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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Appeal from Aiken County

Honorable Diane Schafer Goodstein, Circuit Court Judge

TYRIK GERRARD BRIGHT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001683

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

TYRIK GERARD BRIGHT,

DEFENDANT.

2012-GS-02-00423

JUNE 10, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE J. DERHAM COLE, JUDGE

APPEARANCES:

NICK MCCARLEY, ESQUIRE
ELIZABETH YOUNG, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

DAVE HAYES, ESQUIRE
MICHAEL ROUTZONG, ESQUIRE
ATTORNEYS FOR DEFENDANT

DANETTE HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

NO.	DESCRIPTION	ID	EV
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1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had.)

3 (WHEREUPON, State Exhibit Numbers 1 and 2 were marked
4 for identification.)

5 MR. MCCARLEY: Your Honor, we have a pretrial
6 hearing in the matter of State versus Tyrik Bright on
7 indictment number 2012-GS-02-00432. A true bill indictment
8 for burglary in the second degree violent. I believe the
9 first matter up is a Jackson versus Denno hearing, Your
10 Honor.

11 Your Honor, would you like some context for this
12 hearing or just proceed when ---

13 THE COURT: Well, I just need the indictment.

14 Okay. Mr. Hayes, you and Mr. Routzong represent the
15 Defendant?

16 MR. HAYES: I do, Your Honor.

17 THE COURT: All right. Mr. McCarley, I'm ready
18 when you are.

19 MR. MCCARLEY: Thank you, Your Honor. The first
20 witness the State calls is Detective Keith Glover with the
21 Aiken Department of Public Safety.

22 THE CLERK: The testimony you shall give the
23 Court in this case will be the truth, the whole truth and
24 nothing but the truth, so help you God?

25 THE WITNESS: Yes, ma'am.

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1 THE CLERK: Have a seat in the witness box,
2 stating your full name.

3 MR. MCCARLEY: Your Honor, Detective Glover
4 wanted me to apologize to the Court for the fact that he
5 does not have a jacket. He came from -- directly from a
6 call that was in the rain.

7 THE WITNESS: Anthony Keith Glover with the Aiken
8 Department of Public Safety.

9 KEITH GLOVER,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. MCCARLEY:

13 Q. Detective Glover, where do you work, sir?

14 A. I work for the Aiken Department of Public Safety.

15 Q. And how long have you been working there?

16 A. Twenty-six years and four months.

17 Q. And how long have you been in law enforcement in
18 total?

19 A. Twenty-six years and four months.

20 Q. What's your position there at the Aiken Department of
21 Public Safety, sir?

22 A. I'm a detective.

23 Q. And what are your duties as a detective?

24 A. To investigate crimes that are assigned to me and see
25 if there's enough probable cause to make an arrest.

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1 Q. Okay. Do your duties include taking videotaped
2 statements?

3 A. Yes, sir.

4 Q. How did you first become involved in the investigation
5 of the burglary at Allstar Tents & Events on Christmas Eve,
6 December 24th of 2011?

7 A. I received a call from the dispatcher saying that they
8 were requesting an on-duty investigator to come down to the
9 incident location.

10 Q. Okay. And did you respond to the scene?

11 A. Yes, sir.

12 Q. Okay. And during the course of that investigation,
13 did you seek warrants on anyone?

14 A. Yes, sir, I did.

15 Q. Okay. Did you make an arrest?

16 A. Yes, sir.

17 Q. Okay. Who was arrested in that case?

18 A. Tyrrik Bright.

19 Q. Did you have occasion to interview Mr. Bright?

20 A. Yes, I did.

21 Q. Was it videotaped?

22 A. Yes, it was.

23 Q. Did the Defendant agree to speak with you?

24 A. Yes, he did.

25 Q. Prior to him speaking with you, did you advise the

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1 Defendant of his Miranda rights?

2 A. Yes, I did.

3 Q. How did you do so?

4 A. We've got the standard format at Aiken Public Safety
5 of Miranda rights. Aiken Public Safety Advisement of
6 Miranda Rights form. And I read that to him and had him
7 sign off on it.

8 MR. MCCARLEY: Permission to approach, Your
9 Honor?

10 THE COURT: You may.

11 Q. Detective Glover, what I'm handing you has been marked
12 State's Exhibit Number 1. What is that document, sir?

13 A. This is the Aiken Department of Public Safety
14 Advisement of Miranda Rights form.

15 Q. Okay. And is that a copy of the form that you filled
16 out with Mr. Bright?

17 A. Yes, sir.

18 Q. Okay. Would you mind reading that for us, please,
19 sir?

20 A. Subject's name is Tyrik Gerard Bright. Social
21 Security Number [REDACTED]. At the top of that it's got
22 the case number 12-20-131. The location was at Aiken
23 Public Safety on 12/29/2011. It says Advisement of Miranda
24 Rights. Before we ask you any questions, you must
25 understand your rights. You have the right to remain

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1 silent. Anything you say can and will be used against you
2 in a court of law. You've got the right to talk to your
3 lawyer for advice before we ask you question and have him
4 with you during questioning. If you cannot afford a
5 lawyer, the Court will appoint one to represent you without
6 cost if you wish. If you decide to answer questions now
7 without a lawyer present, you still have the right to stop
8 answering at any time. You also have the right to stop
9 answering at any time until you talk to a lawyer. I have
10 read the statement of my rights and understand what my
11 rights are. And at that point we ask them if they
12 understand their rights and if they do we ask them to
13 initial those six spots there I've got for them to initial.

14 Q. Did the Defendant, in fact, initial everywhere he was
15 supposed to?

16 A. Yes, sir.

17 Q. And he agreed to do that?

18 A. Yes, sir.

19 Q. All right. So that was given to the Defendant and he
20 initialed it?

21 A. Yes.

22 Q. Was it also read to him?

23 A. Yes, sir. We read it to him.

24 Q. Did he voluntarily waive his right to have an attorney
25 present, Detective Glover?

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1 A. Right. And at the bottom of the form, it says waiver.
2 of rights. It says, I want to make a statement and answer
3 questions. I do not want a lawyer at this time. I
4 understand and know what I am doing. No promises or
5 threats have been made to me. No pressure of any kind has
6 been used against me. At that point Mr. Bright did
7 initial, print and sign his name.

8 Q. Okay. Did the Defendant, at any time during the
9 questioning, ask you to stop questioning him?

10 A. No, sir.

11 Q. Did he at any time ask for an attorney to be present?

12 A. No, sir.

13 Q. Did you coerce the Defendant in any form or fashion to
14 make this statement regarding this statement?

15 A. No, sir.

16 Q. All right. Did you promise him anything in regards to
17 sentencing or charging in order to get him to make this
18 statement?

19 A. No, sir.

20 Q. Did you promise him anything at all?

21 A. No, sir.

22 Q. Okay.

23 MR. MCCARLEY: Permission to approach, Your
24 Honor.

25 THE COURT: Yes.

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1 Q. Detective Glover, what I'm handing you has been marked
2 State's Exhibit Number 2. Do you recognize this?

3 A. It appears to be a copy of the videotaped statement
4 between myself and Mr. Bright.

5 Q. And have you seen that videotaped statement?

6 A. Yes, sir, I have.

7 Q. And is it a true and accurate copy of the one taken on
8 December 29th, 2011?

9 A. Yes, sir.

10 Q. And you have watched it since then; correct?

11 A. Yes, sir.

12 MR. MCCARLEY: Your Honor, we would now move to
13 publish this video to the Court as to voluntariness of the
14 Miranda waiver and the statement given.

15 THE COURT: Okay.

16 (WHEREUPON, video was played in open court.)

17 **DIRECT EXAMINATION CONTINUED**

18 **BY MR. MCCARLEY:**

19 Q. Detective Glover, during that questioning, you
20 referred to his attorney. Did he have an attorney at the
21 time or were you expecting him to get one?

22 A. He didn't have an attorney at that time. Just when he
23 either get -- they assign one to him or either he would be
24 able to get one on his own. I advised him that that stuff
25 would be in evidence for his attorney to see once he gets

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1 one.

2 Q. Yes, sir.

3 MR. MCCARLEY: And just to make sure, Your Honor,
4 the State moves to enter both Exhibits 1 and 2 into
5 evidence for the purposes of this hearing.

6 (WHEREUPON, State Exhibits 1 and 2 were admitted into
7 evidence for purposes of hearing only.)

8 MR. MCCARLEY: Beg the Court's indulgence.

9 Please answer any questions Mr. Hayes has.

10 **CROSS EXAMINATION**

11 **BY MR. HAYES:**

12 Q. Detective Glover, how long have you known Mr. Bright?

13 A. I've been knowing Tyrik Bright for many years. I
14 would say probably fifteen years, twenty years, somewhere
15 up in there.

16 Q. Have you been able to identify the second person,
17 alleged second person in the video?

18 A. No, sir, I have not.

19 Q. Nothing further. Thank you.

20 THE COURT: You may step down.

21 MR. MCCARLEY: Your Honor, at this time, the
22 State believes that we've met the burden of proof that this
23 is a voluntary statement and thus admissible at the trial
24 of this case under Jackson v. Denno.

25 THE COURT: Does the Defense object?

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1 MR. HAYES: I do, Your Honor, on multiple
2 grounds. One, under 403, that it's more prejudicial than
3 probative and irrelevant. The question that's going to the
4 jury, is this Tyrik Bright. Throughout this whole video
5 that's all they're arguing about is was it him. And
6 Detective Glover is saying, and I know it's you, as well as
7 multiple other people in my precinct here, as well as the
8 two victims. That is a question for the jury and more
9 prejudicial than it is probative.

10 As well as, Judge, throughout the whole video there is
11 longstanding conversation that they know each other. And
12 under 404, I believe that would be backdooring in a way
13 character evidence that is not relevant. Number one, he
14 tells him, I didn't know you were out and that I thought
15 you were keeping straight. Then that's -- then he also
16 asks him, when did you get out, and I believe he told him,
17 four months ago.

18 THE COURT: Well, we're not there yet. Right now
19 the question is whether or not that statement that was made
20 was voluntary or not. Do y'all concede that the --
21 whatever statement he made was voluntary?

22 MR. HAYES: Yes, sir. My argument would be ---

23 THE COURT: Okay. Now, do you have some
24 objections to some portion of the video?

25 MR. HAYES: Yes, sir.

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1 THE COURT: All right. Tell me what those are.

2 MR. HAYES: Under 403, Judge, I would say that it
3 is irrelevant.

4 THE COURT: All of it?

5 MR. HAYES: All of it, yes, sir. I'm arguing
6 that it is more prejudicial than probative, as well as
7 irrelevant. That he is having the argument with Detective
8 Glover over whether or not it is him in that video. Any
9 perceived confessions, I believe is what the State is
10 arguing, is that you're showing me a picture ---

11 THE COURT: You're not suggesting that's a
12 confession; are you, Mr. McCarley?

13 MR. MCCARLEY: Your Honor, there are, I do
14 believe statements that are partial confessions in there,
15 such as, if you enhance it I'll tell you what you want to
16 know. If you blow it up, I'll tell you the person that was
17 there with me. Show me my face and I'll tell you. How did
18 y'all see me but not the person that was with me.

19 THE COURT: Okay. Well, you and I are not going
20 to agree on that. I don't, I don't perceive that as a
21 confession. I perceive that as a statement of the fact
22 that he finds it incredulous that they believe it's him.

23 MR. MCCARLEY: Yes, sir.

24 MR. HAYES: And that's the Defense's argument,
25 Judge. I also need to throw out 408 as compromising offers

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1 to -- compromise under our South Carolina Rules of Evidence
2 are not admissible. Throughout the interview Detective
3 Glover is telling him, if you want to tell us who the
4 second person is, I know that it's you, we can help you
5 out. If you don't, we're going to trial. I'm not going
6 bend to give you any leeway between here and the trial. I
7 would argue, Judge, that is a compromise and an offer to
8 compromise working toward a plea deal.

9 Judge, if you were to deem that this video is relevant
10 and should come in, there is multiple issues as to his
11 previous character, as well as Detective Glover saying, I
12 know it's you; I've got you on video. And I would ask for
13 any references in that matter to be excluded or redacted.

14 THE COURT: Reference as to what?

15 MR. HAYES: Any reference as to his character,
16 being that he just got out of prison.

17 THE COURT: Oh, sure.

18 MR. HAYES: I didn't know you were home. I know
19 it's you on that video. I got you. Or if you want to give
20 me who it is, I'll make a deal with you or we can deal.

21 That would be the gist of our argument, Your Honor.

22 THE COURT: Okay. Mr. McCarley.

23 MR. MCCARLEY: Thank you, Your Honor. I believe
24 Mr. Hayes mischaracterized some of the statements of Mr.
25 Glover. He said, home, I didn't know how long you've been

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1 home. And he actually says, you must be doing good,
2 because I haven't seen you, or anything like that. He
3 never says prison, he never says out. He says home.

4 As to 403, Your Honor, the test is substantially more
5 prejudicial, not just that it's more prejudicial than
6 probative. It's obviously probative, or I believe to be
7 probative, or we wouldn't be trying to use it. It is not
8 substantially more prejudicial than it is probative. This
9 is the Defendant's post Miranda statement given to Mr.
10 Glover. We plan on calling Mr. Glover in the trial of this
11 case; and thus it's relevant because they have -- they had
12 this discussion and he was advised and then waived his
13 rights.

14 THE COURT: All right. I want you to
15 specifically point out for me why you believe there's
16 something on there that's relevant to some issue in the
17 case. Tell me what the relevance is. I know you believe
18 that he confessed, so that's where I want you to start.
19 Other than that, tell me what else you think ---

20 MR. MCCARLEY: Your Honor, that's the thrust of
21 why we would like to play that video. It is because we
22 believe there are partial confessions throughout. As I
23 said earlier, you saw me but not who was with me. The
24 portion, Your Honor, where he pulls out his ID and says,
25 now, you don't know me. He repeatedly says, now, you don't

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1 know me. Well, Your Honor, in the trial of this case,
2 we're going to call people that knew him. We're going to
3 call his -- both of the owners of the company that he
4 worked for that he then burglarized that already knew him.

5 So the State's theory of the case is not that anyone
6 that doesn't know him can identify him from the
7 surveillance footage that we plan to enter. The State's
8 case is that someone that does know him, as the witnesses
9 will know him, and knew him previously, can identify him
10 from that footage. That's -- when he pulls out his ID,
11 Your Honor, he pretty much says right then, if you don't
12 know me, you wouldn't know me from that surveillance, but
13 you do.

14 THE COURT: Well, let me ask you this.

15 MR. MCCARLEY: Yes, sir.

16 THE COURT: If Detective Glover and/or anybody
17 else can identify the Defendant from that video, or the
18 video -- the store video -- that the jury could not be in
19 the same position.

20 MR. MCCARLEY: The jury will ---

21 THE COURT: They're not experts.

22 MR. MCCARLEY: They're not experts, but they do
23 know him previously. The jury did not know him previously.
24 There's -- I can see a video of anyone in the world that I
25 don't know and not be able to identify them. But from that

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1 surveillance ---

2 THE COURT: He's going to be sitting in the
3 courtroom.

4 MR. MCCARLEY: Yes, sir.

5 THE COURT: I mean, y'all have got pictures of
6 him and he's here.

7 MR. MCCARLEY: Yes, sir.

8 THE COURT: Do you think a jury -- somebody else
9 is in a better position to identify him from that video
10 than the jury is sitting in the courtroom with him?

11 MR. MCCARLEY: Yes, sir, people that have known
12 him for -- that he's worked for for months and someone like
13 Detective Glover that's known him for fifteen or twenty
14 years.

15 THE COURT: Well, how will they be able to
16 identify his face better than the jury is sitting in the
17 courtroom with him?

18 MR. MCCARLEY: Because they knew him previously
19 to viewing that surveillance footage. This also goes in
20 with the fact that it was Detective Glover during the
21 course of his investigation thought it was an inside job so
22 that narrows it down to who they're considering.

23 THE COURT: Well, that's a different issue
24 altogether. I mean, that's -- well, that's a connection
25 with the store. I'm talking about when you have a video or

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1 a picture that you want to place into evidence, somebody
2 saying who's in that picture is in no better position than
3 the jury to decide who's in the picture if the person in
4 the picture is sitting in the courtroom.

5 MR. MCCARLEY: Your Honor, I think the State's --
6 beg the Court's indulgence.

7 Your Honor, if I may, Ms. Young is going -- there's a
8 hearing to limit some testimony from Mr. Glover and Ms.
9 Young is going to handle that. And I believe we've moved
10 in to where she can speak better on behalf of the State on
11 that.

12 THE COURT: Okay.

13 MS. YOUNG: Your Honor, I do believe based on the
14 conversations with Mr. Hayes that he is going to make a
15 motion to exclude Detective Glover's ability to identify
16 the Defendant from the video, as well as potentially the
17 store owners, that Mr. McCarley has already spoke about.
18 You know, that's Mr. Hayes' motion to make. However, we do
19 have some case law regarding that. And since we're kind of
20 moving -- you're moving into that, I wanted to go ahead and
21 take over and pass these cases up and if Mr. Hayes wants to
22 argue that, then we'll be prepared to defend that position,
23 Your Honor. I've already given these cases to Mr. Hayes.

24 THE COURT: All right. Mr. Hayes, were you
25 going to argue that?

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1 MR. HAYES: Judge, I was eventually going to
2 argue to limit Detective Glover from identifying my client.
3 Judge, basically the video or the audio here is basically
4 what this whole case is about. There's two store owners
5 that have video and they claim that they identify Mr.
6 Bright from that video, as well as Detective Keith Glover.
7 Judge, there is case law, and I believe the State has
8 handed it up, Mitchell, as well as Fripp, as to allowing
9 another individual to testify about who is in the video
10 that they see. And the cases have said it is allowed, and
11 it should be allowed. However, in Mitchell, the quote, and
12 I'll quote from the last line of 413 on page three of
13 Mitchell. I'll hand up my copy, as my reference is there
14 to direct you. The trial court further found that the
15 testimony's probative value outweighed the prejudice to
16 Mitchell. But it excluded similar testimony from other
17 officers as cumulative and prejudicial. Here in this case,
18 Judge, I believe there's going to be two individuals, which
19 were the owners of the stores, Ms. Wolf and Mr. Fanning.
20 They're going to testify that that is my client, if they're
21 staying consistent with what they said in their interviews
22 with Detective Glover. After that, I believe the State is
23 going to call Detective Glover, as well, to have him
24 identify him from the video. Well, in this case, they
25 allowed it, Judge, but I don't believe there was any other

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1 witnesses testifying that that is who it purported to be in
2 the video. This lieutenant said that, on the stand, he had
3 known him for twenty years, that's it a small town; it was
4 Newberry, and that he recognized him in the community. No
5 relation to police work.

6 Your Honor, and my argument would be that Detective
7 Glover knows Mr. Tyrik Bright through police work. He's
8 been an officer for almost twenty-six years. He's known
9 Mr. Bright for fifteen years. And my argument is that he
10 knows Mr. Bright due to his job and that it would be
11 prejudicial ---

12 THE COURT: It doesn't matter how he knows him.
13 I mean, if he knows him, he knows him. Now, he can't
14 testify he knows him because he arrested him ten times.
15 But he can testify how well he knows him. If you want to
16 examine him on that, then he can explain how he knows him.
17 But I think it's relevant he can testify to the fact that
18 he knows who he is because he's known him for fifteen years
19 or whatever.

20 MR. HAYES: Judge, I would argue that would
21 affect my client's due process because I would be severely
22 limited as to how I can cross him. If I ask him the
23 question of how he knew him, he's going to tell me, I
24 arrested him; that I've known him for fifteen years. And I
25 would say that that's ---

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1 THE COURT: That's the risk you take.

2 MR. HAYES: Yes, sir. And I would say that
3 violates his due process rights to confront his witnesses,
4 because then if I get into that, I'm opening up a door into
5 his past record and character evidence.

6 THE COURT: Well, what if you had an eyewitness
7 who said the reason I know him, because he broke into my
8 house before. You mean, they don't get to testify as an
9 eyewitness because they might elicit something that's
10 prejudicial?

11 MR. HAYES: Judge, in that scenario I would say
12 that he would be able to, but in this scenario I'm saying
13 that the only reason that he knows him is his connection to
14 law enforcement, and that is a way of -- in a way,
15 character evidence that would be more prejudice than
16 probative.

17 THE COURT: Well, that's how knows him. He can't
18 testify that he's arrested him ten times. But he can
19 testify he's known him for fifteen years. And he has,
20 which is what he testified to. I mean, it doesn't matter
21 how he knows him. Now, how he knows him might be more
22 prejudicial than probative, but ---

23 MR. HAYES: Yes, sir. And that ---

24 THE COURT: --- that doesn't mean that he can't
25 testify that he's known him for fifteen years.

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1 MR. HAYES: Yes, sir. And the argument is that
2 I'm asking the Court to keep it out; that it is more
3 prejudicial than probative, because as the gatekeeper, that
4 would be the Court's determination.

5 THE COURT: Okay. Did I understand you to say
6 that this case stands for the proposition that you can
7 limit the number of people who can identify a defendant
8 who's committed a crime?

9 MR. HAYES: Yes, sir. It says that -- the way
10 it's saying is that cumulative evidence of somebody getting
11 up and saying the same thing over and over and over is,
12 one, a waste of time and judicial economy; two, that the
13 cumulative effect of it would be more prejudicial than
14 probative. The hearing in this case, I'm saying that we've
15 already got two witnesses that are going to testify to the
16 exact same material. We don't need Detective Keith Glover
17 to come up and say, oh, I watched the tape, too, and it is
18 him, as well.

19 THE COURT: Well, I'll have to read this case.
20 But you mean to tell me your interpretation of this case is
21 that if you have ten eyewitnesses to an armed robbery, you
22 can't call but three of them, because if you have ten
23 people identify him, it would be prejudicial? I mean,
24 that's sort of a point; isn't it?

25 MR. HAYES: It is, Judge, but also ---

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1 THE COURT: It's also probative; isn't it? It's
2 the identity of the Defendant as being the perpetrator.

3 MR. HAYES: Judge, and I'd say the cumulative
4 effect, too, though, is damning to the client, is another
5 way of putting it.

6 THE COURT: Well, so if you had ten victims in an
7 armed robbery case, only three of them can testify? Is
8 that what you're telling me? Is that what this case stands
9 for?

10 MR. HAYES: No, sir. I'm just saying the
11 limiting effect of it in an effort to have a fair trial,
12 that instead of having multiple witness, after multiple
13 witness, after multiple witness saying that's him, that's
14 him, that's him, you can accomplish the same effect with
15 one or two witnesses. And in this case, I'd say that
16 having Detective Glover come up and testify to it, as well,
17 that the only reasonable, rational conclusion from the jury
18 is that my client is a criminal and that's how he knows
19 him. And that is more prejudicial than probative.

20 THE COURT: Okay. I understand the argument.
21 Any response to that?

22 MS. YOUNG: Thank you, Your Honor, if I may
23 briefly. I disagree -- respectfully disagree with Mr.
24 Hayes regarding the holding of Mitchell. And the reason
25 that we passed up Mitchell, Your Honor, is that we believe

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1 that it stands for the proposition that it does allow
2 witnesses to come in -- what you were asking for
3 previously, you know, how are they in a better position to
4 judge than the jury? Your Honor, this is not a -- if it
5 was I don't think we'd be here -- but a trial that's not
6 necessarily the most clear video surveillance tape. It's
7 mostly in the dark. And the State's argument is that
8 people who have had a position to have prior dealings with
9 Mr. Bright, specially, Mr. Fanning and Ms. Wolf, who were
10 the owners and proprietors of the business, and Mr. Bright
11 did work there for a period of time, so they would have
12 been in a position that the jury won't have the opportunity
13 to observe him and his face on a daily basis, his
14 mannerisms, his body language and some of those things that
15 are evident on the tape, the jury's not going to -- they'll
16 have a chance to see his face, but they won't have a chance
17 to see his mannerisms and how he walks and things such as
18 that. And we believe that Mitchell stands for the
19 proposition that allowing lay witness testimony that can
20 assist the finder-of-fact in one of the key points of the
21 case, which the key point in this case is whether or not
22 it's Mr. Bright, is admissible testimony.

23 Additionally, in regard to Mr. Hayes' argument about
24 numerous law enforcement officers, the State's intention is
25 only to call -- you know, they mention on the tape that

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1 other officers identified him, but we're only planning on
2 calling Detective Glover. He didn't get asked this by Mr.
3 Hayes or Mr. McCarley, Your Honor, but he has advised me,
4 and I believe he would testify, that he's known the
5 Defendant from the community, as well as living close to
6 him in the neighborhood. So his knowledge of him -- he has
7 knowledge of him that's completely outside the field of law
8 enforcement. And we would not offer any testimony that he
9 knows him because he arrested him previously, but that he
10 has knowledge of him outside, you know, the presence of law
11 enforcement, respective, but from living in the
12 neighborhood and living in close proximity to Mr. Bright.

13 And additionally, and just kind of referring back to
14 Fripp, which is another case similarly in time to Mitchell,
15 that it does further explain allowing people's perceptions
16 that have had contact with the Defendant. In this case, it
17 was store clerks, where somebody can burglarize a store and
18 that the cases do allow that testimony, Your Honor. And we
19 would ask you to review that and allow us to present the
20 testimony of the eyewitnesses or the owners of the video.
21 They're not really eyewitnesses, but Mr. Fanning and Ms.
22 Wolf, both of them had seen Mr. Bright. And from Mr.
23 Hayes' argument, it didn't sound like he objected to those,
24 but rather he objected to Mr. -- Detective Glover's
25 testimony. We would ask that you consider allowing us to

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1 present that, as well, because we believe that it would
2 assist the finder-of-fact in this particular case. Like I
3 said, it's not the most clear video. If it was and we
4 could blow it up and do all those things, we would. But,
5 you know, we're going to do the best we have and that's why
6 we're here, is to determine whether that is Mr. Bright on
7 the video.

8 THE COURT: Well, ma'am, have you seen the video?

9 MS. YOUNG: Yes, sir, Your Honor.

10 THE COURT: And did you identify Mr. Bright on it
11 by looking at his face?

12 MS. YOUNG: Could I personally?

13 THE COURT: Yes, ma'am.

14 MS. YOUNG: No, sir, Your Honor. I felt ---

15 THE COURT: Well, why is it that somebody else
16 can identify him?

17 MS. YOUNG: Well, that's what I was getting back
18 to, is that Mr. Fanning and Ms. Wolf, who worked with Mr.
19 Bright, they had an opportunity to observe him, observe
20 him, how he walks and ---

21 THE COURT: Well, that's a different issue
22 altogether. I mean, mannerisms and gait and habit and
23 things you do that other people might not do, that narrows
24 it down for identification. I know that. But I'm talking
25 about -- we've been talking about this man's face on the

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1 video.

2 MS. YOUNG: Yes, sir.

3 THE COURT: And what I understood is that the
4 witnesses are going to say that they saw his face and they
5 said that's him. But you're standing here, you've seen the
6 video, the Defendant is sitting right beside you basically,
7 or you can look at him all you want to, but you're telling
8 me that you can't identify him, looking at him right now
9 and looking at the video. Is that a fair statement?

10 MS. YOUNG: Well, I would say this, Your Honor, I
11 have a hard time -- and I'm not trying to equivocate. But
12 in the beginning as Mr. -- excuse me -- Detective Glover
13 referred to, he does have his hand up a lot and he does
14 have a hat on. The portion of the video which we feel like
15 is -- the witnesses are going to say -- I mean, you're
16 asking me to stand up here and a hundred percent say I can
17 say that's him. If I didn't believe it was him, we
18 wouldn't be prosecuting him or presenting it, Your Honor,
19 but I don't think I could say -- I don't know him other
20 than seeing him -- this is the first time I've seen him in
21 person, for the first time, so I don't have that same
22 opportunity that Detective Glover has, having known him for
23 a number of years and ---

24 THE COURT: Well, what difference does that make?
25 I mean, his appearance has obviously changed over the

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1 years. I mean, he's gone from a child to an adult. So I
2 don't think ---

3 MS. YOUNG: It does, Your Honor. I mean, that's
4 why I asked you to read these cases. They both are ---

5 THE COURT: Well, I'm going to.

6 MS. YOUNG: --- on point regarding how other
7 witnesses can assist the finder of fact, particularly in
8 case where the video may not be clear or they haven't had
9 the same amount of time or opportunity to observe the
10 Defendant. And that's what these cases are arguing.

11 THE COURT: Well, I understand. But what I'm
12 saying is, if you can't see somebody's face, then I don't
13 care how long you've known them, how would you identify
14 them by their face?

15 MS. YOUNG: Well, you can see his face on that,
16 Your Honor. I mean, it's not perfectly clear, crystal
17 clear, but you can see the man's face.

18 THE COURT: All right. Well, maybe I need to
19 look at the video.

20 MS. YOUNG: And we can -- would you like for us
21 to get that this afternoon?

22 THE COURT: Yeah. Well, if you've got it on a
23 disk?

24 MR. MCCARLEY: Yes, sir.

25 THE COURT: Well, I can just look at it myself on

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1 my computer, unless y'all think it would help to blow it on
2 the big screen.

3 MR. MCCARLEY: Your Honor, it's cut up into
4 pieces because that's the way it was retrieved. The
5 surveillance system was actually tampered with that
6 evening. Retrieved in section. The operative or the
7 identifying part is about -- I believe it's about a three-
8 minute segment. It's number 47. Would you mind if we just
9 play that instead of the entire thirty minutes? The part
10 that the witnesses can say they identified him from is one
11 specific segment where ---

12 THE COURT: That's all I need to see.

13 MR. MCCARLEY: Yes, sir. Your Honor, do you want
14 it up there or do you want it through this?

15 THE COURT: Well, I can do it on my own computer.
16 We don't have to do it necessarily right now, because I can
17 look at it after court if we've got some more work to do.
18 We'll just do it after court.

19 MR. MCCARLEY: Yes, sir.

20 THE COURT: All right. Do we have any other
21 matters we need to address with Mr. Bright's motions?

22 MR. HAYES: Judge, I'd ask the Court to exclude
23 witnesses under 615 so that they may not hear the testimony
24 of each other.

25 THE COURT: Okay. You want to sequester. Have

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1 . y'all got any objection?

2 MR. MCCARLEY: No objection, Your Honor.

3 THE COURT: All right. It's reciprocal, of
4 course.

5 MR. HAYES: Yes, sir. I have no witnesses.

6 THE COURT: All right. Any others?

7 MR. MCCARLEY: At this time I have nothing else,
8 Your Honor.

9 MS. YOUNG: I was just going to say for
10 housekeeping purposes, going away from Mr. Bright, we have
11 a couple of bench warrant requests. We would maybe need a
12 five minute break. It looks like I might have another plea
13 signed up.

14 THE COURT: All right. We'll take a fifteen
15 minute break.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

18

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-GS-02-00423

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 TYRIK GERARD BRIGHT,
7 Defendant.

8
9 Heard on June 11 & 12, 2013

10 Aiken, South Carolina

11
12 BEFORE:

13 THE HONORABLE J. DERHAM COLE

14 & A JURY

15
16 APPEARANCES:

17 Counsel on Behalf of the State:

Nicholas R. McCarley, Esq.

18 Elizabeth Burkhalter Young, Esq.

19 Counsel on Behalf of the Defendant:

C. David Hayes, Esq.

20 Michael D. Routzong, Esq.

21
22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 5232
Aiken, SC 29804-5232

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SELECTION OF THE JURY

1 ON TUESDAY, JUNE 11, 2013 AT 11:37 A.M.:

2 THE COURT: All right. Ladies and gentlemen, we are
3 ready to begin with the trial of the case, the first
4 trial. It will require some of your participation.

5 The title of the case is the State versus Tyrik Gerard
6 Bright. Mr. Bright has been accused by the prosecutor by
7 way of a document called an indictment. An indictment is
8 not evidence of anything. It's not proof of anything, but
9 it is the charging paper. It's like a warrant. It's the
10 charging paper that brings the charge against another into
11 this court.

12 In this particular case Mr. Bright is charged with the
13 crime of burglary in the second degree.

14 The State alleges in this indictment that Mr. Bright
15 did here in Aiken County on or about December the 24th of
16 2011, willfully and unlawfully enter, without consent and
17 with intent to commit a crime therein, a building which is
18 known as All-Star Rentals located on Williamsburg Street
19 Northeast here in Aiken, and that he entered the building
20 without the consent and with the intent to commit a crime
21 therein.

22 Now as to those allegations and as to that charge the
23 Defendant has entered a plea of not guilty. A plea of not
24 guilty places upon the State, because they've made the
25 charge, the burden of proving the allegations that are set

SELECTION OF THE JURY

1 forth in the indictment, the burden of proving each of the
2 essential elements of the crime that they allege the
3 Defendant has committed. And therefore the burden is upon
4 the State to establish his guilt to the satisfaction of 12
5 jurors beyond a reasonable doubt before any verdict of
6 guilty could be returned.

7 So we're going to be selecting 13 of you. There'll be
8 12 primary jurors and one additional juror to serve as an
9 alternate. And by way of your participation, you're
10 simply going to be called upon to listen to the testimony,
11 to consider the evidence introduced during the trial of
12 the case. From that evidence you'll determine what you
13 believe to be the true facts as they relate to the
14 allegations, apply the law and determine whether or not
15 the Defendant has been proven guilty.

16 Now before we begin with jury selection, I've got some
17 people that I'm going to introduce to you. They're people
18 involved in the trial of the case. And the purpose of
19 these introductions is to find out if any juror is
20 connected with any of these people. In other words: Are
21 you related by blood or marriage? Do you work with them?
22 Do you go to church with them? Do you go to school with
23 them? Do you socialize with them? Have you met them
24 somewhere? Do you know them in any capacity or any
25 members of their family?

SELECTION OF THE JURY

1 So as these people are introduced, should you have
2 such a connection, I'm going to ask that you please
3 stand. We'll address what that connection is and
4 determine whether or not it would affect your judgment in
5 the case. And then after we have those introductions, I'll
6 be asking you some other questions in order to determine
7 whether or not you have some reason why you should not be
8 selected to participate in the trial.

9 Now first of all, as I've told you, the Defendant,
10 that is the person who is accused of having committed the
11 crime of burglary in the second degree, is Tyrik Gerard
12 Bright. Mr. Bright, if you'll stand and face the jury
13 panel, please, sir.

14 THE DEFENDANT: (Complies.)

15 THE COURT: Okay. Thank you. Be seated.

16 THE DEFENDANT: (Complies.)

17 THE COURT: Mr. Bright is represented in this case by
18 Charles D. Hayes and Michael Routzong from the Aiken
19 County Public Defenders Office.

20 Presenting the case on behalf of the State are
21 Nicholas McCarley and Beth Ann Young, both of them are
22 Assistant Circuit Solicitors for the Second Judicial
23 Circuit.

24 Potential witnesses to be called during the trial
25 include Mike Fanning. Are these witnesses present? If

SELECTION OF THE JURY

1 you're present and your name is called, please stand.

2 Mary Wolf.

3 Keith Glover with the Aiken Department of Public
4 Safety.

5 Christopher Walker with the Aiken Department of Public
6 Safety.

7 Stacey Coleman with the Aiken County Sheriff's
8 Department.

9 And those appear to be all the witnesses. Any other
10 witnesses on behalf of the State?

11 MR. MCCARLEY: None, Your Honor.

12 THE COURT: On behalf of the defense?

13 MR. HAYES: No, Your Honor.

14 THE COURT: All right. Does any member of the jury
15 panel know anybody who has just been introduced to you or
16 any members of their family? And I also want to include
17 in the question whether or not you know anyone who is
18 employed in the Second Judicial Circuit Solicitor's Office
19 or the Second Judicial Circuit Public Defenders Office.
20 In addition to those who have been introduced, if you know
21 anybody employed in either of those offices or if you know
22 anybody who's been introduced, if so please stand.

23 Okay. Those who are standing I'll ask -- I'll start
24 with you, sir. If you'll give me your name and your juror
25 number then tell who it is that you know and how you know

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1 them.

2 THE JUROR: Kevin Pflieger, Juror Number 140. I know
3 Sam Grimes and a few other members of the solicitor's
4 office. I've known Sam for, I don't know, ten, 15 years.

5 THE COURT: And is there anything about that fact or
6 those connections that would have any bearing upon your
7 decision in this case?

8 THE JUROR: No.

9 THE COURT: Thank you. Be seated. Yes, sir?

10 THE JUROR: Yes. I'm Jeffery Jones, Juror Number 94.
11 I work with Officer Chris Walker and I believe I went to
12 school with Mary, Mary Joe Fanning. All right.

13 THE COURT: Is there anything about those connections
14 or facts that would in any way interfere with your ability
15 to be fair and impartial in this case?

16 THE JUROR: No.

17 THE COURT: Thank you. Be seated. Yes, sir?

18 THE JUROR: Steven Bagley, Juror 15. Pretty close
19 friends with Mr. McCarley and multiple members of the
20 solicitor's office.

21 THE COURT: All right. And is there anything about
22 those connections that would have any bearing upon your
23 decision in the case?

24 THE JUROR: No.

25 THE COURT: Could you not allow it to influence your

SELECTION OF THE JURY

1 judgment?

2 THE JUROR: No.

3 THE COURT: You could not?

4 THE JUROR: No, it wouldn't, it wouldn't affect my
5 judgment.

6 THE COURT: All right. Let me ask that question again
7 so we'll be clear.

8 Would the fact that you know Mr. McCarley and some
9 other persons in the solicitor's office, would it have any
10 bearing whatsoever in your decision in the case?

11 THE JUROR: No, Your Honor.

12 THE COURT: Thank you. Be seated. Yes, sir?

13 THE JUROR: William Wright, Juror Number 198. My
14 younger sister is interning for the solicitor's office,
15 sir.

16 THE COURT: All right. And would that fact have any
17 bearing on your decision in the case?

18 THE JUROR: No, Your Honor.

19 THE COURT: Could you be fair and impartial to both
20 sides, notwithstanding you have a relative in the
21 solicitor's office?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you. Be seated. Yes, sir?

24 THE JUROR: Jonathan Pitts, Juror Number 141. I know
25 Detective Glover. I've worked with him.

SELECTION OF THE JURY

1 THE COURT: And is there anything about that
2 connection that would have any bearing upon your
3 decision?

4 THE JUROR: No, sir.

5 THE COURT: Could you not allow that fact to influence
6 your judgment in the case?

7 THE JUROR: No.

8 THE COURT: Let me ask that question again. I'm
9 having a hard time with that question.

10 THE JUROR: Okay.

11 THE COURT: Would the fact that you know Mr. Glover
12 cause you to side with the State?

13 THE JUROR: No. Huh-uh.

14 THE COURT: So you could give both the State and the
15 the Defendant a fair and impartial trial --

16 THE JUROR: Yes.

17 THE COURT: -- not withstanding the fact you know
18 Detective Glover?

19 THE JUROR: Yes, sir. I could.

20 THE COURT: Thank you. You may be seated. Anyone
21 else?

22 All right. This is an event which the State alleges
23 occurred back on December the 24th of 2011. It is alleged
24 to have occurred at the All-Star Rental located at 156
25 Williamsburg Street Northeast here in Aiken, the City of

SELECTION OF THE JURY

1 Aiken.

2 Is there any juror who believes that you might have
3 heard something about the case, or you might have been
4 exposed to some information about the case? I don't know
5 if it was reported on the television, radio or newspaper,
6 but I need to know if you've been exposed to any type of
7 information about the case from any source whatsoever,
8 whether it be media or whether it be just individuals
9 talking about the case, whether they were talking to you
10 or somebody else. Have you been exposed to any type of
11 information about the case? If so, please stand.

12 Is there anything about the nature of the charge, that
13 is, what the allegations are. Is there anything about the
14 nature of the case itself that would prevent any juror
15 from being able to be fair and impartial to both sides if
16 selected in the case? If so, please stand.

17 Has any member of the jury panel or any member of your
18 immediate family, and let me define any immediate family
19 member as a parent or a spouse or a child or a sibling. A
20 parent, spouse, child or sibling.

21 Have you or any member of your immediate family as I
22 just defined it, ever been the victim of any type of
23 burglary or theft, a burglary or theft, or have you or any
24 member of your immediate family as I defined it ever been
25 accused of having committed any similar type of an

SELECTION OF THE JURY

1 offense?

2 So I need to know if you or a family member was the
3 victim of a similar offense or whether you've been accused
4 of having committed a similar offense. If that's the
5 case,, I would ask that you please stand.

6 All right. I'm going to start on the front row and
7 I'll work my way back row by row, right to left. My right
8 to left. And I'll ask you to give me your name and your
9 juror number. I'll ask you to tell me if it was you or a
10 family member, and then I'll need to know if you or that
11 family member was the victim or was an accused.

12 As we go through this with each juror, if you prefer
13 not to answer the question where you are, feel free to
14 step down here and I'll discuss it with you at the bench
15 privately. But I need you to report the information to
16 me.

17 All right. I'll start on the front row right here
18 with the first gentleman on the corner. If you'd give me
19 your name and juror number, please, sir.

20 THE JUROR: My name's Earl Quiller, Jr., Juror 149.
21 And my mother's home was burglarized.

22 THE COURT: And is there anything about that
23 experience that would affect your judgment in this case?

24 THE JUROR: No.

25 THE COURT: Thank you. Be seated. Next? Yes,

SELECTION OF THE JURY

1 ma'am?

2 THE JUROR: Collette Johnson, Juror Number 93. My son
3 had his home burglarized and I had, also had my home
4 burglarized.

5 THE COURT: And would either of those experience or
6 facts interfere in any way with your ability to be fair in
7 this case?

8 THE JUROR: No, sir.

9 THE COURT: Thank you. Be seated. Next row?

10 THE JUROR: Steven Bagley, Juror Number 15. I've had
11 two of our family's homes burglarized.

12 THE COURT: And would either of those facts have any
13 bearing upon your decision in this case?

14 THE JUROR: No, sir.

15 THE COURT: Thank you. Be seated. Yes, sir?

16 THE JUROR: Douglas Melton, Juror 122. Our family
17 home was burglarized.

18 THE COURT: And would that experience have any bearing
19 upon your decision in this case?

20 THE JUROR: No.

21 THE COURT: Thank you. Be seated. Yes, ma'am?

22 THE JUROR: Melissa Hutto, Juror Number 91. I was the
23 victim of a home burglary.

24 THE COURT: And would that experience have any bearing
25 upon your decision in this case?

SELECTION OF THE JURY

1 THE JUROR: No, sir.

2 THE COURT: Thank you. Be seated. Yes, ma'am?

3 MR. HAYES: I'm sorry, Judge. What number was that?

4 THE COURT: That was 91.

5 MR. HAYES: Thank you.

6 THE COURT: Yes, ma'am?

7 THE JUROR: My name's Michelle Presnell, Juror 144 and
8 I had my car stolen.

9 THE COURT: And would that experience have any bearing
10 upon your decision in this case?

11 THE JUROR: No, Your Honor.

12 THE COURT: Thank you. Be seated. Yes, ma'am?

13 THE JUROR: Deanna Pearson, Juror 135. And earlier
14 this year my husband's vehicle and my vehicles were broken
15 into and items were stolen.

16 THE COURT: And would either of those experiences have
17 any bearing upon your decision in the case?

18 THE JUROR: No, Your Honor.

19 THE COURT: Thank you. Be seated. Next row?

20 THE JUROR: Clinton Sandmel, Juror 159. I've been a
21 victim of a home burglary and mugging.

22 THE COURT: A burglary and a what?

23 THE JUROR: Mugging.

24 THE COURT: And would either of those experiences have
25 any bearing upon your decision in this case?

SELECTION OF THE JURY

1 THE JUROR: No, sir.

2 THE COURT: Thank you. Be seated. Yes, ma'am?

3 THE JUROR: Victoria Cockrell, Juror 42. And my
4 father's storage building was burglarized.

5 THE COURT: And would that have any bearing upon your
6 decision in this case?

7 THE JUROR: No, sir.

8 THE COURT: Thank you. Be seated. Yes, sir?

9 THE JUROR: Kevin Anderson, Juror Number 12. My home
10 and my truck were stolen. My home was burglarized and my
11 truck was stolen.

12 THE COURT: And would either of those experiences have
13 any bearing upon your decision in the case?

14 THE JUROR: No, sir.

15 THE COURT: Thank you. Be seated. Yes, ma'am?

16 THE JUROR: Jennifer Anderson, Juror Number 11.
17 Victim of a wallet stolen.

18 THE COURT: And would that experience have any bearing
19 upon your decision in this case?

20 THE JUROR: No, sir.

21 THE COURT: Thank you. Be seated. And 141?

22 THE JUROR: Jonathan Pitts, 141. I had my vehicle
23 vandalized.

24 THE COURT: And would that experience have any bearing
25 upon your decision in this case?

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1 THE JUROR: No, sir.

2 THE COURT: Thank you. You may be seated.

3 Anyone else need to respond to the question? You or a
4 family member has been the victim of a similar event or
5 have ever been accused of having committed a similar type
6 of crime? If so, please stand.

7 Does any member of the jury panel belong to any
8 organizations which might be characterized or described as
9 law enforcement support organizations or victims' rights
10 organizations, victims' advocacy group-type
11 organizations? Those types of organizations might include
12 Mothers Against Drunk Drivers, Citizens Against Violent
13 Crime, the Honorary Sheriff's Association, the Troopers
14 Association, the Fraternal Order of Police, the Police
15 Benevolent Society, or any neighborhood watch-type of
16 organization.

17 Do you belong to any or do you contribute time or
18 money to any of those types of organizations? If so,
19 please stand.

20 All right. Your name and number, please?

21 THE JUROR: Malcum Kenner, Juror Number 96, Wackenhut
22 SRS.

23 THE COURT: I'm sorry. I didn't hear you.

24 THE JUROR: I work for Wackenhut, SRS.

25 THE COURT: Okay. Is there anything about that that

SELECTION OF THE JURY

1 would affect your judgment in this case?

2 THE JUROR: No, sir.

3 THE COURT: Thank you. Be seated.

4 Is any member of the jury panel related by blood or
5 marriage to any type of law enforcement officer whether it
6 be a deputy sheriff, city police officer, town or
7 municipal law enforcement officer, a detention facility
8 officer or a corrections officer, a probation officer,
9 State Law Enforcement Division agents, FBI, CIA, military,
10 civilian, you name it.

11 If you're related to any type of law enforcement
12 officer, I would ask that you please stand.

13 All right. Your name and number, please, sir?

14 THE JUROR: My name's Kevin Pflieger, 140. Both of my
15 brother-in-laws are, one's a sheriff's deputy and one is a
16 public safety in Aiken and also a first lieutenant.

17 THE COURT: And would any of those facts have any
18 bearing upon your decision?

19 THE JUROR: No, sir.

20 THE COURT: Thank you. Be seated. Yes, sir?

21 THE JUROR: My father's a retired chief of police from
22 Upstate New York, deceased now. Both my brothers are
23 police officers. They're both retired now. I have
24 nephews that are police officers. I have uncles that are
25 police officers. So I come from a very extensive family

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1 of law enforcement. I worked for the IRS for 35 years
2 with a law enforcement group also.

3 THE COURT: And your name and number, please, sir?

4 THE JUROR: Juror Number 35, Keith Campbell.

5 THE COURT: And would any of those facts have any
6 bearing upon your decision?

7 THE JUROR: Possibly.

8 THE COURT: Well, do you think it's reasonably
9 probable that your connection with law enforcement would
10 cause you to take sides in some fashion?

11 THE JUROR: I think I can contain, possibly contain my
12 composure.

13 THE COURT: Well, I know anything's possible but, I
14 mean, is it realistic and probable?

15 THE JUROR: I think so.

16 THE COURT: Okay. We'll excuse Juror 35 from service
17 in the case but don't leave yet.

18 THE JUROR: Yes, sir.

19 THE COURT: Yes, ma'am?

20 THE JUROR: Jessica Fockler, Juror 62. My
21 grandfather's a retired assistant chief of police in
22 Titusville, Pennsylvania.

23 THE COURT: And would that have any bearing on your
24 decision?

25 THE JUROR: No, Your Honor.

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1 THE COURT: Thank you. Be seated. Yes, ma'am?

2 THE JUROR: I'm Jennifer Anderson, Juror 11. My
3 husband is a deputy sheriff with Richmond County, Augusta.

4 THE COURT: And would that have any bearing upon your
5 decision in the case?

6 THE JUROR: No, sir.

7 THE COURT: Thank you. Be seated.

8 All right. I've introduced the Defendant to you.
9 I've introduced the lawyers to you. I've introduced the
10 potential witnesses to you, and I've asked you some other
11 questions.

12 Does any juror know of any reason whatsoever why you
13 believe you could not be fair and impartial if selected as
14 a juror to serve in the trial of this particular case? If
15 you have any reason whatsoever why you think you cannot be
16 fair to both sides, I would ask that you please stand.

17 All right. None responding.

18 Any other questions requested by the State?

19 MR. MCCARLEY: Nothing from the State, Your Honor.

20 THE COURT: By the Defendant?

21 MR. HAYES: No, Your Honor.

22 THE COURT: All right. Draw us a jury, please, ma'am.

23 As your -- the computer draws a list of names. It's a
24 random selection. And as your name appears on the list
25 you'll be called to come forward.

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1 When you're called, your name is called, just come
2 forward and take a position right in front of Ms. Goddard,
3 the clerk, and turn and look back towards the back of the
4 room.

5 Each side has an opportunity to have you excused from
6 serving as a juror in the case or both may agree to have
7 you seated for service in the case.

8 So just come forward as your name is called and you'll
9 be instructed as to whether you are to be excused from
10 serving in the case or you're to be seated. If either
11 side asks that you be excused, just go back and have a
12 seat where you are now. If both agree to have you sworn
13 or seated for service in the case, you'll be having a seat
14 in the jury box to your right and to my left.

15 So please come forward as your name is called and
16 you'll be so instructed.

17 THE CLERK: As I call your name, please come forward
18 turn and face the rear.

19 Juror Number 32, James Burgess.

20 (White male comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MCCARLEY: Please present Mr. Burgess.

23 THE CLERK: Thank you. What say you for the defense?

24 MR. HAYES: Please seat the juror.

25 THE CLERK: Have a seat in the jury box to your left,

SELECTION OF THE JURY

1 please, sir.

2 Juror Number 93, Collette Johnson.

3 (Black female comes forward.)

4 THE CLERK: What say you for the State?

5 MR. MCCARLEY: Please present Ms. Johnson.

6 THE CLERK: What say you for the defense?

7 MR. HAYES: Please excuse this juror.

8 THE CLERK: Return to your seat, please, ma'am.

9 Juror Number 94, Jeffery Jones.

10 (White male comes forward.)

11 THE CLERK: What say you for the State,

12 Mr. Solicitor?

13 MR. MCCARLEY: Please present Mr. Jones.

14 THE CLERK: What say you for the defense?

15 MR. HAYES: Judge, I would move for cause due to the
16 close relationship to the victim of this case.

17 THE COURT: Declined.

18 MR. HAYES: Please excuse the juror. Thank you.

19 THE CLERK: Thank you. Have a seat -- I'm sorry.

20 Return to your seat.

21 Juror Number 85, Duane Hoepker.

22 (White male comes forward.)

23 THE CLERK: What say you for the State?

24 MR. MCCARLEY: Please present Mr. Hoepker.

25 THE CLERK: What say you for the defense?

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1 MR. ROUTZONG: Please seat the juror.

2 THE CLERK: Have a seat in the jury box to your left,
3 please, sir.

4 Juror Number 140, Kevin Pflieger.

5 (White male comes forward.)

6 MR. MCCARLEY: Present Mr. Pflieger.

7 THE CLERK: What say you for the defense?

8 MR. HAYES: Please excuse this juror.

9 THE CLERK: Return to your seat, please, sir.

10 Juror Number 75, Natasha Hallingquest.

11 (Black female comes forward.)

12 THE CLERK: What say you for the State?

13 MR. MCCARLEY: Please present Ms. Hallingquest.

14 THE CLERK: What say you for the defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Have a seat in the jury box to your left,
17 please, ma'am.

18 Juror 149, Earl Quiller.

19 (Black male comes forward.)

20 THE CLERK: What say you for the State?

21 MR. MCCARLEY: Please present Mr. Quiller.

22 THE CLERK: What say you for the defense?

23 MR. HAYES: Please seat the juror.

24 THE CLERK: Have a seat in the jury box to your left,
25 please, sir.

SELECTION OF THE JURY

1 Juror Number 153, Mary Ridenour.

2 (White female comes forward.)

3 THE CLERK: What say you for the State?

4 MR. MCCARLEY: Please present Ms. Ridenour.

5 THE CLERK: What say for the defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please,
8 ma'am.

9 Juror Number 15, Steven Bagley.

10 (White male comes forward.)

11 THE CLERK: What say you for the State?

12 MR. MCCARLEY: Please present Mr. Bagley.

13 THE CLERK: What say you for the defense?

14 MR. HAYES: Please excuse -- Judge, I'd like to move
15 for cause for this juror.

16 THE COURT: Declined.

17 MR. HAYES: Please excuse the juror.

18 THE CLERK: Thank you. Return to your seat.

19 Juror Number 96, Malcum Kenner.

20 (Black male comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MCCARLEY: Please present Mr. Kenner.

23 THE CLERK: What say you for the defense?

24 MR. HAYES: Please excuse this juror.

25 THE CLERK: Return to your seat, please, sir.

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1 State has exhausted no strikes, defense five.

2 Juror Number 122, Douglas Melton.

3 (White male comes forward.)

4 THE CLERK: What say you for the State?

5 MR. McCARLEY: Please present Mr. Melton.

6 THE CLERK: What say you for the defense?

7 MR. HAYES: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, please, sir.

9 Juror Number 148, Lee Quattlebaum.

10 (White male comes forward.)

11 THE CLERK: What say you for the State?

12 MR. McCARLEY: Please present Mr. Quattlebaum.

13 THE CLERK: What say you for the defense?

14 MR. HAYES: Please seat the juror.

15 THE CLERK: Have a seat in the jury box, please, sir.

16 Juror Number 107, Julie Lott.

17 (White female comes forward.)

18 THE CLERK: What say you for the State?

19 MR. McCARLEY: Please present Ms. Lott.

20 THE CLERK: What say you for the defense?

21 MR. HAYES: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, please,

23 ma'am.

24 Juror Number 162, Beth Seigler.

25 (White female comes forward.)

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1 THE CLERK: What say you for the State?

2 MR. MCCARLEY: Please present Ms. Seigler.

3 THE CLERK: What say you for the defense?

4 MR. HAYES: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, please,
6 ma'am.

7 Juror Number 134, Michael O'Leary.

8 (White male comes forward.)

9 THE CLERK: What say you for the State?

10 MR. MCCARLEY: Please present Mr. O'Leary.

11 THE CLERK: What say you for the defense?

12 MR. HAYES: Please excuse the juror.

13 THE CLERK: Return to your seat, please, sir.

14 Juror Number 172, Joyce Starlings.

15 (Black female comes forward.)

16 THE CLERK: What say you for the State?

17 MR. MCCARLEY: Please excuse Ms. Starlings from the
18 trial of this case.

19 THE CLERK: Thank you. Return to your seat, please,
20 ma'am.

21 Juror Number 38, Jennifer Cave.

22 (Black female comes forward.)

23 THE CLERK: What say you for the State?

24 MR. MCCARLEY: Please excuse Ms. Cave from the trial
25 of this case.

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1 THE CLERK: Thank you. Return to your seat, please,
2 ma'am.

3 Juror 135, Deanna Pearson.

4 (White female comes forward.)

5 THE CLERK: What say you for the State?

6 MR. MCCARLEY: Please present Ms. Pearson.

7 THE CLERK: What say you for the defense?

8 MR. HAYES: Please seat the juror.

9 THE CLERK: Have a seat in the jury box, please,
10 ma'am.

11 Juror Number 81, Howard Henderson.

12 (Black male comes forward.)

13 THE CLERK: What say you for the State?

14 MR. MCCARLEY: Please excuse Mr. Henderson from the
15 trial of this case.

16 THE CLERK: Thank you. Return to your seat, please,
17 sir.

18 The State has exhausted three strikes, defense six.

19 Juror 173, William Stoker.

20 (White male comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MCCARLEY: Please present Mr. Stoker.

23 THE CLERK: What say you for the defense?

24 MR. HAYES: Please seat the juror.

25 THE CLERK: Thank you. Have a seat in the jury box,

SELECTION OF THE JURY

1 please, sir.

2 Juror Number 145, Georshia Price.

3 (Black female comes forward.)

4 THE CLERK: What say you for the State?

5 MR. McCARLEY: Please present Ms. Price.

6 THE CLERK: What say you for the defense?

7 MR. HAYES: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, please,
9 ma'am.

10 Alternate number one. Juror Number 144, Michelle
11 Presnell.

12 (White female comes forward.)

13 MR. HAYES: I'm sorry. What was the number?

14 THE CLERK: 144.

15 MR. HAYES: Thank you.

16 THE CLERK: What say you for the State?

17 MR. McCARLEY: Please present Ms. Presnell.

18 THE CLERK: What say you for the defense?

19 MR. HAYES: Please excuse this juror.

20 THE CLERK: Return to your seat, please, ma'am.

21 Juror Number 185, Blanche Walker.

22 (Black female comes forward.)

23 THE CLERK: What say you for the State?

24 MR. McCARLEY: Please present Ms. Walker.

25 THE CLERK: What say you for the defense?

1 MR. HAYES: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please,
3 ma'am.

4 Just one alternate, Your Honor?

5 THE COURT: I think so.

6 THE CLERK: Thank you.

7 THE BAILIFF: You're our alternate juror. Always come
8 back to this seat.

9 THE COURT: Those who have been selected, I'll ask you
10 to please go with the bailiff to the jury room. I'll
11 bring you back in just a few minutes.

12 (Jury exits courtroom at 12:12 p.m.)

13 THE COURT: Are there any matters that need to be
14 addressed regarding jury selection by the State?

15 MR. MCCARLEY: Nothing from the State, Your Honor.

16 THE COURT: By the Defendant?

17 MR. HAYES: No, Your Honor.

18 THE COURT: All right. Those jurors who have not been
19 selected, you are excused for the balance of today. I
20 would ask that you please call back to the number in the
21 middle paragraph in bold black, the juror information line
22 number. Call that number after six o'clock this evening,
23 after six o'clock this evening, to receive further
24 reporting information.

25 Thank you for your participation. Have a good

1 afternoon.

2 (Jury panel excused and exits courtroom at 12:13 p.m.)

3 THE COURT: All right. Yesterday there were two
4 motions heard. One was a Jackson V Denno motion wherein
5 the State was intending to offer into evidence a video of
6 an interview by Detective Glover of the Defendant
7 subsequent to his arrest or pursuant to an investigation
8 for crimes for which the Defendant is now charged.

9 And I understand now the State has made the decision
10 to, not to introduce the video or the interview into
11 evidence?

12 MR. McCARLEY: That is correct, Your Honor.

13 THE COURT: Okay. The other motion was by the defense
14 to exclude identification of the Defendant as being one of
15 the persons shown in a video of the location of the
16 burglary.

17 The defense moved to exclude Detective Glover and
18 Mr. Fanning and Ms. Wolf -- or Mr. Fanning and Ms. Wolf
19 were the ones that the State was going to ask to identify
20 the Defendant from the in-store video?

21 MR. McCARLEY: That is correct, Your Honor.

22 THE COURT: Okay. And they made a motion to exclude
23 that identification based upon the fact that they're not
24 experts and that the jury's in the same position they'd be
25 in to make an identification of the Defendant from the

1 video if such an identification can be made.

2 And they contended that the video was not clear
3 enough for such an identification to be made and therefore
4 they should not be permitted, and that Mr. Glover's
5 relationship with the Defendant was based upon
6 professional experiences he had through his employment as
7 a detective.

8 Mr. Hayes, I've read the two cases that were
9 submitted. Those are State versus Fripp and State versus
10 Mitchell. And while at the time during argument I had
11 some reservation about the witnesses making that
12 identification, I have looked at the video itself. And
13 there's more exhibited in the video other than just the
14 Defendant's face. It also shows him walking through what
15 appears to be some type of warehouse. And it shows his
16 clothing. It shows his mannerisms and it shows also at
17 least some view of his face.

18 Having read the cases, I think it's clear based upon
19 case law now that such an identification is proper where
20 the identification is based upon the personal perception
21 of the witness based upon their knowledge of the
22 Defendant. And therefore your motion to exclude their
23 identification of the Defendant as being one of those
24 persons exhibited in the video is denied.

25 So they will be permitted to make that identification

1 so long as they can. Number one.

2 And, number two, it's based upon their personal
3 perception and their personal knowledge of the Defendant.
4 So that foundation will have to be laid.

5 There will, however, be no testimony or evidence
6 elicited from Detective Glover that he knows the Defendant
7 in his capacity as an Aiken County Public Safety
8 Detective. In other words it can't be, it can't be stated
9 nor can it be insinuated or intimated or inferred that he
10 knows the Defendant based upon him investigating criminal
11 activity that might have involved the Defendant.

12 So he can testify that he knows the Defendant from the
13 community and he's known him for 15 years or whatever, but
14 it can't relate to anything he's -- any knowledge he has
15 of the Defendant based upon any criminal history or
16 alleged criminal history of the Defendant unless the door
17 is opened by the defense's cross-examination.

18 All right. Any other matters we need to address
19 before the jury is sworn?

20 MR. HAYES: Judge, before we move on, I just want to
21 make sure that I was clear on what my actual argument was
22 for the record. It was the cumulative effect of having
23 more than one person, i.e., Mr. Fanning, Ms. Wolf and then
24 Detective Glover testify as to who the Defendant was, and
25 that the cumulative effect was more prejudicial than it

1 was probative.

2 THE COURT: Well, I understand that's part of the
3 argument. But that's based on the Mitchell decision. And
4 the reason the Court ruled that there was a cumulative
5 prejudicial effect, that was because the State in that
6 case was attempting to call several police officers to
7 testify they knew the defendant, they recognized him.

8 And I think the concern the Court had there was that
9 it would give the appearance that the Defendant is known
10 by the entire police department because he's got a
11 criminal history.

12 That's not what's happening in this case.

13 MR. HAYES: Yes, sir.

14 THE COURT: You have one police officer testifying
15 that he knows the Defendant. The other two people are, as
16 I understand it, are people who own the business and who,
17 for whom the Defendant was employed.

18 MR. HAYES: Yes, sir.

19 THE COURT: And so they know him based upon their work
20 experience or his work experience and not based on any
21 other contact.

22 So in that event I don't think the cumulative effect
23 is anything that's prejudicial or if it is prejudicial,
24 it's appropriately so. I mean, it's just people who can
25 identify the Defendant as being what they contend as the

1 perpetrator of a burglary. So I think that's appropriate.

2 MR. HAYES: Thank you, Your Honor.

3 THE COURT: But your exception is noted.

4 MR. McCARLEY: Your Honor, the State noticed that you
5 did not read the portion of the indictment whereby the
6 Defendant has two prior burglary convictions. I just want
7 to make sure for the record that I'm going to be able to
8 refer to that in opening and prove that as an element of
9 the crime.

10 THE COURT: Well, do you want to be heard on that,
11 Mr. Hayes?

12 MR. McCARLEY: Your Honor, we've already agreed. We
13 agreed late last week to stipulate to that fact. And I
14 have the paperwork here for Mr. Hayes to sign.

15 MR. HAYES: Judge, as long as it's clear that they can
16 only use it as the element of the crime and not as a way
17 to prove character, I don't see where I have the grounds
18 to object.

19 THE COURT: I agree with you. I will instruct them on
20 what the stipulation is, that he has two prior
21 convictions?

22 MR. McCARLEY: Yes, sir, Your Honor.

23 THE COURT: Okay. But they didn't agree to stipulate
24 and avoid the jury having --

25 MR. McCARLEY: That is correct.

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1 THE COURT: You didn't?

2 MR. McCARLEY: I did not, sir. I plan on entering the
3 physical stipulation itself, a piece of paper as evidence.

4 THE COURT: Have you seen that, Mr. Hayes?

5 MR. HAYES: I believe I have, Judge.

6 THE COURT: Are you in agreement with it?

7 MR. HAYES: That's correct, Judge.

8 THE COURT: Okay. Well, because of the hour I think
9 we'll recess for lunch and we'll bring the jury back and
10 start at two o'clock with the trial of the case. Anybody
11 have a problem with that?

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

13 THE COURT: Okay. Bring me the jury.

14 (Jury enters courtroom at 12:26 p.m.)

15 THE COURT: All right. Ladies and gentlemen, we're
16 going to recess for lunch because of the hour. We'll
17 start with the trial of the case at two o'clock this
18 afternoon.

19 So while you are going to be excused now for lunch,
20 let me caution you that you are not under any
21 circumstances to discuss this case with any person
22 whatsoever in any fashion whatsoever, because your
23 decision has to be based solely upon what you see and hear
24 during the course of the trial.

25 You cannot be influenced by any outside

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1 consideration. And that includes any discussions about
2 the case with anybody other than your fellow jurors. But
3 you can't discuss the case even with your fellow jurors
4 until the case has been submitted to you for your
5 deliberations.

6 So, no discussions about the case until you are
7 instructed to begin your jury deliberations at the trial's
8 conclusion.

9 Also, as I say, you can't be influenced by any outside
10 consideration. So, do not permit yourselves to be exposed
11 to any type of media coverage that might relate to the
12 case. Also do not conduct any research or do your own
13 investigation in any fashion whatsoever that relates to
14 the case.

15 You have to base your decision solely upon the
16 evidence received during the course of the trial and the
17 law that I'll provide you at the trial's conclusion. You
18 cannot supplement your knowledge by discussing the case or
19 conducting outside research or investigation.

20 You are going to be excused for lunch. You'll be
21 asked to report directly to your jury room that you've
22 just been introduced to. Report to that jury room at two
23 o'clock, at two o'clock this afternoon.

24 If you're not sure how to get back there, discuss it
25 with the bailiff and he'll provide you with those

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1 directions.

2 Have a good lunch. We'll see you at two o'clock this
3 afternoon.

4 (Jury exits courtroom at 12:29 p.m.)

5 THE COURT: All right. Court is in recess until two
6 o'clock.

7 MR. MCCARLEY: Thank you, sir.

8 (Thereupon, the luncheon recess was taken at
9 12:30 p.m. At 2:07 p.m. the trial resumed as follows:)

10 THE COURT: Bring the jury in. We're ready for them.
11 Bring them in. Ask Mr. Melton to take the foreperson
12 seat.

13 THE BAILIFF: Melton?

14 THE COURT: Mr. Melton, Douglas Melton.

15 (Jury enters courtroom at 2:08 p.m.)

16 THE COURT: Good afternoon, ladies and gentlemen. We
17 are ready to begin with the trial of the case for which
18 each of you have been selected.

19 And Mr. Melton, I'm going to ask you to serve as the
20 foreperson of the jury. As the foreperson, you'll have
21 three specific duties that none of the other jurors will
22 have.

23 Number one, you'll be asked to serve as the
24 spokesperson for the jury. And that just means if
25 something arises that needs to be brought to my attention

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1 during the course of the trial, you let me know directly
2 or through the bailiff and I'll address any issue that you
3 or a fellow juror may have or answer any question that you
4 or a fellow juror may have.

5 Secondly, you'll be called upon to preside over jury
6 deliberations in the jury room at the trial's conclusion
7 after all of the evidence has been received and I've
8 instructed you on the law that's applicable in the case.
9 When you do go back to begin your deliberations you will
10 be called upon to preside over that process in the jury
11 room simply to ensure that those deliberations are carried
12 out in some orderly fashion.

13 And, thirdly, you'll be asked to actually write the
14 decision of the jury. You'll do that on a verdict form
15 that I'll provide you at the trial's conclusion on which
16 you will indicate the jury's unanimous decision.

17 Now the foreperson has those specific duties that I've
18 just indicated. That does not however mean that he is any
19 more important than any of you other jurors. And that's
20 because the decision of the jury is the unanimous
21 consensus opinion of all 12 jurors. And so each you will
22 have an equal say and an equal vote in what the ultimate
23 decision will be in the case. But someone simply has to
24 be delegated those responsibilities that I have just
25 indicated, and I have delegated those to Mr. Melton and

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1 appointed him as the foreperson.

2 But all of you jurors are equally important so far as
3 the ultimate decision in this case is concerned because,
4 as I've stated, the verdict has to be unanimous. All 12
5 of you must be in agreement.

6 Now, Ms. Walker, you've been selected as an alternate
7 juror. And the function of an alternate juror is to take
8 the place of one of the original 12 if during this trial
9 one of these 12 cannot continue to serve for some reason.
10 And so if one is called away because of an illness or an
11 emergency and they cannot continue to participate, then
12 you would be called upon to take that person's place. In
13 that event you become the 12th juror. In that event you
14 would participate throughout the trial including the jury
15 deliberations at the trial's conclusion.

16 If however when the time comes for the jury
17 deliberations the original 12 are able to perform that
18 function, your service ends, you don't participate any
19 further. And that's because a decision of the jury is
20 that of 12 and no more than 12 are permitted to engage in
21 that deliberation process.

22 But it is important that you pay just as careful
23 attention as we ask of all of the jurors selected in this
24 case because it does occur from time to time for one
25 reason or another. One of these 12 may be unable to

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1 continue, in that event you become the 12th. So we do
2 appreciate your participation as an alternate juror just
3 as we appreciate the participation of each of you jurors
4 who have been selected for the purpose of deciding the
5 verdict in this particular case.

6 You may swear the panel.

7 THE CLERK: Please stand and raise your right hand.

8 (Jury impaneled.)

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: All right. Ladies and gentlemen, as you
11 well know, you have now been selected and sworn to decide
12 the case of the State versus Tyrik Gerard Bright. As you
13 also know, Mr. Bright has been accused by the solicitor by
14 way of this indictment with having committed the crime of
15 burglary in the second degree.

16 They allege that on December the 24th of 2011, he did
17 willfully and unlawfully and without consent of the
18 owners, enter a building on Williamsburg Street here in
19 the City of Aiken with the intent to commit a crime
20 therein.

21 Those are allegations that he denies. He's entered a
22 plea of not guilty. As I've told you, that plea of not
23 guilty has placed upon the State the burden of proving the
24 allegations that they have made, the burden of proving
25 each of the essential elements that make up the crime of

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1 burglary in the second degree. And therefore the burden
2 is upon the State to establish the Defendant's guilt to
3 the satisfaction of you 12 jurors beyond a reasonable
4 doubt before any verdict of guilty could be returned.

5 Any person who is accused of a crime, and it doesn't
6 matter how serious the offense might be for which that
7 person stands charged, any person accused of a crime is
8 always presumed under the law to be innocent of that
9 charge. And that presumption of innocence remains with
10 any defendant as it does with this Defendant from the time
11 that he is placed under arrest and throughout the course
12 of the criminal process and even throughout the course of
13 the actual trial in the case. That presumption of
14 innocence will be with Mr. Bright even as you go back at
15 this trial's conclusion to begin with your deliberations
16 in this case.

17 And that presumption of innocence will be with him in
18 that jury room and it will be with him forever unless you
19 12 jurors determine that he's no longer entitled to that
20 presumption of innocence.

21 In other words, after you have carefully considered
22 all of the evidence in the case and from that evidence you
23 have decided what you believe to be the true facts as they
24 relate to these allegations, and after deciding those
25 facts you will apply the law that I will have provided

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1 you, if you 12 jurors unanimously determine that his guilt
2 has been proven beyond a reasonable doubt then he would no
3 longer be entitled to the presumption of innocence. But
4 it is only if, unless and until you are satisfied of his
5 guilt beyond a reasonable doubt that the presumption of
6 innocence would no longer be applicable.

7 Now the way the trial will proceed is that in a moment
8 the lawyers are going to address you in what are called
9 opening statements. There are two occasions in the trial
10 of the case where lawyers are permitted to address the
11 jury. And that is at the beginning of the trial before
12 any evidence has been introduced, then again at the
13 conclusion of the trial after all of the evidence has been
14 received.

15 But keep in mind, as I've just indicated, what the
16 lawyers tell you in their statements is not to be
17 considered by you as any evidence upon which you will base
18 your decision. And that's because the lawyers don't know
19 anything about this case of their own personal knowledge
20 or perception like witnesses will be testifying to.

21 The lawyers won't take the witness stand. They won't
22 be placed under oath and they won't be subject to direct
23 and cross-examination like each of the witnesses will be.

24 And so what they tell you in their statements should
25 not be considered by you as evidence upon which you will

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 base your decision. But you should listen to what they
2 have to say because those statements do serve a purpose.
3 The opening statements will serve to provide you with a
4 basic understanding as to what this case is about from
5 both the perspective of the State and of the defense so
6 that you'll have some context in which to place the
7 evidence that we will be receiving shortly thereafter.

8 The closing statements occur after all of the evidence
9 has been received. And, again, while those statements are
10 not to be considered as evidence, it does afford the
11 lawyers an opportunity to try to persuade you or to
12 convince you that the evidence in the case does or does
13 not support a particular decision.

14 And as I've said, it's in between the lawyers'
15 statements that we actually receive the evidence upon
16 which you will base your decision.

17 The State has the burden of proof, as you know.
18 Therefore the State will go forward first in its
19 presentation of evidence.

20 Once the State has concluded with that presentation of
21 evidence, a defendant has the same opportunity to testify
22 or to call witnesses or introduce evidence. But a
23 defendant in a criminal trial is never under any
24 obligation to testify or to call a witness or to introduce
25 evidence. And that's because the burden is not upon a

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 person charged with a crime to prove that he or she is not
2 guilty or to prove that he or she is innocent because in
3 some cases that might not even be possible.

4 The burden is on the State to introduce evidence
5 because they have the burden of proving his guilt beyond a
6 reasonable doubt. But a defendant has no corresponding
7 burden. A defendant doesn't have to prove anything
8 because, as I've stated, in some cases they might not be
9 able to.

10 And therefore where a defendant does not testify or
11 does not call a witness or does not introduce evidence,
12 that's not something that you may allow to weigh in the
13 slightest degree against the Defendant. You can't
14 consider it in any way in your deliberations or in your
15 determination as to whether or not his guilt has been
16 proven beyond a reasonable doubt.

17 You simply must consider the evidence introduced
18 during the trial in order to make your determination of
19 fact, and then apply the law as I will have provided it to
20 you. But while a defendant is not under any obligation to
21 prove anything, a defendant is always afforded an
22 opportunity to present evidence in the event he or she
23 wished to do so.

24 So after all of the evidence has been received and
25 after you hear the final summations of the lawyers, I will

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 then instruct you fully on the law as it relates to the
2 criminal law generally and as it relates to this
3 particular crime specifically. And after that you'll be
4 asked to go back and to begin with your deliberations in
5 the case.

6 And through that process you're simply going to be
7 called upon through the exercise of good judgment and
8 common sense, conscientiously applied to the testimony and
9 evidence in the case to decide what you believe to be the
10 true facts as they relate to these allegations. And then
11 once you decide those facts, you'll apply the law that I
12 will have provided you and you will determine whether or
13 not the Defendant's guilt has been proven beyond a
14 reasonable doubt.

15 And if it has, then your verdict would be guilty and
16 if it has not, then your verdict would be not guilty.

17 So all that we will ask you to do in this case is to
18 pay careful attention throughout the course of the trial.
19 Give every witness the same degree of attention as they
20 testify.

21 During the course of any trial, there may be some
22 conflicts in testimony. And where those conflicts relate
23 to a material fact that has to be decided in order for you
24 to arrive at a decision in the case, you are the persons
25 who decide what is the most believable and credible

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 testimony and that's the testimony that you will accept.

2 And you will reject any testimony or other evidence
3 that you find not to be credible or believable. But in
4 order for you to be in the proper position to be able to
5 fairly evaluate a witness's testimony, you have to pay
6 attention while they testify so that you'll be in the
7 proper position at the trial's conclusion to judge that
8 witness's testimony in light of not just his or her own
9 testimony but in light of all of the testimony and all of
10 the evidence received during the course of the trial.

11 And it's also important that you keep an open mind
12 throughout the course of the trial. And that simply means
13 that you are not to begin making up your minds or
14 formulating your opinions as to what you think the
15 ultimate decision in this case ought to be until after all
16 of the evidence has been received, until I've instructed
17 you on the law that's applicable in the case, and until
18 you've been asked to go back and begin with your
19 deliberations.

20 That is the process that is designed for you 12 jurors
21 to arrive at a fair and just decision in this case and in
22 any case that you might be called to serve upon.

23 So I do want to thank you in advance for your
24 participation as well as for your careful attention. I
25 would ask that you please give the lawyers your attention

OPENING STATEMENTS ON BEHALF OF THE STATE

1 now as they give you their opening statements.

2 Mr. McCarley?

3 MR. MCCARLEY: Thank you, Your Honor. Mr. Hayes,
4 Mr. Routzong. Ladies and gentlemen of the jury.

5 For Mike Fanning and Mary Wolf it was not grinch who
6 stole Christmas in 2011. It was the Defendant, Tyrik
7 Bright. And he didn't use a sled. He didn't go into
8 homes and steal gifts. He walked across the street from
9 his house and he went into All-Star Rentals which is owned
10 by this brother and sister. And he did \$13,000 worth of
11 damage and stole a long list of items.

12 He worked there. You're going to hear testimony from
13 right here. Tyrik Bright worked at All-Star Rentals,
14 worked for Mike and Mary. He was caught on video. They
15 have eight video cameras at All-Star Rentals. And he was
16 caught on video for a large portion of this burglary.

17 What you're going to hear from this stand is that the
18 Defendant, Tyrik Bright, got onto the property. You're
19 going to watch him try to kick down a door. You're going
20 to watch him try to get into a window.

21 What you're not going to see, because it was turned up
22 later in the investigation, is how he actually got into
23 the building. He took the metal siding, tore it back and
24 crawled into the building. He then went to a back door,
25 let another unidentified person into the building. They

OPENING STATEMENTS ON BEHALF OF THE STATE

1 proceeded to do \$13,000 worth of damage and steal goods,
2 the damages and the goods totaling \$13,000. They're on
3 video camera doing that.

4 It's also important to know that the Defendant has
5 been convicted twice of burglary. That is an element of
6 this crime. He has two prior convictions for burglary;
7 one in 2005, one in 2007.

8 Which brings us to the law. What's the law in this
9 case? What's he accused of? Burglary in the second
10 degree violent. There's a number of different kinds of
11 burglaries; burglary first, burglary second non violent,
12 burglary second violent, and burglary third.

13 Tyrik Bright is guilty of burglary in the second
14 degree violent because what he did meets these four
15 elements; a person with two prior convictions for
16 burglary, enters a building, without permission, and with
17 the intent to commit a crime while inside. What I've just
18 described to you from the facts and what you're going to
19 hear from this stand and see on this video monitor, you're
20 going to meet those four elements.

21 Now the State has the burden, as the Judge said. That
22 is the law. That's a fact. And we welcome that burden.
23 We have to prove every element of those four things beyond
24 a reasonable doubt that it was Tyrik Bright that did those
25 four things.

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 Beyond a reasonable doubt simply means firmly
2 convinced. If a person believes something beyond a
3 reasonable doubt, they're simply firmly convinced.

4 If at the end of all the testimony that you hear --
5 we're going to call four witnesses to prove beyond a
6 reasonable doubt that Tyrik Bright committed this
7 burglary. If you're firmly convinced, and you have to
8 honor your oath, find him guilty of burglary in the second
9 degree violent.

10 Reasonable doubt is not something that you're going to
11 have to look high and low for. It's not something that
12 you're going to have to pull out a flashlight and search
13 for. Okay. It is, after all, reasonable. If it's there,
14 you'll see it.

15 Please take your time. Listen to everybody that comes
16 up here. Look at some of the evidence that we're going to
17 enter. Watch this video. Consider it thoughtfully
18 because while this is very, very serious it's not very
19 complicated. Okay. And it's not going to take too long
20 but it is very, very serious and we appreciate y'all's
21 time and look forward to proving this case to you.

22 THE COURT: Mr. Hayes?

23 MR. HAYES: Your Honor, Mr. McCarley. Ladies and
24 gentlemen, I agree with the State on the last part. It's
25 not hard. This is probably one of the easiest trials I've

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 done in a long time.

2 However, one thing. The State is going to call four
3 witnesses. Of these four, I believe three will say they
4 looked at this video and they're going to say that they
5 believe that's my client. Our position is that you find
6 what you look for.

7 There is a video. It is not very long. Y'all
8 decide. You are the finders of the facts. Y'all get to
9 go back and view this as a group. And after watching that
10 video if you believe that's Mr. Bright, you have to find
11 him guilty; however, if you don't believe it's Mr. Bright,
12 you've got to find him not guilty.

13 And they talked about firmly convinced or as I like to
14 say a reasonable hesitation. If you have to hesitate
15 because you're not absolutely sure or you're not positive,
16 that hesitation is reasonable doubt. And that reasonable
17 doubt has to be found in favor of the Defendant. That is
18 reasonable doubt. If you have to hesitate, you're not
19 firmly convinced.

20 Now, you also heard the State mention that he's got
21 two prior burglaries. It is an element of the crime.
22 That is the only reason it can be brought up. That's the
23 only reason it's before you. Okay. It cannot be used to
24 think, well, he's done it before, he's guilty of it this
25 time. That is absolutely improper. And the Judge is

CHRISTOPHER WALKER - DIRECT

1 going to instruct you on that at the end of the trial.

2 All right. So, ladies and gentlemen, I want you to
3 pay close attention. I want y'all to watch the video,
4 listen to the witnesses. And at the end of this trial
5 you, you are the ones that have to decide. Watch the
6 video. A picture is worth a thousand words.

7 THE COURT: Mr. McCarley?

8 MR. MCCARLEY: Thank you, Your Honor. The State of
9 South Carolina calls Officer Chris Walker.

10 CHRISTOPHER WALKER, having been duly sworn, was
11 examined and testified as follows:

12 THE CLERK: Have a seat in the witness box. State
13 your full name for the Court and spell your last.

14 THE WITNESS: My name is Christopher Walker. Last
15 name is spelled W-A-L-K-E-R.

16 DIRECT EXAMINATION

17 BY MR. MCCARLEY:

18 Q. Officer Walker, how are you doing?

19 A. Doing well.

20 Q. Good. Where do you work?

21 A. I work at the Aiken Department of Public Safety.

22 Q. How long have you been working there, sir?

23 A. I began my employment there on December 27th of 2007,
24 became a certified law enforcement officer on the
25 following April.

CHRISTOPHER WALKER - DIRECT

1 Q. And what is your position there?

2 A. I am assigned to the patrol division.

3 Q. What are your duties there in the patrol division?

4 A. Patrol division, we handle an array of situations. We
5 are police, fire, first responders. Our police duties
6 include answering calls of service, enforcing traffic laws
7 and crimes in progress.

8 Q. Okay. And were you working as an officer for Aiken
9 Department of Public Safety on Christmas Day, December
10 25th, 2011?

11 A. Yes, I was.

12 Q. And did you receive a call to a burglary that day?

13 A. I did.

14 Q. At about what time; do you remember?

15 A. It was around one, one p.m.

16 Q. Did you go immediately to the scene of the burglary?

17 A. No. I was requested to respond with our audio-visual
18 data collection kit.

19 MR. McCARLEY: Permission to approach, Your Honor?

20 THE COURT: You may.

21 BY MR. McCARLEY:

22 Q. Is that what you went to public safety to get?

23 A. This is exactly the box, the kit.

24 Q. And what is that, sir?

25 A. This is our data collection kit used to collect video

CHRISTOPHER WALKER - DIRECT

1 and audio surveillance.

2 Q. And you then took that to the incident location?

3 A. I did.

4 Q. And what is that location?

5 A. It's All-Star Rentals on the 100 block of
6 Williamsburg.

7 Q. Is that in the City of Aiken?

8 A. It is.

9 Q. Which is in Aiken County?

10 A. It is.

11 MR. McCARLEY: Okay. Permission to approach?

12 THE COURT: You may.

13 BY MR. McCARLEY:

14 Q. Officer Walker, what I'm handing you has been marked
15 State's Exhibit Number Three. Do you recognize that?

16 A. Yes, I do.

17 Q. And is that a true and accurate representation of what
18 it depicts?

19 A. Yes, it is.

20 Q. Okay. Have there been any alterations, additions or
21 deletions to that photo?

22 A. Not to my knowledge. I cannot tell; no, sir.

23 MR. McCARLEY: Your Honor, the State moves to
24 introduce State's Exhibit Number One into evidence. I
25 apologize. Three into evidence, Exhibit Three.

CHRISTOPHER WALKER - DIRECT

1 MR. HAYES: What was it?

2 THE COURT: Have you seen it? Show it to him.

3 MR. MCCARLEY: (Document handed to defense counsel.)

4 MR. HAYES: No objection.

5 THE COURT: It's admitted.

6 (Thereupon, State's Exhibit No. 3, photograph, was
7 received into evidence.)

8 BY MR. MCCARLEY:

9 Q. What is that, sir?

10 A. This is the store front picture of the incident
11 location.

12 Q. And is that where you responded on December 25th,
13 2011?

14 A. Yes, it is.

15 Q. And did you have that box with you?

16 A. I did.

17 Q. And what exactly is inside that box and how is it
18 used?

19 A. Inside this box is a number of devices used for
20 collecting video and audio surveillance. We can collect
21 it in several different ways. Simple as a flash drive.
22 We can use CDs or DVDs to recover the video if we have
23 that privilege. A lot of times surveillance systems are
24 password protected and the administrator is not on the
25 scene at the time or they have forgotten the password. So

CHRISTOPHER WALKER - DIRECT

1 we have to use other means of collection.

2 And this device here is a digital video recorder and
3 this is the actual device that I used to collect the video
4 that day.

5 Q. And how did you use that device on that day?

6 A. You actually put this online from the DVR in
7 between -- you put it in between the DVR and the monitor.

8 Q. What's DVR?

9 A. The DVR is the unit that actually records and stores
10 all the data, the video or audio if it has audio. But
11 this goes in between the actual box, the DVR and the
12 monitor. So whatever is displayed on the monitor is
13 depicted on this small screen here.

14 Q. And did you ever receive any training in this area,
15 sir?

16 A. I have; yes, sir. I've, I attended a 40-hour class
17 given by the MPGC in gathering electronic surveillance.

18 Q. Okay. And where in the building is that depicted in
19 Exhibit Three here?

20 MR. MCCARLEY: Your Honor, if I may publish this
21 briefly?

22 THE COURT: You may.

23 (Exhibit displayed to the jury.)

24 BY MR. MCCARLEY:

25 Q. Where in this building did you use this equipment?

CHRISTOPHER WALKER - DIRECT

1 A. If you walk through the doors that you see here on
2 this photograph and you walk through a showroom office
3 area, you come to an elevated level. I guess a second
4 level sort of divide. There's actually a wall in the rear
5 of this, this showroom. You step up and you go around the
6 wall and there's two cubicles in the back.

7 Q. And when you plugged that device up to the computer,
8 what happened?

9 A. I immediately started to go through the past night's
10 recorded surveillance in order to identify just when the
11 intruder became on scene.

12 MR. McCARLEY: Permission to approach, Your Honor?

13 THE COURT: You may.

14 BY MR. McCARLEY:

15 Q. What I'm handing you has been marked State's Exhibit
16 Four, Five and Six. Take a look at those.

17 A. (Complies.)

18 Q. Are those an accurate representation of the views of
19 the security camera as you saw them that day?

20 A. Exhibit Four is an accurate depiction of the loading
21 dock.

22 Q. Yes, sir.

23 A. Exhibit Five is an accurate depiction of the warehouse
24 area. Exhibit Six is the location of the surveillance
25 camera at the time. However it looks like the furniture

CHRISTOPHER WALKER - DIRECT

1 has been moved, rearranged.

2 Q. Has the cubicle been moved out of the way right there?

3 A. It has.

4 Q. That is the same camera angle?

5 A. It is.

6 Q. And are those -- have there been any altercations,
7 additions or deletions besides what you've told the jury
8 in the photos?

9 A. Besides from the furniture being moved around in the
10 showroom, no.

11 MR. McCARLEY: Your Honor, the State now moves to
12 introduce Exhibits Four through Six into evidence.

13 MR. HAYES: Judge, I would object to Number Six as not
14 being substantially the same as it was on the night of the
15 incident, that the furniture being moved is a different
16 view and all.

17 THE COURT: Let me see the picture.

18 (Document handed to the Judge.)

19 THE COURT: Let me see y'all just a moment, please.

20 MR. McCARLEY: Yes, sir.

21 (Off-the-record discussion.)

22 BY MR. McCARLEY:

23 Q. Officer Walker, as to Number Six, could you explain to
24 the jury a little bit more exactly what is different about
25 that?

CHRISTOPHER WALKER - DIRECT

1 A. The office spaces or cubicle, the partitions have been
2 rearranged since the night of the incident.

3 Q. Okay.

4 A. The furniture is just, has been rearranged.

5 Q. Okay. And looking at Number Six, is it this cubicle
6 that's been moved --

7 A. Yes.

8 Q. -- that direction? Are these two offices the same?

9 A. That's the same, yeah. It's an addition to that
10 office area, that cubicle area.

11 MR. MCCARLEY: Your Honor, permission to publish these
12 three to the jury.

13 THE COURT: My understanding is that the furniture in
14 the photograph is not the same as it was on December the
15 24th of 2011. The purpose of you offering that photograph
16 is what, Mr. McCarley?

17 MR. MCCARLEY: Is to establish the exact camera angle
18 that was used that night.

19 THE COURT: Just simply the camera angle?

20 MR. MCCARLEY: Yes, sir.

21 THE COURT: Mr. Hayes?

22 MR. HAYES: Judge, I just renew my objection.

23 THE COURT: Note your objection. It's admitted.

24 (Thereupon, State's Exhibit Nos. 4, 5 and 6,
25 photographs, were received into evidence and published for

CHRISTOPHER WALKER - DIRECT

1 the jury.) .

2 BY MR. McCARLEY:

3 Q. Now, Officer Walker, once you had the digital video
4 recorder hooked into the computer and the surveillance
5 camera video up and running, what did you do then?

6 A. Like I said, I started reviewing the night's footage
7 and actually identified when an intruder was on the
8 premise.

9 Q. And how did you identify when an intruder was on the
10 premises?

11 A. The motion lights outside actually came on so that
12 alerted me.

13 Q. And what did the screen look like to you when you were
14 looking at it?

15 A. There was a -- the first thing I look for is every
16 camera angle because we don't know where they came in and
17 so if you look at everything it's easy to identify when
18 something is going on. And then that's when we saw or I
19 saw the activation of a motion light.

20 Q. When you saw the activation of motion lights, what did
21 you do then with the camera?

22 A. I then isolated that one camera to determine if it was
23 a person, an animal, a piece of trash blowing across the
24 yard there, anything to identify what set it off.

25 Q. Now when you gathered this information, did you only

CHRISTOPHER WALKER - DIRECT

1 gather the relevant information or do you have -- did you
2 record the entire night's surveillance?

3 A. I only gathered the relevant information.

4 MR. McCARLEY: Permission to approach, Your Honor?

5 THE COURT: You may.

6 BY MR. McCARLEY:

7 Q. Officer Walker, what I'm handing you has been marked
8 State's Exhibit Number Seven. Do you recognize that CD?

9 A. This is the DVR that was made from the surveillance
10 that we gathered.

11 Q. And have you watched that?

12 A. I have.

13 Q. In its entirety?

14 A. I have.

15 Q. Is that the same footage you viewed on December 25th,
16 2011?

17 A. It is.

18 Q. Has it been altered or changed in any form or fashion?

19 A. No.

20 MR. McCARLEY: Your Honor, the State now moves to
21 introduce State's Exhibit Number Seven into evidence.

22 MR. HAYES: No objection, Your Honor.

23 THE COURT: It's admitted.

24 MR. McCARLEY: Your Honor, may we publish it to the
25 jury?

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1 THE COURT: You may.

2 (Thereupon, State's Exhibit No. 7, DVD of video, was
3 received into evidence and published to the jury.)

4 BY MR. McCARLEY:

5 Q. One quick question, Officer Walker. Could you please
6 explain to the jury about viewing this footage why there
7 are two time stamps on this video?

8 A. Absolutely. Like I said, this is in line. This
9 digital recorder is a device that's in line from the DVR
10 to their monitor.

11 Their surveillance system much like every other
12 surveillance system has a time stamp. It tells you the
13 date and the time. If it's accurate, it's up to them and
14 whoever maintains their system.

15 This also had a time stamp. And this is -- this
16 offers you a different time stamp because it loses time or
17 resets for whatever reason, I'm not sure why, but there's
18 a difference in the time.

19 And it's overlaid. You can see that the actual date
20 and time that this incident occurred will be the one
21 behind the bold time stamp. So it's, it's overlaid on
22 top, but the actual time is the one that's behind. The
23 first time stamp.

24 (Thereupon, video, State's Exhibit No. 7, was played
25 for the jury.)

CHRISTOPHER WALKER - DIRECT

1 BY MR. McCARLEY:

2 Q. Officer Walker, is that all the video you collected
3 that day?

4 A. That is.

5 Q. Okay. And I saw -- I saw the mouse, the cursor moving
6 around a lot on the screen. What was going on there?

7 A. That was me selecting the different camera selections
8 and knowing when to start recording -- start that camera
9 in order for me to start the recording.

10 Q. Okay. And who was with you while you were viewing
11 this on Christmas Day 2011?

12 A. For the most part, I was -- the first part the
13 responding officer, first responding officer was there.
14 He then went into service once I started collecting the
15 data.

16 Mr. Fanning was there for some time and Detective
17 Glover was there early on in my appearance there.

18 Q. And was Ms. Mary Wolf there?

19 A. She was. Yeah, she was in and out as well. Yeah, I'm
20 sorry.

21 Q. Did they ever identify anyone from the surveillance
22 camera?

23 MR. HAYES: Objection. Hearsay.

24 THE COURT: Well, the answer is yes or no but don't
25 testify to what they said.

CHRISTOPHER WALKER - DIRECT

1 THE WITNESS: Yes. They did identify someone.

2 BY MR. MCCARLEY:

3 Q. Mike Fanning identified someone?

4 A. Yes.

5 Q. Mary Wolf identified someone?

6 A. Yes.

7 Q. And what did you do after they identified someone?

8 A. After they made a positive identification, then I
9 concluded my collection, packed my kit and returned to
10 headquarters.

11 Q. Okay. Were you yourself able to identify anyone in
12 the video?

13 A. No.

14 Q. Did you know Tyrik Bright at that time?

15 A. No.

16 Q. What did you do with that video after you left the
17 incident location, sir?

18 A. I went back to headquarters, placed the video -- the
19 footage into evidence.

20 Q. And while you were there on the scene, did you learn
21 through the course of the investigation where the
22 Defendant gained entry?

23 A. I did.

24 MR. MCCARLEY: Permission to approach?
25

CHRISTOPHER WALKER - DIRECT

1 BY MR. MCCARLEY:

2 Q. What I'm handing you has been marked State's Exhibit
3 Number Nine. Do you recognize that, sir?

4 A. It's the portion of the building where the siding was
5 torn.

6 Q. Okay. Is that an accurate representation?

7 A. It is.

8 Q. Okay. Have there been any alterations or deletions or
9 changes to that picture?

10 A. It's been repaired.

11 Q. Okay. What's been repaired?

12 A. The siding. The siding was, was repaired somewhere
13 there.

14 MR. MCCARLEY: Your Honor, the State moves to
15 introduce Exhibit Nine into evidence?

16 MR. HAYES: Judge, I would object. It's the same as
17 Number Six. It's not substantially the same or similar as
18 it was on the date of the incident. I believe the
19 testimony was that the siding had been repaired in that
20 video or in that photograph.

21 THE COURT: The picture, I thought it had been
22 repaired after the picture. Is that a photograph from
23 that night?

24 MR. MCCARLEY: It is not. It is a photograph of --
25 from recently of the point of entry.

CHRISTOPHER WALKER - DIRECT

1 THE COURT: And the difference only is that the siding
2 has been repaired?

3 MR. McCARLEY: Yes, sir, Your Honor.

4 THE COURT: Overrule the objection.

5 MR. McCARLEY: Permission to publish?

6 THE COURT: You may.

7 (Photograph displayed to the jury.)

8 (Thereupon, State's Exhibit No. 9, photograph, was
9 received into evidence.)

10 BY MR. McCARLEY:

11 Q. Officer Walker, when you were on the scene on
12 Christmas Day 2011, did you actually see that siding
13 peeled back?

14 A. I did.

15 Q. And was there a hole left there when it was peeled
16 back?

17 A. There was.

18 Q. And would it have been big enough for a man to crawl
19 through?

20 A. Yes, it was.

21 Q. Okay. Permission to approach?

22 This has been marked State's Exhibit Number Eight,
23 Officer Walker. Do you recognize that?

24 A. I do.

25 Q. And what is that, sir?

CHRISTOPHER WALKER - DIRECT

1 A. This is a picture of the loading area, the loading
2 dock area.

3 Q. Have there been any alterations, changes, deletions to
4 that paragraph?

5 A. No. The area is constructed the same way. Once
6 again, the siding is repaired here.

7 Q. Okay. If you could -- well, the State moves to enter
8 Number Eight into evidence.

9 MR. HAYES: Judge, I just have the same objection.

10 THE COURT: Taken from the other side as Number Nine?

11 MR. McCARLEY: It is not, Your Honor. It is a picture
12 of the entire dock area.

13 THE COURT: And it's offered for what purpose?

14 MR. McCARLEY: It's offered in relation to the door as
15 to the point of entry.

16 THE COURT: Okay. Overrule the objection.

17 (Thereupon, State's Exhibit No. 8, photograph, was
18 received into evidence.)

19 BY MR. McCARLEY:

20 Q. If you wouldn't mind holding that where the jury could
21 see it?

22 A. (Complies.)

23 Q. Where is the door that was being kicked in the video?

24 A. It's over here. In this, the left, left-hand corner
25 of the loading dock.

CHRISTOPHER WALKER - CROSS

1 Q. And where is that point of entry?

2 A. The point of entry is over here.

3 Q. And is that point of entry in camera view?

4 A. It is not.

5 Q. Understood. Beg the Court's indulgence.

6 Officer Walker, please answer any questions the
7 defense has for you.

8 THE WITNESS: Sure.

9 CROSS-EXAMINATION

10 BY MR. HAYES:

11 Q. Officer Walker, you responded to the incident location
12 on the 25th which is the day it was reported?

13 A. Yes, sir.

14 Q. At that time did you collect any fingerprints?

15 A. No, sir. I did not.

16 Q. Any DNA?

17 A. No, sir. I did not.

18 Q. And you're the actual individual that recorded what we
19 saw here today?

20 A. I gathered the recording; yes, sir.

21 Q. How long was this burglary? What was the duration?

22 A. I couldn't give you an accurate length of time.

23 Q. Do you have an estimate from when you were viewing
24 this?

25 MR. MCCARLEY: Objection. Speculation called for.

CHRISTOPHER WALKER - CROSS

1 MR. HAYES: Judge, he --

2 THE COURT: Are you asking him how long the video
3 lasts?

4 MR. HAYES: Yes, sir. I'm asking how long from the
5 time the burglary began to the time it ended when he was
6 recording the video.

7 THE COURT: How long does the video last?

8 MR. HAYES: The video's only about 30 minutes, Judge.
9 But I believe there is -- sidebar?

10 THE COURT: Okay.

11 (Off-the-record discussion).

12 BY MR. HAYES:

13 Q. Officer Walker, looking at the time stamps on the
14 video when you recorded it, when was the first time you
15 saw an individual? Of what hour; do you recall?

16 A. I believe it was slightly before midnight. If I can
17 recall correctly, I believe it was slightly before
18 midnight or around about midnight.

19 Q. When was the last time you saw an individual according
20 to the time stamp? Do you know what time it was then?

21 A. According to the time stamp, 2:30, around 2:30, half
22 past two in the morning.

23 Q. And you were -- you decided what portions and what
24 videos out of the eight cameras that you pulled up and
25 recorded; correct?

1 A. Correct.

2 MR. HAYES: Thank you. Nothing further.

3 REDIRECT EXAMINATION

4 BY MR. McCARLEY:

5 Q. Officer Walker, did you record all of the footage from
6 that entire 24th and 25th?

7 A. No, I did not.

8 Q. Did you record the relevant portions?

9 A. I did.

10 Q. Okay.

11 MR. McCARLEY: Nothing further from the State.

12 THE COURT: You may step down.

13 We're going to take a short break. I'll ask the jury
14 to please go to the jury room. Do not discuss the case.
15 I'll bring you back out after the break.

16 (Jury exits courtroom at 3:17 p.m.)

17 THE COURT: We'll be in recess for 15 minutes.

18 MR. McCARLEY: Thank you, Your Honor.

19 (Thereupon a break was taken at 3:18 p.m. At
20 3:39 p.m. the trial resumed as follows:)

21 THE COURT: Ready for the jury?

22 MR. McCARLEY: Yes, sir, Your Honor.

23 (Jury enters courtroom at 3:39 p.m.)

24 THE COURT: You may proceed.

25 MR. McCARLEY: Your Honor, the State calls Mike

MIKE FANNING - DIRECT

1 Fanning.

2 THE CLERK: Please come forward, sir, put your left
3 hand on the Bible and raise your right.

4 MIKE FANNING, having been duly sworn, was examined and
5 testified as follows:

6 THE CLERK: Thank you. Please have a seat on the
7 witness box. State your full name for the Court and spell
8 your last.

9 THE WITNESS: My name is Mike Fanning, F-A-N-N-I-N-G.

10 DIRECT EXAMINATION

11 BY MR. MCCARLEY:

12 Q. Excuse me, sir. I'll get that out of your way.

13 Mr. Fanning, how are you doing, sir?

14 A. Great.

15 Q. Where do you work, sir?

16 A. I work at All-Star Tents and Events.

17 Q. And where is that located?

18 A. 156 Williamsburg Street.

19 Q. And what is your job there?

20 A. I'm a co-owner.

21 Q. What exactly does All-Star Rentals do?

22 A. We provide party and event rental equipment, anything
23 from stages to tables, chairs, linens, glassware.

24 Q. How long have y'all been doing that?

25 A. I've been in business now for eight years.

MIKE FANNING - DIRECT

1 Q. About how many people work there for you?

2 A. Anywhere from 20 to 40. We've got a lot of seasonal
3 people that we bring in.

4 Q. What do you mean by seasonal?

5 A. When we hit our busy times, we bring in part-time
6 labor.

7 Q. Does Ms. Mary Wolf work there as well?

8 A. She's also a co-partner.

9 Q. And are you related to her?

10 A. She is my sister.

11 Q. Okay. Do you have surveillance and security cameras
12 at your business, sir?

13 A. We do.

14 Q. Okay. Were the security cameras installed and working
15 on December 24th and December 25th of 2011?

16 A. Yes, they were.

17 MR. MCCARLEY: Permission to approach, Your Honor?

18 Q. Mr. Fanning, what I'm handing you has been marked
19 State's Exhibit Number Ten. Do you recognize that?

20 A. Yes. That's the CAD drawing of our facility showing
21 all the camera locations.

22 Q. And are those the camera locations as they were on
23 December 24th of 2011?

24 A. Yeah, they are.

25 Q. Okay. And is that an accurate depiction of the way

MIKE FANNING - DIRECT

1 your building looked on that date?

2 A. It is.

3 Q. Any changes whatsoever?

4 A. None.

5 Q. Okay.

6 MR. McCARLEY: Your Honor, the State moves to
7 introduce Exhibit Number Ten into evidence.

8 MR. HAYES: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (Thereupon, State's Exhibit No. 10, schematic of
11 All-Star, was received in evidence.)

12 BY MR. McCARLEY:

13 Q. Now talking about those video cameras, Mr. Fanning, do
14 they cover every inch of your property there?

15 A. If you come on the property you will get picked up by
16 a camera.

17 Q. Okay. Mr. Fanning, how do you know the Defendant,
18 Tyrik Bright?

19 A. He was one of our seasonal workers.

20 MR. HAYES: Objection from my previous reasons, Judge.

21 THE COURT: You object to him explaining how he knows
22 the Defendant?

23 MR. HAYES: I'm just -- Judge, I just want to preserve
24 the record from my previous objection, that's all.

25 THE COURT: Okay. Overrule the objection.

MIKE FANNING - DIRECT

1 BY MR. McCARLEY:

2 Q. Mr. Fanning, how do you know the Defendant, Tyrik
3 Bright?

4 A. He was one of our seasonal workers.

5 Q. And about how long did he work there, sir?

6 A. A little over three months.

7 Q. And about how often during those, each week during
8 those three months?

9 A. Essentially he lived across the street. So when we
10 were busy we would either come, you want to work today or
11 he would walk over and say, do we have work, anywhere from
12 two to three days, maybe even five days a week.

13 Q. What type of work did he do for you, sir?

14 A. He was a laborer.

15 Q. And you -- how did you become aware that he lived
16 across the street?

17 A. Because he told us. We would come over and get him
18 from over there.

19 Q. Okay. Do you remember the last time that he picked up
20 a paycheck from you, sir?

21 A. Yes. It was the Wednesday before Christmas.

22 Q. Okay. Do you remember by chance what he was wearing?

23 A. I made a comment. He had, like a mosquito net
24 see-through thing on and we kind of kidded him about it.

25 He said that was his style.

MIKE FANNING - DIRECT

1 Q. Do you see Tyrik Bright in the courtroom here today,
2 sir?

3 A. I do.

4 Q. Could you please point him out?

5 A. He's sitting at that table next to those two
6 gentlemen.

7 Q. Okay. And what's he wearing, sir?

8 A. White shirt.

9 MR. McCARLEY: Your Honor, may the record reflect that
10 the witness has identified the Defendant, Tyrik Bright?

11 THE COURT: It shall.

12 BY MR. McCARLEY:

13 Q. Mr. Fanning, do you remember Christmas of 2011?

14 A. I do.

15 Q. Why do you remember that day, sir?

16 A. I had came by the shop to pick up some ice for
17 Christmas Day and immediately I noticed that the office
18 had been ransacked. And as I walked around, I saw some
19 debris scattered where if they didn't quite get everything
20 and broke up some boxes.

21 Immediately -- I didn't know whether there was
22 somebody in the building, so I called public safety. They
23 immediately secured the facility and cleared it to make
24 sure there was nobody in there.

25 Q. Okay. And when you were there that day, I'm handing

MIKE FANNING - DIRECT

1 you what's already been introduced as State's Exhibit.

2 Nine, do you remember seeing this area of your business?

3 A. I do.

4 Q. Okay. And what is that?

5 A. That is on the loading dock and that was the breach
6 point of where they got into the facility.

7 Q. Okay. And when was that repaired?

8 A. Early that morning, immediately. That was our first
9 goal was to get all the busted doors, panels on the walls
10 secure so that we could eventually go back to our families
11 for Christmas Day.

12 Q. Yes, sir. Now as you were going around your property
13 on Christmas Day 2011 and seeing as, what you described
14 everything was amiss, what were you thinking had gone on?

15 A. Somebody knew what they were doing. Somebody had
16 intimate knowledge of our facility.

17 Q. And why do you say that, sir?

18 A. Well, the lights that were on, you would have to know
19 where the master switch was to cut it on. That was in the
20 warehouse that -- right here. It was clear at the other
21 end, and it's behind a --

22 MR. HAYES: Judge, I would object to speculation.

23 THE COURT: Overruled. You may continue --

24 THE WITNESS: Okay.

25 THE COURT: -- with your response.

MIKE FANNING - DIRECT

1 THE WITNESS: Basically just to be able to turn the
2 lights on you have to know where the switch is. That was
3 just that one side of the warehouse. That's an
4 80-year-old facility. Everything's a hodgepodge of wiring
5 and whatnot, but...

6 BY MR. McCARLEY:

7 Q. Yes, sir. And did you make a list of the items that
8 were stolen and damaged at your business?

9 A. We made the best list that we could at the time.

10 Q. Was anything ever returned or recovered?

11 A. No.

12 Q. Okay. Now before you saw the security video, did you
13 have in mind someone because you thought it was an inside
14 job?

15 A. I did.

16 Q. Okay. Where were you when you first saw the security
17 video?

18 A. I was in -- it was actually my cubicle in the building
19 and --

20 Q. And who was there with you, sir?

21 A. Public safety was. They had come in to extract the
22 video off of our DVR.

23 Q. I understand. Was Officer Walker there with you?

24 A. Yes. Officer Walker was the one that did it.

25 MR. McCARLEY: Okay. Permission to approach, Your

MIKE FANNING - DIRECT

1 Honor?

2 THE COURT: You may.

3 BY MR. McCARLEY:

4 Q. Mr. Fanning, I'm handing you what's been marked
5 State's Exhibit 17. Do you recognize that, sir?

6 A. Yes.

7 Q. And have you watched that?

8 A. I have.

9 Q. And is that the footage you watched on Christmas Day
10 of 2011?

11 A. It is.

12 Q. Is it accurate?

13 A. Yes.

14 Q. Okay. Have there been any changes, alterations or
15 deletions to that?

16 A. No.

17 MR. McCARLEY: Your Honor, the State now moves to
18 introduce Exhibit Number 17 into evidence.

19 MR. HAYES: I'm sorry. What -- can we approach?

20 MR. McCARLEY: We can.

21 (Off-the-record discussion.)

22 THE COURT: All right. Objection?

23 MR. HAYES: Yes, sir. Judge, I would argue that this
24 is cumulative. We've already got a full-length video
25 entered into evidence. A portion of the video is at this

MIKE FANNING - DIRECT

1 point cumulative and irrelevant.

2 THE COURT: All right. Overrule your objection.

3 (Thereupon, State's Exhibit No. 17, video, was
4 received into evidence.)

5 MR. McCARLEY: Has that been admitted, Your Honor?

6 THE COURT: It is.

7 BY MR. McCARLEY:

8 Q. Did you watch all of the video that Officer Walker did

9 --

10 A. Yes, I did.

11 Q. -- that night? Okay. And was there a specific
12 portion of that video where you were able to make an ID?

13 A. It was the very last part of it.

14 Q. Who did you identify on that video?

15 A. Tyrik.

16 MR. McCARLEY: Your Honor, permission to publish to
17 the jury?

18 THE COURT: You may.

19 (Thereupon, State's Exhibit 17, video, was played for
20 the jury.)

21 BY MR. McCARLEY:

22 Q. Mr. Fanning, how exactly did you recognize Tyrik
23 Bright from that clip?

24 A. Basically with the mosquito net cover that he had on
25 when he picked up his paycheck and Christmas bonus, he had

MIKE FANNING - DIRECT

1 it on.

2 Q. Okay. Did you see his face in that video?

3 A. I did.

4 Q. And who did you recognize that as?

5 A. Tyrik.

6 Q. Okay. Did he have permission to be in the building?

7 A. No.

8 Q. Have you ever given him permission to be in the
9 building at nighttime?

10 A. Not without a supervisor, not while he was working.

11 Q. Did anyone tell who you was on that video before you
12 saw it?

13 A. No.

14 Q. Had anyone identified Tyrik Bright from that video
15 before you saw it, Mr. Fanning?

16 A. No. It became apparent the more we watched, towards
17 the end is when -- we couldn't tell who it was at first,
18 but by the end of the video especially after he took the
19 hood off we could tell exactly who it was.

20 Q. And did you see him flip on the lights?

21 A. Yes.

22 Q. And did that indicate to you that it was somebody that
23 worked there?

24 A. Yes.

25 Q. Did you ever find a certain kind of a light bulb on

MIKE FANNING - DIRECT

1 your property?

2 MR. HAYES: Objection. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, we had recently purchased some
5 fancy projector global lights for a lot of the events that
6 we do and because they were new, I had it stored in the
7 laundry area which is way out, you know, if you walked in
8 there that's all you would see is laundry. You had to
9 know where I kept those things up on a shelf, up there.
10 And all of those were taken.

11 BY MR. McCARLEY:

12 Q. And did you find a box of those on the grounds as
13 well?

14 A. I did. I found one out in the parking lot.

15 Q. And how many were gone?

16 A. I think four were gone, maybe five.

17 MR. McCARLEY: Permission to approach, Your Honor?

18 THE COURT: You may.

19 BY MR. McCARLEY:

20 Q. Mr. Fanning, I'm handing you what's been marked
21 State's Exhibits 11 through 13. Can you take a look at
22 those please, sir?

23 A. (Complies.)

24 Q. Do you recognize those images?

25 A. I do.

MIKE FANNING - DIRECT

1 Q. And are they an accurate representation of still shots
2 from the security video from the burglary?

3 A. They are.

4 Q. Have there been any alterations, additions or
5 deletions to those photographs?

6 A. No.

7 Q. Who was in those photographs, Mr. Fanning?

8 A. Tyrik.

9 Q. Is that the same man in the courtroom you pointed out
10 earlier?

11 A. Yes, it is.

12 Q. The same man who worked for you for three months?

13 A. It is.

14 Q. The same person that came to pick up that last check
15 in that coat?

16 MR. HAYES: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: It is.

19 BY MR. MCCARLEY:

20 Q. Is that the same person that told you he lived across
21 the street from your business?

22 A. Yes.

23 MR. MCCARLEY: Your Honor, at this time I'd move to
24 enter 11 through 13 into evidence.

25 MR. HAYES: Your Honor, I would object based on that

MIKE FANNING - CROSS

1 it's cumulative. We've already had two photographs. I
2 don't see what we need three more -- or two videos. I
3 don't see why we need three photographs.

4 THE COURT: Overrule your objection.

5 (Thereupon, State's Exhibit Nos. 11, 12 and 13,
6 photographs, were received into evidence.)

7 MR. MCCARLEY: Mr. Fanning, please answer any
8 questions the defense has for you. Okay, sir?

9 THE WITNESS: Sure.

10 CROSS-EXAMINATION

11 BY MR. HAYES:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Mr. Fanning, in your business do you work in the
15 office or do you work out in the field mainly?

16 A. Both.

17 Q. What do you do in the office?

18 A. Anything from scheduling to ordering to managing my
19 day-to-day operations.

20 Q. What is it you do in the field?

21 A. Oversee installs, walk down quality to make sure
22 they're installing some of these larger jobs correctly.

23 And that's typically when we're busiest.

24 Q. You actually put up the tents or the stages?

25 A. I'm on-site at one point or another to make sure that

MIKE FANNING - CROSS

1 it's being done correctly.

2 Q. So what opportunity did you have to observe Mr. Bright
3 working in the field?

4 A. He was on several of the larger jobs that I was very
5 involved with.

6 Q. How about in the office?

7 A. He would come in and out of the office just like all
8 the other guys that work for me.

9 Q. And so over a short period of time -- he was working
10 part-time?

11 A. On and off. Some weeks he made over 40 hours.

12 Q. And that's over the three-month period? I believe
13 that's what you testified to earlier.

14 A. Yes.

15 Q. Are you -- you said something about seasonal labor, I
16 think is now you said it. How long does your seasonal
17 labor usually work for you?

18 A. Anywhere from -- they can work for three or four weeks
19 to three or four months depending on how they work out.
20 Seasonal labor typically only wants to work a few weeks at
21 a time and if they make the grade we'll keep them on as
22 long as we can.

23 Q. What is your season? Let me ask you that question.

24 A. Our season starts in about the end of February through
25 July. We pick back up at mid September through the, mid

MIKE FANNING - CROSS

1 December.

2 Q. So you were just finishing a season?

3 A. We were just finishing up, yes. As a matter of fact,
4 a lot of the guys had already dropped off, had gone
5 elsewhere.

6 Q. Okay. So, at that point in time there had been
7 several layoffs?

8 A. Guys that just we, we weren't calling them in any
9 more.

10 Q. Okay. How many?

11 A. I couldn't tell you right offhand. That was two years
12 ago. A lot of them were just getting less and less hours
13 and after the first of the year some never came back.

14 Q. There's -- which office had the video recorder in it?
15 Which cubicle, or is it an office or?

16 A. It was the office that was above the showroom which
17 was my office.

18 Q. All right. Is that in any other video?

19 A. Any other video?

20 Q. Any other video that was played here today?

21 A. Huh-uh.

22 Q. I beg the Court's indulgence. (Pause.)

23 Out of your seasonal workers, most of them know where
24 your switches are to cut the lights on and off in the
25 warehouse?

MARY FANNING WOLF - DIRECT

1 A. Some would, some wouldn't.

2 Q. And out of that, that's 20 to 40 people?

3 A. Back then about that time of year, probably more in
4 the 20 to 25 range.

5 Q. So you had 20 to 25 seasonal workers at that time?

6 A. Probably so. Our company has grown since then and
7 we've gone up to about 40 now.

8 MR. HAYES: I have nothing further. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MCCARLEY:

11 Q. Mr. Fanning, is there any question in your mind that's
12 Tyrik Bright in that video?

13 MR. HAYES: Objection. Asked and answered already and
14 outside the scope of my cross.

15 THE COURT: Sustained.

16 MR. MCCARLEY: Thank you, Your Honor. No further
17 questions for Mr. Fanning.

18 THE COURT: You may step down.

19 MR. MCCARLEY: Your Honor, the State calls Ms. Mary
20 Wolf to the stand.

21 THE CLERK: Please come forward. Place your left hand
22 on the Bible and raise your right.

23 MARY FANNING WOLF, having been duly sworn, was
24 examined and testified as follows:

25 THE CLERK: Please have a seat in the witness box.

MARY FANNING WOLF - DIRECT

1 State your full name for the Court and spell your last.

2 THE COURT: Just state your name and spell your last
3 name.

4 THE WITNESS: My name is Mary Fanning Wolf, W-O-L-F.

5 DIRECT EXAMINATION

6 BY MR. MCCARLEY:

7 Q. Ms. Mary, how are you doing?

8 A. I'm good.

9 Q. A little nervous?

10 A. Slightly.

11 Q. Where do you work, ma'am?

12 A. All-Star Rents.

13 Q. And where is that located?

14 A. 156 Williamsburg Street.

15 Q. And what is your job there?

16 A. Well, I'm an owner, so, everything. A little bit of
17 everything.

18 Q. About how many folks work there?

19 A. Twenty-ish.

20 Q. Does that number change?

21 A. Often.

22 Q. Specifically, do you handle paychecks and hours for
23 employees and the like?

24 A. Yes.

25 Q. Okay. Permission to approach, Your Honor?

MARY FANNING WOLF - DIRECT

1 THE COURT: You may.

2 BY MR. McCARLEY:

3 Q. Mrs. Wolf, what I'm handing you has been marked
4 State's Exhibit 14. Would you mind taking a moment and
5 looking through that document?

6 A. I apologize but I set my purse down and my glasses are
7 in it.

8 MR. McCARLEY: Your Honor, may I? May I bring the
9 whole purse, Your Honor?

10 THE COURT: You may.

11 THE WITNESS: I apologize.

12 THE COURT: You're fine.

13 BY MR. McCARLEY:

14 Q. Do you need to take another look at them now with your
15 glasses?

16 A. Yeah. Go ahead.

17 Q. Do you recognize those documents?

18 A. Yes, sir.

19 Q. And are those documents kept in the regular course of
20 your business?

21 A. Yes, sir.

22 Q. And how are they kept?

23 A. The top document would be put in -- each person has
24 one of these in their personnel files. The second batch
25 of documents is kept with all the other employees by the

MARY FANNING WOLF - DIRECT

1 week in a file cabinet locked up.

2 Q. Okay. Is data entered into a computer and then
3 printed out?

4 A. Correct.

5 Q. Okay. And those are kept in the ordinary course of
6 the operation of your business?

7 A. Yes.

8 Q. Have those records been altered or changed in any way?

9 A. No, sir.

10 Q. And are they an accurate representation of the
11 employment history that they represent?

12 A. Yes, sir.

13 MR. McCARLEY: Your Honor, the State now moves to
14 introduce Exhibit 14 as a business record of All-Star
15 Rentals. This is the custodian.

16 MR. HAYES: No objection.

17 THE COURT: It's admitted.

18 MR. McCARLEY: Thank you, Your Honor.

19 (Thereupon, State's Exhibit No. 14, employment records
20 of Tyrik Bright, was received into evidence.)

21 BY MR. McCARLEY:

22 Q. Ms. Mary, if you wouldn't mind taking a look at that
23 top piece of paper.

24 A. Uh-huh.

25 Q. And you said there's one of those in everybody's file?

MARY FANNING WOLF - DIRECT

1 A. Yes, sir.

2 Q. Could you please tell the jury whose employment
3 records those are?

4 A. Tyrik Bright's.

5 Q. Okay. On that top document, where does it say he
6 learned about your business?

7 A. Live across street. So the question is: How did you
8 hear about us? Live across street.

9 Q. Okay. How long do those records go back for the
10 Defendant?

11 A. September 19th of 2011.

12 Q. Okay. And when do they end?

13 A. No end.

14 Q. When's the last time he was paid?

15 A. Oh, I'm sorry.

16 Q. That's fine.

17 A. I believe it was December 21st was his last paycheck.

18 Q. Okay. And in the three months that he worked, that
19 Tyrik Bright worked there, did you have an opportunity to
20 view him?

21 A. I'm sorry?

22 Q. Did you see him a lot?

23 A. Every day. Every day he was there.

24 Q. Okay. About how often per week was that that he
25 worked?

MARY FANNING WOLF - DIRECT

- 1 A. Four days.
- 2 Q. Okay.
- 3 A. Five.
- 4 Q. Would those documents show it --
- 5 A. Absolutely.
- 6 Q. -- if you were to go all the way through them?
- 7 A. Uh-huh.
- 8 Q. Okay. Ms. Wolf, do you remember Christmas Day 2011?
- 9 A. Yes, sir.
- 10 Q. And why do you remember that day, ma'am?
- 11 A. We were robbed.
- 12 Q. Did you go to your business on that day?
- 13 A. Yes, sir.
- 14 Q. And what did you see when you went there, ma'am?
- 15 A. Chaos.
- 16 Q. What did you do when you got there?
- 17 A. Probably cried first, and --
- 18 Q. Did you take an inventory of the stolen items?
- 19 A. That was what we attempted to try to do, go through
- 20 each office, each cubicle.
- 21 Q. And were there also -- was there property of yours
- 22 that was damaged?
- 23 A. Oh, yes.
- 24 Q. What was damaged?
- 25 A. The biggest thing that I recall is the back door, the

MARY FANNING WOLF - DIRECT

1 glass was broken out. It wasn't like they could get in
2 but the glass was broken all over the floor. And then of
3 course the siding had been pulled where they entered in.

4 Q. Okay. Were computers damaged?

5 A. Thrown all over the place.

6 Q. And was some of the inventory gone?

7 A. Absolutely.

8 Q. What was the total value of the items taken,
9 approximately?

10 A. 13,000, something like that.

11 Q. And did you submit a detailed inventory of what was
12 taken and damaged to the insurance company?

13 A. Yes, I did.

14 Q. And did you submit that same information to the
15 victims assistance program?

16 A. Yes, I did.

17 Q. And it was all the exact same information?

18 A. Yes, sir.

19 Q. Ms. Wolf, did you watch the security video from
20 Christmas Eve of 2011?

21 A. Yes, I did.

22 Q. When did you watch that, ma'am?

23 A. Christmas Day was the first time.

24 Q. Okay. Where were you when you watched the security
25 video?

MARY FANNING WOLF - DIRECT

1 A. In my -- technically my brother and I's office we
2 shared.

3 Q. Who was there with you when you watched it?

4 A. We were in and out, so I'm not sure. The for-sure
5 person that was there was Mr. Walker because he was
6 performing the video thing. He was the one able to get it
7 off the video. So we were in and out assessing, sweeping,
8 cleaning, and then we'd come back through and then we'd
9 look.

10 Q. Okay.

11 A. My answer is, I don't know who was there.

12 Q. I understand.

13 MR. HAYES: Judge, I would object based on my prior
14 objections. It's cumulative.

15 THE COURT: Overruled.

16 MR. McCARLEY: Permission to approach, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. McCARLEY:

19 Q. Ms. Wolf, what I'm handing you has been marked and
20 already entered into evidence as State's Exhibit 17. Do
21 you recognize that, ma'am?

22 A. Yes, sir.

23 Q. And have you watched that?

24 A. I sure have.

25 Q. Is it an accurate representation of the video footage

MARY FANNING WOLF - DIRECT

1 that you viewed on Christmas Day 2011?

2 A. Yes, sir.

3 Q. Any changes, alterations, deletions or anything like
4 that?

5 A. No, sir.

6 Q. When you watched that on Christmas Day, were you able
7 to identify anyone in that video?

8 A. One of the persons.

9 Q. And who was that, ma'am?

10 A. Tyrik Bright.

11 Q. Is he in the courtroom here today?

12 A. He is.

13 Q. Would you mind pointing him out for us, please,
14 ma'am?

15 A. He's right over there.

16 Q. What's he wearing?

17 A. He's wearing a white shirt with a, maybe that's red
18 tie with some pattern.

19 Q. Thank you.

20 Your Honor, may the record reflect that the witness
21 has identified the Defendant, Tyrik Bright?

22 THE COURT: It shall.

23 MR. McCARLEY: Your Honor, permission to publish this
24 again?

25 THE COURT: You may.

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1 (Thereupon, the video was played for the jury, State's
2 Exhibit No. 17.)

3 BY MR. MCCARLEY:

4 Q. Now, Ms. Wolf, did anyone identify one of the
5 gentlemen in that video before you did?

6 A. I'm not sure.

7 Q. Okay. Did anyone tell you who to pick out of that
8 video?

9 A. No, sir.

10 Q. Did you make your own independent identification of
11 who was in that video?

12 A. Without a doubt.

13 Q. And who was in that video?

14 A. I did not know the one fellow with the camo-type
15 jacket on, but the other fellow with the fishnet was
16 definitely Tyrik.

17 MR. HAYES: Judge, I would object. That's cumulative.

18 THE COURT: Overruled.

19 BY MR. MCCARLEY:

20 Q. Ms. Wolf, did Tyrik Bright have permission to be in
21 the building that night?

22 A. No, sir.

23 Q. Permission to approach?

24 Ms. Wolf, I want to hand you what's already been
25 introduced into evidence as State's Exhibits 11 through

MARY FANNING WOLF - CROSS

1 13. Could you take a quick look at that?

2 A. Uh-huh.

3 Q. Are those still shots from the video that you watched
4 on Christmas Day?

5 A. Yes.

6 Q. And who is depicted there?

7 A. Tyrik Bright.

8 Q. Beg the Court's indulgence. (Pause.)

9 MR. MCCARLEY: Ms. Wolf, please answer any questions
10 that Mr. Hayes has for you.

11 THE WITNESS: Thank you.

12 MR. HAYES: Judge, may I approach, look at the records
13 real quick?

14 (Reviews exhibits.)

15 MR. HAYES: Beg the Court's indulgence.

16 CROSS-EXAMINATION

17 BY MR. HAYES:

18 Q. Mrs. Wolf, did you at any time work outside of the
19 office?

20 A. Did...

21 Q. Did you help set up the tents and set up the stages
22 and the lighting and everything else as well?

23 A. Occasionally I go out in the field; yes, sir.

24 Q. How often?

25 A. Two times a week, three.

MARY FANNING WOLF - CROSS

1 Q. And in those times, what opportunities did you have to
2 see Mr. Bright working in the field?

3 A. I really could not answer you. If he was on that
4 particular job site, he would have been there. I mean,
5 the guys work all the jobs, you know, a lot of the jobs.

6 Q. All right. What about in the office? What
7 opportunities did you see Mr. Bright working in the
8 office?

9 A. Payday. Every morning they -- that first form you see
10 and then the paycheck stub is attached is their timecard.
11 They have to swipe their card every day and it's right at
12 my door.

13 Q. Okay.

14 A. So every morning I'd see the employees.

15 Q. And that would be on the days he worked?

16 A. Uh-huh.

17 Q. And he was part-time; correct?

18 A. He was temporary.

19 Q. Temporary. How many temporary workers did you have?

20 A. On that particular time, I mean, we bring in as many
21 as ten a season.

22 Q. Now, ten temporary workers. They work 40 hours a day
23 (sic), they work part-time, a few hours a day? What is
24 their schedules generally?

25 A. Our work is just very different. It's a case-by-case

MARY FANNING WOLF - REDIRECT

1 basis. I could not answer that. Each person is
2 different.

3 Q. How many full-time employees do you have or regular
4 employees that are not seasonal?

5 A. Fifteen, I'm going to guess.

6 Q. Beg the Court's indulgence.

7 Between the 25th -- I'm sorry. Between the 24th and
8 the 25th, did you have discussions with your brother?

9 A. Yes.

10 Q. Did you have discussions with police officers?

11 A. Yes.

12 MR. HAYES: I have nothing further. Thank you.

13 THE WITNESS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. MCCARLEY:

16 Q. Ms. Wolf, did you make a list of all the people who
17 worked at All-Star Rentals between July of 2011 and
18 December of 2011?

19 A. Yes, sir.

20 Q. And did you review that list with your brother?

21 A. I sure did.

22 Q. And did you consider all of those people and the
23 possibility of their involvement in this?

24 A. I did.

25 MR. HAYES: Judge, I object. This is outside of my

MARY FANNING WOLF - REDIRECT

1 cross:

2 MR. MCCARLEY: Your Honor, I believe it's firmly
3 within the scope of his cross. He discussed seasonal
4 workers, other workers, implying the possibility of other
5 peoples' involvement of misidentification.

6 THE COURT: Overruled. Go ahead.

7 BY MR. MCCARLEY:

8 Q. Do you remember that list you compiled?

9 A. Yes, sir.

10 Q. Would you mind telling me a little bit about the
11 people on that list?

12 A. Well, I started by the females, took them off the
13 list. And then I had no choice but to segregate the
14 number of blacks that were on the list and the number of
15 whites. And then I took those names of males because at
16 that time we had a pre-release program where we brought
17 gentlemen from the pre-release program for work --

18 MR. HAYES: Judge, I'm going to object. Sidebar?

19 THE COURT: Let me see y'all just a moment.

20 (Off-the-record discussion.)

21 BY MR. MCCARLEY:

22 Q. Ms. Wolf, not discussing Tyrik Bright but discussing
23 the rest of the people, you can go on.

24 A. So then I pulled out the fellows, we may have had
25 three, four, I'm not sure on the number that came from the

1 pre-release program. So it really didn't matter what
2 color or nationality they were, they go home every night
3 to what we call the camp. And so they were out of the
4 possibilities and that just left a few behind.

5 Q. And did you see any of the few left behind on that
6 video?

7 A. Oh, no, sir.

8 Q. Did you see Tyrik Bright on that video?

9 MR. HAYES: Objection. Asked and answered.

10 THE COURT: Overruled.

11 MR. MCCARLEY: No further questions for this witness,
12 Your Honor,

13 THE COURT: Do you have anything else?

14 RECROSS-EXAMINATION

15 BY MR. HAYES:

16 Q. Ms. Wolf, when was this list made?

17 A. It was requested a few days ago, last week possibly.

18 Q. So this list was not made when the burglary happened;
19 was it?

20 A. No, sir.

21 Q. And out of this list, there's 29 names by my prior
22 counts, how many of them were black males?

23 A. I'm going to say seven, eight. I don't have it in
24 front of me.

25 MR. MCCARLEY: Your Honor, I'm more than happy to

1 provide the witness with a copy if she'd like to refresh
2 her recollection.

3 THE COURT: If she needs her list, if y'all are going
4 to ask her about, for sure.

5 MR. MCCARLEY: May I approach with this list,
6 Mr. Hayes?

7 (Document handed to the witness.)

8 THE WITNESS: From my memory, there's approximately
9 eight black males.

10 BY MR. HAYES:

11 Q. Now you said this list was not made the day it
12 happened, it was made more recently?

13 A. Yes, sir.

14 Q. How did you make this list? Did you go to your
15 employment records and pull whoever were the employees at
16 that time?

17 A. From QuickBooks it gave me all the employees that were
18 paid employees from that time period requested.

19 MR. HAYES: Thank you.

20 THE WITNESS: Okay.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: You can take your list with you.

24 ANTHONY KEITH GLOVER, having been duly sworn, was
25 examined and testified as follows:

ANTHONY KEITH GLOVER - DIRECT

1 THE CLERK: Please have a seat on the witness box.
2 State your full name for the Court and spell your last
3 name.

4 THE WITNESS: Anthony Keith Glover, G-L-O-V-E-R.

5 DIRECT EXAMINATION

6 BY MS. YOUNG:

7 Q. Detective Glover, where are you employed?

8 A. The Aiken Department of Public Safety.

9 Q. And how long have you been employed there?

10 A. About 26 years and three or four months.

11 Q. And I keep calling you detective so you're obviously a
12 detective; correct?

13 A. Yes, ma'am.

14 Q. How long have you been in that position?

15 A. Since 1999.

16 Q. And what are some of your general duties as a
17 detective for the Department of Public Safety?

18 A. Normally we're assigned a case or we're called out to
19 different calls. And my job is to collect and preserve
20 evidence from a crime scene, and to basically put the
21 puzzle together to make an arrest.

22 Q. How did you become involved in a case involving the
23 Defendant, Tyrik Bright?

24 A. I received a call from my dispatcher and she told me
25 that the line was requesting for the duty investigator to

ANTHONY KEITH GLOVER - DIRECT

1 come to All-Star Rental for a burglary.

2 Q. And do you recall what date that was that you
3 responded to the All-Star Rentals?

4 A. Yes, ma'am. It was Christmas Day 2011. Actually I
5 was in church when they called me out of church.

6 Q. And do you know approximately what time you responded
7 to the scene?

8 A. I got the call approximately a little after one and
9 because it was raining so hard it took me about 30 minutes
10 to get there. So I would say probably 1:35, 1:40,
11 somewhere up in there.

12 Q. And you're referring to 1:30 or 1:40 in the afternoon?

13 A. In the afternoon; yes, ma'am.

14 Q. And what other officers were present, if any, when you
15 arrived?

16 A. When I arrived there was Officer Daubs -- and my
17 mind's just drawing a blank. Officer Daubs, an initial
18 officer that took the report, Officer Porter and Chris
19 Walker when I arrived on the scene.

20 Q. What was the first thing you observed, Detective
21 Glover, when you arrived on the scene that day?

22 A. I noticed the office area had been ransacked. I
23 noticed stuff up all over the place. And actually -- and
24 started to question them. They said they had a video
25 which that's the reason why Officer Walker was there to

ANTHONY KEITH GLOVER - DIRECT

1 retrieve the video.

2 Q. And did you observe anything about the building
3 itself?

4 A. We walked around the backside and noticed that the
5 point of entry, up under the loading dock where they had
6 pulled back some of the siding and made entry into the
7 building.

8 Q. And did you -- were you able to determine a point of
9 exit?

10 A. I'm trying to recall. I think they may have exited
11 through a door.

12 Q. And did you observe the video at all while you were
13 responding on the scene?

14 A. Yes. When I arrived on the scene Officer Walker
15 pulled the video. The first part of the video which -- we
16 couldn't really make an identification from the first part
17 of the video, but we could tell that they had on gloves so
18 they didn't leave anything for us to process for
19 fingerprints or DNA.

20 So at that time I told Chris Walker to finish loading
21 the video and give me a call if he come up with anything
22 from the video.

23 And I end up leaving possibly 2:30, somewhere up in
24 there. And I left Officer Walker on the scene.

25 Q. And what was the next thing you did regarding this

ANTHONY KEITH GLOVER - DIRECT

1 investigation?

2 A. I'm going to say it was approximately four or a little
3 after four, maybe 4:30, I received a call from Officer
4 Walker stating that --

5 MR. HAYES: Objection. Hearsay.

6 THE COURT: Well, I don't know where you're going with
7 that testimony. He's here if you need him. Go ahead.
8 Overruled.

9 THE WITNESS: I received a call from Officer Walker
10 stating that he had pulled video where --

11 BY MS. YOUNG:

12 Q. Let me just ask you this. Let me narrow it down.

13 Based on your conversation with Mr. Walker, were you aware
14 that an identification had been made?

15 A. Yes, ma'am.

16 Q. And were you aware by whom the identification had been
17 made?

18 A. Officer Walker stated to me that both of the owners
19 made an identification as to the subject being Tyrik
20 Bright.

21 MR. HAYES: Objection.

22 THE COURT: Overruled.

23 BY MS. YOUNG:

24 Q. And what was the next thing you did after you received
25 that information from Officer Walker?

ANTHONY KEITH GLOVER - DIRECT

1 A. I advised Officer Walker to make sure that he secured
2 that video and dropped it into evidence. I was going to
3 take a look at it when I returned back to work. We had
4 had a few days delay because on the 27th we ended up
5 burying Officer Scotty Richardson. So we had a couple
6 days delay. Then on the 28th, 29th I pulled the video of
7 that and was able to make an identification as to the
8 person being Tyrik Bright.

9 MR. HAYES: Objection as to cumulative.

10 THE COURT: Overruled.

11 BY MS. YOUNG:

12 Q. Without replaying videos, have you had an opportunity
13 to observe both the long video and the short video that
14 have already been entered into evidence?

15 A. No. The only time I observed any video at that time
16 was at the time when I was in the store. And then the
17 second video, the long version of the video I observed
18 after taking it out of evidence and taking a look at it
19 and doing a follow up on the case based on what I was
20 told.

21 MS. YOUNG: Your Honor, may I approach?

22 BY MS. YOUNG:

23 Q. Detective Glover, I'm going to show you what's already
24 been entered as State's Exhibit 11, 12, 13, and ask if you
25 recognize those exhibits?

ANTHONY KEITH GLOVER - DIRECT

1 A. Yes, ma'am. That was pictures, still pictures from
2 the video that I observed Mr. Bright in the video.

3 Q. And was that where you were able to make a
4 determination or an identification of him?

5 A. Yes, ma'am.

6 MS. YOUNG: Your Honor, may I approach?

7 BY MS. YOUNG:

8 Q. Detective Glover, I'm going to show you what's been
9 marked for identification purposes as State's Exhibit 15
10 and ask you: Do you recognize that?

11 A. Yes, ma'am. I do.

12 Q. And what is it? Without saying, describing it, tell
13 me what it is.

14 A. The mailbox is 156. That's the mailbox in front of
15 All-Star Rental and across the street is the house where
16 Mr. Bright live.

17 Q. How do you know that?

18 A. I just know that's where he lived at. I've seen him
19 there numerous times riding through the neighborhood.

20 Q. And does that fairly and accurately depict that
21 mailbox you mentioned and Mr. Bright's residence?

22 A. Yes, ma'am.

23 MS. YOUNG: Your Honor, at this time we'd offer
24 State's Exhibit 15 into evidence.

25 MR. HAYES: No objection, Judge.

ANTHONY KEITH GLOVER - CROSS

1 THE COURT: It's admitted.

2 (Thereupon, State's Exhibit No. 15, photograph, was
3 received into evidence.)

4 BY MS. YOUNG:

5 Q. Detective Glover, how long have you known Tyrik
6 Bright?

7 A. Probably --

8 MR. HAYES: I'm going to object to this line as to my
9 prior reasons that it is cumulative.

10 THE COURT: Overruled.

11 THE WITNESS: Approximately 15 years.

12 BY MS. YOUNG:

13 Q. Detective Glover, is Tyrik Bright present in the
14 courtroom today?

15 A. Yes, he is.

16 Q. Will you identify him, please, sir?

17 A. He's sitting at the table over there with the white
18 shirt on and the rust color-looking tie.

19 MS. YOUNG: Your Honor, we'd ask that the record
20 reflect the witness has identified this, the Defendant.

21 THE COURT: It shall.

22 MS. YOUNG: Detective Glover, that's all I have for
23 you. If you would, please answer any questions of

24 Mr. Hayes.

25 THE WITNESS: Okay.

ANTHONY KEITH GLOVER - CROSS

CROSS-EXAMINATION

1

2 BY MR. HAYES:

3 Q. Good afternoon. Detective Glover, you said there was
4 no fingerprints found?

5 A. We didn't lift any fingerprints. We observed from the
6 video that both subjects were wearing gloves.

7 Q. There was no DNA found?

8 A. There was no DNA found.

9 Q. Was any of the items that were stolen found?

10 A. We did not recover any, any of the items that were
11 stolen on that night.

12 Q. Detective Glover, did you ever find any clothing
13 consistent with a camo net?

14 A. We didn't find any of the clothing.

15 MR. HAYES: Thank you, sir.

16 MS. YOUNG: Beg the Court's indulgence. (Pause.)

17 No further questions, Your Honor.

18 THE COURT: You may step down.

19 MR. MCCARLEY: Your Honor, the State requests to read
20 what has previously been marked as State's Exhibit 16 into
21 evidence.

22 THE COURT: It's an agreed-upon exhibit?

23 MR. MCCARLEY: Yes, sir, it is.

24 MR. HAYES: Yes, sir. I would just ask for a limiting
25 instruction.

1 THE COURT: Okay.

2 MR. MCCARLEY: In the case of State versus Tyrik
3 G. Bright on the charge of burglary in the second degree,
4 the State and the defense stipulate to the fact the
5 Defendant has a prior record of two convictions for
6 burglary. The Defendant Tyrik G. Bright was convicted of
7 burglary on June 22nd, 2005, and on April 26, 2007.

8 The State moves to enter this into evidence, Your
9 Honor.

10 THE COURT: It's admitted without objection.

11 (State's Exhibit No. 16, stipulation, was received
12 into evidence.)

13 MR. MCCARLEY: Your Honor, the State rests.

14 THE COURT: All right. Ladies and gentlemen, we're
15 going to stop for this afternoon. That's all the evidence
16 the State's going to present.

17 Before we go further, I've got some matters I need to
18 address with the lawyers anyway so this is a good chance
19 to quit. So we'll do that.

20 Let me remind you of the caution I gave you prior to
21 excusing you for lunch; you're to have no discussions
22 about the case with anyone. That includes spouses,
23 children, friends, relatives, even your fellow jurors.
24 You can't talk about it until deliberation time begins and
25 that's not that time yet. So no discussions. No

1 investigation. No research. No exposure to any type of
2 media coverage.

3 Have a good evening and please return to your jury
4 room at 9:30 in the morning, 9:30 in the morning. Have a
5 good afternoon.

6 (Jury exits courtroom at 4:45 p.m.)

7 THE COURT: All right. Motions or other matters by
8 the defense?

9 MR. HAYES: Judge, taking the evidence in the light
10 most favorable to the State, the defense would move based
11 on all previous objections and other reasons that the
12 State has not been able to prove beyond a reasonable doubt
13 for a reasonable jury to be able to find the Defendant
14 guilty of burglary in the second degree.

15 THE COURT: Mr. McCarley, do you want to be heard?

16 MR. MCCARLEY: Your Honor, the State has entered
17 evidence as to each element of the crime and thus we
18 survive at this phase and go on to the rest of the case.

19 THE COURT: All right. Well, considering the evidence
20 in the light most favorable to the State as I must do on
21 your motion, I do find there is sufficient evidence
22 tending to establish each of the essential elements of the
23 crime including the identification of the Defendant as the
24 perpetrator. And therefore your motion for a directed
25 verdict is denied.

1 Others?

2 MR. HAYES: No, sir.

3 THE COURT: Have y'all talked with Mr. Bright about
4 his right to testify or not?

5 MR. HAYES: I have, Your Honor. My last indication
6 from Mr. Bright was that he did not wish to testify.

7 THE COURT: All right. Mr. Bright, your lawyer says
8 that y'all have talked about your right to testify as well
9 as not testify; is that true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand that you have the right
12 to testify if you want to?

13 THE DEFENDANT: (Nods head.)

14 THE COURT: You have a right to not testify if you
15 don't want to. It's simply a decision that you have to
16 make. But you're the one that has to make it. Nobody
17 else can make it for you. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you had plenty of time to talk with
20 your lawyers about the advantages and disadvantages of
21 testifying as well as not testifying?

22 THE DEFENDANT: I mean, I just -- I ain't got -- I
23 don't know what to say because I ain't got nothing to
24 say. I mean, I don't -- I don't --

25 THE COURT: I just want you to answer my question.

1 THE DEFENDANT: If I go up there and testify, I'm
2 like, I'm testifying for nothing because I ain't did
3 nothing. I mean, so I'm just listening.

4 THE COURT: Well, you can testify to that if you
5 wanted to.

6 THE DEFENDANT: No, I mean, I guess -- I mean, they
7 got the video. They can look and see what's going on, you
8 know. That's the only thing I want, you know. Just, I'm
9 just hoping that they -- I'm glad that they got a video
10 instead of just somebody saying I did. Like, they can see
11 what's going on, you know. So I'm thankful for that, that
12 they can see what's going on instead of somebody just
13 going up there saying they see me.

14 So I'm better off listening to what's going on. No
15 statement. No testifying or nothing.

16 THE COURT: Okay. Let me get back to my question. My
17 question was: Have you and your lawyers discussed the
18 advantages and disadvantages of testifying --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- as well as not testifying?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you appreciate what those
23 advantages and disadvantages are?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And have you had time to talk with your

1 lawyers about your decision?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And have you had time to reflect upon what
4 your decision will be regarding testifying?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Have you made a decision?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And what is your decision?

9 THE DEFENDANT: I'm not going to testify.

10 THE COURT: And is that a decision that you made of
11 your own free will and accord?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And you've had plenty of time to reflect
14 upon it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has anybody forced you into that
17 decision?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has anybody even suggested to you that's
20 the decision you ought to make?

21 THE DEFENDANT: No, sir.

22 THE COURT: You made that decision on your own?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you're satisfied with it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any other witness you want
2 your lawyers to call?

3 THE DEFENDANT: No, sir. Because, I mean, we really
4 ain't know nothing about it until the police raided my
5 house, you know what I'm saying. So I really, I really
6 don't know nothing about what they're accusing me of. So,
7 I mean, nobody knows nothing. They just came around and
8 put me in jail. So, I mean, I really don't have nothing
9 to say. I just leave it up to God, you know. You know
10 what I'm saying. I ain't got no other witness, Your
11 Honor.

12 THE COURT: Okay. Any other evidence you have you
13 want to introduce?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Thank you. You can change your
16 mind overnight if you want to because we're breaking for
17 the day. So, if during the overnight recess you think
18 about it some more and decide you want to testify, you
19 know you can change your mind.

20 THE DEFENDANT: Yes.

21 THE COURT: But you won't be able to change it in the
22 morning. I'll ask you again. If you change your mind, if
23 you tell me no, that will be the end of it. You don't get
24 to introduce any evidence or testify once the jury gets
25 the case. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now -- thank you.

3 Any other matters we need to address before we
4 recess?

5 MR. McCARLEY: Nothing from the State, Your Honor.

6 MR. HAYES: Judge, we've addressed and I would renew
7 my directed verdict if this is the appropriate time.

8 THE COURT: Well, we'll do that tomorrow. You're
9 going to have to rest in front of the jury but remind me
10 and we'll allow you to renew your motion rather than send
11 the jury out again and bring them back.

12 MR. HAYES: Yes, sir.

13 THE COURT: But we'll wait and be sure that Mr. Bright
14 didn't change his mind about his right to testify -- or
15 about his decision to testify.

16 Do you all have any jury instruction requests?

17 MR. McCARLEY: Your Honor, the State -- I cannot
18 remember from the last time you were in whether or not you
19 you charge firmly convinced as to reasonable doubt.

20 THE COURT: I don't. I use Manning's charge.

21 MR. McCARLEY: I would like to at this time request
22 that charge.

23 THE COURT: The Manning charge? Granted.

24 MR. McCARLEY: Thank you, sir.

25 MR. HAYES: Judge, I do not have a specific charge.

1 THE COURT: All right. If nothing further, we're in
2 recess until 9:30 in the morning.

3 MR. McCARLEY: Thank you, Your Honor.

4 END OF DAY'S PROCEEDINGS: 4:52 P.M.

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CLOSING ARGUMENT ON BEHALF OF THE STATE

1 ON WEDNESDAY, JUNE 13, 2013 AT 9:36 A.M.:

2 THE COURT: Any matters to address before the jury is
3 brought in?

4 MR. MCCARLEY: Nothing from the State, Your Honor.

5 MR. HAYES: No, sir.

6 THE COURT: Okay. Bring them in, please.

7 THE BAILIFF: Okay.

8 (Jury enters courtroom at 9:37 a.m.)

9 THE COURT: Good-morning, ladies and gentlemen. As
10 you know, when we recessed yesterday all of the evidence
11 had been received. And what remains to be done are the
12 lawyers' final summations, I'll instruct you on the law
13 then you can begin your jury deliberations.

14 So, please give the lawyers your attention now as they
15 give you their final summations.

16 Mr. McCarley?

17 MR. MCCARLEY: Thank you, Your Honor. Mr. Hayes.
18 Good morning, ladies and gentlemen.

19 First and foremost, I thank you for your time. I'll
20 try not to take very much more of it.

21 In his opening statement, the defense said that you're
22 going to find what you're looking for. And in this case
23 they're exactly right. Officer Walker sat down in front
24 of that computer on Christmas Day 2011, and he looked and
25 he looked. And he looked for hours. And he finally found

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 a good enough video, a good enough picture that three
2 people independently could identify the Defendant, Tyrik
3 Bright, as the man that was inside that building
4 committing that burglary.

5 That security video's not perfect. Okay. But nothing
6 in this world is. But it is plenty good enough for,
7 again, three different people, Mike Fanning, Mary Wolf,
8 Detective Keith Glover, to identify the Defendant, Tyrik
9 Bright as the man who committed this burglary. And that's
10 why he's guilty beyond a reasonable doubt of burglary in
11 the second degree.

12 Please don't forget when you go back into that jury
13 room what you heard and what you saw. You saw the
14 burglary in progress. You saw the entering of the
15 building which is an element of the crime. You saw the
16 crime being committed inside, the damage being done, the
17 items being stolen, \$13,000 worth.

18 You heard from this witness stand from Mike and Mary
19 that the Defendant did not have permission to be in the
20 building that night at that time.

21 You also heard the Defendant has two prior convictions
22 for burglary in 2005 and in 2007.

23 Those are the elements of the crime. We have to meet
24 all of those elements beyond a reasonable doubt for you to
25 find him guilty. And we have.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 The defense is not arguing a burglary didn't occur.
2 That's obvious from the video that a burglary occurred.
3 They're arguing that it wasn't Tyrik Bright.

4 But when you take that video and you combine it with
5 the testimony that you heard from this chair under oath
6 from these three people, that you have Tyrik Bright and
7 you have him in that building and that, again, is burglary
8 in the second degree.

9 Think about those witnesses when you go back into that
10 jury room. What motivation do they have to lie? If
11 they're going to tell lies, why not identify the other
12 person?

13 If Mike and Mary had something against Tyrik Bright,
14 why would they walk from their business across the street
15 and ask him to come work with them? Once he came to work
16 with them, you heard Mike say, sometimes we'd go across
17 the street if we needed somebody.

18 You also heard the defense ask some about fingerprints
19 and DNA. The video shows they were wearing gloves. It's
20 not going to be fingerprints from that night. And Tyrik
21 Bright worked there. His fingerprints are going to be all
22 over the place. If there was going to be DNA, his DNA
23 would be there because he worked there.

24 It's also not a case of mistaken identity. You've got
25 three people who knew him. Mike Fanning knew him for

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 three months. Mary knew him for three months, saw him
2 every day he worked. He'd come clock in, she saw him.
3 Mike saw him out at sites building stuff and there in the
4 warehouse, in the office. Detective Keith Glover's known
5 him for 15 years. All three separate independent IDs of
6 the Defendant, Tyrik Bright.

7 You heard Mike Fanning from the witness stand say when
8 he learned it was an inside job, he actually had somebody
9 else in mind until he saw the video.

10 You heard Mary from the stand talk about how she had a
11 list of all the people that worked for them and went down
12 that list and by process of elimination Tyrik Bright fit
13 the bill. But while the process of elimination is great,
14 it doesn't, it's nothing compared to her independent
15 identification of him on that video.

16 Please take what you saw, what you heard, the videos,
17 all the pictures, please take your common sense back into
18 that jury room. Please honor your oath to render a true
19 verdict. Take the facts that you learned here today, put
20 them together with the law, the elements of the crime as I
21 laid them out for you, merge them with the facts that
22 you've heard and seen during this case. When you do,
23 you're going to see that it's a burglary in the second
24 degree violent.

25 Take the video, merge it with what you heard Detective

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Glover and Mike and Mary say. And when you merge those
2 two together, you're going to know that it's Tyrik
3 Bright. So now you got Tyrik Bright in a burglary second
4 degree violent guilty beyond a reasonable doubt.

5 Reasonable doubt, again, ladies and gentlemen, is a
6 big hole in a case. Okay. You don't have to look high
7 and low for it. It is reasonable. But there's no hole in
8 this case.

9 The only hole in this case, ladies and gentlemen, is
10 the one that Tyrik Bright left when he tore back that
11 steel siding from All-Star Rentals and crawled inside.
12 That's the only hole in this case. And that's the reason
13 he's guilty beyond a reasonable doubt of burglary in the
14 second degree.

15 Again, thank you for your time. Thank you for your
16 attention. I look forward to your verdict.

17 THE COURT: Mr. Hayes?

18 MR. HAYES: May it please the Court. Ladies and
19 gentlemen.

20 Don't rush to judgment. I submit to you, that's what
21 the Fannings did, and -- Ms. Wolf, as well as the officer
22 in this case.

23 You heard from the stand and I believe the State
24 misquoted but y'all were here, y'all decide what he said.
25 I think he said he had somebody in mind. He didn't say it

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 changed when he saw the video. He said he had somebody in
2 mind.

3 And I believe the implication for y'all was that he
4 believed it was my client and that the video to him sealed
5 the deal. He had a preconceived notion. Now, Ms. Wolf
6 said, I talked to my brother. And what did they testify
7 to? Ms. Wolf, Mr. Fanning and PSO Walker was watching the
8 video. She was coming in and out but she was there and
9 she was talking with her brother. That's family and
10 that's her brother. And the officer was there and
11 collecting information.

12 Detective Glover, what did he tell you? He was at the
13 scene. He left probably sometime around two, 2:30-ish.
14 Somewhere around four o'clock he got a phone call. What
15 was that phone call about? We think we got an ID. We
16 think it's Mr. Bright.

17 Okay. So he says he goes and pulls the video and he
18 watches it the next day. Did he watch it the next day
19 with fresh eyes? No. At that point he's got a
20 preconceived notion. They told him who he's looking for.

21 So everybody's who's watched this video up until the
22 time they see somebody, they see Mr. Bright because they
23 told them that's who they're looking for. They're not
24 looking at it in fresh eyes and say, okay, can I ID this
25 person?

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 There's no fingerprints. There's no DNA. All we have
2 is the video and three other people saying, I've watched
3 that video, and this is who I believe it is. But those
4 three people have a preconceived notion, potentially rush
5 to judgment. Okay.

6 Ladies and gentlemen, you are the jury. You are the
7 finders of the facts. Y'all get to watch this video and
8 you get to decide: Is the video sufficient that you
9 believe, you individually, that that is Tyrik Bright?

10 That's the best evidence of this whole case is the
11 video.

12 The State's talking about reasonable doubt is a big
13 hole in a case. That's not a hole in the case. A hole in
14 the case is when the State doesn't do their job, being
15 either the State or the investigation coming up to it and
16 there's something they can't explain. That's a hole in
17 the case.

18 Reasonable doubt is the presumption of innocence that
19 is guaranteed to you by our forefathers through our
20 Constitution. That's not a hole in the case. That is
21 your rights. And that is what we're here to determine
22 today. Is this video sufficient enough to take away
23 somebody's right to freedom? It's not a hole in the case.

24 Okay. That's what we talked about in the beginning.
25 He's got a cloak sitting over him, a presumption of

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 innocence. And until you find that that is sufficient to
2 take it away from him, he is innocent. That is a
3 constitutional right. Everybody, everybody is entitled to
4 that right.

5 Y'all have heard from three people saying that that's
6 him. Ladies and gentlemen, I submit to you that they got
7 what they were looking for.

8 Can everybody see this? I'm going to give y'all a few
9 minutes to read it. If y'all are done, let me know when
10 you're done.

11 (Poster displayed to the jury.)

12 Ladies and gentlemen, there is very, very few actual
13 words on here. But most people can read. And it's
14 because the brain is able to un-jumble it and create the
15 actual sentences that you're trying to read.

16 And if you have a preconceived notion which is --
17 everyone of you, I presume, can read, because that was a
18 question that was asked of you when y'all were qualified,
19 you know what you're looking for when you're looking at it
20 and your brain can fill in the gaps.

21 I present to you that the same thing's happened in
22 this case. If you perceived that somebody had done this
23 and that's who you're looking for immediately, and then
24 you turn around and you watch the video, even though it's
25 not crystal clear, you get the answer that you're looking

JUDGE'S CHARGE TO THE JURY

1 for.

2 Now it's also said a picture's worth a thousand
3 words. That's something we always hear. And in this case
4 case though, ladies and gentlemen, that picture's worth
5 two words; not guilty.

6 JUDGE'S CHARGE TO THE JURY

7 THE COURT: Ladies and gentlemen, you've heard and
8 seen all the evidence. You've now heard the final
9 summations of the lawyers. And therefore it now becomes
10 my duty and obligation to instruct you on the law that's
11 applicable in the case.

12 Then you'll be asked to go back and to begin with your
13 deliberations and through that process, through the
14 exercise of good judgment and common sense, you will
15 examine all of the testimony, examine all of the
16 evidence. From that evidence you will determine what you
17 believe to be the true facts. After deciding those facts,
18 you apply the law that I will have provided you and you
19 will determine whether or not the Defendant has been
20 proven guilty of the crime of burglary in the second
21 degree.

22 It is your exclusive duty to determine what the facts
23 are. And you do that, as I say, through your own
24 common-sense examination of all the testimony and the
25 other evidence received during the course of the trial.

JUDGE'S CHARGE TO THE JURY

1 You 12 jurors alone will decide what weight, value and
2 effect to give any particular testimony or other evidence
3 in the case. Your sole objective is to simply be fair and
4 impartial and render a verdict based solely upon the
5 evidence presented and the law that's applicable as I will
6 have provided it to you.

7 Now in this case, as you know, the State through the
8 prosecutor has accused the Defendant, Tyrik Gerard Bright,
9 with the crime of burglary in the second degree.

10 That charge is set forth in the indictment that I
11 referred to prior to and after your selection as jurors.
12 The indictment itself however, as I've stated, is not
13 evidence in the case. It's not proof of anything. It
14 does not establish anything. It's simply the charging
15 paper. It puts the Defendant on notice as to what crime
16 the State claims he has committed, but it's not evidence.

17 It will be in the jury room because it is on the back
18 of this indictment, Mr. Foreman, that you're going to be
19 asked to indicate the jury's unanimous decision. And
20 you'll see on the back, you'll see the word verdict. It's
21 beneath that word that you'll indicate the jury's
22 unanimous decision. You'll sign your name as the
23 foreperson. You're the only juror that needs to sign the
24 verdict form. But other than serving as the verdict form,
25 the indictment serves no purpose so far as you jurors are

JUDGE'S CHARGE TO THE JURY

1 concerned.

2 Now as to the charge contained in that indictment, the
3 Defendant has entered a plea of not guilty. And as I've
4 told you, that plea of not guilty has placed upon the
5 State the burden of proving the allegations that they've
6 made against the Defendant, the burden of proving each of
7 the essential elements that constitute the crime of
8 burglary in the second degree.

9 And therefore the burden is upon the State to
10 establish the Defendant's guilt to the satisfaction of you
11 12 jurors beyond a reasonable doubt before any verdict of
12 guilty could be returned.

13 It is a vital important and cardinal rule of law that
14 every defendant in a criminal trial, it doesn't matter how
15 serious the offense might be for which that person stands
16 charged, a person charged with a crime is always presumed
17 innocent of that charge.

18 That presumption of innocence, as I've told you,
19 remains with this Defendant from the time that he is
20 arrested and throughout the course of the criminal process
21 and even throughout the course of this trial. That
22 presumption of innocence will be with him as you go back
23 to begin with your deliberations in this case. And that
24 presumption of innocence will be with him in that jury
25 room and it will be with him forever unless you 12 jurors

JUDGE'S CHARGE TO THE JURY

1 determine that he's no longer entitled to the presumption
2 of innocence.

3 In other words, after you have carefully considered
4 all of the evidence in the case and from that evidence you
5 have determined what you believe to be the true facts as
6 they relate to these allegations, and upon deciding those
7 facts you apply the law that I will have provided you. If
8 you 12 jurors unanimously determine that his guilt has
9 been proven beyond a reasonable doubt, then he would no
10 longer be entitled to that presumption of innocence. But
11 it is only if, unless and until you are satisfied of his
12 guilt beyond a reasonable doubt that the presumption of
13 innocence would no longer be applicable.

14 Now while the State does have the burden of proving
15 the Defendant's guilt beyond a reasonable doubt, that
16 doesn't mean that the State has to prove his guilt beyond
17 all doubt or beyond any possible doesn't, but it does
18 require the State to prove his guilt to your satisfaction
19 beyond a reasonable doubt.

20 And the term reasonable doubt should be given its
21 plain and ordinary meaning. A reasonable doubt is the
22 kind of doubt that would cause a reasonable person to
23 hesitate to act upon the information provided.

24 And a Defendant is entitled to any reasonable doubt
25 that arises from the evidence or lack of evidence in the

JUDGE'S CHARGE TO THE JURY

1 case. And if upon any factual issue essential to a
2 finding of a verdict of guilty you have some reasonable
3 doubt as to how that issue should be resolved, it would be
4 your duty to resolve that reasonable doubt in favor of the
5 Defendant. And therefore, if upon your consideration of
6 the whole case you have a reasonable doubt as to his guilt
7 it is your duty to return a verdict of not guilty.

8 And at the same time, after you've considered all of
9 the evidence and decided the facts and applied the law, if
10 you have no reasonable doubt as to his guilt, it would be
11 your corresponding duty to find him guilty of the crime
12 where it has been proven to your satisfaction beyond a
13 reasonable doubt.

14 Now the same law that provides that you are the judges
15 of the facts also provides that I'm the judge of the law.
16 That simply means that nobody's going to tell you how to
17 arrive at your determination of fact in this case. You do
18 that, as I've already stated, through the exercise of good
19 judgment and common sense, conscientiously applied to the
20 testimony and evidence received during the course of the
21 trial.

22 You must, however, under your oath as a juror accept
23 the law as I provide it to you as being the law that you
24 are to apply in the case. In other words, you're not to
25 concern yourself with what you thought the law was before

JUDGE'S CHARGE TO THE JURY

1 you came to serve as a juror this week, or what you think
2 the law ought to be.

3 Under your oath as a juror you must simply accept the
4 law as I provide it to you as being the law that you are
5 to apply in the case. And then you simply take that law
6 and you apply it to the facts as you 12 jurors determine
7 those facts to be based upon your common sense and
8 examination of the evidence received during the trial.

9 Now because you are the sole finders of the fact in
10 this case, you are therefore necessarily the sole judges
11 of the credibility, that is, the believability of each
12 witness that has testified during the course of this
13 trial.

14 And you 12 jurors alone will decide what weight, value
15 and effect you give to any particular witness's testimony
16 or even portions of that testimony. But there are several
17 factors which you should take into consideration in
18 arriving at your assessment as to a particular witness's
19 credibility and I'm going to list those factors for you.

20 You should consider the demeanor of the witness. That
21 is, how the witness appeared to you as the witness
22 testified from that witness stand. Was the witness
23 straight forward in responding to questions or was the
24 witness hesitant or evasive in responding to questions
25 that were asked of that witness. Simply put, did the

JUDGE'S CHARGE TO THE JURY

1 witness appear to you to be telling the truth and to have
2 knowledge of the facts to which that witness has
3 testified.

4 You should also consider whether or not the testimony
5 of a witness is consistent or is it inconsistent with that
6 witness's own testimony or with other testimony or other
7 evidence received during the course of the trial. You
8 should also consider how the witness came to know the
9 facts to which a witness has testified.

10 In other words, what was that particular witness's
11 opportunity and ability to be able to perceive the
12 existence of those facts to which that witness has
13 testified that they have previously perceived. And then,
14 what is that witness's ability to be able to come into
15 court and to accurately recollect to you as to what they
16 have previously seen or heard.

17 You should also consider any bias or prejudice or
18 interest that a witness might have with regard to a case.
19 In other words, do you find some reason that a particular
20 witness would come into court and would testify one way or
21 another to help or hurt one side or the other. And you
22 may consider any interest that a witness might have in the
23 outcome of the case if you determine that a witness does
24 have such an interest and you further find that that
25 interest would bear upon that particular witness's

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1 credibility.

2 You should also consider whether or not the testimony
3 of a witness is strengthened or is it weakened by other
4 testimony or other evidence received during the course of
5 the trial.

6 Now because you are the judges of the facts and
7 because you are the judges of the credibility of each
8 witness that has testified, you are permitted to believe
9 as much or as little of what a witness has testified to as
10 you deem is appropriate. And therefore you may believe
11 everything that a witness testified to. You may choose to
12 believe none of it. You could believe one witness as
13 opposed to several or several as opposed to one in a given
14 case, but whatever your good judgment and common sense
15 tells you is the most believable and credible testimony is
16 the testimony you should accept. And you should reject
17 any testimony or other evidence that you find not to be
18 credible or believable.

19 Again your sole objective is to simply reach a fair
20 and impartial verdict in the case based solely upon the
21 evidence and the law that's applicable.

22 While there are various forms of evidence such as
23 testimony, photographs, documents, charts, videos, and
24 other types of physical exhibits, there are really only
25 two types of evidence. Either or both of those types of

JUDGE'S CHARGE TO THE JURY

1 evidence may be used to prove any fact in issue but the
2 two types of evidence are direct evidence and
3 circumstantial evidence.

4 Now direct evidence is the testimony of a person who
5 testifies from actual knowledge of the fact. It is
6 testimony by a person who has perceived the existence of
7 some fact by means of his or her senses and then they come
8 into court and they testify as to what they have
9 previously perceived.

10 Circumstantial evidence on the other hand is the proof
11 of some other fact or set of facts which taken either
12 singly or collectively may prove the existence of a fact
13 in question as the necessary consequence. That is,
14 through an inference.

15 And an inference is simply a deduction of fact that
16 may logically and reasonably be drawn from proof of some
17 other fact or set of facts. In other words, it's not a
18 fact which is proven by the direct testimony of a witness
19 based upon their personal perception but it is a
20 conclusion which might reasonably be drawn from the proof
21 of other facts.

22 In other words, you may infer that a particular event
23 occurred or that a particular fact exists based upon the
24 proof of sufficient factual circumstances which would
25 reasonably warrant your arriving at a particular

JUDGE'S CHARGE TO THE JURY

1 conclusion.

2 The law however makes no distinction between the
3 weight or value to be given to direct evidence as opposed
4 to circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence as opposed
6 to direct evidence.

7 Whatever the type of evidence used to prove any fact
8 in issue, you should consider all of the evidence
9 presented during the trial of this case and after
10 carefully considering that evidence and weighing it in
11 your minds, if you are not convinced of the guilt of the
12 Defendant beyond a reasonable doubt, then you must resolve
13 that doubt in his favor and return a verdict of not
14 guilty.

15 Now, as you know, the Defendant is charged with
16 burglary in the second degree. Burglary in the second
17 degree is a statutory offense and that just means that the
18 offense is contained in one of these blue books, the Code
19 of Laws of South Carolina. And every year the legislature
20 meets from January till June. In fact, they'll finish
21 tomorrow -- oh no, they finished last Thursday. Excuse
22 me.

23 But while they are in session they pass a number of
24 laws and rules and regulations that govern our conduct in
25 a variety of ways. And some of those statutes are

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1 criminal penalty statutes. And that just means that they
2 define a crime, they prohibit us engaging in certain types
3 of conduct and when we are found to have engaged in that
4 conduct in violation of that particular statute, then it
5 results in the imposition of some type of punishment or
6 penalty for a violation of the statute.

7 Please keep in mind however that you are never to be
8 concerned with punishment or penalty. That's not
9 something that you decide. Your sole obligation and duty
10 in this case is to determine whether or not the Defendant
11 has been proven guilty of a crime beyond a reasonable
12 doubt. And you are to make that determination without any
13 consideration to any punishment or other consequence of
14 your verdict.

15 But Section 16-11-312 is the statute that defines what
16 constitutes burglary in the second degree. And that
17 statute in its relevant parts provides that a person is
18 guilty of burglary in the second degree if the person
19 enters a building without consent and with the intent to
20 commit a crime therein and the burglary is committed by a
21 person with a prior record of two or more convictions for
22 burglary.

23 So based upon this particular statute, before you can
24 return a verdict of guilty in this case it would be
25 necessary that the evidence in this case has established

JUDGE'S CHARGE TO THE JURY

1 to your satisfaction beyond a reasonable doubt four
2 essential elements.

3 First of all, the evidence must establish that the
4 Defendant did enter a building. Entry is an indispensable
5 element in the crime of burglary and the entry is the act
6 of going into the building.

7 Secondly -- well, let me tell you the definition of
8 building. Building is defined as any structure where
9 people assemble for the purposes of business or where
10 goods are stored.

11 Secondly, it must be proven that the entry of the
12 building was without consent. Entering without consent
13 means to enter the building without the consent of the
14 owner or other person in lawful possession of the
15 premises.

16 Thirdly, it must be an entry of a building without
17 consent and with the intent to commit a crime therein.
18 There must be an intent to commit a crime whether or not
19 the crime is actually committed, accomplished or completed
20 or not. But the mere entry of a building without an
21 intent to commit a crime does not constitute the crime of
22 burglary. It is only when there is an entering of a
23 building accompanied with an intent to commit a crime that
24 the crime of burglary is complete. And a crime of any
25 grade or severity is sufficient to satisfy this particular

JUDGE'S CHARGE TO THE JURY

1 element of the crime of burglary. The entry of a building
2 without consent and with the intent to commit a crime
3 therein completes the crime of burglary.

4 The fourth element that the evidence must prove to
5 your satisfaction beyond a reasonable doubt in order for
6 the crime of burglary in the second degree to be proven is
7 that the evidence must show that when -- well, in this
8 particular case the evidence must show that the burglary
9 was committed by a person with a prior record of two or
10 more convictions for burglary.

11 Now in this case you know that the State is alleging
12 that the crime of burglary in the second degree or that it
13 is a burglary in the second degree because a burglary was
14 committed by a person with a prior record of two or more
15 convictions for the crime of burglary. And therefore you
16 have heard testimony or perhaps seen other evidence
17 regarding the Defendant having prior convictions for the
18 crime of burglary.

19 You are instructed that such evidence is offered for
20 and you may only consider it for a very limited purpose.
21 The purpose for which it is offered is to establish a
22 particular degree of burglary in the event that you
23 determine that the evidence in this case has proven the
24 Defendant to be guilty of the crime of burglary.

25 It is not being offered as proof of the Defendant's

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1 commission of the crime of burglary for which he now
2 stands trial nor may it be considered by you as evidence
3 that the Defendant did commit the crime of burglary.

4 If you determine that the State has proven beyond a
5 reasonable doubt that the Defendant did commit the crime
6 of burglary, then you may consider any evidence of prior
7 convictions for the crime of burglary as it relates to the
8 degree of any burglary proven to have been committed by
9 the Defendant.

10 You are not permitted to consider evidence of any
11 prior burglary convictions for any other purpose. You may
12 not consider such evidence as evidence of bad character
13 nor may you consider it as evidence that the Defendant may
14 have acted in accordance with prior conduct. It may only
15 be considered by you in determining the degree of burglary
16 if you find beyond a reasonable doubt that the Defendant
17 has been proven guilty of the crime of burglary as I have
18 already defined it for you.

19 As I have stated, the State has the burden of proving
20 every essential element of any crime alleged against the
21 Defendant beyond a reasonable doubt. And therefore not
22 only must the State prove beyond a reasonable doubt that
23 the Defendant committed the crime of burglary in the
24 second degree, the State must also prove beyond a
25 reasonable doubt that it was the Defendant who was the

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1 perpetrator of that particular crime.

2 If after a careful consideration and examination of
3 all the evidence in this case relating to the issue of the
4 identification of the perpetrator of any crime or burglary
5 that has been proven to have been committed, should you
6 have a reasonable doubt as to the accuracy of the
7 identification of the Defendant as a perpetrator of that
8 crime, then you must resolve that reasonable doubt in
9 favor of the Defendant and return a verdict of not guilty.

10 Now, ladies and gentlemen, I further instruct you and
11 I emphasize to you that a fact that a defendant does not
12 testify during the course of a trial is not a circumstance
13 that may be considered by you jurors during your
14 deliberations or in your determination as to whether or
15 not his guilt has been proven beyond a reasonable doubt.

16 As I have already stated more than once, the burden is
17 on the State to prove the Defendant guilty beyond a
18 reasonable doubt. The burden is never upon a defendant to
19 prove that he or she is not guilty or to prove that he or
20 she is innocent because in some cases that might not be
21 possible.

22 And, therefore, you are never to draw any conclusion
23 nor may you draw an inference from the fact that a
24 defendant does not testify during the course of a trial,
25 nor may that fact even be discussed by you while you are

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1 engaged in your deliberations in this case and you may not
2 allow such a fact to weigh in the slightest degree against
3 the Defendant.

4 Mr. Foreman and ladies and gentlemen, I am not in any
5 way concerned with what your decision is but, as I've
6 stated, it must be unanimous. All 12 of you must be in
7 agreement.

8 Mr. Foreman, as I told you, in addition to the
9 evidence which has been introduced you will also have the
10 indictment which will serve as the verdict form. In this
11 particular case there are two potential verdict forms;
12 those two forms are guilty and not guilty.

13 So whatever your decision is, Mr. Foreman, I'll ask
14 that you indicate that decision in the space provided on
15 the back of the indictment, sign your name as the
16 foreperson, place the appropriate date on it. Once you've
17 arrived at your decision and you've indicated it on the
18 indictment, knock on the jury room door, let the bailiffs
19 know that you've reached a decision, we'll bring you back
20 to receive that verdict.

21 While you may turn over the evidence to the bailiff to
22 bring back to the courtroom, Mr. Foreman, you will hold
23 onto the verdict form and I'll receive that from you after
24 you and your fellow jurors have arrived in the courtroom
25 and been seated.

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1 Now during your deliberations there may come a time
2 where you have some question about evidence or the facts
3 of the case. Please understand that I am never permitted
4 to answer any questions that relate to evidence or
5 questions of fact. You simply have to resolve those
6 questions based upon your collective examination of all
7 the evidence in the case and any reasonable inferences
8 that might be drawn from that evidence.

9 Also, no additional evidence may be received now that
10 you're going back to begin your deliberations. And
11 sometimes a jury panel will wonder if something is
12 available for them and you don't have it in the jury room
13 and so you wonder if you can get it.

14 What I'm saying is, no additional evidence can be
15 introduced now that you're going back to begin with your
16 deliberations. So if it has not been introduced during
17 the trial of this case it cannot be introduced now. So
18 don't inquire about it because you can't have it even if
19 it exists.

20 If you have a question about testimony of a witness,
21 while I do not have transcripts of that testimony, if you
22 need a witness's testimony replied in whole or in part we
23 can bring you back into the courtroom to have a witness's
24 testimony reheard. You will simply need to let me know
25 that you wish to hear a particular witness's testimony and

JUDGE'S CHARGE TO THE JURY

1 we'll bring you back to play it in its entirety or only
2 some portion of it if that's all you need.

3 If you ever have a question about the law that is
4 applicable, I am permitted to answer those questions. So
5 should you need a re-instruction or an explanation or a
6 clarification of some point of law, I'll be happy to
7 respond to that question and provide you with that
8 information accordingly.

9 Mr. Foreman, when you go back if you or your fellow
10 jurors ever have a question or an issue that needs to be
11 addressed to me, if you'll write it on a piece of paper,
12 give it to the bailiff, he'll provide that to me and then
13 I'll respond to that question or address that issue should
14 one arise.

15 I think that covers everything but in the event it
16 does not, I'm sure one of these lawyers will remind me
17 that I neglected to tell you something. And if that's the
18 case, I'll bring you back and provide you with additional
19 information.

20 If that's not the case, then I'll simply send word by
21 way of a bailiff that you may begin your deliberations.
22 And in that event, he'll bring to the jury room all of the
23 exhibits which have been introduced and to you,
24 Mr. Foreman, he'll also bring the indictment which will
25 serve as the verdict form.

1 We'll have the videos, we'll have to provide you with
2 a computer or something that you can play the videos on.
3 And so we'll have that sent back also. And if for some
4 reason you have an issue with the video or you can't get
5 the thing to work, just let us know and we'll try to
6 assist you in that regard.

7 So with the exception of Ms. Walker -- Ms. Walker, I'm
8 going to ask you to stay with me. If the 12 original
9 jurors will please retire to your jury room but await my
10 instruction as to when to begin.

11 (Jury exits courtroom at 10:16 a.m.)

12 THE COURT: Mrs. Walker, as you know you're the
13 alternate juror and you can't participate in deliberations
14 if the original 12 are able to do that, and they
15 apparently are. So that's going to conclude your service
16 in the trial of this case.

17 And because you had participated in this case, I'm
18 going to give you an option. The remaining jury panel is
19 coming back at 11:30. I anticipate that we're going to
20 select another jury at that time. It might be that you
21 will be called upon again to serve as a juror. But
22 because you've already served in the case and we have
23 plenty jurors, I'm going to give you the choice of whether
24 you want to stay or you want to leave and then just call
25 back tonight and see if you need to come back any

1 further.

2 Do you have a preference as to what you'd like to do?

3 THE JUROR: I'll stay.

4 THE COURT: Ma'am?

5 THE JUROR: I'll stay.

6 THE COURT: You'll stay?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. The jury panel will be
9 reporting to the jury assembly room at 11:30 this
10 morning. So until that time you can do whatever you'd
11 like, but I would ask that you please be certain that
12 you're in the jury assembly room by 11:30 this morning.

13 THE JUROR: All right, sir.

14 THE COURT: Thank you again for your participation.

15 THE JUROR: Thank you.

16 (Alternate juror exits courtroom.)

17 THE COURT: Are there any exceptions taken to the
18 instructions or requests for additions by the State?

19 MR. McCARLEY: Yes, sir, Your Honor.

20 I do not recollect hearing anything about the
21 definition of a stipulation, exactly what that is and what
22 that means. I don't think you did during the trial of the
23 case and as I recall it's also not part of your charge.

24 THE COURT: Well, I didn't. You introduced it into
25 evidence; didn't you?

1 MR. McCARLEY: I have, Your Honor. I just heard it in
2 a jury charge before. It's a piece of this case.
3 Obviously leave it up to you.

4 THE COURT: Okay. Where is that stipulation?

5 MR. McCARLEY: May I approach?

6 THE COURT: Sure.

7 MR. McCARLEY: I believe the clerks have all the
8 evidence. May I approach?

9 THE COURT: Sure.

10 (Document handed to the Judge.)

11 THE COURT: Well, if you believe it's not clear enough
12 I'll be happy to bring them back and explain this
13 stipulation to them.

14 MR. McCARLEY: I just never -- I don't think they
15 understand that it's a fact and that I have proven that
16 element.

17 THE COURT: All right. Bring the jury back, please.

18 MR. McCARLEY: Thank you, Your Honor.

19 MR. HAYES: Judge, I would ask during the stipulation
20 again to follow it with a limiting instruction.

21 THE COURT: I just gave them a limiting instruction.
22 I'm not going to rehash everything. I'm just going to
23 provide them information I have not provided.

24 MR. HAYES: Yes, sir.

25 THE COURT: I'm not sure it's necessary, but I didn't

1 do it.

2 (Jury enters courtroom at 10:19 a.m.)

3 THE COURT: Ladies and gentlemen, as I told you, they
4 would remind me if I forgot something. And I did neglect
5 one thing.

6 And that is, introduced during the trial was a
7 stipulation. A stipulation is an agreement as to a fact
8 between the sides to a lawsuit, in this case a criminal
9 case.

10 The solicitor and the defense counsel have agreed to a
11 particular fact. So you don't have to worry about whether
12 or not there's evidence in the record to prove that fact.
13 They've agreed that it is a fact and therefore other
14 evidence of it was not introduced.

15 But the stipulation is in evidence and you'll have it
16 in the jury room. And what the stipulation provides is
17 that the State and the defense agree that the Defendant,
18 Tyrik Bright, does have a prior criminal record for two
19 convictions of burglary.

20 And, again, the purpose of that evidence is to
21 establish a degree of burglary. It is not introduced to
22 establish whether or not the Defendant has committed the
23 crime of burglary and you cannot consider it for that
24 purpose. But you can consider it in determining any
25 degree of burglary that has been proven, if such has.

1 Okay.

2 You may retire to your jury room and begin with your
3 deliberations. Notify us when you've concluded.

4 (Jury exits courtroom at 10:21 a.m.)

5 THE COURT: Any other requests?

6 MR. MCCARLEY: Nothing from the State, Your Honor.

7 MR. HAYES: No, sir.

8 THE COURT: Let me ask y'all to verify the exhibits,
9 please.

10 And what about the player for the video?

11 MR. MCCARLEY: It's my understanding we can take this
12 computer back to the jury room; is that correct?

13 UNIDENTIFIED SPEAKER: Yeah. I'm getting information
14 on that now to see if we have another laptop.

15 MS. YOUNG: We do have a screen in there, Your Honor

16 THE COURT: In the jury room?

17 MS. YOUNG: Yes, sir. It's just a matter of
18 confirming if it needs to be played if they request it.

19 (Attorneys reviewing evidence.)

20 THE COURT: All right. We're still in session. Have
21 all the exhibits been accounted for?

22 MR. HAYES: Yes, sir.

23 THE COURT: Send them back, tell the jury to begin
24 deliberations. Notify us when they've concluded. Have
25 they all got the computer to send back?

1 MR. MCCARLEY: We are efforting that as we speak, Your
2 Honor.

3 THE COURT: Could've done that ahead of time.

4 MR. MCCARLEY: I apologize. I apologize.

5 THE COURT: When did you think we might need it? When
6 the jury went out?

7 MR. MCCARLEY: It's just something I did not even
8 consider until just now, sir. I apologize.

9 THE COURT: Well... We'll be at ease while the jury
10 is deliberating.

11 (Thereupon, from 10:25 a.m. until 11:16 a.m., Court
12 stood in recess. Then the trial resumed as follows:)

13 THE COURT: Thank you. Be seated. The jury wants to
14 re-hear some testimony so we'll bring them back and replay
15 that testimony. All right. Bring them in.

16 (Jury enters courtroom at 11:19 a.m.)

17 THE COURT: All right. Ladies and gentlemen, I
18 understand you'd like to have the testimony of Mr. Fanning
19 and Detective Glover replayed.

20 So, the court reporter has that prepared and so we'll
21 replay it. And it will be played in its entirety unless
22 you tell us to stop. So if you get to a point you've
23 heard what you need to hear, you don't want to hear any
24 more, just let me know that fact and we'll stop it.
25 Otherwise it will be played from start to finish.

VERDICT & SENTENCING

1 (Thereupon, the testimony of Mike Fanning was played
2 from page 69 line six through page 75 line 18.

3 And, the testimony of Detective Glover was played from
4 page 100 line one through page 105 line five.)

5 THE COURT: Please retire to your jury room, continue
6 with your deliberations.

7 (The note from the jury was marked and received into
8 evidence as Court's Exhibit No. 1.)

9 (Jury exits courtroom at 11:35 a.m.)

10 THE COURT: All right. We'll stand at ease while the
11 jury is deliberating.

12 MR. MCCARLEY: Yes, sir, Your Honor.

13 (Court stood at ease until 11:43 a.m., when the trial
14 resumed:)

15 THE COURT: I'm told the jury has reached a unanimous
16 decision. Are we ready to receive it?

17 MR. MCCARLEY: The State is, Your Honor.

18 MR. HAYES: Yes, Your Honor.

19 THE COURT: Bring them in, please.

20 (Jury enters courtroom at 11:43 a.m.)

21 THE COURT: Mr. Foreman, have you and your fellow
22 jurors reached a unanimous decision?

23 FOREPERSON OF THE JURY: Yes, sir.

24 THE COURT: Have you reflected that decision on the
25 indictment as requested?

VERDICT & SENTENCING

1 FOREPERSON OF THE JURY: Yes, sir.

2 THE COURT: Did you sign it and date it as the
3 foreperson?

4 FOREPERSON OF THE JURY: Yes, sir.

5 THE COURT: If you'll please hand that verdict form
6 up.

7 FOREPERSON OF THE JURY: (Complies.)

8 THE COURT: You may publish the verdict.

9 THE CLERK: Your Honor, we have Case Number 2012-GS-
10 02-00423, the State of South Carolina versus Tyrik Gerard
11 Bright, indictment for burglary second degree, verdict of
12 the petit jury is guilty.

13 Signed, Douglas R. Melton, Foreman, June 12th, 2013.

14 Ladies and gentlemen of the petit jury, if is your
15 verdict, please indicate by the raising of your right
16 hand.

17 THE JURY (COLLECTIVELY): (Complies.)

18 THE CLERK: Judge, all hands are raised.

19 THE COURT: Are all hands raised? Okay.

20 Are there any other matters we need to address with
21 the jury present?

22 MR. MCCARLEY: Nothing from the State, Your Honor.

23 MR. HAYES: No, Your Honor.

24 THE COURT: Does the Defendant wish to have the jury
25 polled?

VERDICT & SENTENCING

1 MR. HAYES: No, sir. I believe all hands were raised.

2 THE COURT: Okay. All right.

3 Thank you, ladies and gentlemen. That's going to
4 conclude your service for the trial of this case.

5 The jury panel is in the jury assembly room. We
6 expect to -- as soon as everybody gets here, we expect to
7 select another jury. But because you have already served
8 in a case and we have plenty of jurors I'll leave it up to
9 you, if you want to be excused for the rest of today or if
10 you want to go back to the jury assembly room. You might
11 be called upon to serve again. If you prefer to be
12 excused for the balance of the day, as I say, we have
13 plenty of jurors. So I'm going to let you have that
14 option.

15 Is there anybody that wants to go back to the jury
16 assembly room in the hopes of being selected again?
17 Nobody? No hands on that one. All right.

18 You are excused for the balance of the afternoon.
19 Thank you for your participation. Please call back to the
20 number that you have after six o'clock this evening to
21 receive further reporting information.

22 Have a good afternoon.

23 THE BAILIFF: Need your badges, please.

24 (Jury exits courtroom at 11:47 a.m.)

25 THE COURT: All right. Any matters we need to address

VERDICT & SENTENCING

1 32 years of age, that he was previously working for
2 All-Star Tents and Rentals until this incident. After
3 this incident in early 2012, he started working at Amick
4 Farms and was working there until his arrest or
5 incarceration this time.

6 He has been a citizen of Aiken all his life. He
7 attended Aiken High School and made it through the 10th
8 grade. He has gotten a certificate in carpentry in 1998
9 and has no children.

10 Judge, I understand that the jury found us guilty. I
11 believe he's still maintaining that it's not him on the
12 video. And we would ask the Court to consider that when
13 it structures its sentence.

14 THE COURT: All right. Mr. Bright, do you have
15 anything you'd like to add to what your lawyers told me?

16 THE DEFENDANT: Yes, Your Honor.

17 I mean, I mean, that ain't -- I didn't do this crime
18 and I'm -- I don't understand. They, you know, they said
19 I did, you know. I thought that at least, you know, that
20 they had the video and the jury would get to see the
21 people that was doing it, you know.

22 And I was like, I know I ain't did this crime. So I
23 want -- I want -- I don't want to plead guilty to nothing
24 I didn't do so I took the trial hoping that, you know,
25 knowing that I'm innocent and that they'll see that.

VERDICT & SENTENCING

1 But they looked at it, you know what I'm saying,
2 really because it's not me, but I still was found guilty.
3 I mean, I'm just asking you this because I don't
4 understand how I was found guilty of a crime I didn't
5 commit.

6 THE COURT: Well, that's because those 12 jurors
7 unanimously determined that your guilt had been proven
8 beyond a reasonable doubt. That's how that worked.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Anything else you'd like to tell me?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Okay. What about his criminal history?

13 MR. MCCARLEY: Yes, sir, Your Honor. I was reviewing
14 that right now.

15 He has a resisting arrest in 1997.

16 Resisting arrest in 1998.

17 Shoplifting in 2000.

18 Breaking into auto, 2000. Another resisting arrest,
19 probation violation, failure to stop for a blue light.

20 He has a 2005 burglary second degree violent that was
21 referenced during the trial.

22 He also has a burglary third referenced. He also has
23 a false information to police.

24 If I may approach with the sentencing sheet, Your
25 Honor?

VERDICT & SENTENCING

1 THE COURT: Yes.

2 (Document handed to the Judge.)

3 MR. MCCARLEY: I would also like it noted for the
4 Court, Mr. Bright -- the Captain of the Aiken Department
5 of Public Safety as well as the Chief of Aiken Department
6 of Public Safety are actually on their way here right now
7 in support of the State in this case.

8 Mr. Bright was a member of something we call Safe
9 Communities Initiative whereby the small percentage of
10 people that are committing the large percentage of crime
11 are brought in, given opportunities for support, given
12 opportunities for jobs, et cetera, and help.

13 Now this crime does predate him getting in -- him
14 being put in that program. It's a probation-based
15 program. At the same time, Your Honor, Mr. Bright has
16 been recognized by public safety and the solicitor's
17 office in this community as someone who is a repeat
18 offender, who is a violent offender, and is a menace to
19 this community, Your Honor.

20 THE COURT: Mr. Hayes, do you or Mr. Bright have any
21 disagreement with the criminal history recited?

22 MR. HAYES: Judge, I don't disagree with his criminal
23 history.

24 I disagree with that program that he's referring to.
25 This incident was way prior to that program being

1 initiated, and any consideration of that is, I believe is
2 improper. And I object to it being used in consideration
3 of his sentence.

4 THE COURT: Okay.

5 ON INDICTMENT 2012-423, AN INDICTMENT FOR BURGLARY IN
6 THE SECOND DEGREE WHEREIN YOU HAVE BEEN FOUND GUILTY BY A
7 JURY OF THAT OFFENSE, THE SENTENCE OF THE COURT IS YOU,
8 TYRIK GERARD BRIGHT, BE CONFINED TO THE SOUTH CAROLINA
9 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.

10 Mr. Bright, you have a right to appeal the verdict of
11 the jury and the sentence of the Court. You must file any
12 notice of your intention to appeal those decisions within
13 ten days of today's date.

14 MR. HAYES: Thank you, Your Honor.

15 MR. ROUTZONG: Thank you, Your Honor.

16 MR. MCCARLEY: Thank you sir.

17 THE COURT: Okay.

18 END OF CASE: 11:54 A.M.

19 ** * **

20 CERTIFICATE OF REPORTER

21 STATE OF SOUTH CAROLINA)

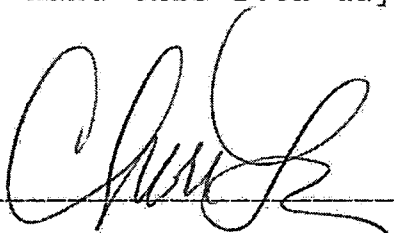
22 COUNTY OF AIKEN)

23 I, Cheri L. Young, Registered Professional Reporter
24 and Official Court Reporter for the State of South
25 Carolina, Second Circuit-At Large, do hereby certify that

1 the foregoing is a true, accurate and complete transcript
2 of record of the proceedings had and evidence introduced
3 in the hearing of the captioned case, relative to appeal
4 in the Court of General Sessions for Aiken County, on the
5 11th and 12th days of June, 2013.

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

8 I have hereunder set my hand this 26th day of July,
9 2013.

10
11
12 
13 Cheri L. Young, RPR
14 Official Court Reporter
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FORM 5

1093853

2015-CP-02-01489
 2012-GS-02-00423
 Filed 6-17-2015
 C.C.P. & G.S. Aiken County
 Deputy Clerk: [Signature]
 Trial Atty: [Signature]
 Court Reporter: [Signature]
 Sec. PCR/Petitioner: [Signature]
 General Sessions: [Signature]
 Appointed Atty: [Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF)

Tyrick Gerrard Bright 272194
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Aiken County Detention Center
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-02-00423
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 12, 2013
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Judgment of Conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Appellate ~~Ct~~ Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 14th 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Not Guilty of The Crim / No Evidence

- (a) _____
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) No evidence
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) ☒ any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof: Appeal
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Appellate De Pace
 ii. 1330 Lady Street Suite 401
 iii. Columbia SC 29201-3332
 iv. P.O. Box 11589
 (c) the disposition thereof: A Firm Conviction
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. MAY 14, 2015
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- 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?

NA

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- 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) NA
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. David Hayes
- ii. Wanda Porter 1330 Lady Street Columbia S.C. 29201
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

ACU Trial / Charges dismissed

20. Are you now under sentence from any other court that you have not challenged?

No

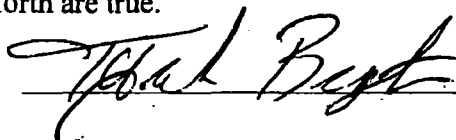
STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 16th
day of June, 2015.

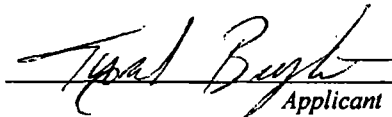
 (L.S.)
Notary Public

My Commission Expires: 4-27-2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

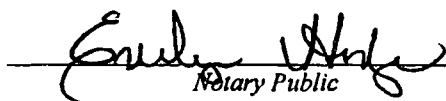
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

16th day of June, 2015


Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Tyrik Gerard Bright, #272194,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT

) Case No. 2015-CP-02-01484

) **RETURN AND MOTION FOR A MORE**
) **DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief filed June 19, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In March 2012, the Aiken County Grand Jury indicted Applicant for Burglary – Second Degree (2012-GS-02-00423). David Hayes, Esquire, represented Applicant. On June 10 - 12, 2013, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant without negotiations or recommendation to twelve (12) years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Bright, Op. No. 2015-UP-222 (S.C. Ct. App. filed May 6, 2015). The remittitur was returned to the circuit court on May 28, 2015.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Not Guilty of the Crim (sic)/ no evidence"
 - a. "no evidence"

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.

Attached to this Return and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. 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 application, Applicant alleges that he is being held in custody unlawfully based on the fact that there is no evidence. However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only

on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

III.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IV.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

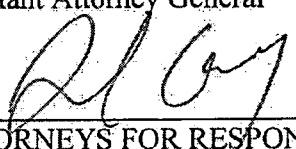
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 9, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2015-CP-02-01484

TYRIK GERARD BRIGHT, #272194,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this the 9th day of July, 2015.



Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2015-CP-02-1484
	)	
Tyrik Gerard Bright, #272194,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PRIOR PCR
v.	)	APPLICATION
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed June 19, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel for failure to object to Wolf's testimony constituting improper character evidence.
 - (b) Ineffective assistance of counsel for failure to object to Detective Glover's testimony.
 - (c) Ineffective assistance of counsel for failure to object to improper jury instructions.

Respectfully submitted,



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
September 28, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2015-CP-02-1484
	)	
Tyrik Gerard Bright, #272194,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE BY MAIL
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
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 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 September 28, 2015

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2015-CP-02-01484

3
4 TYRIK GERRARD BRIGHT,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Thursday, May 26, 2016

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE DIANE SCHAFFER GOODSTEIN

15
16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
Lance S. Boozer, Esq.

18
19 Counsel on Behalf of Respondent, State of SC:
Justin Hunter, Esq.
20 Julie A. Coleman, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
P O Box 5232
24 Aiken, SC 29803-5232
25

EXHIBITS

(No exhibits identified/introduced.)

EXAMINATION INDEX

TYRIK GERRARD BRIGHT

DIRECT BY MR. BOOZER

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CROSS BY MR. TURNER

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CHARLES DAVID HAYES

DIRECT BY MR. TURNER

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CROSS BY MR. BOOZER

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BY THE COURT

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1 ON THURSDAY, MAY 26, 2016, AT 10:05 A.M.:

2 THE COURT: Okay. Yes, sir.

3 MR. TURNER: May it please the Court, Your
4 Honor.

5 THE COURT: Yep.

6 MR. TURNER: This is Tyrik Bright versus the
7 State of South Carolina, 2015-CP-02-1484.

8 Your Honor, he was indicted the March 2012
9 term of the Aiken County Grand Jury for burglary in
10 the second degree, 2012-GS-02-423. He was
11 represented by Mr. David Hayes.

12 On June, 10th, 2013, he proceeded to a jury
13 trial before the Honorable J. Durham Cole and was
14 found guilty as indicted. He did file a direct
15 appeal which was perfected by Appellate Defense.
16 The Court of Appeals affirmed his convictions and
17 sentences by an unpublished opinion. A remittitur
18 was issued May 28, 2015. On June 19th, 2015, he
19 filed his current applications. He's represented
20 by Mr. Lance Boozer who did file an amendment as
21 well which should all be in your packet. He's
22 present today and so is Mr. Boozer.

23 THE COURT: Yes, sir.

24 MR. BOOZER: Good morning, Your Honor.

25 THE COURT: Yes, sir.

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 MR. BOOZER: At this time we would call
2 Mr. Bright to the stand.

3 THE COURT: All right.

4 TYRIK GERRARD BRIGHT, having been duly sworn,
5 was examined and testified as follows:

6 THE CLERK: Please have a seat in the witness
7 box and state your full name for the Court.

8 THE COURT: Good morning, Mr. Bright.

9 THE APPLICANT: How you doing, ma'am?

10 THE CLERK: Just state you name for the
11 record.

12 THE APPLICANT: Tyrik Gerrard Bright.

13 THE COURT: And how do you spell Tyrik?

14 THE APPLICANT: T-Y-R-I-K.

15 THE COURT: And, Gerrard?

16 THE APPLICANT: G-E-R-R-A-R-D.

17 THE COURT: Got it. Your witness.

18 MR. BOOZER: Thank you, Your Honor.

19 THE COURT: Mr. Boozer.

20 MR. BOOZER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. BOOZER:

23 Q. Mr. Bright, how are you doing this morning?

24 A. All right, sir.

25 Q. All right. Good. Do you know what it is

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 that we're doing here today?

2 A. Yes, sir.

3 Q. And what is it that we're doing?

4 A. PCR hearing.

5 Q. You filed an application for post-conviction
6 relief?

7 A. Yes, sir.

8 Q. Mr. Bright, what are you currently
9 incarcerated for?

10 A. Burglary second degree.

11 Q. All right. And did you have a trial in that
12 case?

13 A. Yes, sir.

14 Q. All right. What kind of sentence did you
15 receive?

16 A. 12 years, 65 is a -- 12 years, 65 violent.

17 Q. Well, tell me this. When is your max-out
18 date?

19 A. 20 -- I think it's June 2019.

20 Q. Okay. So it's not too terribly far away?

21 A. No, sir.

22 Q. All right. Mr. Bright, do you understand
23 today that the only thing that Her Honor can do,
24 that this Court can do is give you a new trial,
25 start you over from day one. Do you understand

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 that?

2 A. Yes, sir.

3 Q. All right. And you and I have discussed that
4 there's a possibility if you got a new trial and
5 let's just say everything went terribly wrong for
6 you at the trial for whatever reason, there's a
7 possibility that you could get more time than what
8 you have left with your max-out date being 2019?

9 A. Yes, sir.

10 Q. And understanding that, is it your decision
11 that -- even knowing that, you still want to go
12 forward today with your PCR hearing?

13 A. Yes, sir.

14 Q. Okay. Mr. Bright, let's take a minute. Who
15 was your lawyer for your trial?

16 A. David Hayes and he was assisted by Michael
17 Routzong.

18 Q. All right. Now, you filed a PCR
19 application. You got a few issues, correct?

20 A. Yes, sir.

21 Q. Let's just go through those issues and then
22 we'll talk about them individually. Okay?

23 A. Yes, sir.

24 Q. And I want to make sure that we've got
25 everything. You've got: Your lawyer failed to

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 object to a detective's improper -- or, excuse me.
2 Counsel failed to object to Wolf's testimony who
3 was a witness at your trial that you feel was
4 improper character evidence?

5 A. Yes, sir.

6 Q. You've also got that counsel failed to object
7 to a Detective Glover's testimony?

8 A. Yes, sir.

9 Q. All right. You've also got that counsel
10 failed to object to some jury instructions?

11 A. Yes, sir.

12 Q. Do you also take issue with, I guess there
13 were two prior burglaries that were stipulated to
14 at the beginning of your trial?

15 A. Yes, sir.

16 Q. All right. Before we get into each of those,
17 let's kind of get some background into the case.
18 Was Mr. Hayes appointed or retained as your lawyer?

19 A. He was appointed.

20 Q. Did you have any other lawyers besides
21 Mr. Hayes or was he the first and only lawyer
22 appointed to represent you?

23 A. He was, he was the only -- he was my lawyer
24 but they had Michael Routzong to assist him in my
25 trial.

1 TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 Q. Okay. Do you know how many times you
2 probably met with Mr. Hayes prior to your trial?

3 A. Probably twice.

4 Q. Do you know when those meetings may have
5 been?

6 A. It was once when I was out. I bonded out. I
7 went to the public defender office, he gave me a
8 Rule Five. And once when I got locked back up they
9 went off my bond. He came, like, probably a week
10 before I went to trial.

11 Q. All right. Was there ever a plea offer in
12 the case?

13 A. Yes, Your Honor -- I mean, they offered me 10
14 years and then the judge came back and he asked me
15 what was in my time stretch and I told Mr. Hayes, I
16 asked him for probation. Mr. Hayes said he
17 wouldn't give me probation. He said not even
18 asking, he just told me he's not going to give you
19 probation. But I asked him to ask him.

20 Q. Do you know if he asked -- when you're saying
21 you asked him to ask somebody, are you talking
22 about you wanted him to go to the solicitor and ask
23 if you could get some sort of probationary
24 sentence?

25 A. No, the judge came back, he told -- the judge

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 told Mr. Routzong that, to talk to me and ask me
2 did I -- what was in my time stretch. Usually,
3 like, what would I plead to, how much time could I
4 do.

5 And I asked for probation because I didn't do
6 the crime. They ain't had no evidence or nothing
7 on the crime. So I just said, man, I'll take
8 probation just to get it on out of the way. But
9 Mr. Hayes told me he wasn't going to give me
10 probation. But the judge asked me what was in my
11 time range. I was asking for probation but he
12 never asked me.

13 Q. Was this at your trial or right prior to your
14 trial?

15 A. It was the day of my trial.

16 Q. The day of your trial?

17 A. Yes, sir.

18 Q. Okay. You indicated you think you may have
19 met with Mr. Hayes maybe twice?

20 A. Yes, sir.

21 Q. Do you know about how long each one of those
22 meetings would last?

23 A. Well, one time when I went, when I went to
24 the public defender office I just got the Rule
25 Five. That wasn't probably, like, three, four

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 minutes, five minutes. And then it was another
2 time when he came to the jail but he came with a
3 female with him. And they was trying -- he was
4 trying to tell me that the lady was saying that,
5 oh, she's saying that that's you. It looks like
6 you. But I never seen this lady in my life at any
7 time. But he trying to tell me stuff, the lady
8 saying it looked like me on the camera. I say,
9 that's not me, I didn't do the crime. The lady
10 saying -- the lady that was with him, doesn't that
11 look like him. And she's saying, yeah. I'm like,
12 that's not me. I didn't do the crime.

13 Q. Did you discuss any defenses to the charges
14 other than you telling him it wasn't you?

15 A. In the other charges?

16 Q. Well, just any defenses. Any ways that y'all
17 felt like y'all could defend against these charges
18 or win in a trial.

19 A. Yes, sir. I basically, I basically told him
20 I ain't doing -- I ain't do the crime because they
21 got a camera. They got the video of the crime. So
22 I'm telling him I'm like, could you just show
23 you -- show the videotape because if you just look
24 at the videotape you will know it's not me. I was
25 trying to get him to show the videotape and let him

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 know it wasn't me.

2 Q. Let me ask you this. What was the
3 relationship like between you and Mr. Hayes? Were
4 you happy with him as your lawyer?

5 A. No, sir, because I had, I had caught some
6 drug charges and he was representing me on them.
7 And I had a simple possession that they had. When
8 I got locked up they charged me with a simple
9 possession of marijuana and possession of crack
10 cocaine, but when the narcotic agents came the next
11 day they weighed up the drugs and they came back
12 the next day with four more warrants saying that it
13 was way greater than a gram or more. So they
14 charged me with PWID in a school zone for the crack
15 and the marijuana but they left the simple
16 possession of marijuana into the computer. So I
17 went -- they took me to court on the simple
18 possession. I pled guilty to simple possession and
19 the judge gave me 30 days for it.

20 So I told Mr. Hayes that I pled guilty to the
21 30 days. I had showed -- I had sent the ticket to
22 him through the mail. I sent the ticket to him
23 showing him that I had pled guilty to these 30 days
24 to the marijuana charge. I said, now that's -- the
25 PWID marijuana happened in a school zone, can you

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 get that dismissed because I already pled to this
2 charge in magistrate court.

3 He wouldn't do it: So I told him I wanted
4 him fired, dismiss him from counsel because I
5 already feel that he was against me. Like, he was
6 trying to get me to plead to possession with
7 intent. He was trying to get me to plead to two
8 and a half mile school zone and 15 years. He
9 trying to get me two and a half mile school zones
10 and the plea was for 15 years but he saying if, if
11 I didn't plead to the half mile school zone that
12 they would've hit me with a habitual offender and
13 gave me a life sentence because I would have two
14 serious charges.

15 Q. Was that all going on while he was
16 representing you on these charges?

17 A. Yes, sir.

18 Q. Well, let me ask you this. Did you ever try
19 and have Mr. Hayes relieved as your lawyer?

20 A. Yes, sir.

21 Q. All right. Did you do that with regard to
22 this burglary charge?

23 A. Yes, sir.

24 Q. All right. Tell the Court about that. What
25 did you do?

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 A. It was probably a month prior before I went
2 to trial he took me in front of Judge Early. And I
3 told Judge Early everything about the, about how he
4 was trying to get me to plead to a charge that I
5 had already been found guilty of in magistrate
6 court and everything. I was basically letting him
7 know that he's not representing me, he's not for
8 me. But Judge Early wouldn't let me dismiss him
9 from counsel.

10 Q. Okay.

11 A. So when I was locked up I tried to get a copy
12 of it so I could bring it to my PCR hearing and
13 show the judge I tried to dismiss him of counsel
14 but it wasn't, it wasn't in -- Ms. Goddard told me
15 it wasn't in the record that I tried to dismiss him
16 from counsel. I tried to put in a motion to
17 dismiss counsel.

18 Q. But do you recall having a hearing such as
19 we're having today?

20 A. Yes, sir.

21 Q. Okay. And as a result of that hearing
22 Mr. Hayes was not relieved as your lawyer?

23 A. No, sir. The judge told me I had to keep
24 him.

25 Q. Well, when -- as you're saying you had to

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 keep him, what was your relationship like from that
2 point on to the trial with Mr. Hayes?

3 A. I basically didn't want to talk to him, you
4 know, because every time he came to me he was
5 trying to get me to plead guilty to a charge,
6 telling me that's, you know, me on the camera,
7 that's me, this is me, and they're going to do
8 this.

9 So I basically was telling Mr. Routzong -- I
10 was really basically talking and dealing with
11 Michael Routzong. So Michael Routzong is the guy
12 that really got the PWID marijuana dismissed when I
13 gave him a copy of the ticket but Mr. Hayes
14 wouldn't get it dismissed.

15 Q. I want to talk about your allegations now.
16 With regard -- let's talk about -- who was Mary
17 Wolf? She testified at your trial. Who was she?

18 A. She was a owner of the business that I was
19 working at, at All Star Rents, Tent and Events.

20 Q. And is that the place that was alleged to
21 have been burglarized?

22 A. Yes, sir.

23 Q. How did you get that job?

24 A. I had -- my step dad, he had told me, like,
25 that they was hiring people that got out of prison,

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 giving them a chance to work over there. So when I
2 went over there that's how I got the job, from --
3 my stepfather had took me over there and introduced
4 me to them.

5 Q. Okay. Now do you recall Ms. Wolf testifying
6 at your trial?

7 A. Yes, sir.

8 Q. All right. For Your Honor's information, I'm
9 looking at page 96 through 97 of the trial
10 transcript.

11 THE COURT: Uh-huh. Okay.

12 BY MR. BOOZER:

13 Q. And just paraphrasing some of the testimony.
14 At this point, Mr. Bright, was there some testimony
15 that Ms. Wolf sort of went through and started
16 gathering a list of names of people who worked
17 there?

18 A. Yes, sir.

19 Q. And then on page 97 the question is asked of
20 Ms. Wolf: Would you mind telling me a little bit
21 about the people on that list. And then Ms. Wolf
22 says: Well, I started by the females, took them
23 off the list. And then I had no choice but to
24 segregate the number of blacks that were on the
25 list and the number of whites. And then I took

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 those names of males because at that time we had a
2 pre-release program where we brought gentlemen from
3 the pre-release program for work.

4 Do you recall that testimony?

5 A. Yes, sir.

6 Q. All right. Then Mr. Hayes, your attorney,
7 says, Judge, I'm going to object. Sidebar. And at
8 that point the Court says: Let me see y'all just a
9 moment. Then there's an off-the-record discussion
10 and then the testimony continues at that point.

11 Do you remember the objection being made?

12 A. Yes, sir.

13 Q. All right. And have you reviewed the
14 transcript?

15 A. Yes, sir.

16 Q. Did you see where there's any ruling on the
17 objection?

18 A. I can't recall.

19 Q. All right. Did you -- did you also file a
20 direct appeal in this case?

21 A. Yes, sir.

22 Q. And was -- that went up through appellate
23 courts?

24 A. Yes, sir.

25 Q. Was that one of the issues that was raised on

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 your appeal is that the trial judge erred in
2 admitting that testimony?

3 A. Yes, sir.

4 Q. Do you know whether the State actually argued
5 that, well, it wasn't preserved because there was
6 no ruling on the record?

7 A. Yes, sir.

8 Q. All right. Do you think -- when she was
9 referring to the pre-release program, is that
10 talking about you?

11 A. Yes, sir.

12 Q. Is that how you had the job?

13 A. Yeah. She was basically saying, basically
14 stating that she had to really segregate the
15 people, the people that was criminals, just the
16 people that was basically, that she could say was
17 capable of committing this crime.

18 Q. All right. Do you think that that prejudiced
19 your case?

20 A. Yes, sir.

21 Q. Going back. You had mentioned earlier that
22 there was a stipulation made that you had two prior
23 burglaries?

24 A. Yes, sir.

25 Q. All right. Tell the Court about that.

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 A. I had, I had asked Mr. Hayes -- well,
2 Mr. Hayes gave the solicitor, Mr. McCarley, a
3 written agreement to use two of my prior burglary
4 convictions against me. And I already knew that
5 they couldn't really bring my priors up unless I
6 took the stand.

7 But I don't know how he knew that I wasn't
8 going to take the stand or nothing like that, but
9 Mr. Hayes gave Mr. McCarley a written agreement
10 without my consent to use two of my background, two
11 of my burglaries out of my background record.

12 Q. Was this, -- Your Honor, just for the Court's
13 information, this is on page 33 of the transcript
14 which Mr. Bright is referring to.

15 THE COURT: Uh-huh.

16 BY MR. BOOZER:

17 Q. Mr. Bright, did you have any discussion with
18 Mr. Hayes about stipulating to the fact that you
19 had two prior burglary convictions?

20 A. I never, I never knew that he was going to do
21 that. It was a surprise to me. And I asked him, I
22 asked him, I asked him why would he do that, why
23 would he give him permission to do that. And he
24 kept saying the lady's up front, the lady's up
25 front. I was, like, why would you give this man

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 permission to use prior burglaries against me
2 because if he's, he's saying that I got prior
3 burglary's it's going to make it look like to the
4 jury that I'm a burglar.

5 And so at the time during the trial the
6 solicitor, Mr. McCarley, he kept using, he kept
7 showing it to the jury, he kept showing it to the
8 jury he got two prior burglaries, two prior
9 burglaries charges, two prior burglaries. He did
10 it, like, four times.

11 Q. And when are you referring to him saying
12 that? Are you talking about when he's making his
13 arguments to the jury?

14 A. Yes.

15 Q. Okay. Do you think that that prejudiced your
16 case?

17 A. Yes, sir, because that was really no, no
18 evidence against me, no physical evidence, no
19 nothing. Only thing they had was the witnesses
20 saying that they -- well, the judge in my pretrial,
21 he admitted the witnesses in on personal perception
22 because he looked at the video during my pretrial
23 and he, he knows that you couldn't see nobody face
24 on the camera.

25 So he asked the solicitor, he asked her: Can

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 you say that this is Mr. Bright. He's sitting
2 beside you. You can look at him all you want. Can
3 you say this is him. And the solicitor, I think,
4 the woman, she was, like, no, Your Honor, I can't
5 say that it's him. So the judge told her, he said,
6 well, is that fair to say, for your witnesses to
7 say that's him.

8 So, at the time when I got -- during the
9 trial, that's all they had was somebody thinking
10 that I did this crime. So, being -- my judgment is
11 the only defense that they had was to make it look
12 like that I'm a criminal, that I'm a burglar, that
13 I did this before. So he kept using it. He has a
14 burglary in 2005 and 2007. He did it, like, four
15 times. Keep in mind he has a burglary in 2005 and
16 2007.

17 Q. Let me ask you another question. You've
18 alleged that your lawyer failed to object to
19 Detective Glover's testimony?

20 A. Yes, sir.

21 Q. Now who was Detective Glover?

22 A. He, he's a detective in Aiken County. You
23 know, I've been getting in trouble since I was
24 young so he probably, he basically he knows me
25 since I'm a juvenile.

TYRIK GERRARD BRIGHT - DIRECT BY BOOZER

1 Q. You've had some dealings with Detective
2 Glover before?

3 A. Yes, sir.

4 Q. And, Your Honor, for the Court's information
5 looking at his testimony -- Detective Glover's
6 testimony begins on page 100 and goes through
7 several pages after that. I'm looking at, in the
8 record I'm looking at page 106 specifically. Well,
9 if we can flip back to 105. And beginning at --
10 Mr. Bright, do you recall the testimony of
11 Detective Glover?

12 A. Yes, sir.

13 Q. All right. Do you recall the solicitor
14 asking Detective Glover, looking at an exhibit and
15 describing it as the mailbox in front of All Star
16 Rental and across the street is where Mr. Bright
17 lives?

18 A. Yes, sir.

19 Q. Was there any objection to that that you
20 recall?

21 A. I don't think so. I don't think so.

22 Q. All right. And then the question was asked:
23 How do you know that. And Detective Glover says:
24 I just know that's where he lives at. I've seen
25 him there numerous times riding through the

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1 neighborhood.

2 Was there any objection to that?

3 A. No, sir.

4 Q. And then on 106 the question is asked on line
5 five: Detective Glover, how long have you known
6 Tyrik Bright. The Answer: Probably -- and your
7 lawyer says: I'm going to object to this line as
8 to my prior reasons that it's cumulative. That's
9 overruled. And approximately 15 years.

10 And then just paraphrasing the rest of the
11 testimony, does he identify you in the courtroom?

12 A. Yes, sir.

13 Q. Okay. Why do you feel like -- do you feel
14 like your lawyer objected to everything he should
15 have objected to in that line of questioning?

16 A. No, sir. Because I already knew that -- I
17 already knew they was trying to paint the picture
18 that I was a burglar, that I was already a
19 criminal. That's why they got the prior
20 convictions, the police detective up here
21 identifying me because they had no physical or no
22 kind of evidence, nothing. Only thing they had was
23 something that, just to paint a picture that
24 Mr. Bright is a criminal, he's a well-known
25 criminal. And that's what kept me on the jury. I

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1 don't see no other kind of way that they found me
2 guilty.

3 Q. All right. Do you recall the jury
4 instructions where the judge gives instructions to
5 the jury?

6 A. Yes, sir, but I really don't understand a lot
7 of it because, you know, I ain't really sharp in
8 courtroom talk.

9 Q. We'll probably ask those questions towards
10 Mr. Hayes in a moment. But other than what we've
11 talked about, the allegations that you've presented
12 today, do you have any other -- anything else that
13 you want to tell this Court about your PCR case or
14 about your claims against Mr. Hayes or anything
15 that happened at the trial court or prior to your
16 trial that you believe is relevant that we haven't
17 covered and that you've alleged in your PCR
18 application?

19 A. I just, I just want to put on the record
20 that, you know, I ain't -- I don't see how I'm even
21 found guilty of a crime that they have no evidence
22 on me because I didn't do this crime. So I don't
23 understand.

24 But at the end of the day only the thing I
25 see is, like, they just using my background record

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1 and the detective to say that I did this crime. But
2 I didn't do the crime.

3 And the judge, the judge knew that these
4 people couldn't see me on, like, they, they, they
5 couldn't pick nobody out of this video because you
6 got two people on there. You could see one. You
7 couldn't see two. But I knew I ain't do this
8 crime. Even if they would have offered me one year
9 I wouldn't have pled guilty to it because I didn't
10 do this crime.

11 And in my mind I didn't think I was going to
12 get found guilty because I didn't do this crime,
13 but, everything that happened in the trial it was,
14 like, it was trying to point to me like I was a
15 convicted felon and I did it before and I'll do it
16 again.

17 The judge let the witnesses in under personal
18 perception. So that means that you consented that
19 this man did this. So the whole time he let the
20 witnesses in that testified that, okay, I think
21 that's Mr. Bright. But the whole time the
22 solicitor, Mr. McCarley, was asking them questions
23 they're saying, can't see his face, can't see his
24 face. And they're saying yes, yes, yes.

25 Q. Let me ask you one other question we probably

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1 didn't cover. When Detective Glover was called,
2 and I'm looking at page 104 through 105, do you
3 recall Detective Glover, beginning at line 23
4 through 105 line, beginning at line one. Do you
5 recall Detective Glover identifying you on the
6 video?

7 A. Yes, sir.

8 Q. Okay. Was any objection made to that
9 identification that you recall?

10 A. I can't recall right now because I can't, I
11 ain't got my legal work with me because I was --

12 Q. Let me ask you this. I'm sorry to cut you
13 off. If there's not an objection on the record
14 would you agree with that?

15 A. No, sir.

16 Q. Let me ask you that again. If in the record
17 that it says that no objection was made, would you
18 agree that no objection was made?

19 A. Can you run that by me again?

20 Q. Yes, sir. All right. This is what I'm --
21 I'm looking at page 105 of the transcript. And the
22 question was asked, and this is of Detective
23 Glover: And was that where you were able to make a
24 determination -- or, excuse me. Let me back up.

25 On page 104 the question was asked:

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1 Detective Glover, I'm going to show you what's
2 already been entered as State's Exhibits 11, 12, 13
3 and ask you if you recognize those exhibits.

4 Answer: Yes, ma'am. That was pictures, still
5 pictures from the video that I observed Mr. Bright
6 in the video. Question: And was that where you
7 were able to make a determination or identification
8 of him. Answer: Yes, ma'am.

9 If there's no objection made, would you
10 agree -- would you agree with me that no objection
11 was made during this testimony?

12 A. I think he should've objected to it.

13 Q. Okay. Anything else that we've not covered?

14 A. I have some questions here. (Pause.)

15 Basically I guess we covered most of it.

16 Q. I don't want to miss it. I want to make sure
17 we covered everything.

18 A. Yeah. The only thing I really wanted to
19 address to the Judge and everybody is that I ain't,
20 like, I was found guilty because of my background
21 record because they stipulating that I got two
22 prior burglaries, two prior burglaries, two prior
23 burglaries, two prior burglaries. You know, I
24 ain't, I ain't do the crime.

25 The only thing I ask for is another, another

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1 trial, man, because I feel like that's the only
2 thing that hurt me during my trial because that's
3 the only thing that they had against me is that, is
4 that, those two bills, that I had two prior
5 burglaries.

6 If those wasn't into, wasn't entered into
7 evidence, which I didn't give my lawyer consent to
8 enter into evidence, I believe my trial would have
9 been totally different.

10 Q. All right. Mr. Bright, at this time I don't
11 have any further questions of you. Please answer
12 any questions that Madam Attorney General has for
13 you.

14 THE COURT: Cross-examination. Yes, sir.

15 MR. BOOZER: Or, excuse me. Mr. Attorney
16 General.

17 MR. TURNER: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. TURNER:

20 Q. So you said you met with Mr. Hayes twice
21 before your trial?

22 A. Yes, sir.

23 Q. And you wanted him to be relieved before
24 trial; is that what you're saying?

25 A. Yes, sir.

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1 Q. Did you ever tell the trial judge that you
2 wanted him relieved?

3 A. I ain't tell the trial judge because Judge
4 Early told me I had to keep him, so I feel like I
5 had to put in a motion to dismiss, so I feel like I
6 had to keep him.

7 Q. This was Judge Cole. Did he say anything?

8 A. No. Judge Cole never dismissed it. I went
9 in front of Judge Early to dismiss my counsel.
10 Judge Early told me I had to keep him. So I had
11 went through trial with him. I feel I had to go
12 all the way through with him.

13 Q. Okay. But now you're saying you didn't want
14 him as your attorney at the trial?

15 A. No. I tried to dismiss him but the judge
16 told me I had to keep him, probably a month prior.

17 Q. Okay. Now, you said you talked to him about
18 discovery or Rule Five, and defenses. You said
19 that it was -- your defense was basically, I didn't
20 do it? Is that -- you reviewed the videos and the
21 pictures with him?

22 A. (Nods head.)

23 Q. Okay.

24 A. Yes, sir.

25 Q. Now, I guess you had some disagreements with

TYRIK GERRARD BRIGHT - CROSS BY TURNER

1 whether or not it was you on camera, talking to
2 Mr. Hayes?

3 A. Yes, sir.

4 Q. Okay. And he thought that it was you?

5 A. Yes, sir.

6 Q. You said it wasn't?

7 A. Yes, sir.

8 Q. Okay. Now just briefly we talked about or
9 your counsel talked about Ms. Wolf's testimony
10 about the pre-release program. Did she ever say
11 that you were on that program?

12 A. She never stated that. But she stated --
13 well, she was stating, she was stating it to the
14 fact that I, when I got out of jail it was, like,
15 they was hiring people that was getting out of
16 jail. Like, like, when you get out of jail they'll
17 give you a job. They'll try to help you. Like,
18 you just getting out of jail. So she was basically
19 letting them know that I was fresh out of prison.
20 It's on my application and everything.

21 Q. Was she talking about you or was she talking
22 about everybody else on that list?

23 A. Yeah, it's probably about, like, five,
24 probably about four or five of us at the time but
25 she couldn't say it was them because they were

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1 still there. So she really just segregated them
2 out because they went back to the camp that night
3 but I was released. I was free. So she basically
4 telling them that I was the only person that was
5 capable of doing it that was on the pre-release.

6 Q. Well, wasn't the point of that list to find
7 out who helped you do it?

8 A. I don't know. I can't really say what her,
9 what her intention was on the list.

10 Q. Okay. Well, about the stipulation, do you
11 remember the judge or do you remember your counsel
12 saying, Judge, as long as it's clear that they can
13 only use it as an element of the crime and not as a
14 way to prove character, I don't see where I have a
15 grounds to object. That's page 33 starting at line
16 15.

17 So do you remember Mr. Hayes saying you can't
18 use this for his character, only as an element of
19 burglary; isn't that correct?

20 A. I ain't got my, my trial paper with me but --

21 Q. And do you remember the judge reminding the
22 jury after his charge, I think they came back out
23 and he went over what a stipulation was with them.
24 Do you remember that?

25 A. I think so but I never gave him permission to

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1 even give this man permission to use my background
2 record. That's why I asked him. I thought he had
3 to ask me to get permission from me to even give
4 somebody consent to use my background record
5 because I didn't even know that he knew that I
6 wasn't going to take the stand.

7 Q. Okay. So basically you didn't know that they
8 were allowed to use all of this without talking to
9 you first?

10 A. Yeah. It was -- part of my defense was me
11 not taking the stand. The other part of my defense
12 but I don't know how he understood that I wasn't
13 going to take the stand and he not going to be able
14 to use my background record and he was going to
15 need consent. That was part of my defense because
16 there was no evidence against me and my defense was
17 not to take the stand because I didn't do the
18 crime.

19 Q. Okay. Now, just -- about Officer Glover's
20 testimony. Did he ever say, I know Mr. Bright from
21 working in law enforcement or I've arrested
22 Mr. Bright before?

23 A. No, they prohibited him from saying that.

24 Q. Right.

25 A. The judge prohibited him from saying that.

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1 Q. Right. So all he said was, I've seen him
2 around the neighborhood?

3 A. (Nods head.)

4 Q. Okay.

5 A. Yes, sir.

6 Q. I just wanted to make sure.

7 A. Yes, sir.

8 Q. And you're also just -- about the evidence.
9 You were ID'd by Mr. Fanning from the video and
10 still pictures and Ms. Wolf from the video; is that
11 correct?

12 A. Yes, sir. They said that they seen my face
13 but the trial -- the judge in my pretrial basically
14 went over that with the solicitor showing her that,
15 how can you say that. You can't see nobody's
16 face. And your witness's saying that they can see
17 somebody's face.

18 So the judge basically told them they can't
19 come into the trial and say that they seen my face
20 on the camera because you can't see a face.

21 In my pretrial the judge asked to see the
22 camera -- see, see the video. And they produced
23 the video to him. And he came back. He realized
24 that you can't see a face. So he prohibited them
25 from saying that they can see my face on the

1 camera. So he let them in to identify me on a
2 personal perception. That means you could see
3 that's him.

4 Q. Right. Right. Okay. And they did make
5 those identifications during your testimony?

6 A. They made identification saying that they see
7 my face, all -- both of them.

8 Q. All right. I don't have anything else.

9 THE COURT: Okay. Redirect?

10 MR. BOOZER: No redirect, Your Honor.

11 THE COURT: Thank you. You can come on down.

12 THE APPLICANT: Thank you, Your Honor.

13 THE COURT: All right. Call your next
14 witness.

15 MR. BOOZER: No further witnesses on behalf
16 of the Applicant, Your Honor.

17 THE COURT: Okay. Now, before we move
18 along. Mr. Bright was talking about a pretrial and
19 reviewing the video. And, just -- I was looking --
20 there it is. What pages would you refer me to?

21 MR. BOOZER: For the pretrial, Your Honor?

22 THE COURT: Yeah. The colloquy that says you
23 can't see the faces. Because I'm not clear whether
24 or not the judge, on what basis he would have
25 allowed the video if you can't see anything.

1 MR. BOOZER: Court's indulgence.

2 THE COURT: Huh?

3 MR. BOOZER: Court's indulgence.

4 THE COURT: Absolutely. Absolutely.

5 (Pause.)

6 MR. TURNER: Your Honor, I believe it starts
7 on page 30. The judge basically says that they
8 have to use their personal perceptions to make that
9 identification. I'll get the exact line for you.

10 THE COURT: Okay. Because I was looking at
11 the June 10th.

12 MR. TURNER: Oh, the Denno?

13 THE COURT: Is that --

14 MR. TURNER: It begins on the next one. I'm
15 sorry.

16 THE COURT: So you would send me to the
17 bigger transcript on page 30?

18 MR. TURNER: Yes, yes, Your Honor.

19 THE COURT: Okay. All right.

20 MR. TURNER: And I believe it starts page
21 30 --

22 THE COURT: Okay.

23 MR. TURNER: -- about either the second full
24 paragraph or third full paragraph.

25 THE COURT: Okay.

1 MR. TURNER: Your Honor, line 16 and 17.
2 THE COURT: That's exactly where I am. Yeah.
3 MR. TURNER: Okay.
4 MR. BOOZER: I think we're on page 25,
5 Judge --
6 THE COURT: Okay.
7 MR. BOOZER: -- in the pretrial is what
8 Mr. Bright has directed me to. I think his -- I
9 want to make sure I'm answering the Court's
10 question.
11 THE COURT: Okay. You're talking about the
12 June 10th hearing?
13 MR. BOOZER: Yes, ma'am.
14 THE COURT: All right. Wait a minute now.
15 And you want me to go now to page 15?
16 MR. BOOZER: He's looking at page 25.
17 THE COURT: I'm sorry. Let me get to 25.
18 Okay. I'm at 25. Okay.
19 MR. BOOZER: All right. And I'm not sure --
20 I may not even recall Your Honor's question so I
21 apologize.
22 THE COURT: Just go with it.
23 MR. BOOZER: He wanted me to direct your
24 attention to this.
25 THE COURT: Sure.

1 MR. BOOZER: This is on page 25 at line 10,
2 and the question was asked to Ms. Young, the
3 solicitor's office: And did you identify
4 Mr. Bright only by looking at his face. And she
5 says: Can I personally. The Court: Yes, ma'am.
6 Ms. Young: No, sir, Your Honor. The Court says:
7 Why is it that somebody else can identify him.

8 And then we go through, well, that's what I
9 was getting back to is that Mr. Fanning and
10 Mr. Wolf who worked for {sic} Mr. Bright, they had
11 an opportunity to observe him, observe kind of how
12 he walks.

13 THE COURT: And then he starts -- that was
14 perfect because then the judge goes back at page 30
15 in the trial transcript and he says, and he's
16 having a colloquy with Mr. Hayes, at page 30
17 beginning at line -- really, I guess at line two,
18 and it appears that, that the objection and what's
19 talked about in pretrial is they can't see their
20 faces.

21 And the judge is talking about you can't see
22 the faces but then at page 30 the judge has
23 reviewed State V Fripp and State V Mitchell, and it
24 says this: And while at the time during argument I
25 had some reservation about the witnesses making the

1 identification, I have looked at the video itself
2 and there's more exhibited in the video other than
3 just the Defendant's face. It also shows him
4 walking through what appears to be some type of
5 warehouse. And it shows his clothing. It shows
6 his mannerisms. And it shows also at least some
7 view of his face. Having read the cases I think
8 it's clear based upon the case law now that such an
9 identification is proper with the identification
10 based upon the personal perception of the
11 witnesses, based upon their knowledge of the
12 Defendant. And therefore your motion to exclude
13 their identification of the Defendant as being one
14 of those persons exhibited in the video is denied.

15 So I see where your client is coming from.
16 He's coming from the discussion at pretrial. But
17 it appears that Judge Cole picked that up again
18 before the trial began the next day.

19 And, because apparently there was some
20 hearings on the 10th of June and there was a
21 hearing on the 11th of June. Apparently he read
22 the cases and looked at the video and ruled on the
23 11th and says that he's going to deny the motion to
24 exclude because of the cases that he read and
25 because he viewed the video and there are other

1 things depicted additionally.

2 You know, and I know that that was a matter
3 arranged by the client and I just wanted to sort of
4 nail that down.

5 Now having said that, are there more parts of
6 the transcript that I need to look at because it
7 just -- my -- and let me watch the sausage being
8 made. That's sort of where intellectually I am at
9 this point. I read the 10th, looked like the judge
10 had big concerns, came onto the 11th it looked like
11 they were resolved.

12 But if there was a change I want to know
13 about it so I can read that, too.

14 MR. BOOZER: Your Honor, I think the relevant
15 testimony would be, for Your Honor's review would
16 be confined to Detective Glover's testimony sort of
17 as a whole.

18 THE COURT: Okay.

19 MR. BOOZER: And then also Ms. Wolf's
20 testimony.

21 THE COURT: Okay.

22 MR. BOOZER: And then of course relating to
23 his other allegations, the opening and the closing
24 by the State --

25 THE COURT: Gotcha.

1 MR. BOOZER: -- in the case but I think what
2 he's really harping on and referring to is the
3 identification of his face on the video which he
4 feels like, well, if the judge can't see it how can
5 anybody else make that identification. We
6 certainly understand the judge's ruling but I think
7 it also kind of goes into how well it was preserved
8 for appellate review as well.

9 But those are the areas which would need to
10 be examined.

11 THE COURT: Let me ask you this question. Is
12 the position of Mr. Bright that after all of this
13 that the objection was not made to the
14 admissibility of the video?

15 MR. BOOZER: Well, Your Honor, I guess I'm
16 left a little bit confused --

17 THE COURT: Okay.

18 MR. BOOZER: -- in the opinion that was
19 handed down by the Court of Appeals.

20 THE COURT: Okay.

21 MR. BOOZER: And, certainly, respectfully,
22 I'm a little bit confused. There is, the two
23 issues on appeal were as to the --

24 THE COURT: That happens to me a lot.

25 MR. BOOZER: -- admissibility of Wolf's

1 testimony as well as to Detective Glover's
2 testimony. I think my client's position on this is
3 that there is an analysis done in each breakdown of
4 the opinion. As to Wolf's testimony, you know,
5 generally the admissibility of evidence is left up
6 to the discretion of the judge and so on and so
7 forth. But then the last line of each section has
8 stating constitutional issues must be raised and
9 ruled on by the trial court to be preserved for
10 appeal.

11 So I think that's where the argument comes in
12 that, well, maybe looking at it from this and
13 seeing that opinion, there's certainly an argument
14 for, well, maybe it wasn't made strenuously enough
15 to protect record.

16 THE COURT: I understand.

17 In other words, his concern is that when you
18 look at the appellate opinion, which I have not
19 looked at at this moment, I will, maybe sooner
20 rather than later, but his concern is that even
21 though there appears to be some degree of analysis
22 at the end of that analysis there is the lack of
23 preservation statement made and that concerns
24 Mr. Bright because his position would be why would
25 -- if it was preserved, why would they make that

1 statement.

2 MR. BOOZER: Absolutely, Your Honor.

3 And really, I don't want to mislead the Court
4 into thinking that there was no analysis done on to
5 the admissibility of either issues but just to
6 point out, as Your Honor has done, that that
7 isn't -- that is stated that, the issue about
8 preserving it for appeal.

9 And even the State's argument as to
10 Ms. Wolf's testimony in the briefs is that, well,
11 it wasn't raised and ruled upon by the trial court
12 so it's not preserved for appeal. In their brief,
13 that was their main argument on Ms. Wolf's
14 testimony. I don't believe that they argued it on
15 Detective Glover's testimony.

16 THE COURT: Okay. Got it. Got it.

17 MR. TURNER: Your Honor, we would call
18 Mr. David Hayes.

19 CHARLES DAVID HAYES, having been duly sworn,
20 was examined and testified as follows:

21 THE CLERK: Please have a seat in the witness
22 box and state your name for the Court.

23 THE COURT: And now state your full name.

24 THE WITNESS: Charles David Hayes, H-A-Y-E-S.

25 THE COURT: All right. Your witness.

C DAVID HAYES - DIRECT BY TURNER

1 MR. TURNER: May it please the Court.

2 DIRECT EXAMINATION

3 BY MR. TURNER:

4 Q. Mr. Hayes, where do you currently work?

5 A. Second Circuit Public Defender's Office.

6 Q. Is that where you were working in 2012 --

7 A. It was.

8 Q. -- when this case took place?

9 A. Yes.

10 Q. Could you briefly describe how your
11 representation of Mr. Bright began?

12 A. I don't remember a whole lot, but all the
13 cases are appointed to the public defender's
14 office. Once they're appointed to the public
15 defender's office, they are dished out or assigned
16 to different attorneys. I previously represented
17 Mr. Bright and therefore the case was assigned to
18 me.

19 Q. And about how long were you representing him
20 from beginning to when this trial occurred?

21 A. It looks like he was arrested on 12-29-2011,
22 appointed on January 4th, 2012, and then we had the
23 trial --

24 THE COURT: I've got on the transcript June
25 the 11th and 12th, 2013, is what the transcript

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1 says.

2 THE WITNESS: And I filed for a speedy trial
3 on -- January, February, March -- May 16, 2013, in
4 front of Judge Early. And it was set for trial
5 June 2013. And a motion to relieve was heard at
6 that time.

7 BY MR. TURNER:

8 Q. That motion to relieve on this particular
9 case?

10 A. Yeah.

11 Q. Okay.

12 THE COURT: In May or in June?

13 THE WITNESS: It would have been heard on
14 5-16-2013, when we did the motion for a speedy
15 trial.

16 BY MR. TURNER:

17 Q. You how many times did you meet with him
18 before trial?

19 A. I went to jail and saw him on January 25th,
20 2012, 3-27-2013, 4-17-2013. Then I met with him on
21 5-16 as well. And I think there was another one,
22 on 5-6-2013. 5-13 at court was the next one.

23 Q. And aside from meeting with him, what other
24 forms of communication, if any, did you have?

25 A. Letters and phone calls.

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1 Q. Okay. Now, during these meetings do you
2 recall what y'all discussed?

3 A. We reviewed the video, what the testimony of
4 the people would be. My advice was that he
5 probably needed to try to work it out. He said it
6 wasn't him, he wanted to go to trial. We reviewed
7 the video. My intern at the time was, Katie Graves
8 was currently licensed as an attorney but she also
9 watched the video. We went over all the discovery
10 at the jail visit that he was referring to. And
11 she even said that she believed it would be him and
12 that he would be found guilty.

13 Q. And, you relayed your opinions --

14 A. Yes.

15 Q. -- to Mr. Bright and is that where a lot of
16 the disagreements came from?

17 A. Yes.

18 Q. What, if anything, did he do to assist in his
19 defense?

20 A. I'm looking at a letter from June 7. It's
21 saying: During our conversation you informed me
22 that two other individuals were accused by your
23 employer of committing the crime. However you say
24 you do not want me to contact them and that that
25 would not give me any contact information.

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1 Therefore, I'm unable to ask them and be able to
2 interview them as potential witnesses.

3 And that was on a letter from June 7th of
4 2013.

5 Q. And that was based off information --

6 A. That he discussed with me at Aiken County.

7 Q. Okay. That he discussed, not that the State
8 provided? I'm a little unclear.

9 A. He informed me that there were other
10 co-workers that the, Ms. Wolf and Mr. Fanning
11 accused of doing the crime. And that that would
12 show that they maybe were unsure of who the person
13 in the video was and it was my, you know, how I was
14 going to use it. And when I asked him for more
15 information about how to contact these individuals
16 so I could interview them, it was refused.

17 Q. Other than the possibility of the other two
18 individuals being involved, did he do anything
19 else, provide you with any other alibis, witnesses?

20 A. No, not that I'm aware of.

21 Q. Now leading up to trial there was never any
22 doubt that he wanted to go to trial?

23 A. No, no doubt.

24 Q. And just to talk about this allegation
25 briefly. The two prior burglary stipulations, did

C DAVID HAYES - DIRECT BY TURNER

1 y'all discuss this prior to trial?

2 A. I don't recall. I'm sure I would have at
3 least discussed it with him and as to why I would
4 stipulate. And the reason I did that is I made a
5 decision strategically that I did not want two
6 clerks or a clerk from the court to sit up here and
7 put in two certified copies of two prior
8 convictions other than I could just stipulate and
9 it would be just a quick, we stipulate to two
10 priors.

11 Q. Rather than a big announcement?

12 A. Yes.

13 Q. And, was there ever any issue that those
14 would be used? I mean, was he denying that he
15 committed those?

16 A. No.

17 Q. Okay. So, do you recall the judge defining
18 stipulations to the jury?

19 A. I do not but I did read it in the transcript.

20 Q. Okay. But you do remember -- when you
21 stipulated to this at the beginning did you tell
22 the judge about any -- to give a cautionary
23 instruction?

24 A. I think he had mentioned it earlier that as
25 long as it wasn't used as a character back door I

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1 was okay with it. His two priors was an element of
2 the enhancement for burglary violent.

3 Q. Right. And with that, did you ever discuss
4 the elements of burglary second to Mr. Bright?

5 A. Yes.

6 Q. Was he aware that these could possibly be
7 used?

8 A. Yes.

9 Q. Or that they were an element?

10 A. He would have been told that, yes.

11 Q. Okay. And you don't think there was anything
12 improper during the trial that, involving this
13 stipulation; is that correct?

14 A. No.

15 Q. And now discussing Ms. Wolf's testimony. Do
16 you remember exactly what was going on with this
17 list that they were compiling?

18 A. They had evidently hired some work release
19 from SCDC as well as Mr. Bright. But he wasn't in
20 work release at the time. He was a civilian. He
21 just happened to live across the street. And he
22 may have started his employment that way but there
23 was no discussion as to that prior. But she was
24 going through -- she had made a list trying to
25 identify possible people that had broken into the

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1 business.

2 I remember making the objection. I know my
3 concern would have been that I did not want them to
4 bring out that he had previously been to work
5 release or was involved with any priors or
6 incarceration.

7 Q. Now, do you remember when that list was
8 made? Do you remember discussing that during
9 trial?

10 A. I do not. If you point me to the transcript,
11 I'll be glad to review it.

12 Q. Page 98. It's your recross starting at page
13 16 -- I mean, line 16 page 98.

14 A. Page 98 line 16.

15 Okay. It looks like I questioned her as to
16 when the list was made and that she had said she
17 made it a few days prior, possibly the week before
18 trial.

19 Q. Okay. So essentially she had already
20 identified Mr. Bright before this list was made,
21 correct?

22 A. Yes.

23 Q. And are you aware -- I think I might have
24 gone over this -- whether or not he was on that
25 list?

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1 A. I don't think there was ever any mention of
2 him actually being on the list.

3 Q. Right. Is it fair to say that this list was
4 to see who else might have helped since he had
5 already been ID'd?

6 A. That would be fair.

7 Q. And just to make sure. You never saw what
8 this list looked like. Was that turned over?

9 A. I don't believe I ever saw this.

10 Q. That's fine. And just in her testimony do
11 you remember Ms. Wolf ever saying that he was or
12 that he had been on pre-release or that he had been
13 previously incarcerated?

14 A. I don't recall that, and I'm not seeing it as
15 of right now.

16 Q. If that was brought out, would you have
17 objected?

18 A. I feel sure I would have. That would have
19 been part of the character issue.

20 Q. And, again, she actually did identify him on
21 the video, correct?

22 A. Yes.

23 Q. Okay. Now looking at Mr. Glover's
24 testimony. Again, this is page 104, starting at
25 page 104. Did Mr. Glover ever say that he knew

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1 Mr. Bright through prior arrests or law enforcement
2 dealings?

3 A. No. I believe that was resolved with the
4 pretrial.

5 Q. Right.

6 A. That that was not going to be gotten into.

7 Q. Do you remember what the judge said would be
8 allowed?

9 A. That he could testify that he knew him,
10 just --

11 Q. Just personally?

12 A. -- personally.

13 Q. Around the neighborhood?

14 A. I want to say Detective Glover at the time
15 said that it was somewhere around 15 years, and
16 that he grew up around the corner from where he
17 lived or something like that.

18 Q. Okay. So it was essentially that they were
19 familiar with each other but not -- it was brought
20 out that they were familiar with each other but not
21 through law enforcement?

22 A. Correct.

23 Q. Okay. And just to make sure. He -- if he
24 had testified anything suspect about a prior arrest
25 or prior law enforcement dealing, you would have

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1 objected?

2 A. Yes.

3 Q. But you didn't see anything wrong with his
4 testimony that was given at the time?

5 A. Well, I saw that there was some objections as
6 to the identification which the objection would
7 have been for prior and that it was cumulative. I
8 believe there is one on page 104 line nine, and
9 then again on 103 line 21.

10 Q. Right. It's fair to say you consistently
11 objected to about every time that Detective Glover
12 identified Mr. Bright, is that correct, throughout
13 the trial?

14 A. Yes.

15 Q. And, again, did you see anything wrong other
16 than being cumulative about Mr. Glover testifying
17 that he had known Mr. Bright for 15 years?

18 A. I think the biggest -- where I had the
19 strongest argument was that it was cumulative. I
20 think that was the Mitchell case that I was citing
21 in pretrial.

22 Q. Okay. Now, as far as the judge's jury
23 charges go, do you recall anything suspect or
24 anything out of the ordinary, unlawful that he
25 charged the jury with?

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1 A. I don't remember anything about the jury
2 instructions.

3 Q. And if there had been something
4 objectionable, do you feel like you would have
5 objected to that?

6 A. Yes.

7 MR. TURNER: And, Your Honor, just for the
8 Court, I'm not exactly sure what his allegation is
9 regarding the charges. So I, you know, of course
10 reserve the right to come back when we find out
11 what that is on redirect.

12 Beg the Court's indulgence for one second.

13 THE COURT: Okay.

14 (Pause.)

15 MR. TURNER: That's all I have for this
16 witness.

17 THE COURT: All right. Cross-examination,
18 Mr. Boozer.

19 MR. BOOZER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BOOZER:

22 Q. Mr. Hayes, how are you?

23 A. Good morning -- or, good afternoon.

24 Q. Good afternoon.

25 Just a few questions for you. During your

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1 meetings with Mr. Bright prior to trial, did you
2 say that y'all sat down and watched the video?

3 A. Yes.

4 Q. At that time I know you indicated you may
5 have had a law clerk.

6 A. We had an intern. She was doing her, either
7 second or third year at USC and was doing an
8 internship with our office.

9 Q. At that time could you identify him on the
10 video?

11 A. Yes. I would have to say if somebody asked
12 me I'd say it was.

13 Q. Did you tell him --

14 A. Yes.

15 Q. -- that?

16 A. I told him do not profile yourself at trial,
17 too. Do not give the jury the same view as the
18 view or angle is as to the video camera and to sit
19 at a catty corner angle so that he was more
20 directly facing the jury.

21 Q. What was the, what was the trial strategy for
22 this case?

23 A. The biggest thing was that I would try to
24 keep out as much character back door as to his
25 priors, and I did not want the officer as well to

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1 testify that he knew him from prior arrests due to
2 his record, and argue it wasn't him.

3 Q. Were these -- the two burglary priors that
4 you've heard discussed today, the two prior
5 burglaries, was that something that was coming in
6 no matter, no way with what you did, or?

7 A. It was coming in, either, one, I can
8 stipulate to it and can consent, or either they
9 were going to call the clerks and have them enter
10 two prior sentencing sheets so that they could
11 establish the two priors for the burg second
12 violent enhancement.

13 Q. Did you ever have that conversation with
14 Mr. Bright?

15 A. I would think I would have. I don't have it
16 documented here but I would think I would have
17 discussed that with him.

18 Q. But you indicated you don't have any
19 independent recollection of it?

20 A. It's been too long.

21 Q. And that's fair. Do you think that's
22 something important that someone facing this sort
23 of charge should know that this is going to come
24 out?

25 A. Yeah, I do.

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1 Q. And do you think it's damaging to someone
2 who's on trial to hear that they have two prior
3 burglaries and yet here he is again being charged
4 with another?

5 A. I think it is extremely damaging. I hate
6 that we can't stop it but being it's an element it
7 comes out. So I tried to do damage control.

8 Q. Do you recall -- you may have already
9 testified to this so we may be going back over
10 this, but do you recall Ms. Wolf's testimony in
11 general?

12 A. I do not.

13 Q. Have you had time to look at the transcript?

14 A. I did but I don't remember. What page?

15 Q. Yes, sir. Absolutely. I'm looking at page
16 96 and 97.

17 A. 96.

18 Q. And once you get to it, probably if I could
19 just direct your attention over to 97 and
20 specifically looking at, beginning on line 15
21 through to line, going down line 25. And if you
22 would, would you just review that to yourself?

23 A. (Complying.) Okay.

24 Q. Do you see that this is where there's a
25 discussion of a pre-release program?

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1 A. That's correct.

2 Q. And you -- why did you object at that point?

3 A. I did not want them putting in that he was
4 maybe hired through that release, pre-release
5 program or was involved in it, providing any bad
6 character. I didn't want it be released -- or put
7 out in the open, yes.

8 Q. And that's what you had indicated earlier.
9 Your, kind of, defense strategy was to kind of
10 limit any association with him having some sort of
11 record --

12 A. Right.

13 Q. -- or being in trouble or whatnot? So that's
14 why you made the objection?

15 A. Yes.

16 Q. So even if he wasn't ever identified as being
17 in the pre-release program, do you think it's still
18 damaging to have just that thrown out there to be
19 in the jury's mind that he could be associated with
20 that?

21 A. Yes, but I couldn't do anything else at that
22 point. I didn't even know about the list until she
23 was on the stand from what I recall. I don't
24 recall ever seeing a list put in hand prior.

25 Q. And looking at this and just looking at the

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1 transcript where there's the objection and then you
2 request a sidebar and the Court says, let me see
3 y'all just a moment. And it indicates an off-the-
4 record discussion occurred.

5 Do you recall what happened during that
6 discussion?

7 A. I do not. I realize that an objection
8 probably was to try to stop them from putting any
9 character evidence in that he was hired through
10 that program or was associated with it. I see that
11 I failed to put it on record though at some later
12 time.

13 Q. Okay. And just looking at it, was there a
14 ruling made on the record by the judge?

15 A. No.

16 Q. Did you have any discussion with Mr. Bright's
17 appellate counsel ever following your
18 representation at trial?

19 A. I don't recall.

20 Q. Is that something that you -- that ever
21 happens?

22 A. Occasionally I'll call or occasionally I'll
23 get a phone call from appellate defense. I just
24 don't recall one in this case.

25 Q. Okay. Also over on -- let me ask you this --

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1 well, scratch that.

2 Going over to Detective Glover, was this
3 something -- obviously from the pretrial hearing,
4 was this something you were trying to keep out --

5 A. Yes.

6 Q. -- Detective Glover's identification of
7 Mr. Bright?

8 A. I didn't even want Detective Glover to
9 testify. I didn't think it was related or needed.

10 Q. Why not?

11 A. We had two prior witnesses, the Fannings, who
12 were the victims, were testifying that they
13 identified my client, Mr. Bright, as the
14 perpetrator.

15 I didn't think it just needed to be another
16 person heaped onto the pile. Plus, he was also a
17 police officer who, even if it's not said, I would
18 think only knows my client because of his prior
19 history. So I thought it was kind of a way to put
20 it in without putting it in.

21 Q. I'm looking at, you may have just reviewed
22 this a moment ago but Detective Glover's testimony
23 and specifically an example would be page 104, 105
24 and 106. While you're flipping to that, you had
25 indicated in your direct examination that you did

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1 make some objections as to, I guess, the cumulative
2 nature of Detective Glover's testimony?

3 A. Yes.

4 Q. At the pretrial hearing the judge had already
5 made a ruling?

6 A. That's correct.

7 Q. What's the purpose of continuing to make
8 those objections?

9 A. To preserve it for -- if you let an objection
10 go knowingly, let them testify to something that
11 you've prior made an objection to or a motion to
12 suppress, you effectively without knowing it waive
13 your appellate preservation. And I did not want
14 that.

15 Q. And looking specifically -- I know you did in
16 fact make a number of cumulative-argument
17 objections during the course of Detective Glover's
18 testimony, but looking at the bottom of page 104 to
19 the top of 105 where: Detective Glover, I'm going
20 to show you what's already been entered as State's
21 Exhibit 11, 12, 13 and ask if you recognize these
22 documents. Yes, ma'am. That was pictures, still
23 pictures from the video that I observed Mr. Bright
24 in the video. And was that where you were able to
25 make a determination or identification of him.

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1 Yes, ma'am.

2 Was there any objection either as a
3 cumulative objection or any sort of other objection
4 made during that point?

5 A. No, the objection was made prior to that --

6 Q. Okay.

7 A. -- at line nine, but I didn't follow up with
8 another one on --

9 Q. And just looking back --

10 A. -- that.

11 Q. -- during the Monday morning quarterbacking,
12 is this something, looking back, when you're
13 reading the transcript, that you probably should
14 have raised an objection?

15 A. Probably, but I think at that point I had
16 sufficed to preserve that issue.

17 MR. BOOZER: Court's indulgence, Your Honor.

18 THE COURT: All right.

19 (Pause.)

20 THE WITNESS: But also, you're looking back
21 at it reading the transcript.

22 BY MR. BOOZER:

23 Q. Do you recall during the jury charge that the
24 judge instructed the jury that they were to be fair
25 and impartial?

C DAVID HAYES - EXAM BY THE COURT

1 A. I don't.

2 Q. Okay.

3 A. I don't remember.

4 Q. Is that something that you object to,
5 normally would object to?

6 A. If he was -- if the judge said it?

7 Q. Correct.

8 A. I don't think I've ever made an objection as
9 to that.

10 Q. Okay.

11 A. I have objected to solicitors making similar
12 or such statements in closing.

13 MR. BOOZER: Mr. Hayes, that's all the
14 questions I have. Thank you.

15 THE COURT: Redirect?

16 MR. TURNER: Just briefly -- I don't have any
17 redirect.

18 THE COURT: I have a couple questions I want
19 to ask. But if that prompts questions from y'all,
20 I want you to feel absolutely free to ask some
21 additional questions. Okay?

22 EXAMINATION

23 BY THE COURT:

24 Q. Mr. Boozer asked you some questions about
25 whether or not you had been over the stipulation

C DAVID HAYES - EXAM BY THE COURT

1 versus having the clerk put in a prior record.

2 A. Right.

3 Q. And you made the statement that normally and
4 typically you go over, and you think you went over
5 that with Mr. Bright.

6 A. Right.

7 Q. And that you made the determination to do the
8 stipulation as a strategic move on your part.

9 A. Right.

10 Q. If Mr. Bright had said, no, I don't want to
11 stipulate to it, I want you to do otherwise, would
12 you have still entered into the stipulation as
13 opposed to having the clerk come and testify to the
14 record?

15 A. No. If he would have objected to it, I would
16 have not stipulated. I would have made them go
17 through it, if that's what he desired.

18 Q. If that's what he desired?

19 A. Right.

20 Q. All right. And, of course there's case law
21 that says that you can't make the State stipulate.
22 If they want to go through the long and exhaustive
23 process of being sure it gets put in front of the
24 jury as opposed to the stipulation --

25 A. Right.

C DAVID HAYES - EXAM BY THE COURT

1 Q. -- that you can't force them to stipulate.

2 A. No.

3 Q. But in this particular instance you are able
4 to get the State to stipulate.

5 A. I don't know if the State asked me to
6 stipulate or if I asked them.

7 Q. Okay.

8 A. I don't know who initiated the process.

9 Q. I gotcha. And in your trial -- based on your
10 experience, what is more damaging?

11 A. I would think having the long testimony,
12 bringing it out and putting it in and marking it as
13 a piece of evidence, it would be more damaging.

14 Q. Okay.

15 A. That's my opinion.

16 Q. Uh-huh. Okay. And I've got the transcript
17 and I was looking through the transcript. The
18 limiting instruction was given in the concluding
19 instructions; is that right?

20 A. I would have to refer back to it.

21 Q. Y'all didn't talk about it so I presume it
22 was. Yes?

23 MR. TURNER: Right. I believe the --

24 THE WITNESS: I would have to look at the
25 instructions.

1 MR. TURNER: I believe after the charges the
2 State asked why the judge did not define the
3 stipulation. Let me find that exactly for you.

4 THE COURT: Okay.

5 MR. BOOZER: That is correct, Judge. On page
6 143. I think the jury is brought back in to
7 discuss the stipulation.

8 MR. TURNER: Right. 145 the jury comes back
9 in.

10 THE COURT: Got it. That's the limiting
11 instruction there. Great. Okay. Okay. Did that
12 prompt any additional questions?

13 MR. TURNER: No, Your Honor.

14 MR. BOOZER: No, Your Honor.

15 THE COURT: Very well. Thank you. And is
16 this gentleman free to go back to his sick bed?

17 MR. BOOZER: Absolutely.

18 THE WITNESS: Actually I got one more.

19 MR. TURNER: Not quite yet.

20 THE COURT: Okay. Well, the bench is way too
21 heavy for you to -- I mean, hard for you to lie
22 down and we don't have little pillows over there.
23 I just want you to sit where you feel comfortable.

24 THE WITNESS: I'll go sit in one of those
25 chairs.

1 THE COURT: There you go. Flip the other one
2 around.

3 Any additional witnesses?

4 MR. TURNER: Nothing else from the State,
5 Your Honor.

6 THE COURT: Thank you. Any response, reply?

7 MR. BOOZER: Nothing further, Your Honor.

8 THE COURT: All right. Now that we've
9 finished, normally I don't want to hear any closing
10 arguments because I sort of have the issues, I
11 think. I want -- I don't want closing argument. I
12 want to have a discussion. I'm going to start with
13 Mr. Boozer and you respond.

14 MR. TURNER: Yes, ma'am.

15 THE COURT: Mr. Boozer, I believe that it is
16 a strategic move how to offer up the burglaries,
17 the prior burglaries. And while I absolutely
18 understand your client's concern about that, and,
19 you know, I have to refrain from editorializing
20 when our case law was clear that it comes in before
21 the jury, the prior burglaries. I understand
22 exactly his concerns about that because he would be
23 concerned.

24 And certainly we are all concerned that our
25 limiting instruction operates so that the jury

1 doesn't consider the two prior burglaries to be
2 propensity evidence as it would concern him. It
3 concerns certainly the bench. But it is what it
4 is. I think it is a strategic move.

5 Now but I do want to talk about some of your
6 other grounds that I think are stronger grounds.
7 So, let's talk about those. Okay?

8 MR. BOOZER: Absolutely.

9 THE COURT: Go for it.

10 MR. BOOZER: Thank you, Your Honor. If it
11 please the Court.

12 THE COURT: Yeah.

13 MR. BOOZER: Judge, the other grounds and as
14 I indicated kind of halfway through, and after
15 Mr. Bright testified, when I was referencing the
16 opinion from the appellate court.

17 THE COURT: Uh-huh.

18 MR. BOOZER: Although I'm certainly not
19 trying to hide the ball and say they didn't do an
20 analysis of some of them, the issues and I'm still
21 left with, as to Ms. Wolf's testimony and
22 identification, or the pre-release issue coming
23 out. Mr. Hayes even indicated, you know, what we
24 were trying to do and our whole trial strategy was
25 to separate him as far as we could from any sort

1 of, you know, nefarious activities, I guess. And
2 that's why he raised the objection I think was his
3 testimony as to the pre-release program.

4 And that was an appellate issue that was
5 raised by his appellate counsel during his appeal.
6 And even the State in its argument, in its brief to
7 the Court, to the appellate court said, well, hey,
8 this issue isn't properly before the appellate
9 court because the issue's not preserved for appeal
10 because there was no ruling on it by the trial
11 court.

12 And looking at the transcript it's obvious
13 that Mr. Hayes made the objection. He indicated
14 why he objected but for whatever reason there was
15 just no ruling made. And at that point the cat's
16 kind of out of the bag and now you've got
17 pre-release and he's got two priors.

18 And I think that's why he feels like he was
19 prejudiced in his trial because he's now been
20 lumped in as, you know, he was probably in prison
21 before and here he is again with another burglary.
22 And their ruling was made and a limiting
23 instruction was given so our argument is, you know,
24 looking at the appellate opinion where it states
25 that constitutional issues must be raised and ruled

1 on by the trial court to be preserved for appeal
2 that maybe that was an issue before the appellate
3 court.

4 Secondly with regard to Detective Glover's
5 testimony, Mr. Hayes indicated that he did, and the
6 transcript reflects in the pretrial hearing that he
7 did strenuously try to keep out Detective Glover's
8 testimony. He even indicated today that he felt
9 that it was entirely irrelevant.

10 However, in the transcript, although
11 Mr. Hayes does make numerous objections to the
12 cumulative nature of his identification of
13 Mr. Bright on the video, I think the key objection
14 which is missed is where he actually makes the ID
15 on the video. I think that was an objection that
16 was missed.

17 And, again, going back to what we were
18 discussing with Wolf's testimony, it's noted in the
19 appellate opinion that constitutional issues must
20 be raised and ruled on by the trial court to be
21 preserved for appeal. I think that that may have
22 been another issue that would have gotten that
23 before the Court of Appeals as well.

24 I'll touch just briefly on the jury
25 instructions. There is just some language in there

1 of being fair and impartial jurors. There is a
2 case called State versus Daniels that was handed
3 down. And it's always a confusing case because the
4 majority opinion is that -- written first in the
5 opinion so when you read through you think one
6 thing when it's really the other. But there is
7 some cautionary message, I think, to the bench
8 about just and fair verdicts and acting for the
9 community. And we would just kind of lump that
10 fair-and-impartial language under sort of that
11 language, the just and whatnot.

12 So those are our reasons that the Applicant
13 believes he's deserving of a new trial. And he
14 certainly wants to go forward with it. He
15 understands that he has some arguments to be made
16 and he does stand some risks in going back and
17 having a new trial with his max-out date being when
18 it is. But he is so adamant about what he's
19 professing as his innocence. That's why he's so
20 strenuously going forward with this.

21 But that would be the Applicant's argument,
22 Your Honor.

23 THE COURT: Got it. Well, it certainly is
24 always an applicant's prerogative to request relief
25 with regards to PCR, irrespective. I've had folks

1 come in with PCRs after they've been released.

2 So.

3 All right. Response?

4 MR. TURNER: Yes, Your Honor. .

5 First, about Wolf, the testimony and the
6 pre-release program. It is true that we, our
7 criminal appeals division argued preservation, like
8 we always do for everything, but -- and I'm not
9 sure if you have a copy up there, our final brief
10 of Respondent was extensively on this issue.

11 And essentially one thing we're saying is
12 even though it's not preserved it's not character
13 evidence anyway. Nowhere does she say he was
14 incarcerated, he was in pre-release. And when you
15 look at the context of, I believe -- this was just
16 on her redirect or recross -- when you look at
17 everything, it's the State's position what was
18 going on. She had already identified him. And
19 then, I think she makes this list two days before
20 trial. Okay. Who else could have been involved.
21 And they go through, take out the women. Okay.
22 Who else could have been.

23 So it's the State's position that they're
24 essentially talking about who else could have been
25 involved. You know, she doesn't testify to any

1 prior bad acts of Mr. Bright, criminal history,
2 negative character traits. So it's essentially,
3 you know, we believe it's not objectionable and it
4 would probably be even worse if they spent a while
5 arguing about it in front of the jury rather than
6 just letting it go.

7 And just reading the line after the -- I
8 believe after the sidebar and, again, we don't
9 exactly know what the sidebar talks about, but
10 following they then come back on the record:

11 Ms. Wolf, not discussing Tyrik Bright but
12 discussing the rest of the people you can go on
13 which makes me think that that sidebar had to do
14 with, okay, listen, this has nothing to do with
15 him. This has to do with everybody else.

16 So that's -- the State's position is that her
17 testimony doesn't concern him. And even if, you
18 know, it's brought out, you know, nowhere does it
19 definitively say that he was involved in that.

20 THE COURT: In other words, your position is
21 is that even if the ruling should have been
22 requested specifically on the record because it
23 very well could have been made at sidebar but not
24 on the record, but even assuming that, the position
25 is also that it's non prejudicial because the

1 comments of the Court to the, obviously to the
2 jury -- as an instruction to the witness but
3 obviously the jury hears it, are in the nature of a
4 limiting instruction. In other words, you --
5 talking about other people but you're not talking
6 about Mr. Bright.

7 MR. TURNER: Right. I believe we're on the
8 same page there. And --

9 THE COURT: In other words, you don't think
10 that imbedded in that statement, not talking about
11 Mr. Bright, tell me about the other people, doesn't
12 mean he's on the list but don't talk about him.
13 It's not imbedded within that statement.

14 MR. TURNER: Right. And, you know, I think
15 that statement pretty much steers the direct exam
16 back where it was going, clarifying where it was to
17 begin with. She had already identified him.

18 THE COURT: Uh-huh.

19 MR. TURNER: They're just going through other
20 people now.

21 THE COURT: I understand.

22 MR. TURNER: And as far as Mr. Glover's
23 testimony, again, this was extensively dealt with
24 in our final brief for Respondent.

25 And essentially here they're saying nowhere

1 does he say, I knew him from arresting him before,
2 I knew him from seeing him be arrested before, or
3 anything having to do with law enforcement. He was
4 simply testifying as a lay witness.

5 And then we go through the analysis where lay
6 witness can give an opinion based on perception if
7 it's helpful to make a clear understanding of his
8 testimony, and it doesn't require any special
9 knowledge or training. Here he knows him. He's
10 known him for 15 years around the neighborhood.
11 And that's all that he talks about. Whether or not
12 he has to wear a uniform that, you know -- those
13 are, I would say, just inferences that aren't made
14 to the jury. He's testifying, I've seen him
15 numerous times riding around the neighborhood,
16 known him for 15 years. That's it. Nowhere does
17 he say anything about criminal activity. There's
18 nothing to suggest that he knew him in any other
19 way.

20 So even though that was, you know, well, the
21 first one wasn't objected to but we argue it's not
22 objectionable. The second one was objected to as
23 cumulative and overruled. The State just argues
24 that it wouldn't have prejudiced him in any way.
25 Even if it was preserved, it likely wouldn't have

1 been, you know, reversed on appeal. That he
2 simply -- even though he is a detective, he's
3 giving his observations as a lay witness.

4 THE COURT: Got it.

5 MR. TURNER: And just briefly about the jury
6 instruction which, you know, I wasn't really
7 prepared for to argue today. But we would just say
8 case law, you look at the whole jury instruction
9 not just one isolated portion. I don't, I don't
10 believe there was any way that they or that the
11 jury erroneously applied the instructions to get an
12 unconstitutional verdict. The State sees nothing
13 wrong with that.

14 THE COURT: Okay.

15 MR. TURNER: That's our position.

16 THE COURT: Thank you. Yes, sir. Anything
17 else you want to add to it?

18 MR. BOOZER: Nothing further, Your Honor.

19 THE COURT: Thank you so much. I got it. I
20 thank you. I'll consider it. Thank you very much.

21 MR. TURNER: Thanks.

22 THE COURT: All right.

23 END OF CASE: 12:43 P.M.

24

25

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Tyrik Bright,
S.C.D.C. No. 272191,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SECOND JUDICIAL CIRCUIT

2015-CP-02-01484

ORDER OF DISMISSAL

FILED

7-27-16

Shirley Gaddard
C.C.P. & G.S.
Christa Unzueta
Deputy Clerk

1152

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed June 19, 2015. Respondent made its Return on or about July 13, 2015. Applicant filed an Amendment on September 30, 2015. An evidentiary hearing into the matter was convened on May 26, 2016, at the Aiken County Courthouse in Aiken, South Carolina. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, David Hayes, Esquire, also testified. This Court had before it a copy of Applicant's records from the Aiken County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In March 2012, the Aiken County Grand Jury indicted Applicant for Burglary – Second Degree (2012-GS-02-423). David Hayes, Esquire, represented Applicant. On June 10, 2013, Applicant proceeded to trial before the

Honorable J. Derham Cole and a jury. The jury found Applicant guilty as indicted. Judge Cole sentenced Applicant to twelve years imprisonment.

Applicant filed a timely notice of appeal. Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Bright, Op. No. 2015-UP-222 (S.C. Ct. App. filed May 6, 2015). The Remittitur was returned to the circuit court on May 28, 2015.

PCR Application

On June 19, 2015, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel. On September 30, 2015, Applicant filed a Motion to Amend, alleging the following grounds:

1. Ineffective assistance of counsel for failure to object to Wolf's testimony constituting improper character evidence
2. Ineffective assistance of counsel for failure to object to Detective Glover's testimony
3. Ineffective assistance of counsel for failure to object to improper jury instructions

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective assistance of counsel for failure to object to Wolf's testimony constituting improper character evidence

Applicant testified that Counsel should have objected to testimony from Mary Wolf, the co-owner of All-Star Rental, where Wolf discussed compiling a list of employees who could

have been involved in the crime and mentioned a pre-release program. Applicant testified that an objection was made but the Court did not rule on the objection, leaving the issue unpreserved for appeal. Applicant testified that he believed Wolf was talking about him being part of a pre-release program, but also agreed that she never stated that he was ever part of a pre-release program.

Counsel testified that he objected to Wolf's testimony because he did not want the jury to think that Applicant was involved in a pre-release program. He testified that the judge called a sidebar but could not remember the substance of the sidebar discussion. He testified that the judge did not make a ruling on his objection and testimony continued.

This Court finds that Applicant's allegation is without merit. This Court finds that Wolf did not testify that Applicant was incarcerated or in a pre-release program. This Court finds that when reading the testimony as a whole, Wolf had already identified Applicant from the surveillance video as being involved in the burglary and made a list before the trial of potential employees who might have also been involved with Applicant. Additionally, this Court finds that Wolf did not testify to any prior bad acts, criminal history, or negative character traits of Applicant. The transcript also reflects that Wolf testified that the three or four employees that may have come from the pre-release program were excluded from her list of possible suspects because they go home to the camp every night and could not have committed the break-in. See Trial Transcript p. 97, l. 24 – p. 98, l. 4.

Accordingly, this Court finds that Counsel was not ineffective for failing to object and receive a ruling regarding Wolf's testimony as such testimony was not inappropriate or prejudicial to Applicant. This Court also finds that Applicant has failed to show that he was prejudiced by Counsel's actions as he has failed to show that the outcome of his trial would have

been different had Counsel made an objection and received a ruling. Accordingly, this allegation must be dismissed.

Ineffective assistance of counsel for stipulating to Applicant's two prior burglary convictions

At the PCR hearing, Applicant verbally amended his allegations to allege that Counsel was ineffective for agreeing to stipulate as to Applicant's two prior burglary convictions. These two prior convictions were used by the State to prove an element of first degree burglary. Applicant testified that he did not have a discussion about this stipulation prior to the trial and believed that it made him look like a criminal in front of the jury.

Counsel testified that he made a strategic decision to stipulate to Applicant having two prior burglary convictions because the alternative would be for the State to present the clerk of court who would read each conviction out loud to the jury. Counsel testified that he believed that he informed Applicant of this stipulation, and testified that if Applicant told him not to stipulate to the convictions he would have done so if Applicant's case deserved such action. Counsel further testified that Applicant's two prior burglary convictions were damaging but there was nothing Counsel could do since the proof of two prior burglary convictions is an element of first degree burglary. Counsel testified that having the Clerk of Court present certified copies of his prior convictions would be much more damaging to Applicant's case. Counsel testified that he believed stipulating was the best form of damage control.

This Court finds that Counsel's decision to stipulate to Applicant's two prior burglary convictions was a valid strategic decision and Counsel was not ineffective as a result. This Court finds that Counsel's decision to stipulate to the prior convictions was a valid strategy as the alternative would have been for the Clerk of Court to present two certified copies of convictions to the jury. This Court finds that Counsel was not ineffective for pursuing this strategy. This Court

finds that Applicant has failed to show that the outcome of his trial would have been different had Counsel not agreed to stipulate and has failed to show that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

*Ineffective assistance of counsel for failure to object to Detective
Glover's testimony*

Applicant alleged that Counsel was ineffective for failing to object to testimony from Detective Anthony Glover where Detective Glover identified Applicant on the surveillance video and testified that he had known Applicant for fifteen years and knew his residence was across the street from All-Star Rental because he had seen him there numerous times riding through the neighborhood. See Trial Transcript p. 105, l. 12 – p. 106, l. 11. Applicant testified at the PCR hearing that he had known Detective Glover since he was young. Counsel testified that he did not want Detective Glover to testify because he believed his testimony would be cumulative. He testified that he did not object to this testimony but believed the issue to be preserved.

This Court finds that Counsel was not ineffective for failing to object to Detective Glover's testimony as it was not objectionable. This Court finds that Detective Glover did not state or suggest that he had arrested Applicant before or that he knew him from any experience with law enforcement. Detective Glover's testimony simply identified Applicant based on his own personal perceptions and knowledge of Applicant. This Court finds that the testimony in question did not suggest that Detective Glover knew Applicant in any regard other than seeing him ride through neighborhood.

Further, this Court finds that Detective Glover's identification of Applicant from the surveillance video constituted proper lay witness opinion testimony as this Court finds it was rationally based on Detective Glover's own personal perceptions and knowledge of Applicant; was helpful to the jury in determining a fact in issue; and did not require any special knowledge,

skill, experience, or training on the part of the officer. See SCRE 701 (a lay witness is fully permitted to offer opinion testimony during trial when the witness' opinion or inference: (1) is rationally based on the witness' perception; (2) is helpful to a clear understanding of the witness' testimony or to the determination of a fact in issue; and (3) does not require special knowledge, skill, experience, or training). See also State v. Mitchell, 399 S.C. 410, 416, 731 S.E.2d 889, 893 (Ct. App. 2012) (holding that a police officer's identification of the defendant from surveillance photographs was admissible because the officer had firsthand knowledge of the defendant through twenty years of living in the area). As Detective Glover's testimony was proper, this Court finds that Counsel was not ineffective for failing to object to the testimony. Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions. Accordingly, this allegation must be dismissed.

Ineffective assistance of counsel for failure to object to improper jury instructions

Applicant alleges that Counsel was ineffective for failing to object to the trial court's charge to the jury which stated, "Your sole objective is to simply be fair and impartial and render a verdict based solely upon the evidence presented and the law that's applicable as I will have provided it to you." Trial Transcript, p. 125, ll. 3-6.

This Court finds that the instructions given to the jury were proper and not objectionable. The trial court is required to charge only the current and correct law of South Carolina. Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). "If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error." State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "The substance of the law is what must be charged to the jury, not any particular verbiage." State v. Adkins, 353 S.C. 312, 318-19, 577 S.E.2d 460, 464 (Ct.App.2003). This Court finds that when

reading the jury charge as a whole, the trial judge properly charged the jury on the law and made it clear that Applicant was presumed innocent, the State had the burden of proof, and the jury cannot convict on any standard less than proof beyond a reasonable doubt. This Court further finds that the isolated portion at issue is not objectionable as the jury's role is to be fair and impartial and to render a verdict based upon the evidence presented and the law as instructed by the trial judge.

Accordingly, Applicant has failed to show that Counsel was ineffective in this regard and that he was prejudiced by Counsel's actions. As such, this allegation must be dismissed.

IV. CONCLUSION

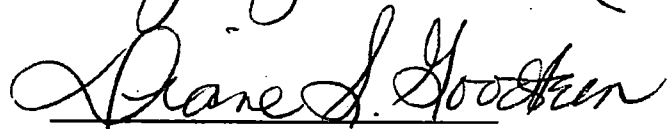
Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of July, 2016.



DIANE SCHAFER GOODSTEIN
Presiding Judge
Second Judicial Circuit



South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0201484

Tyrik Gerrard Bright

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

7/27/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on 7-27-16, and a copy mailed first class or placed in the appropriate attorney's box on 7-27-16, to attorneys of record or to parties (when appearing pro se) as follows:

Lance S. Boozer 807 Gervais Street Suite 203 Columbia, SC
29201

J. Coleman
~~Daniel Francis Gourley II~~ P.O. Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [Signature]
Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Aiken Department Of Public Safety

Anthony K Glover

Law Enforcement Case #: 12-20131

DOCKET NO. 2012GS0200423

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

1093853

MARCH TERM 2012

THE STATE
vs.

TYRIK GERARD BRIGHT

ACTION OF GRAND JURY

True Bill

Wesley E. ...
Foreperson of Grand Jury
Date: March 8, 2012

VERDICT

GUILTY

Orlando R. ...
Foreperson of Petit Jury
Date: 6/12/13

CDR #: 0086

Indictment for

BURGLARY SECOND DEGREE

§ 16-11-0312(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

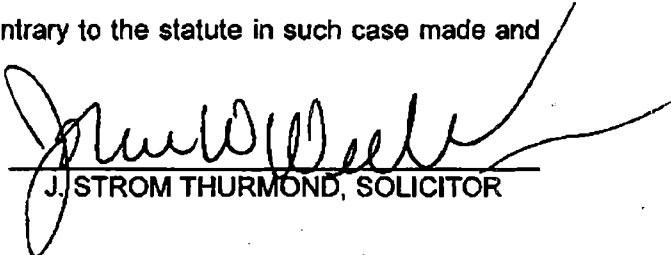
INDICTMENT FOR
BURGLARY SECOND DEGREE

§ 16-11-0312(B)

At a Court of General Sessions, convened on March 12, 2012, the Grand Jurors of Aiken County present upon their oath:

That TYRIK GERARD BRIGHT did in Aiken County on or about December 24, 2011, wilfully and unlawfully enter without consent and with the intent to commit a crime therein, a building, to wit: All Star Rentals located at 156 Williamsburg Street N.E., Aiken, South Carolina and the defendant having two prior Burglary convictions. All in violation of §16-11-312 of the 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.


J. STROM THURMOND, SOLICITOR