that he was sentenced to a disproportionate
25 really amount of time compared to his codefendants is not

1 something this Court has the right to do anything about.
2 I find that the record of the witnesses that he
3 complained of, while it may not have been brought out by
4 his attorney, was brought out and made a part of the
5 record and heard by the jury, therefore, could have been
6 considered by the jury. For those reasons and there's
7 just a complete -- I agree with the state's position on
8 these -- there's a complete lack of any evidence to grant
9 post conviction relief.

10 Mr. Schmeckpeper, if you would please prepare an
11 order?

12 MR. SCHMECKPEPER: Yes, sir.

13 THE COURT: I can't change your sentence,
14 Mr. Coward.

15 THE APPLICANT: Yes, sir.

16 MR. WELBORN: Thank you, Your Honor.

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

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF ANDERSON)

5
6
7 I, Donna M. Brady, Official Court Reporter for the
8 Tenth Judicial Circuit of the State of South Carolina, do
9 hereby certify that the foregoing is a true, accurate and
10 complete Transcript of Record of the proceedings had and
11 evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Family Court for Anderson
13 County, South Carolina, on the 10th day of February,
14 2016.

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

17
18 September 20, 2016
19

20
21 Donna M. Brady, RPR
22 Donna M. Brady, RPR
23 Family Court Reporter
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
David Lee Coward,	)	C.A. No. 2012-CP-37-0404
S.C.D.C. No. 332888	)	
	)	
Applicant.	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	(with prejudice)
State of South Carolina,	)	
	)	
Respondent.	)	

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUN 13 PM 2:20

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 2, 2012. Respondent filed its Return on August 3, 2015. An evidentiary hearing into the matter was convened on February 10, 2016, at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted by the December 2007 term of the Oconee County Grand Jury for burglary, first degree (2007-GS-37-1835) and petit larceny (2007-GS-37-1836). Dallas Ball, Esquire, represented him. On January 27, 2009, Applicant proceeded to a trial before the Honorable Alexander Macaulay and a jury. He was found guilty as indicted. Judge Macaulay sentenced Applicant to a term of thirty (15) years imprisonment for burglary, first degree, and to a term of 30 days for petit larceny. The sentences were to be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf. Elizabeth Franklin Best, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Coward, Op. No. 2011-UP-583 (filed December 21, 2011). Counsel for Applicant then filed a Petition for Rehearing on January 4, 2012. By Order dated January 27, 2012, the South Carolina Court of Appeals denied the Petition. Counsel for Applicant finally filed a Petition for Writ of Certiorari on February 27, 2012. By Order dated June 20, 2013, the Supreme Court of South Carolina denied the Petition. The Remittitur was issued on June 25, 2013.

Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. "Violation of my Due Process and Equal Protection Rights Guaranteed by the United States Constitution. Trial Judge in violation."
 - a. "Hearsay statement was allowed three (3) times in [t]rial, which clearly influenced jury."
 - b. "Applicant got 15 years, co-defendants got probation – one got nothing – equal protection."

At the evidentiary hearing, Applicant also proceeded the allegation that counsel failed to question a witness about a prior conviction for possession of cocaine.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, Applicant during his testimony, passed upon his credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings,

and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Hearsay Statements

Applicant first alleged hearsay statements were allowed at trial, which he says influenced the jury. Applicant argued Debra Miller's testimony constituted hearsay when she said "[h]e told me that him and his friends had been making [pipe bombs] just to play with." Tr. p. 51, l. 24-25. He acknowledged, however, that trial counsel objected to this testimony as hearsay, and that the court sustained that objection. Tr. p. 52, l. 1-20. Applicant next alleged hearsay statements were allowed when Ms. Miller testified that "David's mother called me and told me that --". Tr. 55, l. 13. Again, he acknowledged that counsel objected to the testimony and the court sustained his objection. Tr. p. 55, l. 14-15. Counsel objected to a subsequent statement by Ms. Miller as hearsay, which was overruled by the judge. Tr. p. 55, l. 22 - p. 56, l. 4. Applicant also alleged hearsay statements were allowed from Scott Arnold, Tr. p. 121, l. 15-19, but that counsel objected, and that the court overruled his objection. Tr. p. 121, l. 20-25.

This Court finds Applicant has failed to meet his burden with respect to the above allegations. First, to the extent he is alleging any deficiency on counsel's part, Applicant has not provided any factual basis for such a finding. In each instance, counsel objected on the record to the purported rule violation, and the judge made a ruling -- several of which were favorable. Accordingly, this Court cannot find his performance fell below the standard of reasonable under professional norms. Butler, supra.

To the extent Applicant is alleging the trial judge erred in admitting hearsay testimony, this is a direct appeal issue not appropriate for consideration on post-conviction relief. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); *see also, Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is



uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Therefore, a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal unless couched as claims of ineffective assistance of counsel. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (citing, *Hyman v. State*, 278 S.C. 501, 299 S.E.2d 330 (1983)). Applicant could have argued on appeal that the trial judge erred in his evidentiary rulings. The failure to do so bars this allegation as a ground for relief. Applicant simply cannot use post-conviction relief to bring this free standing claim of a constitutional violation.

Disparate Sentencing

Applicant next alleges his rights were violated because he received a different sentence than his co-defendants. A reviewing court has no jurisdiction to review a sentence, provided it is within the limits provided for the discretion of the trial court, and is not the result of prejudice, oppression, or corrupt motive. *State v. Franklin*, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976). Moreover, a trial judge is allowed broad discretion in sentencing within statutory limits. *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995).

This Court finds Applicant has failed to meet his burden to show his sentence was unlawful. He was sentenced to fifteen (15) years for burglary, 1st degree. The statutory range for burglary, 1st degree is from fifteen (15) years to life imprisonment. S.C. Code Ann. § 16-11-311(B) (2015). Applicant has not presented any evidence that his sentence was the result of prejudice, oppression or corrupt motive. Accordingly, this allegation is denied and dismissed.



Failure to Impeach Witness

Applicant next alleges counsel was ineffective for failing to impeach Russell Rogers – a co-defendant who testified against him at trial – with prior convictions for possession of cocaine. This Court finds Applicant has failed to meet his burden.

First, Applicant has not presented any evidence which would overcome the “strong presumption” that counsel’s rendered effective assistance. See Butler, supra. Cross-examination must be objectively reasonable, but not flawless. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). An attorney’s decision about the extent of cross-examination and whether to refrain from certain lines of inquiry is entitled to great deference. Id.; see also Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (the manner and extent of cross-examination should not be second-guessed).

Here, Applicant has not met his burden to prove counsel deficient in failing to ask question about Mr. Rogers’ prior record, where that information had already been elicited by the State on direct-examination. Mr. Rogers testified on direct examination that he was a convicted felon, and that he had previously pled guilty to another count of burglary, 2nd degree, and possession of cocaine. Tr. p. 78, l. 4-19. Counsel was therefore free to tread new ground and raise other questions about Mr. Rogers’ credibility. He confirmed with Mr. Rogers, for example, that he had been drinking while underage the night of the crime. Tr. p. 81, l. 12-17. Counsel also pointed out that Mr. Rogers was, in fact, charged with shooting a dog at the scene of the burglary, even though he denied doing so. Tr. p. 81, l. 1-4. Accordingly, this Court finds counsel’s cross-examination of Mr. Rogers to be objectively reasonable.

Applicant has also failed to show any prejudice from counsel’s alleged deficiency. As explained above, the State elicited Mr. Rogers’ prior record on direct examination. As a result,



Applicant has failed to meet his burden to show that counsel's failure to impeach could have reasonably affected the outcome of the proceeding where that information was already before the jury. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive representation of a name.

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

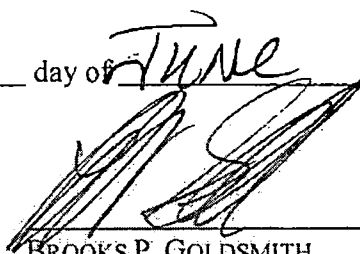
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

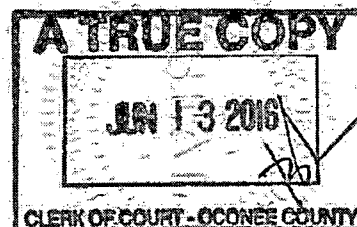
IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 7 day of June, 2016.

Greenwood, South Carolina


BROOKS P. GOLDSMITH
Presiding Judge
Tenth Judicial Circuit



FILED OCOONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2016 JUN 13 P 2:20

WITNESSES
OCSD/ARNOLD

Mike Cannon

DOCKET NO. 2007-0001 100

The State of South Carolina,

OCONEE

County of _____

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

2007 DEC -4 P 12:47

COURT OF GENERAL SESSIONS

DEC 04 2007

TERM

2007

THE STATE

vs.

DAVID LEE COWARD

ARREST WARRANT NO. K226059

ACTION OF GRAND JURY

True Bill

December 4, 2007

Robert A. Kiser

Foreman of Grand Jury

Indictment for

BURGLARY - 1ST DEGREE

16-11-311

(079)

VERDICT

DAVID R. WAGNER, JR., DEPUTY SOLICITOR

Foreman of Petit Jury

Date:

BW

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
OCONEE)
COUNTY OF _____)

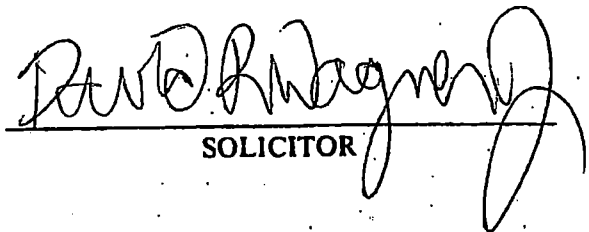
INDICTMENT FOR
BURGLARY - 1ST DEGREE
16-11-311 (0079)

DEC 04 2007

At a Court of General Sessions, convened on _____
OCONEE
the Grand Jurors of _____ County present upon their oath:

183
THAT DAVID LEE COWARD DID IN OCONEE COUNTY ON OR BETWEEN
JULY 26, 2007 AND JULY 27, 2007, WILLFULLY AND UNLAWFULLY ENTER THE
DWELLING OF DEBRA MILLER WITHOUT CONSENT AND WITH THE INTENT TO COMMIT
A CRIME THEREIN, AND AGGRAVATING CIRCUMSTANCES WERE PRESENT, TO WIT:
WHILE INSIDE THE RESIDENCE, DEFENDANT WAS ARMED WITH A DEADLY WEAPON.
IN VIOLATION OF SECTION 16-11-311, CODE OF LAWS OF SOUTH CAROLINA (1976), AS
AMENDED.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

WITNESSES
OCSD/ARNOLD

Mike Cawshaw

REST WARRANT NO. K226060

ACTION OF GRAND JURY

Imrie Bell
December 4, 2007

Robert A. Knowlton
eman of Grand Jury

VERDICT

eman of Petit Jury

Date:

DOCKET NO.

2007-GS-37-1836

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DEC 04 2007

TERM

2007

THE STATE

VS.

DAVID LEE COWARD

Indictment for

PETIT LARCENY

16-13-30(A)

(480)

DAVID R. WAGNER, JR., DEPUTY SOLICITOR

FILED OCONEE, SC
SALLIE C. SMITH
CLERK OF COURT

2007 DEC -4 P 12:47

284

284

EW

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

INDICTMENT FOR

OCONEE

PETIT LARCENY
16-13-30(A) (480)At a Court of General Sessions, convened on DEC 04 2007

the Grand Jurors of _____ County present upon their oath:

OCONEE

THAT DAVID LEE COWARD DID IN OCONEE COUNTY ON OR BETWEEN
JULY 26, 2007 AND JULY 27, 2007, FELONIOUSLY TAKE AND CARRY AWAY THE
PERSONAL GOODS OF DEBRA MILLER, TO WIT: GUNS, A CAMERA, X-BOX AND OTHER
PROPERTY, VALUED AT LESS THAN \$1000, WITH INTENT TO DEPRIVE THE OWNER
PERMANENTLY OF THE PROPERTY. ALL IN VIOLATION OF SECTION 16-13-30, CODE
OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR