

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Laurens County

Honorable Brooks P. Goldsmith, Circuit Court Judge

KEVIN SHANE EPTING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000696

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

2009-GS-30-0190

2009-GS-30-0191

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

KEVIN SHANE EPTING,
DEFENDANT.

ORIGINAL

November 10, 12, and 13, 2009
Laurens, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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Laurens County.

P R O C E E D I N G S

THE COURT: Okay. Yes, sir, Mr. Fleming.

MR. FLEMING: Yes, sir, Your Honor.

The State, at this time, calls State v. Kevin Epting,
Your Honor, on indictment 2009-GS-30-0190 and
2009-GS-30-0191.

THE COURT: All right, sir. Do you have a copy of
the indictments?

MR. FLEMING: Yes, sir.

I can get that. I didn't know you needed that for
the jury selection, Your Honor.

THE COURT: Do you have a copy -- or the originals?

MR. FLEMING: I have a copy of the originals here,
Your Honor, if that would suffice until --

THE COURT: That's fine. Yes, sir.

MR. FLEMING: May I approach, Your Honor?

THE COURT: Yes, sir.

Thank you.

Ladies and gentlemen, the State has called the first
case for trial that we're going to now select a jury for,
which is State v. Kevin Shane Epting.

And is Mr. Epting present?

(WHEREUPON, Mr. Kevin Epting raised his hand.)

THE COURT: Yes, sir. If you'll just stand up so the
jury can see you, sir.

1 All right. Thank you, Mr. Epting.

2 This is a criminal case. It's in the Court of
3 General Sessions, which is the criminal side of Circuit
4 Court. And, before we begin the jury selection, let me go
5 over with you some fundamental principles that apply to
6 criminal cases, generally, and, certainly, apply to this
7 case.

8 Mr. Epting has been charged in two indictments. The
9 first indictment is an indictment for burglary. And the
10 second one is for assault and battery of a high and
11 aggravated nature.

12 Before I read these allegations that are contained in
13 the indictments to you, I want to stress to you and
14 emphasize to you that Mr. Epting has pled not guilty to
15 these charges. And, like any citizen who is charged with
16 a crime, Mr. Epting is presumed innocent. And that
17 presumption of innocence is something that will stay with
18 Mr. Epting, not only today during the jury selection, but
19 even into the trial, and even into the deliberation room
20 once the case is over.

21 Any citizen charged with a crime is presumed
22 innocent. And the presumption of innocence can only be
23 removed if the jury determines, after deliberations, after
24 hearing all the evidence, and after hearing the arguments
25 of the lawyers, and being given the law that applies to

1 the case, if the jury determines that the State has proven
2 the crime beyond a reasonable doubt and proven each and
3 every element of that crime beyond a reasonable doubt,
4 then and only then may that presumption of innocence be
5 removed.

6 Mr. Epting does not have any burden of proof. The
7 burden is entirely on the State. Mr. Epting is presumed
8 innocent. He doesn't have to offer any evidence or
9 explanation whatsoever. Instead, it is the State that
10 must prove guilt by proof beyond a reasonable doubt.
11 Mr. Epting does not have to prove his innocence or prove
12 he is not guilty. The burden of proof, again, is entirely
13 on the State.

14 Now, at this stage, these allegations are simply
15 that. The indictments I'm about to read to you are simply
16 words on a piece of paper. And they don't constitute
17 evidence. They don't even constitute a suspicion about
18 this matter. They're simply the way the case gets
19 started. An indictment is simply the ticket, so to speak,
20 that allows the Government to come in this courtroom and
21 begin its case against a citizen, and let the citizen know
22 what he is charged with.

23 In this particular case, in indictment
24 #09-GS-30-0190, it alleges in the indictment that Kevin
25 Shane Epting did in Laurens County, state aforesaid, on or

1 about the 11th day of November, 2008, willfully and
2 unlawfully enter a dwelling without consent and with the
3 intent to commit a crime therein, or the entering or
4 remaining occurred in the nighttime, the said dwelling
5 being owned and/or occupied by Marilyn Hopkins in
6 violation of Section 16-11-311 of the South Carolina Code.

7 The indictment for assault and battery of a high and
8 aggravated nature alleges that Mr. Epting did in this
9 county on or about the 11th day of November, 2008,
10 willfully and unlawfully commit an act of violent injury
11 to the person of another, to wit, Marilyn Hopkins,
12 accompanied by circumstances of aggravation, the use of a
13 deadly weapon, and/or the infliction of serious bodily
14 injury, and/or the intent to commit a felony, and/or a
15 great disparity between the ages and physical conditions
16 of the parties, and/or the difference in sexes, and/or
17 indecent liberties or familiarities with a female, and/or
18 the purposeful infliction of shame and disgrace, and/or
19 resistance of lawful authority in violation of the laws of
20 South Carolina.

21 Now, again, these allegations are just that, they're
22 allegations. They're not evidence of anything. And
23 they're simply a way to notify Mr. Epting what he's
24 charged with, and the statutes he's charged under, and to
25 allow the State to come into court and start this trial.

JURY QUALIFICATION

THE COURT: Now, at this stage, we're going to select a jury.

And the first thing I need to know is if anyone is related by blood or marriage, or kin to in any way Kevin Shane Epting or Marilyn Hopkins? If so, please, stand.

(WHEREUPON, there was no response.)

THE COURT: Does anyone know Mr. Epting or Ms. Hopkins, or have any business, social, or personal relationship with either of these people? If so, please, stand.

Okay. Yes, ma'am.

JUROR LORRAINE PRICE: I don't know him personally, but I know his mother. And I have met him. He -- his mother used to live in Cross Hill.

THE COURT: All right. And would that in any way prevent you from being fair and impartial in this case?

JUROR LORRAINE PRICE: It may.

THE COURT: All right. And tell me your name.

JUROR LORRAINE PRICE: Lorraine Price.

THE COURT: Okay. I'm going to have to excuse you from the case.

Thank you, ma'am.

Does anyone know anything about this case, or have any knowledge about it, other than what you've heard from

1 me here this morning? If so, please, stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Okay. I'm going to read out to you the
4 people who may testify in this case. And I'm going to ask
5 if you know any of these people, or if you have any kind
6 of relationship with them, or are related to them in any
7 way. The potential witnesses are: Joyce Epting, Sharon
8 Corley, Judy Prather, P-R-A-T-H-E-R, Juan Galarza,
9 G-A-L-A-R-Z-A, Nicholas Moyer, M-O-Y-E-R, Steve Davenport,
10 Bill Sizemore, Howard Davenport, Ted Richardson, and a
11 Dr. Funke, and Marilyn Hopkins. Does anyone have any
12 business, social, or personal relationship with any of
13 those potential witnesses? If so, please, stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: Does anyone know any of those people I
16 just listed that may testify in this case, or is anyone
17 related to any of them by blood or marriage? If so,
18 please, stand.

19 Yes, sir.

20 JUROR #62, JASON GRANT: I know Ms. Judy Prather.

21 THE COURT: And your name, sir?

22 JUROR #62, JASON GRANT: Jason Grant.

23 THE COURT: Okay. You know Ms. Prather?

24 JUROR #62, JASON GRANT: Yes, sir.

25 THE COURT: And if you're seated as a juror, in the

1 case, sir, one of your jobs will be to determine whether
2 the witnesses are credible or believable. And I need to
3 know if you can do that fairly and impartially in the case
4 of Ms. Prather if she testifies, or would your
5 relationship with her in any way color your judgment or
6 effect your impartiality?

7 JUROR #62, JASON GRANT: No, sir.

8 THE COURT: You could decide the case solely on the
9 evidence and the law, and be fair and impartial in judging
10 the credibility of the witnesses?

11 JUROR #62, JASON GRANT: Yes, sir.

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

13 Is there anyone who contributes, whether it's your
14 time or your money, to any organization whose primary
15 purpose is to promote victims rights or more aggressive
16 law enforcement? If so, please, stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Is there anyone who has ever been
19 employed by or had an immediate family member be employed
20 by a civilian or military law enforcement agency? If so,
21 please, stand.

22 Okay. Yes, ma'am. Tell me your name.

23 JUROR #19, RITA BOBO: Rita Bobo.

24 My husband is a lieutenant with the Simpsonville
25 Police Department and he, also, used to work in Laurens

1 County.

2 THE COURT: All right. Thank you.

3 Yes, ma'am.

4 JUROR #98, BRANTLEE NICKLES: I have a brother that's
5 a police officer with the Ninety Six Police Department.
6 And I have a father that's a deputy law enforcement
7 officer with DNR.

8 THE COURT: And your name?

9 JUROR #98, BRANTLEE NICKLES: Brantlee Nickles.

10 THE COURT: Thank you.

11 Yes, ma'am.

12 JUROR #5, SHIRLEY GARY: I'm Shirley Gary.

13 I have a sister who's a hearing officer for the
14 State.

15 THE COURT: And your name, ma'am?

16 JUROR #5, SHIRLEY GARY: Shirley Gary.

17 THE COURT: Okay. Thank you, Ms. Gary.

18 Yes, sir.

19 JUROR #26, MICHAEL BURDEN: I was employed with the
20 Ninety Six Police Department in about '82, '83.

21 THE COURT: And your name, sir?

22 JUROR #26, MICHAEL BURDEN: Michael Burden.

23 THE COURT: Thank you.

24 Yes, sir.

25 JUROR #7, JOE LANIER: I'm Joe Lanier.

1 I was in the 82nd Airborne Police.

2 THE COURT: All right. Thank you.

3 Okay. Now, this next question, there's several parts
4 to it. And, again, it asks for information that is
5 personal. And the last thing we want to do is embarrass
6 anyone. So I'm going to allow you to come down and talk
7 to me with the lawyers present, if they want to be
8 present, up front with the court reporter, if you need to
9 respond to this question or series of questions.

10 And the questions are as follows. Has any of you or
11 has any member of your immediate family ever been arrested
12 for, convicted of, or been a victim of a violent crime?
13 And I'm including in the word "violent crime" crimes such
14 as murder, manslaughter, armed robbery, assault and
15 battery, kidnapping, and, also, if you've been a victim of
16 or charged with or convicted of, or had a member of your
17 immediate family be a victim of, arrested for, or charged
18 with a serious property crime. That's the first question.

19 And the second question is, has anyone read about
20 this case in the media, or heard about it in the media, or
21 had any conversations about this case, or heard any
22 conversations about this case? And I don't know if it's
23 ever been in the media. But it's a question I always ask.

24 So those are the questions. If anyone needs to
25 respond to those, again, we can talk to you one at a time.

1 Just form a line in the center.

2 Does anybody want me to repeat the questions?

3 (WHEREUPON, there was no response.)

4 (WHEREUPON, a side bar was held with the Judge, the
5 attorneys, and prospective jurors.)

6 THE BAILIFF: Juror #9.

7 THE COURT: Yes, ma'am.

8 Ms. Jenkins has to be able to hear what you say, so
9 just keep your voice up.

10 JUROR #9 KYNETTE MOORE: I have an aunt that an
11 intruder came in and murdered her.

12 THE COURT: And you're Ms. Moore?

13 JUROR #9, KYNETTE MOORE: Yes, Kynette Moore.

14 THE COURT: And this was your aunt?

15 JUROR #9, KYNETTE MORE: Yes. An intruder was in her
16 home and killed her. It was a murder.

17 THE COURT: This case alleges a burglary and
18 assault -- assault and battery of a high and aggravated
19 nature --

20 JUROR #9, KYNETTE MOORE: She was assaulted very bad.
21 I don't know. Because I don't know him. I don't know
22 that I would be unfair. I would hope that I wouldn't be
23 unfair.

24 THE COURT: You could decide the case solely on the
25 evidence and the law?

1 JUROR #9, KYNETTE MOORE: I think so.

2 THE COURT: And what about your experience with your
3 relative, would it interfere with your ability to be fair
4 and impartial?

5 JUROR #9, KYNETTE MOORE: I think I could be fair.

6 THE COURT: Do you have any doubt about it?

7 JUROR #9, KYNETTE MOORE: Well, you know, was there a
8 murder involved?

9 THE COURT: Not that I know of.

10 JUROR #9, KYNETTE MOORE: I think I could judge it
11 fairly if it was -- if there wasn't a murder. I would be
12 for capital punishment, though. I'm sorry.

13 THE COURT: You don't have to apologize. I'm just
14 asking the questions.

15 All right. Thank you, ma'am.

16 THE BAILIFF: Juror #10.

17 THE COURT: You're Ms. Reid?

18 JUROR #10, EDNA REID: Yes.

19 THE COURT: Ms. Jenkins has to be able to hear what
20 you say, so just keep your voice up.

21 JUROR #10, EDNA REID: I have a nephew that's serving
22 time for armed robbery.

23 THE COURT: Would that effect your ability to be fair
24 and impartial in this case?

25 JUROR #10, EDNA REID: No.

1 THE COURT: You could put that aside and decide the
2 case solely on the evidence and the law?

3 JUROR #10, EDNA REID: I'm sorry?

4 THE COURT: You could put that aside and decide the
5 case solely on the evidence and the law?

6 JUROR #10, EDNA REID: Yes.

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

8 THE BAILIFF: Juror #26.

9 THE COURT: You're Mr. Burden?

10 JUROR #26, MICHAEL BURDEN: Yes, sir.

11 THE COURT: Ms. Jenkins has to be able to hear what
12 you say, so just keep your voice up.

13 JUROR #26, MICHAEL BURDEN: Yes, sir.

14 Both my sons have been --

15 THE COURT: We don't want the whole courtroom to hear
16 about it.

17 JUROR #26, MICHAEL BURDEN: Well, both sons have been
18 in jail for breaking and entering and robbery.

19 THE COURT: All right. And do you feel you could be
20 fair and impartial in this case?

21 JUROR #26, MICHAEL BURDEN: I do.

22 THE COURT: You wouldn't let that interfere with your
23 ability to be fair and impartial?

24 JUROR #26, MICHAEL BURDEN: No, sir. It wasn't me.
25 It was them.

1 THE COURT: I understand.

2 And you could base your decision solely on the
3 evidence and the law in this case?

4 JUROR #26, MICHAEL BURDEN: Yes, sir.

5 THE COURT: Thank you, sir.

6 THE BAILIFF: Ms. Sharon Lynch. She doesn't know her
7 number.

8 THE CLERK: It is #83.

9 THE COURT: All right. Good morning.

10 JUROR #83, SHARON LYNCH: Good morning.

11 My daughter was a victim of a lewd act on a minor and
12 assault of a high and aggravated nature.

13 THE COURT: All right. Could you put that aside and
14 decide this case fairly and impartially?

15 JUROR #83, SHARON LYNCH: Uh-huh.

16 THE COURT: You have to say "yes" or "no."

17 JUROR #83, SHARON LYNCH: Yes.

18 THE COURT: And could you decide the case solely on
19 the evidence and the law, and not let what happened to
20 your daughter effect your impartially?

21 JUROR #83, SHARON LYNCH: Yes, I can.

22 THE COURT: Thank you, ma'am.

23 THE BAILIFF: Juror #35.

24 JUROR #35, KATHY COFFMAN: Kathy Coffman.

25 THE COURT: Good morning.

1 JUROR #35, KATHY COFFMAN: Okay. In terms of violent
2 crimes, my brother was knifed. He was a bouncer. And one
3 of my cousin was raped and murdered.

4 THE COURT: Do you feel you could put that aside and
5 decide this case solely on the evidence and the law?

6 JUROR #35, KATHY COFFMAN: Absolutely.

7 THE COURT: Thank you, ma'am.

8 MR. FLEMING: What did she say?

9 THE COURT: Her brother was knifed. He was a
10 bouncer. And she had a cousin who was raped and murdered.

11 THE BAILIFF: Juror #91.

12 THE COURT: Good morning.

13 JUROR #91, VICTOR MERRILL: I have a brother who was
14 the victim of a strong armed robbery in 1993.

15 THE COURT: You're Mr. Merrill?

16 JUROR #91, VICTOR MERRILL: I am.

17 THE COURT: Could you decide this case fairly and
18 impartial putting aside your brother's experience?

19 JUROR #91, VICTOR MERRILL: Yes.

20 THE COURT: You could decide this case solely on the
21 evidence and the law you heard in the courtroom?

22 JUROR #91, VICTOR MERRILL: I think so, yes.

23 THE COURT: Thank you.

24 THE BAILIFF: Juror #6.

25 JUROR #6, SHARON JEFFERSON: I have two stepsons that

1 were arrested in Greenville County. One was arrested for
2 assault and battery on a state trooper. And he done time.
3 And the other was first-degree burglary with a gun. And
4 they both done time for it.

5 THE COURT: All right. And you're Ms. Jefferson?

6 JUROR #6, SHARON JEFFERSON: Sharon Jefferson.

7 THE COURT: Ms. Jefferson, do you think you could put
8 that aside and decide this case solely on the law and
9 evidence presented in the courtroom?

10 JUROR #6, SHARON JEFFERSON: Uh-huh.

11 THE COURT: You have so say "yes" or "no."

12 JUROR #6, SHARON JEFFERSON: Yes.

13 THE COURT: And could you be fair and impartial to
14 both the State and Mr. Epting?

15 JUROR #6, SHARON JEFFERSON: Yes.

16 MR. HOWE: Madam Court Reporter, she said she had a
17 family member that went to jail?

18 THE COURT: Thank you.

19 THE COURT REPORTER: Yes, sir.

20 THE BAILIFF: #61.

21 THE COURT: Good morning.

22 JUROR #61, SENTHEA GOSSETT: My brother was convicted
23 of domestic violence.

24 THE COURT: What's your name again?

25 JUROR #61 SENTHEA GOSSETT: Senthea Gossett.

1 THE COURT: All right. Your brother was convicted of
2 domestic violence?

3 JUROR #61, SENTHEA GOSSETT: Yes.

4 THE COURT: And could you put that aside and decide
5 this case solely on the evidence and law in this case.

6 JUROR #61, SENTHEA GOSSETT: Yes.

7 THE COURT: And that wouldn't effect your ability to
8 be fair and impartial in this case?

9 JUROR #61, SENTHEA GOSSETT: No, not at all.

10 THE COURT: Thank you.

11 (WHEREUPON, the side bar was concluded.)

12 THE COURT: Any further voir dire from the State?

13 MR. FLEMING: Nothing from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. HOWE: No, sir.

16 THE COURT: Okay. We're now going to proceed with
17 the jury selection and --

18 Are you all ready?

19 THE CLERK: Yes, sir.

20 THE COURT: So when your name is called, you can just
21 stand up where you are. And, if you are seated as a
22 juror, Mr. Bolt will help you get down and have a seat in
23 the jury box.

24 Each side in a case has a certain number of what are
25 called strikes. And they can strike people from the jury.

1 Don't take it personally. It's just part of the process.

2 So, again, when your name is called, just stand up.

3 And I'm going to ask -- or, actually, Ms. Lancaster
4 will ask each side a question. And then you'll know
5 whether you've been selected or not.

6 So, yes, ma'am.

7 JURY SELECTION

8 THE CLERK: Juror #131, Shirley A. Woodruff.

9 (Shirley A. Woodruff, a black female, stood.)

10 THE CLERK: What says the State?

11 MR. FLEMING: Please present this juror.

12 THE CLERK: What says the Defense?

13 MR. HOWE: Please seat Ms. Woodruff.

14 THE CLERK: Juror #45, Charles J. Darby.

15 (Charles J. Darby, a white male, stood.)

16 MR. FLEMING: Number what, Madam Clerk?

17 THE CLERK: #45.

18 MR. FLEMING: Thank you.

19 THE CLERK: What says the State?

20 MR. FLEMING: Please present this juror.

21 THE CLERK: What says the Defense?

22 MR. HOWE: Please seat Mr. Darby.

23 THE CLERK: Juror #8, Jamie R. Marshall.

24 (Jamie R. Marshall, a white female, stood.)

25 THE CLERK: What says the State?

1 MR. FLEMING: Please present this juror.

2 THE CLERK: What says the Defense?

3 MR. HOWE: Please seat Ms. Marshall.

4 THE CLERK: Juror #62, Jason L. Grant.

5 (Jason L. Grant, a black male, stood.)

6 THE CLERK: What says the State?

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

9 THE CLERK: Juror #49, Reginald C. Dean.

10 (Reginald C. Dean, a white male, stood.)

11 THE CLERK: What says the State?

12 MR. FLEMING: Please present this juror.

13 THE CLERK: What says the Defense?

14 MR. HOWE: Please seat Mr. Dean.

15 THE CLERK: Juror #63, Katherine S. Grant.

16 (Katherine S. Grant, a white female, stood.)

17 THE CLERK: What says the State?

18 MR. FLEMING: Please present this juror.

19 THE CLERK: What says the Defense?

20 MR. HOWE: Please seat Ms. Grant.

21 THE CLERK: Juror #90, James B. McNuer.

22 (James B. McNuer, a white male, stood.)

23 THE CLERK: What says the State?

24 MR. FLEMING: Please present this juror.

25 THE CLERK: What says the Defense?

1 MR. HOWE: Please seat Mr. McNuer.

2 THE CLERK: Juror #27, Bobby Burton.

3 (Bobby Burton, a black male, stood.)

4 MR. FLEMING: I'm sorry, Madam Clerk. What number?

5 THE CLERK: #27.

6 MR. FLEMING: Thank you.

7 THE CLERK: What says the State?

8 MR. FLEMING: Please excuse this juror from the trial
9 of this case.

10 THE CLERK: Juror #98, Brantlee B. Nickles.

11 (Brantlee B. Nickles, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. FLEMING: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. HOWE: Please excuse Ms. Nickles from this case.

16 THE CLERK: Juror #114, Hartwell K. Sledge, III.

17 (Hartwell K. Sledge, III, a white male, stood.)

18 THE CLERK: What says the State?

19 MR. FLEMING: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. HOWE: Please excuse Mr. Sledge from this case.

22 THE CLERK: Juror #50, Shaquella Dendy.

23 (Shaquella D. Dendy, a black female, stood.)

24 THE CLERK: What says the State?

25 MR. FLEMING: Please present this juror.

1 THE CLERK: What says the Defense?
2 MR. HOWE: Please seat Ms. Dendy.
3 THE CLERK: Juror #127, Kay C. Weathers.
4 (Kay C. Weathers, a white female, stood.)
5 THE CLERK: What says the State?
6 MR. FLEMING: Please present this juror.
7 THE CLERK: What says the Defense?
8 MR. HOWE: Please excuse Ms. Weathers from this case.
9 THE CLERK: Juror #12, Lillie P. Anty.
10 (Lillie P. Anty, a black female, stood.)
11 THE CLERK: What says the State?
12 MR. FLEMING: Please present this juror.
13 THE CLERK: What says the Defense?
14 MR. HOWE: Please excuse Ms. Anty from this case.
15 THE CLERK: Juror #56, Keyshia L. Evans.
16 (Keyshia L. Evans, a white female, stood.)
17 MR. FLEMING: I'm sorry, Madam Clerk. What number?
18 THE CLERK: It's #56.
19 MR. FLEMING: Okay. Thank you.
20 THE CLERK: What says the State?
21 MR. FLEMING: Please present this juror.
22 THE CLERK: What says the Defense?
23 MR. HOWE: Please seat Mr. Evans.
24 THE CLERK: Juror #6, Sharon D. Jefferson.
25 (Sharon D. Jefferson, a white female, stood.)

1 THE CLERK: What says the State?

2 MR. FLEMING: Please excuse this juror from the trial
3 of this case.

4 THE CLERK: Juror #135, Alfrieda B. Younts.
5 (Alfrieda B. Younts, a white female, stood.)

6 THE CLERK: What says the State?

7 MR. FLEMING: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. HOWE: Please seat Ms. Younts.

10 THE CLERK: Juror #94, Erin M. Morris.
11 (Erin M. Morris, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. FLEMING: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. HOWE: Please seat Ms. Morris.

16 THE CLERK: Juror #61, Senthea C. Gossett.
17 (Senthea C. Gossett, a white female, stood.)

18 THE CLERK: What says the State?

19 MR. FLEMING: Please present this juror.

20 THE CLERK: What says the Defense?

21 MR. HOWE: Please seat Ms. Gossett.

22 THE CLERK: Juror #7, Joe H. Lanier, Jr.
23 (Joe H. Lanier, Jr., a white male, stood)

24 THE CLERK: What says the State?

25 MR. FLEMING: Please excuse this juror from the trial

1 of this case.

2 THE CLERK: Juror #9, Kynette K. Moore.

3 (Kynette K. Moore, a white female, stood.)

4 MR. FLEMING: I'm sorry, Madam Clerk. What number?

5 THE CLERK: #9.

6 What says the State?

7 MR. FLEMING: Please present this juror.

8 THE CLERK: What says the Defense?

9 MR. HOWE: Please excuse Ms. Moore from this case.

10 THE CLERK: Juror #35, Kathryn D. Coffman.

11 (Kathryn D. Coffman, a white female, stood.)

12 THE CLERK: What says the State?

13 MR. FLEMING: Please present this juror.

14 THE CLERK: What says the Defense?

15 MR. HOWE: Please excuse Ms. Coffman from this case.

16 THE CLERK: Juror #82, Latasha L. Lovelist.

17 (Latasha L. Lovelist, a black female, stood.)

18 THE CLERK: What says the State?

19 MR. FLEMING: Please excuse this juror from the trial

20 of this case.

21 THE CLERK: Juror #84, Becky A. Lyons.

22 (Becky A. Lyons, a white female, stood.)

23 THE CLERK: Would the State challenge for cause?

24 MR. FLEMING: I'm sorry. What number?

25 THE CLERK: #84.

1 MR. FLEMING: The State does not challenge.
2 THE CLERK: Okay. What says the Defense?
3 MR. HOWE: Please excuse Ms. Lyons from this case.
4 THE CLERK: Juror #101, Travis R. Pitts.
5 (Travis R. Pitts, a white male, stood.)
6 THE CLERK: Would the State challenge for cause?
7 MR. FLEMING: No, ma'am.
8 THE CLERK: What says the Defense?
9 MR. HOWE: Please seat Mr. Pitts.
10 THE COURT: We're going to have two alternates.
11 THE CLERK: Juror #20, Brenda S. Boekel.
12 (Brenda S. Boekel, a white female, stood.)
13 THE CLERK: What says the State?
14 MR. FLEMING: Please present this juror.
15 THE CLERK: What says the Defense?
16 MR. HOWE: Please excuse Ms. Boekel from this case.
17 THE CLERK: Juror #108, Barbara A. Roddy.
18 (Barbara A. Roddy, a white female, stood.)
19 THE CLERK: What says the State?
20 MR. FLEMING: Please present this juror.
21 THE CLERK: What says the Defense?
22 MR. HOWE: Please excuse Ms. Roddy from this case.
23 THE CLERK: Juror #106, Kathryn K. Reece.
24 (Kathryn K. Reece, a white female, stood.)
25 THE CLERK: What says the State?

1 MR. FLEMING: Please present this juror.

2 THE CLERK: Would the Defense challenge for cause?

3 MR. HOWE: No, ma'am.

4 THE CLERK: You may be seated.

5 Juror #91, Victor A. Merrill.

6 (Victor A. Merrill, a white male, stood.)

7 THE CLERK: What says the State?

8 MR. FLEMING: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. HOWE: We would have a challenge. We'd like to
11 discuss the matter with the Court, please.

12 (WHEREUPON, a side bar was held with the attorneys
13 and the Judge.)

14 MR. HOWE: In this particular case, Mr. Merrill had a
15 brother that had been assaulted. The brother was --
16 actually, suffered a very significant brain injury. I
17 represented the Defendant in that case. I don't know that
18 Mr. Merrill remembers that or not. But it's a case that I
19 remembered well as soon as I saw him on the potential jury
20 panel on this case. And I would challenge for cause based
21 on that.

22 MR. FLEMING: He has already stated he could decide
23 the case fairly. And I think we have to take that into
24 account.

25 THE COURT: All right. I'm going to excuse him due

1 to Mr. Howe's involvement in that case. He may not know
2 about it, but he may recall something as we get further
3 into this case. And we don't want to take that risk.

4 (WHEREUPON, the side bar was concluded.)

5 THE COURT: Mr. Merrill is excused from the case.

6 THE CLERK: Juror #5, Shirley L. Gary.

7 (Shirley L. Gary, a black female, stood.)

8 THE CLERK: What says the State?

9 MR. FLEMING: Please present this juror.

10 THE COURT: What says the Defense?

11 MR. HOWE: No challenge.

12 THE COURT: All right. Any matters or motions
13 related to the selection process or the composition of the
14 jury from the State?

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

16 THE COURT: From the Defense?

17 MR. HOWE: If I could have just one minute.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. HOWE: Nothing further, Judge.

21 THE COURT: Okay. Well, I find that all statutory
22 and Constitutional mandates were complied with.

23 And, ladies and gentlemen, you've been selected to be
24 the jury in the case of the State v. Kevin Shane Epting.
25 And, as I mentioned earlier, we're not going to begin the

1 case today, but, rather, on Thursday.

2 So just be back in the jury room, which Mr. Bolt will
3 show you where that's located momentarily, but be back in
4 the jury room at 10:00 on Thursday. And we have a couple
5 of other matters that aren't related to this case that we
6 have to hear Thursday morning. But we should be able to
7 get underway around 10:00. So just be back at 10:00.

8 Don't talk about this case with anyone. And don't do
9 any kind of outside research. You have to confine your
10 decision, in this case, to the evidence, which will
11 consist of the testimony and exhibits you hear during the
12 trial, and the law that I give you that you are to apply
13 to the facts of the case. So don't try to do any outside
14 research or anything of that nature.

15 So we'll see you back Thursday at 10:00.

16 Thank you very much.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 12:10 p.m.)

19 MR. FLEMING: Judge, I have the originals of the
20 indictments, if you want me to hand those up to you at
21 this time.

22 THE COURT: All right. Thank you.

23 And, those of you who were not chosen, just call back
24 tomorrow night after 6:00, and you'll get further
25 instructions. If something happens with this case, we may

1 need you to come back in Thursday morning to select
2 another jury. But, right now, this case is slated to go
3 forward, as you can see. So just call back Wednesday
4 night after 6:00.

5 And thank you for your cooperation and your patience
6 with us this morning.

7 (WHEREUPON, the remaining jurors exited the
8 courtroom.)

9 THE COURT: Okay. Are there going to be any
10 pre-trial matters that we need to take up before the trial
11 begins on Thursday?

12 MR. HOWE: We're going to want to sequester
13 witnesses.

14 Do you challenge that?

15 MR. FLEMING: No.

16 MR. HOWE: Judge, I'd ask that the witnesses be
17 sequestered. I don't know if that's pre-trial or not.

18 And there may be something -- I don't think that it
19 will take a lot of time that we may present to the Court
20 on Thursday.

21 THE COURT: All right.

22 MR. HOWE: But I don't believe it's going to be an
23 issue that's going take a lot of deliberations or anything
24 like that. We're still working on that issue as we speak.

25 THE COURT: Yes, sir.

1 All right. Well, I'll grant your motion to sequester
2 under Rule 615.

3 And, Thursday morning, I have a civil hearing I've
4 got to start at 9:00. And I've limited the time they
5 have. So we should be through by 10:00. And I understand
6 that there's, also, a bond matter.

7 THE CLERK: Yes. Go-off bond relief.

8 THE COURT: And we should be ready to go after that.
9 But there might be a slight delay.

10 MR. FLEMING: Judge, the sequestration motion, that
11 applies to both sides, Your Honor?

12 THE COURT: Yes, sir.

13 MR. FLEMING: Okay. Thank you.

14 MR. HOWE: Thank you.

15 THE COURT: Okay. So there's no Jackson v. Denno, or
16 Neil v. Biggers, or anything we need to take up?

17 MR. FLEMING: No, sir.

18 MR. HOWE: No, sir.

19 THE COURT: Okay. Thank you very much..

20 I'll see you back Thursday morning.

21 (WHEREUPON, the proceedings were concluded at
22 approximately 12:13 p.m., to be reconvened on
23 Thursday, November 12, 2009.)
24
25

1 THURSDAY, NOVEMBER 12, 2009

2 THE COURT: We're on the record in case
3 2009-GS-30-0190 and 0191, the State v. Kevin Shane Epting.
4 Mr. Epting is here with his counsel.

5 And I understand there were some matters the parties
6 wish to raise before we have the opening statements. So
7 I'll be glad to entertain those at this time.

8 PRE-TRIAL MOTIONS

9 MR. FLEMING: Thank you, Your Honor.

10 First, just to clear up, I understand the Court
11 sequestered the witnesses. It's my understanding that I
12 am allowed to have my chief investigating officer and the
13 victim in here as well.

14 THE COURT: Oh, yes, sir, absolutely.

15 MR. FLEMING: Thank you.

16 Your Honor, first, the State would move for a motion
17 in limine to exclude a 911 CAD that the Defense has
18 submitted to the Prosecution dealing with a 911 call that
19 was made back in September of '08, Your Honor.

20 I beg the Court's indulgence for one second so I can
21 get to the -- to that CAD.

22 (Pause.)

23 MR. FLEMING: It's my understanding, Your Honor, that
24 that CAD was a call made to 911 in September of '08, which
25 was two months prior than -- to the incident that we're

1 having the trial about, Your Honor, where the victim,
2 Ms. Hopkins, called 911 to report that her son was acting
3 up.

4 And I'm still looking for that CAD, Your Honor. I'm
5 sorry.

6 MR. HOWE: Here, Ron, we have one.

7 MR. FLEMING: Okay. Thanks.

8 Ms. Hopkins called and stated that the subject was
9 her son and he was showing out. He'd knocked a hole in
10 the wall. And that he was now at the next door
11 neighbor's. She would like an officer to come out, Your
12 Honor.

13 The State would move to exclude anything dealing with
14 that CAD or with that call, Your Honor, based on the rules
15 of evidence and relevancy, Your Honor, which states in
16 part, Relevant evidence means any evidence having any
17 tendency to make the existence of any fact that is of
18 consequences to the determination of the action more
19 probable or less probable than it would be without the
20 evidence.

21 Here, obviously, Your Honor, we're dealing with a
22 burglary and ABHAN. That was -- the 911 call occurred
23 back on 9-6 of 2008, which was a little more than two
24 months prior, which is not even near the time the incident
25 happened that we're talking about, Your Honor, and in

1 trial on.

2 Furthermore, it has no -- it tends to -- it does not
3 tend to make any fact of the burglary any more probable or
4 less probable, Your Honor. We're dealing with a totally
5 different thing of where she called and that her
6 husband -- that her son was showing out, Your Honor. And
7 that's the extent of it.

8 The State would, also, move to exclude any kind of
9 third-party testimony, unless that would deal with any
10 other incidents concerning the son, unless they could show
11 that there was evidence that would put the son at the
12 burglary that night at the house. I don't know of any
13 evidence that puts the burglary -- or puts him anywhere
14 near ■ Cindy Drive the night of the burglary, Your Honor,
15 except -- or I don't mean to say except -- where, in fact,
16 at that time, the victim's son, Billy Sizemore, was living
17 in Whitmire. He lived there at a house in Whitmire by
18 himself.

19 Now, if there were evidence that he was in that area
20 and the Defense could prove that, then I think that they
21 could probably submit any kind of third-party testimony as
22 to whether or not he might be guilty of that. But they
23 don't have any evidence to prove that that I know of, Your
24 Honor.

25 So we would move to exclude those two things, Your

1 Honor, at this time.

2 THE COURT: Thank you, sir.

3 Mr. Howe, or, Ms. Anderson.

4 MR. HOWE: Thank you, Your Honor.

5 I'll begin by saying I think -- based on the
6 presentation I'm hearing, I think we'd all agree that the
7 evidence concerning the 911 call does tie in with our
8 position that we think we're entitled to introduce
9 third-party guilt evidence and, actually, call, if
10 necessary, the son, Sizemore, as a Court's witness in this
11 case.

12 Judge, first of all -- and so I'll -- Ms. Anderson is
13 going to be making the presentation and will hand up to
14 the Court a memo regarding that.

15 THE COURT: Thank you.

16 MR. HOWE: And, Your Honor, while she's handing that
17 up, I would, also, contend that, regardless of the Court's
18 ruling on the third-party guilt issue, I think it would
19 still be relevant evidence on the question in this case.
20 Because the -- Ms. Hopkins, in her statement, indicated
21 that she did not know how the intruder got into her home.
22 And we would offer evidence that when law enforcement was
23 called out there in September on this 911 call that law
24 enforcement had to go to the neighbor's house and retrieve
25 the key to the home from her son, Sizemore.

1 And, even though this occurred two months prior,
2 there was a mention in the -- in Ms. Hopkins statement
3 that she had no idea how anybody got into her home. And I
4 don't think there's even going to be any evidence offered
5 that there was a forced entry at all into the home in the
6 way of physical evidence, a door broken, window broken,
7 anything of that nature.

8 But, as far as the third-party guilt, I'm going to
9 turn that over to Ms. Anderson, who's prepared to make
10 that presentation to the Court.

11 Thank you.

12 THE COURT: Thank you, Mr. Howe.

13 Yes, ma'am.

14 MS. ANDERSON: May it please the Court.

15 Mr. Howe briefly outlined the facts. So I'll just go
16 ahead and skip to the prevailing law on this issue. The
17 rule in South Carolina regarding third-party guilt is as
18 follows: Evidence offered by the accused as to the
19 commission of the crime by another person must be limited
20 to such facts as are inconsistent with his own guilt, and
21 to such facts that raise a reasonable inference or
22 presumption as to his own innocence.

23 The main part we're relying on is the facts that
24 raise a reasonable inference or presumption as to his own
25 innocence. I've handed up the case of State v. Williams.

1 In that case, the Defendant was convicted of murdering his
2 wife and son. They were found in a van about six miles
3 from the home. At trial, he sought to introduce evidence
4 regarding manufacturers of marijuana in the area. And
5 they had previously, I believe, either assaulted or
6 threatened the lives of a confidential informant and a
7 narcotics officer, which were completely unrelated to the
8 victims in that case.

9 The trial court properly ruled that that was
10 inadmissible third-party evidence. It was completely
11 unrelated to the crime at hand, and didn't have any
12 bearing on raising a reasonable inference as to the
13 Defendant's guilt in that case.

14 Unlike Williams, in this case, there are a number of
15 factors that we proffer into evidence that does tie
16 Mr. Sizemore's guilt as the actual intruder in the case at
17 hand. First, being that the CAD report, which we seek to
18 introduce into evidence, was very recent in time, a couple
19 months before the incident. It noted that they had had
20 some physical -- or she had felt the need to call the
21 police, that she felt unsafe in her own home with her son
22 there. Also, in her statement to the police, after the
23 incident, she said that her son was off limits to her
24 billfold. The case at hand involves theft of money out of
25 a wallet and the intruder assaulting her.

1 One moment, Your Honor.

2 THE COURT: Yes, ma'am. Take your time.

3 (Pause.)

4 MS. ANDERSON: In addition to the CAD report,
5 Mr. Howe mentioned that the police were requested to
6 retrieve a residential key. I'm unsure if it was,
7 actually, ever retrieved. But it does show that
8 Mr. Sizemore had possession of a key to the victim's home
9 and would have access to explain why there was no forced
10 entry with the incident in question. In light of the CAD
11 report being recent to the offense at hand, displaying
12 that she was uncomfortable with her son being in the home,
13 that she was not -- he was not allowed near the billfold,
14 as evidenced by the police report on November 12th and
15 13th, I believe.

16 Further, two of Mr. Sizemore's co-workers will be
17 called to introduce evidence that Mr. Sizemore had very
18 severe hatred toward his mother and wished someone would
19 kill her, and that he wanted her dead.

20 In light of all those facts, we believe it does raise
21 a reasonable inference as to Mr. Epting's guilt and does
22 show that Mr. Sizemore is likely the actual intruder in
23 this case. And, under that, we believe it meets South
24 Carolina's standard for third-party guilt.

25 THE COURT: Well, let me ask you, Ms. Anderson, the

1 incident back in September of 2008, involved a breaking
2 into the home of the victim, I know there was a hole
3 knocked in the wall, but was that inside the house or
4 outside the house?

5 MS. ANDERSON: It was inside the house. It wasn't a
6 breaking in, other than there had been a disturbance. He
7 had punched the wall. And then she had later reported, in
8 a separate police report, that he was off limits to her
9 wallet that -- I presume that he had taken money from her
10 in the past.

11 THE COURT: Had he been living there recently?

12 MS. ANDERSON: On and off, Your Honor.

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

14 MS. ANDERSON: Thank you.

15 THE COURT: Yes, sir, Mr. Fleming.

16 MR. FLEMING: Your Honor, going back to that, if you
17 will look at the Defense's brief on Page 2 of 3, Your
18 Honor, where it cites the rule at the top. It, basically,
19 states and goes on to state after what Ms. Anderson was
20 telling the Court, it states, To raise such facts as
21 raised -- as to raise a reasonable inference or
22 presumption as to his own innocence. And then it goes on
23 to say, Evidence which can have no other effect than to
24 cast a mere suspicion upon another is not admissible.

25 And that's what the Defense is trying to do here,

1 Your Honor. They're just trying to cast suspicion. . This
2 911 CAD where they went out because the mother called the
3 son -- the son was living with the mother at that time.
4 And it has nothing to do with a burglary.

5 THE COURT: What about the wallet connection?

6 MR. FLEMING: Yes, sir. I was going to get to that.

7 THE COURT: I'm sorry. I didn't --

8 MR. FLEMING: Again, they're talking about this
9 wallet saying that she said that he was not -- that
10 Ms. Hopkins said that, You're not allowed to do that.
11 Well, that's what she told the Defendant that night when
12 he was in her house. She never told that to her son. She
13 told that to the Defendant the night in the house, Your
14 Honor.

15 THE COURT: Well, I thought there was some evidence
16 about him getting -- the son getting into a wallet or
17 something and being --

18 MR. FLEMING: No, sir. There's no evidence of that
19 that we know of.

20 They're pulling that off of Ms. Hopkins statement
21 that she made to the police officers that she stated when
22 she came -- she was in the bed. She got out of the bed
23 when she heard somebody coming through the front door.
24 She went to the kitchen. She saw Mr. Epting there with
25 the wallet in his hand -- or purse in his hand. And she

1 told him, You're not supposed to be in here.' That's off
2 limits to you. You need to get out or I'm going to call
3 the police. At that time is when he started beating
4 Ms. Hopkins, Your Honor. Once he beat her, he left, Your
5 Honor.

6 And, as far as the key and everything is concerned,
7 Your Honor, it's in evidence -- or we have evidence by
8 testimony from Ms. Hopkins and the police officers that
9 she told them she forgot to lock the front door. That's
10 what happened. She forgot to lock the front door when she
11 went to bed that night, Your Honor.

12 So, basically, what you have is you have nothing
13 that, actually -- no direct evidence that the Defense is
14 wanting to introduce that would be -- that would have any
15 other effect than to bear suspicion in this case. And it
16 should be excluded, Your Honor.

17 In fact, the case that they state, State v. Williams,
18 it was dealing with the murder of some victims, the murder
19 of a wife and son. The victims were found inside the
20 family van. And, at trial, it says, The Defendant
21 proffered evidence that there were marijuana manufacturers
22 in the area where the bodies were found, who had,
23 subsequently, threatened the lives of a confidential
24 informant and a narcotics agent. And, there, the Court
25 upheld that that should be disallowed. You couldn't bring

1 it in. And that's, basically, what we have here, Your
2 Honor, same thing, same scenario.

3 You've got evidence of a 911 call that it was just a
4 family dispute. And then you don't have anything other
5 than some defendants [sic] saying that the son, at one
6 time, said he wished somebody would kill his mother. It
7 has nothing to do with a burglary or robbery, Your Honor.

8 So, based on that, Your Honor, we would argue that
9 any kind of evidence dealing with that should be excluded.

10 THE COURT: Thank you, Mr. Fleming.

11 MR. HOWE: Your Honor, if I may respond.

12 THE COURT: Yes, sir. Sure.

13 MR. HOWE: And Ms. Anderson, if the Court would allow
14 her to jump in on anything concerning the law.

15 Judge, in response, first of all, there is a
16 statement. And if the Court wants to review the statement
17 of Ms. Hopkins, that would be fine. There's no question
18 that she did, in fact, mention in her statement that
19 the -- her wallet was off limits to her son.

20 Mr. Fleming, the Solicitor, has given you one
21 interpretation of that statement. I'm sure that
22 Ms. Hopkins, you know, can testify as to what she meant
23 when she happened to mention her son, in her statement, as
24 far as him being off limits to the wallet. That would be
25 a matter, I think, that would be left for the jury to

1 determine what she meant at that point in time.

2 Judge, as far as the other issue concerning the fact
3 that now I'm hearing that the door was left unlocked, that
4 would be information that we've heard for the first time
5 right now. Because, in her statement, she indicated that
6 she had no idea of how the door had been -- or how entry
7 had been gained. That would be new information that would
8 not have been provided to us.

9 But, Judge, going back to the question as to whether
10 or not Mr. Sizemore would be the intruder, you have not
11 only the issue about the statement mentioning him as being
12 off limits, you have the 911 issue involving the key.

13 Before that, you, also, have the testimony that we
14 would be prepared to offer from co-workers, witnesses, who
15 said that he wished his mother -- somebody would do harm
16 to her. Those things all and all, clearly, point to a
17 reasonable inference that he could have very well been the
18 person that was involved in this. We would contend it's
19 more than just mere suspicion when you tie all that
20 together. And we'd like to have the opportunity to do
21 that.

22 THE COURT: Okay. Bear with me just one minute.

23 (Pause.)

24 THE COURT: May I see the statement, the victim's
25 statement?

1 MR. FLEMING: Yes, sir.

2 THE COURT: Thank you, sir.

3 MR. FLEMING: Yes, sir.

4 Your Honor, if I could.

5 THE COURT: Yes, sir, Mr. Fleming.

6 MR. FLEMING: I just wanted to -- even if that word
7 is "son" -- and it could be interpreted more than one way.
8 But even if that is saying "son," she's, basically,
9 telling who's there that even her son is off limits to
10 that wallet -- to her wallet. And you will not go in my
11 billfold. And he looked up, and she said it was Kevin
12 Epting.

13 So, you know, if we're going to allow that, I think
14 that's going to go up against the case law, Your Honor.
15 And it's going to just cause confusion, which the rule
16 does not allow.

17 MS. ANDERSON: Your Honor, a brief response.

18 Just under State v. Holmes, it's not a weighing test
19 between the State's case of how strong it is that she
20 implicate the Defendant, ultimately, but that there's a
21 reasonable inference given the facts outlined in the brief
22 that someone other -- or Mr. Sizemore is the actual
23 intruder, not Mr. Epting.

24 THE COURT: All right. Well, I agree you can't base
25 it on the strength of the State's case. And I take it

1 into consideration under Holmes.

2 But Holmes did not overrule the basic law outlined in
3 State v. Gregory, which, as has already been quoted,
4 states that, Evidence that just raises a conjectural
5 inference or casts a mere suspicion upon another as to the
6 person that committed the crime is not admissible and not
7 proper third-party guilt evidence. Rather, there has to
8 be a proof of connection with the crime and the train of
9 facts or circumstances tending to clearly point out the
10 other person is the guilty party.

11 And Gregory stated that remote acts disconnected and
12 outside the crime itself cannot be separately proved for
13 such a purpose. And it says, An orderly and unbiased
14 judicial inquiry as to the guilt or innocence of the
15 Defendant on trial does not contemplate that a Defendant
16 be permitted by way of defense to indulge in conjectural
17 inferences that some other person might have committed the
18 offense for which he is on trial, or by fanciful analogy
19 to say to the jury that someone other than he is more
20 probably guilty. And I think other cases have said that
21 third-party guilt evidence is limited to facts that are
22 inconsistent with the Defendant's innocence.

23 Based on what I've heard here and reading the
24 statement, the incident with the son that occurred
25 approximately two months before the alleged crime here was

1 disconnected to this crime. The only connection would be
2 the victim, Ms. Hopkins, statement of her apparent belief
3 that giving us the interpretation most favorable to the
4 Defense that it was her son who had entered her home
5 without consent. Otherwise, why would she put in her
6 statement that she said, Upon discovering the intruder, I
7 said, "My son is off limits to my wallet. And you will
8 not go in my billfold." I believe that is how the
9 statement of November 13th, 2008, reads.

10 Other than that, there's no connection to the son,
11 other than the fact that there was a prior incident where
12 he became enraged and did some physical damage to the
13 victim's home, and the victim had to call police, and
14 later had to retrieve her keys from the son. And the son
15 harboring some grudge against his mom, apparently,
16 threatened her harm.

17 But I just don't find here that it's enough to show a
18 reasonable inference as to the son as the guilty party.
19 And if you need to proffer further evidence on that, I'll
20 be glad to let you do that, Ms. Anderson, or, Mr. Howe.

21 All right. Thank you very much.

22 MR. FLEMING: I just wanted to make sure that we're
23 clear, Your Honor. That includes the testimony by
24 witnesses saying that he made a threat that he wished she
25 was dead as well?

1 THE COURT: I'm sorry. Now, who is "he"? The son?

2 MR. FLEMING: Yeah.

3 The Defense is saying that they're going to put up
4 witnesses who will say that the son made the statement
5 that he wished that she was dead. I don't know when he
6 said it. That hasn't been said.

7 And, again, I don't think that's directly on point
8 dealing with this crime, even if it was said by the son.

9 So does your ruling include that as well?

10 THE COURT: Yes.

11 MR. FLEMING: Thank you, Judge.

12 MR. HOWE: Your Honor --

13 THE COURT: Yes, sir.

14 MR. HOWE: -- just -- and I may have a couple
15 questions so I don't go into anything inconsistent with
16 your ruling.

17 THE COURT: Certainly.

18 MR. HOWE: But, also, we would like to have the
19 opportunity to proffer. Here is the way we did it -- and
20 it's probably my fault for doing it this way. We've got
21 the 911 operator who received the call, as well as the law
22 enforcement officer who answered the call, under subpoena,
23 as well as the two co-workers who made the -- would
24 testify as to what the son said. And we, also, have the
25 son under subpoena.

1 We were not prepared to do this now. Can -- at some
2 point in time during the trial, could we offer that?

3 I -- because it wouldn't come up until we put up our
4 case anyway, that I see. And I will -- as I understand
5 the Court's ruling, I will not be allowed even to ask the
6 mother on cross-examination about the prior incident in
7 September, as I understand all that.

8 Is that correct?

9 THE COURT: Right. Yes, sir.

10 MR. HOWE: And, also, would I be prohibited under
11 your ruling from questioning the mother about the wallet
12 or -- well, I think -- or would I be allowed to question
13 her on anything that came forward in her statement to law
14 enforcement and what she meant by that, or something in
15 that regard? I'm sure Mr. Fleming will bring that out on
16 direct from her.

17 Am I prohibited from going into that at all, also?
18 Do you see what I'm saying?

19 THE COURT: I do, yes. And I appreciate your
20 inquiry.

21 And I'm trying to think through how I can fairly
22 allow you to cross-examine Ms. Hopkins concerning her
23 statement, and give you the full opportunity of
24 confrontation and not let us get bogged down in a
25 disorderly process and have irrelevant factors interjected

1 into the trial.

2 And, you know, I'm treating this as a motion in
3 limine. I mean, I may hear things during the trial that
4 change my mind.

5 MR. HOWE: Yes, sir.

6 THE COURT: So, right now, I think I would let you
7 explore with her why she made the statement. And we'll
8 just have to see where it goes. I mean, I don't know any
9 other way to approach it. Because I don't think it would
10 be fair to totally cut off your right to ask her about
11 what is, essentially, a whole sentence in a fairly short
12 statement --

13 MR. HOWE: Yes, sir.

14 THE COURT: -- that she gave, so. But, right now,
15 that's as far as I'll let you go.

16 MR. HOWE: Yes, sir.

17 And, Your Honor, would I then have permission to
18 proffer, at least, when we're prepared to put up our case
19 that at that time?

20 THE COURT: Yes, sir, absolutely.

21 And, like I say, I may change my mind.

22 MR. HOWE: Yes, sir.

23 THE COURT: I'm just looking at it now without the
24 benefit of a full record, and that's my ruling. But,
25 certainly --

1 MR. FLEMING: So Your Honor -- I'm sorry, Your Honor.

2 THE COURT: Go ahead. Yes, sir, Mr. Fleming.

3 MR. FLEMING: So you're saying -- you're telling the
4 Defense that they can put this evidence up, but they have
5 to stop short. And you're going to decide whether or not
6 you're still going to allow it in or not?

7 THE COURT: Well, all I'm saying now, Mr. Fleming, is
8 that when Ms. Hopkins testifies, the Defense will be
9 allowed to ask her what she meant about the statement.

10 MR. FLEMING: Oh, I understand that, Your Honor.

11 I'm talking about the testimony by these two other
12 supposed witnesses, which you've already ruled cannot come
13 in.

14 THE COURT: I'm saying that he can proffer that
15 outside the presence of the jury for the record.

16 MR. FLEMING: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 MR. FLEMING: Your Honor, the State does have -- it's
19 my understanding that the Defense is making a motion -- or
20 will make a motion to try to have the State elect under
21 which, I guess, element that we're going to prove the
22 burglary on, Your Honor. And we have a -- we have case
23 law, the State v. John Simmons, Your Honor, 352 S.C. 342,
24 which, basically, it states in there that the State can
25 prove the burglary first on any of the elements. And

1 we're not limited to choosing one of them, Your Honor.

2 THE COURT: All right.

3 MR. HOWE: Your Honor, in response to that, I would
4 contend you still have to go through a 403 analysis, you
5 know. And I would -- it still is extremely prejudicial
6 when you have a Defendant on trial for burglary where
7 there's going to be evidence introduced that the Defendant
8 has committed two prior burglaries. And they don't need
9 to do that. Based on what you've already heard the
10 presentation to -- if the jury believes the State's
11 position, they don't have to use that. Because there's
12 already allegations of a burglary during the nighttime,
13 entry during the nighttime. They don't have to do that.

14 All it does is it tells the jury right off the top
15 that this man has been convicted of two prior burglaries.
16 And that, I would contend, still should go through that
17 analysis. Because it just puts the Defendant in a
18 difficult position.

19 I don't have the case. But I would cite -- I don't
20 know that this is the perfect analogy. But I would ask
21 the Court to consider this that, you know, in cases
22 where -- in a drug trial where the Defendant is accused of
23 a distribution of a drug, I think there's, at least, one
24 case that talks about it's prejudicial to have evidence of
25 a prior record. Of course, that goes, I realize, to

1 sentencing enhancement purposes. But the Courts have
2 ruled that you can't bring up the prior conviction of a
3 similar type offense because it's prejudicial.

4 And, here, in this case, when that's brought up, the
5 testimony that it -- clearly, if you apply that same
6 analysis, it's prejudicial. There's no question about it.
7 I think everybody -- I don't think anybody would disagree
8 with that. It's just -- you know, if they can go under
9 either theory, anybody who's charged with burglary, based
10 on two or more priors, he's behind the eight ball already.

11 THE COURT: Well, I understand your point. I think
12 it is, certainly, a reasonable point to make. But I don't
13 know how it overcomes the law, which sets forth the crime
14 which the State is entitled to pursue and prove by both
15 means about his two prior convictions, or that it occurred
16 in the nighttime.

17 I know there are cases, I think, where, you know, if
18 someone has a multitude of prior burglary convictions,
19 there has to be some limit on how many can be put in. I
20 don't understand that to be the case here. I don't know
21 how many priors there are. I would have to find that the
22 State can pursue and proceed with that prior conviction
23 method of establishing burglary first.

24 As far as Rule 403, you know, I think you're right,
25 Mr. Howe.

1 There are cases under Rule 609 that talk about -- or
2 Rule 404, for that matter, that talk about bad acts or
3 convictions that are similar to the case that the
4 Defendant is, currently, charged with, certainly, enhances
5 the prejudicial value and effects that analysis. But, you
6 know, here, there's no way to sanitize the prior
7 convictions without eroding what I find to be the State's
8 clear right, under the statute, to proceed using that
9 method of proof.

10 I mean, the only analogy I can think about is the
11 cases involving a felon in possession of a firearm, and
12 the State or the federal government is entitled to prove
13 those by proving the prior felony. I know there are cases
14 saying that even if the Defense offers to stipulate to the
15 felonies, it is not enough to cut off the State's right to
16 have that brought before the jury in its full particulars.

17 Although this is different because we're talking
18 about a crime exactly of the nature for which the
19 Defendant has previous convictions for. So it becomes
20 almost an automatic form of character evidence. But it is
21 what it is. And I can't change the statute.

22 So thank you for your argument, but I respectfully
23 deny it.

24 MR. HOWE: Judge, you brought up a good point, if I
25 can. And not to belabor this. We would have offered to

1 stipulate that for you making that determination without
2 that going to the jury. We, certainly, would have done
3 that --

4 THE COURT: Right. And I would have --

5 MR. HOWE: -- to make -- to add to the argument
6 that's being presented.

7 THE COURT: Yes, sir.

8 MR. HOWE: Because you pointed that out very wisely.

9 THE COURT: Okay. Anything further?

10 MR. FLEMING: Yes, sir. One more motion, Your Honor.

11 Your Honor, pursuant to Rule 404 of the South
12 Carolina Rules of Evidence, Your Honor, which allows to
13 show the conduct of other crimes or wrongs or acts, Your
14 Honor, the State would move, at the appropriate time, to
15 proffer into evidence a letter written by the Defendant
16 after he was arrested. He sent the letter from the jail.
17 Basically, he sent the letter to the victim, Your Honor,
18 saying that he doesn't know why she is doing this to him
19 after he cut her grass, took her to the movies, took her
20 to the doctor.

21 And he goes on to say that, "You know what I need
22 right about now is to play with some big tits. I've got
23 me some lowtron [phonetic] I have to use every couple of
24 days. You know what you need is a little bit of this
25 peter in you. When I do get out, that's what I'm going to

1 do is come and give you some. How about that?"

2 Your Honor, we would proffer that evidence under
3 that -- under Rule 404 and under State v. Lyle, which you
4 can proffer evidence of other bad acts to show -- I just
5 beg the Court's indulgence for one second, Your Honor.

6 (Pause.)

7 MR. FLEMING: It's to show a motive, identity, the
8 existence of a common scheme or plan, the absence of
9 mistake or accident, or intent.

10 It's our position that this would be proffered to
11 show identity, Your Honor, in that he is, basically,
12 threatening the victim, because she reported this crime,
13 with sexual conduct if he ever got out. So the State
14 would proffer that evidence at this time. I would proffer
15 that argument at this time, Your Honor.

16 THE COURT: All right. Thank you.

17 Yes, sir, or, yes, ma'am.

18 MR. HOWE: Your Honor, I was not prepared to argue
19 this motion at this point in time. It was just presented.
20 It's not in writing, this particular thing. I'd like to
21 have the opportunity to make an argument concerning that
22 at the appropriate time.

23 I will point out, though, that that particular letter
24 came from the jail after my client was arrested and put in
25 jail. And, as the Court is aware, Lyle, that whole

1 thing -- if I had my guru, Rauch Wise, here with me to do
2 that, even Rauch -- although he would submit that Lyle has
3 to do with prior bad acts -- you know, this is talking
4 about a letter from the jail.

5 And, by the way, my client was charged with
6 intimidation of a witness. There is an indictment on
7 that. He was, actually, charged with that. This is an
8 event that took place after the events here. And he's
9 trying to argue that under -- somehow under 404 that that
10 goes -- that that should be admitted to prove character of
11 the evidence generally -- character evidence generally,
12 character of the accused, character of the victim,
13 character of the witness, other crimes, wrongs, or acts.
14 And that's, basically, what he's trying to do, you know,
15 is get it in.

16 And, clearly, that would be prejudicial under any
17 analysis and doesn't -- has absolutely nothing to do with
18 whether or not he's guilty of this burglary and this
19 assault in this case, a letter from the jail after the
20 fact. That's the best I could come up with having just
21 heard that argument right now, Judge. But I think that's
22 sufficient for the Court to rule this would not be allowed
23 to come in.

24 THE COURT: Have you got the letter?

25 MR. FLEMING: Yes, sir.

1 MR. HOWE: And, Judge, one more thing for the record.
2 As I recall, that letter took place after a bond hearing.

3 THE COURT: All right. Thank you.

4 MR. HOWE: Your Honor, I would have one more argument
5 briefly.

6 THE COURT: Okay.

7 MR. HOWE: The motion that you've heard now does,
8 also, not comply with Criminal Procedure Rule 4. It's not
9 in writing.

10 THE COURT: All right. Well, I find that, under Rule
11 403, that any probative value this letter has as to
12 whether or not Mr. Epting committed the crimes alleged is
13 substantially outweighed by unfair prejudice. And,
14 therefore, I would not allow it.

15 Okay. Thank you very much.

16 Anything else before we bring the jury in?

17 MR. FLEMING: Nothing from the State, Your Honor.

18 MR. HOWE: No, sir.

19 THE COURT: You can bring the jury in, Mr. Bolt.
20 Thank you.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:57 a.m.)

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: All right. Thank you very much.

25 Ladies and gentlemen, first of all, I want to

1 apologize for the delay. I know y'all have been sitting
2 back there now for almost two hours and wondering what
3 we're doing out here. And I want to tell you what we've
4 been doing. I had a hearing that started a little bit
5 after 9:00 in another case that I had to delay back a
6 couple of weeks ago and wrap up. And we had about 10
7 lawyers out here arguing. And we were hoping to complete
8 that at 10:00, but things went on a little more than we
9 thought. But we even had a lawyer from New York on
10 conference call. And, believe it or not, he never said
11 anything. So I don't know. That's the record for me, a
12 lawyer from New York being here and not saying anything.

13 But, nevertheless, that's why we were delayed. And I
14 apologize for the inconvenience to you. And then we had
15 some matters that we, also, had to resolve in some other
16 cases before we could start this one. And, hopefully,
17 we've narrowed down some of the issues involved in this
18 case as well. And, hopefully, it will make it run
19 smoother because we had the time to do that. But I know
20 it's not pleasant for you to sit back there for a long
21 period of time. And I do apologize for that.

22 I want to, again, thank you for your service and
23 thank you for your commitment to your community this week
24 in allowing the parties, in this case, to exercise their
25 Constitutional right to a jury trial. The right to a jury

1 trial is a valuable and important right. It's one of the
2 fundamental rights under our system of justice and under
3 our government. And it's only possible because people
4 like you have to take off time from their jobs, and from
5 their families, and other important aspects of their
6 lives, and come down here and help people resolve disputes.

7 So Thomas Jefferson said that the right to a jury
8 trial is perhaps the most important right of all.
9 Because, in the end, all of our other rights, ultimately,
10 depend upon it. So we appreciate you being here. And I,
11 again, thank you for your service.

12 The people in the courtroom who you have met are the
13 lawyers. And I think I've introduced myself to you. I'm
14 Gary Hill. I'm a circuit judge from Greenville. And I'm
15 glad to be serving with you here in Laurens for this term
16 of General Sessions Court.

17 But let me introduce some of the people who you have
18 not met and kind of let you know what their role is in
19 this process. And then I'm going to tell you what your
20 role is and what your job is, as well as what my job and
21 my role is.

22 First of all, I want to introduce to you the
23 bailiffs. You've already met Mr. Bolt and Mr. Byars
24 that's back here. And there's another bailiff, Mr. Harry,
25 you might see from time to time. They're here for your

1 assistance and your aid and comfort while you do serve on
2 the jury. And they do an outstanding job. And they'll
3 make sure that you're well taken care of.

4 The next person I want to introduce to you is the
5 court reporter, Hollie Jenkins, who you can see is
6 furiously typing as I'm talking right here. Circuit Court
7 is a court of record. And that means that every word that
8 is spoken is taken down. And she is the court reporter
9 with me this week. And she does an excellent job as well.
10 I'm glad to have her with me this week.

11 And then Lynn Lancaster is your fine Clerk of Court.
12 I know you know who she is. And, as you saw, she helps
13 with the jury selection. She helps with the paperwork
14 related to the case and helps things move efficiently when
15 the Judge doesn't get in the way and delay things.

16 Up here on the bench with me is Robert Mebane. He's
17 my law clerk. He is a lawyer and a member of the Bar.
18 And he graduated from law school about a year ago and is
19 spending time with me helping me research cases and
20 prepare for trials and so forth.

21 So those are some of the other people in the
22 courtroom. And I hope that will kind of help you feel
23 more comfortable and more at home, and know what everybody
24 is doing in here. Everybody I introduced to you and,
25 certainly, the lawyers and, certainly, I did as well, we

1 all have taken an oath to do our jobs. You're going to
2 take an oath to do your job.

3 So I'm going to ask Ms. Lancaster to administer that
4 oath to you. And listen to it very carefully, because
5 it's been around a long time. And it's of ancient origin.
6 But it tells you in a nutshell what your job is.

7 So, yes, ma'am.

8 THE CLERK: If you'll, please, stand and raise your
9 right hand. And if you accept the oath I'm about to
10 administer, please, respond by saying, "I will."

11 (WHEREUPON, the jury was sworn at approximately
12 12:02 p.m.)

13 INTRODUCTORY REMARKS

14 THE COURT: Okay. Thank you.

15 Now, ladies and gentlemen, the roles that you and I
16 have are very different. As I told you yesterday, any
17 time we have a trial in General Sessions Court, there are
18 two judges. There is the judge of the law, and that's the
19 role that I fill. And, as the judge of the law, I have
20 three main duties. The first is to try to move things
21 along efficiently. The second is to rule on whether
22 evidence is admissible or not. That is whether you can
23 consider certain evidence.

24 So if during the course of this trial a party objects
25 to evidence -- and don't hold it against someone for

1 objecting. They have an ethical duty to object to
2 evidence they think is improper. But, if someone objects,
3 I will rule on whether the evidence is proper and whether
4 you can consider it. If I sustain the objection, that
5 means the evidence is not proper and you cannot consider
6 it. If I overrule the objection, that means the evidence
7 is proper and you can consider it.

8 The third and last role I have is to be the judge of
9 the law. And that means, at the end of the case, I will
10 give you the law that you are to apply to the facts of
11 this case in my final instructions to you.

12 Now, you, the jury, are the judges of the facts. And
13 I can't have an opinion as to what the facts are, in this
14 case, that I can share with you. Under our Constitution,
15 I'm not allowed to comment on the facts of this case. And
16 I won't comment or intimate in any way what I think the
17 facts are, or what I think your decision should be.

18 You and you alone determine what the facts are.
19 Because, under our Constitution, the jury solely
20 determines the facts in any given case. So you're the
21 judges of the facts. And when it comes to what the facts
22 are, your badge may as well say judge, instead of juror.
23 Because your determination is the only determination that
24 we go by under our system of justice.

25 Now, how do you determine what the facts are? You do

1 that by weighing, and considering, and evaluating the
2 evidence you're going to hear during the course of this
3 trial. You must base your decision as to what the facts
4 are on the evidence, and nothing else. And the evidence
5 consists of two sources. The first is the one you're
6 probably most familiar with, and that is sworn witness
7 testimony. I anticipate, in this case, we will have
8 witnesses who come in who are sworn and who tell you
9 things they know about this case, or relate to you
10 knowledge they have concerning the case. And that is one
11 source of evidence from which you can determine what the
12 facts are, sworn witness testimony.

13 The second source is by way of an exhibit. We may
14 have, in this case, an exhibit introduced into evidence
15 and admitted into evidence. An exhibit is simply a
16 physical tangible thing, something you can see, feel, or
17 touch. And it may be a map, a photograph, a diagram,
18 something of that nature. But you'll know it's an
19 exhibit. And you'll know it's something you can use to
20 determine what the facts are in this case. Because it
21 will be back in the jury room with you at the end of the
22 case and will have a sticker on it that says, Exhibit
23 number so and so. So those are the only two things you
24 can consider in determining what the facts of this case
25 are, sworn witness testimony and exhibits.

1 What the lawyers say is not evidence. You need to
2 pay very close attention to what the lawyers say. Because
3 they're trying to help you interpret and understand the
4 evidence. But they are not witnesses. So what they say
5 is not evidence. So if you recollect something different
6 than how the lawyers recollect it, your memory controls.
7 Likewise, anything you may see or hear while court is not
8 in session is not evidence.

9 Now, this is a criminal case. And there are certain
10 rules and principles that apply to any criminal case. And
11 they, certainly, apply to this one. First of all, as I
12 mentioned to you, Mr. Epting has been charged in two
13 indictments, one for burglary and one for assault and
14 battery of a high and aggravated nature. Simply because
15 someone has been charged with a crime doesn't mean
16 anything. These indictments are not evidence. They're
17 not witnesses. They're not exhibits. So you can't
18 consider them in determining whether the State has met its
19 burden of proof in this matter.

20 The indictments are simply the formal way the case
21 starts. And it's a ticket that allows the Government to
22 start a case against a citizen and let the citizen know
23 what he or she is charged with. But an indictment does
24 not even create a suspicion of guilt. And it, certainly,
25 does not constitute evidence in any way, shape, or form.

1 Mr. Epting has pled not guilty to the indictments.

2 And that puts the burden of proof on the State.

3 Mr. Epting has no burden of proof. He doesn't have to
4 prove his innocence to you, or prove he's not guilty, or
5 offer any evidence or explanation whatsoever. Instead,
6 under our system of justice, it is the State that must
7 prove guilt. And they bear the burden of proving every
8 element of the crime beyond a reasonable doubt.

9 Now, Mr. Epting, like anyone charged with a crime, is
10 presumed innocent of that crime. And that presumption of
11 innocence will stay with him throughout the trial and even
12 into your deliberations. It can only be removed if you
13 find the State has proven each and every element of the
14 crime beyond a reasonable doubt.

15 Now, there are two crimes charged. And you will have
16 to consider and weigh the evidence as to each one
17 separately and not let your decision on one indictment
18 influence your decision on the other. You will have to
19 give them individual consideration.

20 Now, ladies and gentlemen, as the judges of the
21 facts, you're going to have to, by necessity, determine
22 whether the evidence is believable, or sometimes, as we
23 call it, credible. So that means for every witness who
24 comes in and is sworn in and sits down before you, you
25 will have to determine whether they're worthy of belief.

1 Likewise, for any exhibit that's introduced, you'll have
2 to determine whether it is credible or worthy of belief.

3 Now, how do you do that? Well, in a case of witness
4 testimony, you can use several tools. You can consider
5 whether the witness has some interest in the outcome of
6 this matter, whether they might have some bias or
7 prejudice towards someone or some issue in this case, the
8 opportunity they've had to observe the things that they're
9 telling you about. You may, also, consider their demeanor
10 on the stand. And you, certainly, can use whatever you
11 use in your day-to-day life to determine whether someone
12 is telling you the truth. Because your common sense did
13 not suddenly evaporate when you walked into the Laurens
14 County courthouse.

15 Now, please, bear in mind that you have a very
16 important and difficult job. It's much more difficult
17 than mine. Because, as the judges of the facts, you must
18 determine what those facts are. If I make a mistake
19 during this trial on the law, it can easily be corrected
20 on appeal. But a jury's decision as to what the facts are
21 is almost always final under our system of justice.

22 So I know that you will pay close attention during
23 this trial. And while it is hard to sit there for long
24 periods of time and listen, as we all know, it's right
25 when we start letting our minds wander that something

1 important happens. So, please, try to keep keen attention
2 throughout the trial. We'll try to take breaks about
3 every hour and 15 minutes or hour and a half. And if
4 anyone needs a break before that, just get my attention or
5 one of the bailiffs attention and we'll, certainly,
6 accommodate you, or accommodate any of the parties or
7 lawyers in this matter.

8 How many of y'all have been a juror in a criminal
9 case before? If you will, just raise your hand.

10 (WHEREUPON, three jurors raised their hands.)

11 THE COURT: Okay. So we've got three people. Others
12 of you may know how a criminal trial works, but let me
13 just give you some idea of the structure of the trial so
14 you'll know what to expect.

15 In just a moment, the State, through the Solicitor's
16 Office and Mr. Fleming, will give an opening statement.
17 An opening statement is simply a way for the lawyer to
18 give you a road map as to what they think the evidence is
19 going to show in this trial and what the issues will be.
20 The State goes first because, again, they bear the burden
21 of proof.

22 After the State completes its opening statement, the
23 Defense will have the opportunity, but not the obligation,
24 to give an opening statement. Because, remember, the
25 Defense doesn't have to offer any explanation or evidence

1 whatsoever throughout this matter. But they, certainly,
2 have the opportunity to give an opening statement.

3 And, after you hear the opening statement or
4 statements, we'll move into the presentation of the
5 evidence in this trial. And you'll hear from witnesses
6 and consider the evidence, have the evidence admitted at
7 that time.

8 The Defense will have the opportunity to confront and
9 cross-examine that evidence. Then after the State has
10 completed its presentation of evidence, the Defense will
11 have the opportunity, but, again, not the obligation, to
12 present any evidence he wishes to.

13 And then after you've heard all the evidence, you'll
14 hear the closing arguments of the lawyers where they will
15 try to help you understand the evidence and interpret it,
16 and tell you what they think your verdict should be. And
17 then I will give you the instructions on the law that you
18 are to apply to the facts of this case. And then the case
19 will be in your hands for a decision for a verdict.

20 Now, it's very important that until we reach that
21 point, after you've heard all the evidence and after
22 you've heard the lawyers arguments and after you've heard
23 the law that you are to use in this case, that you not
24 discuss this case with anyone, or talk about it, or do any
25 kind of outside research.

1 We went to a great deal of trouble on Tuesday, and so
2 did you, trying to find 12 people who could be impartial
3 about this matter and have an open mind. So we want to
4 keep you that way. And don't talk about the case during
5 the breaks. And don't talk about it with anyone outside
6 of court. And don't go out and try to do your own
7 research. Because, as I told you, you must confine your
8 decision as to the evidence you hear during the course of
9 this trial.

10 So I appreciate your attention to me. I don't know
11 how long this trial is going to take. It may go into
12 tomorrow. It may not. But, regardless of how long or
13 short the trial is, this is a very important day for
14 Mr. Epting, and for the State. And this is their only day
15 in court. And I know you'll give the case the attention
16 it deserves.

17 And, with that, we'll have the opening statements.

18 Yes, sir, Mr. Fleming.

19 MR. FLEMING: Thank you, Your Honor.

20 May it please the Court.

21 THE COURT: Yes, sir.

22 OPENING STATEMENTS

23 MR. FLEMING: Good afternoon, ladies and gentlemen.

24 My name is Ron Fleming. I'm one of the assistant
25 solicitors here in Laurens County. I work for Jerry

1 Peace, the Solicitor for Laurens County and Greenwood,
2 Newberry, and Abbeville. And I was assigned to prosecute
3 this case.

4 Now, you've all heard the story of Little Red Riding
5 Hood and the big bad wolf, I'm sure you have. I'd like to
6 call this case the case of grandma and the big bad wolf.
7 Grandma being Ms. Marilyn Hopkins sitting back here. She
8 sort of reminds you of a grandma. She does to me. And
9 sitting over here at the Defense table is Kevin Epting,
10 the big bad wolf.

11 Ladies and gentlemen, you will hear testimony, in
12 this case, from Ms. Hopkins that on November the 11th,
13 2008, it started out as a pretty normal day for her. And
14 that was an exception. Because, at that time, or prior to
15 that, Ms. Hopkins had been diagnosed with cancer, with
16 lung cancer. And she had just finished up her chemo and
17 her radiation treatments, or she was about to finish it up.

18 She was at home cleaning, washing clothes, cooking,
19 doing all the daily chores that she tried to do. And you
20 will hear from her how she had to rely heavily on other
21 people to take her places. Because she didn't have a car.
22 And she never had a driver's license. Okay. That
23 evening, you will hear from her that about 9:30, 10:00,
24 she decided to go to bed. And she went to bed.

25 And she will tell you that about 1:40, 1:30, 1:45,

1 maybe 2:00, she heard somebody coming in her front door.
2 And, naturally, she got up to see who it was, what was
3 going on. And, as she went into the kitchen of her mobile
4 home, she will tell you that, at that time, she saw the
5 big bad wolf, Kevin Epting, in her house.

6 He had gone into the kitchen to a china hutch where
7 she kept her purse and he had her purse in his hand. She
8 will tell you that that's not the first time Mr. Epting
9 had been in her house. He had been in there prior,
10 because he was an acquaintance with her son, Billy
11 Sizemore. And he had been over there with her son one
12 time to eat some chili beans. And Ms. Epting [sic] knew
13 his mother who lived directly across the street from her.
14 So Ms. Hopkins knew Mr. Epting's mother, Ms. Epting,
15 because she lived right across the street. And that's
16 where Mr. Epting stayed.

17 She will tell you that on one occasion, Ms. Epting
18 and Kevin Epting had taken her to Greenwood to have her
19 cancer treatment. But, obviously, that didn't mean
20 anything to Mr. Epting. Because there he was breaking
21 into Ms. Hopkins house late at night and trying to steal
22 what was in her purse.

23 You'll hear Ms. Hopkins tell you that when she caught
24 him, she asked him what was he doing. And she told him
25 that he was not supposed to be there and if he didn't get

1 out, she was going to call the police. Ms. Hopkins,
2 grandma, 56 years old with cancer, will tell you of how
3 once she told him that, he started to beat her, not once,
4 not twice, but three to four times he hit her, ladies and
5 gentlemen. She will tell you and you will see
6 photographs. As a result of that beating, she had two
7 very bad black eyes, and other bruises, as well, on her
8 body.

9 She will tell you that when she went to bed, she had
10 thought she had locked her front door, but she didn't.
11 And that's how Mr. Epting got in. You'll, also, hear from
12 Deputy Galarza. He got a call on the 12th, which was the
13 next day, about the incident. And he responded to ■
14 Cindy Lane where Ms. Hopkins lived.

15 You will hear Deputy Galarza tell you that
16 Ms. Hopkins sister was the one that had called 911 and
17 reported this. And when he got there, he saw the victim,
18 Ms. Hopkins. And he will testify to you that she was
19 visibly shaken, upset, and scared. He will tell you that
20 what he observed were two black eyes on the victim with
21 other bruises, and that he took photographs of that.

22 Deputy Galarza will, also, tell you that not only did
23 she identify her assailant by name, but she described him
24 to a T, including tattoos. There was no doubt of her
25 identifying her assailant.

1 And Ms. Hopkins sister, Judy Prather, will, also,
2 testify to you that she had not heard from her sister.
3 And she was worried. So she called and went over to her
4 sister's house. And, when she arrived, she saw the
5 evidence of the bruising due to the vicious beating that
6 was given to her. She will, also, testify to you that the
7 victim was very upset, very scared. And she called the
8 police. Her sister, Ms. Prather, called the police.

9 Now, ladies and gentlemen, Mr. Epting, the big bad
10 wolf, has been charged with burglary in the first degree
11 and assault and battery of a high and aggravated nature.

12 Now, a person is guilty of burglary in the first
13 degree -- and the Judge will instruct you on this. But I
14 want to give you just a little background on it. A person
15 is guilty of burglary in the first degree if they enter a
16 dwelling of another person without consent with the intent
17 to commit a crime while they're in that dwelling.

18 And they either, one, when effecting the entry,
19 whenever going into the building or immediate flight from
20 the building, they are armed with a deadly weapon, gun,
21 knife, or an explosive of some sort. B) They cause
22 physical injury to a person who is not a participant in
23 the burglary. They use or threaten to use a deadly weapon
24 or they display what appears to be a knife, pistol,
25 revolver, rifle, or shotgun. Two, the burglary is

1 committed by a person with two or more convictions for
2 burglary. Again, it's committed by a person with two or
3 more convictions for burglary. And, three, the entering
4 or remaining there in that dwelling that they broke into
5 was during the nighttime. Okay. That's, basically, what
6 burglary is, ladies and gentlemen, as defined by our law.

7 Now, assault and battery with intent to kill -- or
8 assault and battery of a high and aggravated nature is the
9 other charge that Mr. Epting is charged with. And I'll
10 tell you that is an unlawful and intentional infliction of
11 a violent injury on a person of another accompanied by
12 circumstances of aggravation.

13 And those circumstances of aggravation can be the use
14 of a deadly weapon. It can be the infliction of serious
15 bodily injury. It can be the infliction of that injury
16 with the intent to commit a felony. It can be a great
17 disparity in the ages. It can be differences in the
18 sexes, male, female. And it can be a physical difference
19 in the parties. And last, but not least, it can, also,
20 be -- an aggravating circumstance can be where you take
21 indecent liberties with a female.

22 Now, the Judge has told you that the Defendant comes
23 into this courtroom presumed innocent until the
24 Prosecution proves him guilty beyond a reasonable doubt.
25 And that's the way our law is set up. And the Judge will,

1 also, instruct you on what a reasonable doubt is. And
2 I'll just give you a little bit of that right now.

3 A reasonable doubt is a doubt that would make a
4 reasonable person hesitate to act. Beyond a reasonable
5 doubt is a level that leaves you firmly convinced of the
6 Defendant's guilt. So, if it is beyond a reasonable
7 doubt, it leaves you firmly convinced that the Defendant
8 is guilty. It's not a doubt that is beyond a shadow of a
9 doubt. It's not beyond a shadow of a doubt. Nothing in
10 this life is totally certain, including our legal system,
11 ladies and gentlemen.

12 So it's -- I don't have to prove him guilty beyond a
13 shadow of a doubt. All I have to do is prove him guilty
14 of those crimes beyond a reasonable doubt, a doubt that
15 leaves you -- or it's beyond a reasonable doubt if I show
16 or prove to you or you're left reasonably convinced that
17 he is guilty.

18 Now, ladies and gentlemen, I don't know if any of you
19 have children. I have two, a little boy that's eight and
20 a little girl that's five. Have you ever noticed young
21 children when you're trying to get their attention, you're
22 trying to tell them something, their attention is easily
23 diverted? I mean, something can come up on the TV or
24 something and you can be telling them something and
25 they'll say, What? It happens all the time with me with

1 my kids. Well, don't get caught up in this trial and let
2 your attention get diverted, ladies and gentlemen.
3 Because that's what the big bad wolf and his attorneys
4 will try to do. Beware of that. They will try to confuse
5 you and divert your attention away from the facts.

6 Your role, as a juror, is the most important role in
7 this courtroom, when the Judge went over everybody's roles.
8 And yours is the one to determine the facts, which is the
9 most important. You need no specialized knowledge to do
10 that. What you do need is good common everyday sense.
11 That's all it takes.

12 You can take into account the witnesses, their
13 demeanor, any bias that they may have that's brought out.
14 The witness may have -- or you have a feeling that a
15 witness is just not totally believable. You can -- you,
16 as the jury, can take part or none of what any witness
17 tells you based upon your feeling as a juror, your common
18 sense, your feeling.

19 Now, ladies and gentlemen, all I ask you to do is
20 just use your good everyday common sense in assessing this
21 case. If you do that, the State is confident that you
22 will see that we have presented evidence sufficient enough
23 for you to find that the big bad wolf is guilty of
24 burglary first degree and assault and battery of a high
25 and aggravated nature against grandma.

1 Thank you.

2 THE COURT: Thank you, Mr. Fleming.

3 Mr. Howe, or, Ms. Anderson.

4 MR. HOWE: Thank you, Your Honor.

5 I'll be speaking.

6 May it please the Court.

7 THE COURT: Yes, sir.

8 MR. HOWE: Good afternoon, ladies and gentlemen.

9 I'm Chip Howe. I'm representing Kevin Epting in this
10 case. I'm the public defender in Laurens County. Helping
11 me with the case is Kate Anderson, who just went to work
12 with the Public Defender's Office. She's helping me in
13 this case, and this is her first trial. And, also,
14 helping out over here, in this case, is Mr. Wayne Sherry.
15 He is helping in a non-lawyer capacity helping us out with
16 the case here.

17 I want to thank y'all on behalf of my client and the
18 system we have in this country for being here. The Judge
19 has already thanked you. And I want to thank you on
20 behalf of my client, too.

21 Now, you've heard an opening statement. That's what
22 you've heard so far.

23 Kevin, if you could, step up and come around here
24 real quick.

25 And let me tell you, ladies and gentlemen, I consider

1 it a privilege to be able to represent Kevin in this case.
2 I want y'all to look at him and see right off the bat that
3 he's got two legs, and he doesn't walk on all fours.

4 Kevin, you can have a seat.

5 And he's not any big bad wolf. That's an attempt
6 right off the bat by the Prosecutor to try to demonize him
7 to try to rile y'all up. Maybe it worked, maybe it
8 didn't. But I believe once we have an opportunity to
9 present the evidence, in this case, that y'all will do
10 away with that. But that's what that was for. And you'll
11 see he's a human being.

12 He's been charged with a crime. And he comes into
13 this courtroom, just like any other human being, including
14 one of you, presumed innocent. And he's only guilty if
15 you -- all of you unanimously find that they have proved
16 beyond a reasonable doubt, as y'all determine and the
17 Court tells you, he's guilty of these crimes. So I want
18 to tell you about that right off the bat.

19 And with all due respect to Ms. Hopkins, who is ill,
20 and, as I understand, she's still being treated for
21 cancer, you know, I don't know whether she's a grandma or
22 not. But, you know, she seems like a fine lady. But
23 we're not going to call her grandma. And we're not going
24 to call anybody a big bad wolf, if I have anything to do
25 with it. And I think if y'all are going to be fair

1 jurors, that's the way y'all will handle it, too.

2 Now, you've heard what the State contends that they
3 will present in this case. You've heard it. Now, I'm
4 going to give you a little bit of what the Defense
5 contends that we can present, in this case, for you to
6 consider why you have every right to find Kevin Epting not
7 guilty of these crimes.

8 Mr. Fleming mentioned that there was a casual
9 relationship and that she might have met Kevin through her
10 son, Bill Sizemore. He mentioned that. What he didn't
11 tell you is Kevin Epting stayed part of the time with
12 Joyce Epting, his mother, who was neighbors with
13 Ms. Hopkins. He saw her on a regular basis. He did
14 things for her, more than just go to Greenwood one time to
15 the doctor, or wherever it was. He knew her. She knew
16 him. She knew about him. He did things for her. He
17 didn't have any argument or beef with her whatsoever. You
18 will hear that.

19 You'll hear from the witness in the case, the law
20 enforcement officer, who will indicate that this thing --
21 and you heard it happened almost a year ago, November 11,
22 at 1:30 in the morning, just getting into 1:30, 1:40 in
23 the morning just going past November the 10th, into the
24 very early morning hours of November 11th, 2008, when this
25 assault -- when an intruder attacked Ms. Hopkins,

1 according to what she's going to tell you.

2 What Mr. Fleming didn't tell you that you'll hear
3 from the officer is that there was no report of this made.
4 There was no report of this made until November the 12th
5 at 3:15 or so in the afternoon when law enforcement got
6 called. That period of time went by before there was any
7 report whatsoever of this intruder. And you'll hear that.
8 And you'll have some consideration there about that.

9 You, also, will hear testimony from Kevin Epting's
10 mother that on November the 11th, in the regular morning
11 hours, she received a call from Ms. Hopkins to go over
12 there and see her where Ms. Hopkins told her about her
13 eyes. They discussed things. Ms. Hopkins fixed dinner
14 for them. They ate dinner. Ms. Epting will tell you what
15 they ate. And they visited. And there was no mention
16 whatsoever of Ms. Hopkins saying that she was assaulted by
17 Kevin Epting. No mention whatsoever.

18 You'll, also, hear testimony that Kevin Epting,
19 actually, spent the night -- that next night, November the
20 11th, the evening hours, at his mother's home and watched
21 a music awards show that was on TV. You'll hear testimony
22 to that from his mother. You'll hear testimony that he
23 was there on and off, even on November the 12th. And then
24 he was not even arrested in this case until November the
25 13th. That's what you'll hear.

1 But you'll, also, hear something very important, that
2 on the night of November the 10th leading into the early
3 morning hours of November the 11th, when this happened,
4 you'll have a witness come in here, put her hand on the
5 Bible, and testify that Kevin Epting spent the night with
6 her. That he was with her when this happened. And that
7 she later on -- upon learning that this had taken place,
8 she attempted to make that known to law enforcement, but
9 got nowhere with it.

10 Now, those are facts that you're going to hear in the
11 case from the Defense. And, with all that, you're going
12 to apply the law. And you're right, we're going to ask --
13 I'm going to ask you, just like Mr. Fleming did, to not
14 lose your attention, not have him even divert your
15 attention by referencing to him being a big bad wolf or
16 something like that, that you keep your eye on the ball in
17 this case.

18 And that is that the State of South Carolina, when
19 they charge a Defendant with a crime, when the Government
20 does that, they've got to prove to each and every one of
21 you to your satisfaction beyond a reasonable doubt that it
22 was committed. And you've got to hear all the evidence,
23 not just what the State says, but all the evidence when
24 you apply that law and make that decision.

25 And that's where we are right now, ladies and

1 gentlemen. That's where we are. We're at opening
2 statements. That's where we are. And that's what I ask
3 you and urge you to do, to keep an open mind and give us
4 the chance to present that before you make your decision.
5 I appreciate very much your willingness to do that.

6 Thank you.

7 THE COURT: Thank you, Mr. Howe.

8 Mr. Fleming, you may call your first witness.

9 MR. FLEMING: Thank you, Your Honor.

10 We would call Marilyn Hopkins to the stand.

11 THE BAILIFF: If you'll put your left hand on the
12 Bible and raise your right hand and turn that way.

13 WHEREUPON,

14 MARILYN DIANE HOPKINS,

15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 You may be seated.

18 MR. FLEMING: May it please the Court, Your Honor.

19 THE COURT: Yes, sir.

20 MR. FLEMING: Thank you.

21 DIRECT EXAMINATION

22 BY MR. FLEMING:

23 Q Ms. Hopkins, could you just state your full name for
24 the record?

25 A Marilyn Diane Hopkins.

MARILYN DIANE HOPKINS-DIRECT BY MR. FLEMING

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- 1 Q Okay. And where do you live, Ms. Hopkins?
- 2 A ■ Cindy Drive, Cross Hill, South Carolina.
- 3 Q Okay. ■ Cindy Drive?
- 4 A ■.
- 5 Q Okay. And is that in Laurens County?
- 6 A Laurens County.
- 7 Q Okay. And how long have you been living there?
- 8 A Oh, going on 4 years.
- 9 Q Okay. And, prior to living there, where did you
- 10 live?
- 11 A I lived in Greenville up until about four and a half
- 12 years ago when I lost my husband in ICU from a bad car
- 13 wreck.
- 14 Q Okay. So, prior to living in Laurens, you lived in
- 15 Greenville County with your husband?
- 16 A Yes, sir.
- 17 Q Okay. And, so after he passed away, you moved here
- 18 to Laurens. Is that what you're saying?
- 19 A I lived with my sister for a year. And then I moved
- 20 over where I'm living now.
- 21 Q Okay. And who is your sister?
- 22 A Judy Prather.
- 23 Q Okay. And how old are you, Ms. Hopkins?
- 24 A 57.
- 25 Q Okay. And do you work anywhere?

1 A I don't.

2 Q Okay. Where did you last work?

3 A I worked at different places, at J.P. Stevens until
4 my health went downhill.

5 Q Okay. And you said your health went downhill. What
6 happened back in August of '08, at that time, concerning
7 your health?

8 A Well, I found out I had lung cancer. And I had it in
9 the left lung. They did a biopsy. The pathology was done
10 on it. And I started taking chemo and radiation. And it
11 made me real weak and pulled me down and -- you know, like
12 that.

13 Q Okay. In November of 2008, were you still undergoing
14 chemotherapy and radiation?

15 A I was.

16 Q Okay. And what about now, are you taking any
17 treatment now?

18 A No. I took the chemo and radiation. I don't have to
19 take it now.

20 Q I'm sorry. You said what now?

21 A I don't have to take it now.

22 Q Okay. So are you still -- do you still have the
23 cancer, or is it gone?

24 A It's gone.

25 Q Okay. And you had some trouble here recently,

MARILYN DIANE HOPKINS-DIRECT BY MR. FLEMING

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1 though, did you not?

2 A I did with breathing with my lungs, and emphysema,
3 and all that. I was breathing on oxygen. I was doing
4 breathing treatments. I just got out of the hospital
5 yesterday, it's in and out.

6 Q Okay. Why did you move down here to Laurens?

7 A Why did I move down here to Laurens?

8 Q Yeah.

9 A Because I didn't no longer want to be -- there's too
10 many memories there of me and my husband. Because we were
11 married about 17 years. And I moved down here to be
12 closer to my sister.

13 Q Okay. And do you have children?

14 A I have a son.

15 Q And what's his name?

16 A William Earl Sizemore.

17 Q Okay. He goes by "Billy"?

18 A Billy.

19 Q Okay. And do you drive?

20 A I never drove.

21 Q Never?

22 A My sister took me places. And then my son took me
23 places and brought me back home.

24 Q So you've relied on others to get you places; correct?

25 A Uh-huh.

1 Q At [REDACTED], the place that you live, is it a
2 regular house, or is it a mobile, home or --

3 A Mobile home.

4 Q Okay. And are there other houses around you there?

5 A I have someone that lives to the right. That's my
6 friend, Ms. Norma. And then on the other side -- well,
7 that mobile home was moved. She was a real good friend of
8 mine. And I loved her to death.

9 Q Okay. How about across the street?

10 A Across the street? Are you talking about to the
11 left? Are you talking about Joyce?

12 Q Yes. Who lives across the street from you?

13 A Joyce Epting.

14 Q Joyce Epting?

15 A Uh-huh.

16 Q Okay. And who stayed there with Ms. Epting?

17 A Her son, Kevin Epting. And she, also, had a son
18 there...

19 Q Okay. Let's go back to November the 11th of 2008.

20 A Sure.

21 Q What did you do that day?

22 A I did my laundry, vacuumed my floors, and mopped.
23 And I did all the things a woman does.

24 Q Was that a good day for you as far as physically?

25 A A perfect day.

MARILYN DIANE HOPKINS-DIRECT BY MR. FLEMING

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- 1 Q Okay.
- 2 A Perfect.
- 3 Q What kind of side effects had you been experiencing
- 4 because of the treatment you were going under?
- 5 A From the -- Dr. Vician, one of the cancer ladies -- I
- 6 was having a lot of back pain and all that from the chemo.
- 7 It made me real sick.
- 8 Q It made you real sick?
- 9 A Yes.
- 10 Q How?
- 11 A Just some nausea.
- 12 Q Okay. What about your strength, did it have any
- 13 effect on your strength?
- 14 A I was real weak.
- 15 Q Did you go anywhere that day, on November the 11th?
- 16 A Not to my knowledge.
- 17 Q If you had, you would have had to call somebody --
- 18 A To come get me.
- 19 Q Okay. What time did you go to bed that evening?
- 20 A I went to bed that night about -- well, about 10:30
- 21 or 15 until 11:00. -
- 22 Q So, somewhere in that time frame, you went to bed?
- 23 A Uh-huh.
- 24 Q And when you go to bed -- or when you went to bed
- 25 that night, do you turn all the lights out or --

1 A I turn them all out.

2 Q Okay.

3 A Sometimes I have trouble getting off to sleep when I
4 lay down, because I can't breathe good.

5 Q Okay. Well, that night, did you turn all the lights
6 off that night?

7 A I turned all the lights off.

8 Q Okay. Even -- in your bedroom -- what about the
9 other rooms? Did you turn off all the lights --

10 A I cut them out, too.

11 Q Okay. And did you go to sleep immediately when you
12 went to bed?

13 A I didn't. Because I wasn't breathing good. I had to
14 put myself up against the wall and use some breathing
15 stuff and then get my oxygen on. I had trouble breathing.
16 I felt like I was going to take my last breath.

17 Q Well, what happened after you went to bed?

18 A I, finally, laid there and I got off to sleep. And I
19 thought -- I said, I'm not going to -- I assume I've got
20 my front door locked. I said, I don't want to get back up
21 and go check it. So I didn't get up and go check it. I
22 just laid there and went to sleep.

23 Q Okay. What happened next?

24 A Next, I heard somebody in there. And I got up. And
25 it was the Defendant.

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1 Q Let's go back a little bit.

2 A Okay.

3 Q You said you heard somebody. Were you awake when you
4 heard them, or did it wake you up?

5 A It woke me up.

6 Q Okay. So whoever -- whatever you heard woke you up?

7 A It woke me up.

8 Q Okay. What did it sound like?

9 A Somebody coming in the front door.

10 Q Okay. And what did you do after you heard that?

11 A I heard that. And I said, What are you doing with my
12 pocketbook and all? And he started walking toward me and
13 kicking me, and hitting me, and all that. And I told him
14 if he didn't get out of the house, I'd call the police.

15 Q Who was it?

16 A The Defendant, Kevin Epting.

17 Q Is there any doubt in your mind that that's who it
18 was?

19 A He was the one.

20 Q Okay.

21 A He was the one.

22 Q All right. How did you know it was him?

23 A Because he had been in my house several times with my
24 son eating chili beans. He would cook on the grill and
25 take it over there, and bring boxes of clothes to my son.

1 Q Okay. Well, how were you able to determine that it
2 was Mr. Epting that was there in your house?

3 A Because from the tattoos on his arms and on his legs.

4 Q Okay. And how about the lighting in there? You said
5 you had turned all the lights out when you went to bed?

6 A I did.

7 Q Okay.

8 A When I come through, I turned the hall light on.
9 That's when he came hitting me, and kicking me, and all
10 that after me going through cancer.

11 Q All right. And what did he have in his hand when you
12 saw him?

13 A He had my pocketbook.

14 Q Okay. And how many times did Mr. Epting hit you?

15 A Several times.

16 Q Okay. Where did he hit you at?

17 A In the eyes. He kept kicking me. And then I had
18 bruises on my legs where he kicked me.

19 Q Okay.

20 A Just somebody going through cancer and then somebody
21 comes up and does something like that to a 57-year-old.

22 Q Okay. Well, what happened after he kicked you?

23 A I told him that he best get on out the door or I was
24 going to call the police. And he went on out the door.
25 And, about an hour later, he was down at a trailer park on

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1 down from me trying to sell some tapes.

2 Q Now, did you immediately call the police at that
3 time?

4 A I didn't.

5 Q Why not?

6 A I was frightened, and scared, and everything. I
7 called my sister and woke her at about 1:40 in the
8 morning.

9 Q Okay. And did he take your pocketbook?

10 A He didn't take it. He dropped it on the couch.

11 Q Okay. So he dropped the pocketbook and then he
12 left?

13 A He left.

14 Q Had Mr. Epting helped you out before in the past?

15 A Sure has. There was a time when my sister couldn't
16 take me for chemo or radiation. And him and his mother
17 took me over there. And I got the gas for them to go over
18 there. And they brought me back and everything.

19 She would get him to go along with her, because her
20 car wasn't working good. She was scared it would cut off.
21 And he drove. He never had no driver's license or
22 anything. He just drove her car on his own free will.

23 Q Okay. Let me let you read that, Ms. Hopkins.

24 A Sure.

25 Q Can you identify that document there?

1 A (There was no response.)

2 Q Is that your statement that you gave to police?

3 A It sure is.

4 Q Okay. Well, let me hold it back again. Let me ask
5 you this. Right here, you say you heard someone in the
6 kitchen and you opened your bedroom door and someone was
7 at the china hutch. And I said, My son is off limits to
8 my wallet and you will not go in my billfold. And they
9 looked up and you said it was Kevin Epting?

10 A Correct.

11 Q And when you say that part about your son, you say
12 your son is off limits to your wallet. What were you
13 meaning by that?

14 A Well, because up here one time, her mother had Sharon
15 and Joyce Epting. And she had Kimberly over there. And,
16 at one time, what I mean by that is when I said he was off
17 limits to my billfold, because I took it one time -- he
18 had gotten money out of my billfold. But it was Kimberly
19 that went and purchased some stuff high up and paid way up
20 money for it. And people has to be on, you know...

21 Q Okay. So were you saying -- this night when you said
22 your son is off limits to your wallet, were you saying --
23 was it your son --

24 MR. HOWE: Objection. He's leading, Judge.

25 THE COURT: All right. Sustained.

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1 BY MR. FLEMING:

2 Q When you say -- when you make the statement, My son
3 is off limits, were you directing that to him?

4 MR. HOWE: Objection, Your Honor. Again, that's
5 leading.

6 THE COURT: Sustained.

7 BY MR. FLEMING:

8 Q What did you mean by, My son is off limits to my
9 wallet or my -- I said, My son is off limits to my wallet?

10 A Because I thought he had been in there. He hadn't.
11 Kimberly had been in and gotten money out of it.

12 Q Who?

13 A Kimberly was staying with Kevin's mother over at
14 Joyce's next door beside me.

15 Q Was your son there the night of the 11th in your purse?

16 A No, sir, he was not.

17 Q Who was it?

18 A Kevin Epting.

19 MR. FLEMING: I beg the Court's indulgence for one
20 minute, Your Honor.

21 THE COURT: Yes, sir.

22 (Pause.)

23 BY MR. FLEMING:

24 Q Ms. Hopkins, let me show you this. Is that a fairly
25 good representation of the schematics of your home?

1 A It sure is.

2 Q Okay. And does it show your bedroom on there?

3 A Uh-huh, right here.

4 Q And if you hold that up and show the jury, point to
5 your bedroom?

6 A My bedroom is here.

7 Q Okay. And your bedroom goes out into what?

8 A This is -- it just goes back into the big bathroom in
9 my bedroom.

10 Q Yeah. But I'm talking about, to get out of your
11 bedroom to go to the kitchen, what does it go out into?

12 A In the hallway.

13 Q Okay. And, the hallway, is that where you say you
14 turned on the light?

15 A That's right.

16 Q Okay. And, as you come around the hallway into the
17 kitchen, what is right there on the wall there?

18 A Right here?

19 Q No. Up top?

20 A Up top?

21 Q No. As you're coming around the corner from -- into
22 the kitchen?

23 A That's another bedroom on --

24 Q No. Let me show you. As you come around the hall to
25 the kitchen area against the wall, what is that?

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1 A The dining room where the table and everything sits.

2 Q All right. What's this right here that's up against
3 the wall there?

4 A That's my china hutch.

5 Q Okay. And is that where you kept your --

6 A That's where I kept it.

7 Q And so you came around and that's where you saw
8 Mr. Epting; is that correct?

9 A Correct.

10 MR. FLEMING: Your Honor, the State would like to
11 move this into evidence as State's Exhibit No. 1.

12 MR. HOWE: No objection to that, Judge.

13 THE COURT: All right. It's in evidence.

14 (WHEREUPON, State's Exhibit No. 1 was marked for
15 identification and admitted into evidence.)

16 BY MR. FLEMING:

17 Q Ms. Epting [sic], I think I said this in my opening,
18 but you didn't call the police until the 12th; is that
19 correct?

20 A The 12th?

21 Q Yeah, November the 12th.

22 A On the 12th, my sister did.

23 Q Okay. Your sister called?

24 A Uh-huh.

25 Q And who did you talk with?

1 A I don't know who she talked with.

2 Q I'm talking about when the police got there, who did
3 you talk with?

4 A Oh, I talked with Ken and another one come by,
5 another officer. I don't recall his name. And then Joel
6 Turner come by one day.

7 Q Okay. Do you recognize Deputy Galarza here?

8 A Sitting right here?

9 Q Yes.

10 A Sure do.

11 Q Did you talk to him?

12 A He's the one I called when the episode occurred with
13 my son, William Earl Sizemore.

14 Q Okay. Did you talk to him the day after Kevin Epting
15 broke into your house?

16 A Not to my knowledge. I called him on behalf --
17 because my son had come in. He was watching TV. I was
18 watching TV. And he went into the bedroom. He was
19 sleeping in and --

20 Q Okay. We're not going into that right now.

21 A Okay.

22 Q The day that your sister called, wasn't it Deputy
23 Galarza that came out to talk to you?

24 A That's where he was.

25 MR. FLEMING: I beg the Court's indulgence for one

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1 second, Your Honor.

2 THE COURT: Yes, sir.

3 (Pause.)

4 BY MR. FLEMING:

5 Q Did you have to go to the hospital as a result of the
6 injuries you received from --

7 A I sure did.

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

10 MR. HOWE: Your Honor, may we approach real quick?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: Okay. Ladies and gentlemen, we're going
14 to break for lunch. I just ask you to be back in the jury
15 room at 2:15. And we'll resume the case at that time.

16 Don't talk about the case. And continue to keep an
17 open mind.

18 Thank you very much.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 1:02 p.m.)

21 THE COURT: Okay. We'll see you back at 2:15.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Are you all ready for the jury?

24 MR. FLEMING: Yes, sir.

25 Just one thing, I noticed before we started and I

1 meant to bring it up, there's only 13 jurors there. And
2 we didn't know anything about that, Judge. And that's --
3 nobody told us.

4 THE COURT: Sir?

5 MR. FLEMING: Nobody told us that --

6 THE COURT: Well, let's see. I don't know where --
7 Ms. Lancaster called me yesterday and said that --

8 What was the juror's name?

9 THE CLERK: Was it Erin Morris?

10 I think that's it.

11 THE COURT: She had a child-care issue. And I asked
12 her to call back and confirm that the child was under
13 seven and asked if she had custody, care, and control of
14 the child, and doesn't have any other way to take care of
15 the child. She said that her child care had fallen
16 through, from what she had told Ms. Lancaster. So I just
17 told her to go ahead and excuse her.

18 But if anybody has anything they want to put on the
19 record in regard to that, I'll be glad to let them do it.
20 And I apologize for not disclosing that earlier. But I,
21 frankly, forgot about it since yesterday. But I don't
22 know if she was a regular juror or an alternate.

23 MR. FLEMING: Nothing from State, Your Honor.

24 MR. HOWE: Nothing, Judge.

25 THE COURT: Okay.

1 MR. HOWE: Was she a regular?

2 THE CLERK: She was a regular.

3 THE COURT: She was a regular juror. But it seemed
4 to me that she met the criteria to be exempt anyway, so.

5 All right. Anything further?

6 MR. FLEMING: Nothing from the State, Your Honor.

7 MR. HOWE: Your Honor, again, I don't want to risk
8 any of the Court's previous rulings. But, now, I think
9 under cross-examination, anything that was testified to
10 would be proper cross-examination; is that correct,
11 without going beyond the Court's ruling?

12 THE COURT: Well, I think I --

13 MR. HOWE: Are you just going to rule on that at the
14 time?

15 What I'm trying to do -- I'm not asking for an
16 advisory opinion. I mean, I just don't want to stop the
17 flow of the cross-examination. But it may have to happen
18 anyway. We'll see how it develops.

19 THE COURT: Well, I may be anticipating where you're
20 going, which is probably erroneous on my part. But we'll
21 just have to see where it goes.

22 MR. HOWE: Yes, sir.

23 THE COURT: Yes, sir. You can bring the jury on in.

24 (WHEREUPON, the jury came into open court at
25 approximately 2:25 p.m.)

1 THE BAILIFF: They're all present, Your Honor.

2 THE COURT: Thank you.

3 Yes, sir, Mr. Howe.

4 MR. HOWE: Thank you, Your Honor.

5 THE COURT: Cross-examination.

6 MR. HOWE: Thank you.

7 CROSS-EXAMINATION

8 BY MR. HOWE:

9 Q Ms. Hopkins, how are you doing?

10 A Fine.

11 Q Good. I understand that you just got out of the
12 hospital, I think, just the other day; is that right?

13 A I did yesterday afternoon.

14 Q Yes, ma'am. You've been having breathing problems?

15 A Uh-huh.

16 Q And emphysema?

17 A Emphysema.

18 Q Yes, ma'am. Were you smoker?

19 A I was.

20 Q Okay. I understand. Now, let's talk a little bit
21 about, if we can, Kevin first.

22 A Excuse me. I need to do this (indicating and raising
23 her hand).

24 Q Ma'am?

25 A I need to do this (indicating and raising her hand).

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1 Q No, ma'am. You've already done that. Okay. You
2 don't have to do that again.

3 Kevin -- you knew Kevin Epting; right?

4 A Sure did.

5 Q Okay. And Joyce, his mother, lived real close to
6 you; right?

7 A Yeah. She was real good friend to me.

8 Q Okay. And, as a matter of fact, Kevin would cut your
9 grass sometimes?

10 A Uh-huh.

11 Q Even in the summertime?

12 A Uh-huh.

13 Q Okay. So you had a chance to see any tattoos or
14 anything like that, I guess, when he was cutting your
15 grass and riding you home; is that right?

16 A Uh-huh.

17 Q All right. And, in fact, you know, he helped out --
18 you know, any time you asked him about anything, he would
19 help out, or his mom would help you out?

20 A Sure.

21 Q Because you indicated that you needed help at
22 different times?

23 A Sure.

24 Q You didn't drive?

25 A I didn't drive.

1 Q And they helped you out with stuff like that; right?

2 A Right.

3 Q Yes, ma'am. And let me ask you, the -- on the
4 Tuesday -- on the evening we're talking about, November
5 the 10th, you said you went to sleep, you know, sometime,
6 I think, you said you were having trouble breathing. But
7 you thought you went -- tried to go to sleep about a
8 quarter of 11:00; right?

9 A Correct.

10 Q Okay. And you were taking, I guess, some medication
11 for your cancer during that time; right?

12 A I was taking something.

13 Q Yes, ma'am. Were you taking, I think, Xanax?

14 A Oh, no.

15 Q You weren't taking anything like that?

16 A Oh, no.

17 Q The doctor never had prescribed that for anxiety or
18 anything?

19 A I just took stuff for chemo and radiation.

20 Q Okay. What kind of medicine was it? Do you
21 remember?

22 A Just stuff that run through my IV veins. And you
23 have to lay in the bed and take it and the chemo. And
24 then you go to radiation.

25 Q Okay. So the doctor's records talking about that --

1 you didn't take the Xanax?

2 A Huh-uh.

3 Q Did he ever prescribe it for you?

4 A Oh, no.

5 Q Okay. Now, the -- I heard you say that you thought
6 about whether or not to lock the door. That's what I
7 heard you testify to; right?

8 A I sure did.

9 Q Your door -- you could lock your door; right?

10 A I could lock my door.

11 Q With keys?

12 A Uh-huh.

13 Q All right. Is that right, with keys?

14 A That's right.

15 Q Okay. And I believe you testified that you heard
16 someone open the door. That's what I heard you testify to
17 when you were talking to Mr. Fleming; is that right?

18 A Uh-huh.

19 Q Okay. And I believe you testified then that you
20 opened your bedroom door; right?

21 A Correct.

22 Q Okay. So your bedroom door was closed; right?

23 A Uh-huh.

24 Q Now, when I looked at that statement -- and that was
25 the statement that Mr. Fleming was asking you about

1 earlier.

2 MR. HOWE: Let's see if we can have that -- fine
3 where that statement is.

4 Do you have that?

5 MR. FLEMING: Here it is.

6 BY MR. HOWE:

7 Q This was the statement that he was talking to you
8 earlier about; right?

9 A That's it.

10 Q Yes, ma'am. And that was the statement that you gave
11 back on November the 13th, 2008, at about 12:45 in the
12 daytime; right?

13 A Correct.

14 Q Okay. And your sister is Judy Prather; right?

15 A Judy Prather.

16 Q And she was a witness to the statement; right?

17 A Uh-huh.

18 Q And, in that statement, Ms. Hopkins, you didn't say
19 anything about leaving your door unlocked, did you?

20 A I didn't say anything about leaving it locked or
21 unlocked. But I went on off to sleep that night. And
22 then I thought, I'm -- I'll go back in and check my door.
23 I believe it's locked. Evidently, it wasn't locked.

24 Q Okay. You didn't -- but in your statement that you
25 gave law enforcement -- and that was back on November the

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1 13th of last year -- you didn't tell the police officers
2 that investigated the case that, I didn't lock my door.
3 You didn't tell them that, did you?

4 A Not to my knowledge. I don't think I did. I just
5 told them I didn't get up and go check it.

6 Q As a matter of fact, you --

7 A It was unlocked, though.

8 Q Okay. And don't let me interrupt. I'm having a hard
9 time hearing you sometimes and understanding you.

10 A Okay.

11 Q But, in fact, you told the police officers that you
12 didn't know -- back on November the 13th, when they first
13 investigated the case that you didn't know how anybody
14 came into your home. You told them that, didn't you?

15 A Uh-huh.

16 Q Okay. So you didn't mention anything about hearing
17 the front door open, did you?

18 A No.

19 Q To the police officers back then?

20 A No.

21 Q Okay. And this drawing -- you helped out, I believe,
22 with the drawing of the inside of your home; right?

23 A I did.

24 Q Okay. And the door that we're talking about is the
25 front door; right?

1 A The front door.

2 Q And then the front door leads, actually, into the
3 living room; right?

4 A Uh-huh.

5 Q It doesn't lead directly into the kitchen, does it?

6 A Huh-uh.

7 Q Okay. And then your bedroom is off to the left from
8 the kitchen some distance away?

9 A From the dining area.

10 Q Okay. And this is a -- I'm not going to ask you to
11 stand up. I understand that. But that drawing of the
12 front door, and the living room, and the kitchen, and the
13 bedroom, that's pretty much the way it is in your home; is
14 that correct?

15 A That's the way it is.

16 Q Okay. And you didn't even tell the officers, did
17 you, that you heard the front door open? Did you?

18 A I didn't.

19 Q In fact, you told them that you heard somebody in the
20 kitchen area of your home, not the living room area where
21 the front door --

22 A It woke me up. And I heard it. And I got up.

23 Q Right. Okay. But you told -- but what I heard you
24 testify to earlier was that you heard the front door open.
25 But, now -- but going back to your statement, you told the

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1 officer then that the -- that you heard somebody in the
2 kitchen, didn't you?

3 A I did.

4 Q Okay. And you didn't say anything about hearing the
5 front door open; right?

6 A Huh-uh.

7 Q You would agree with that, wouldn't you?

8 A Huh?

9 Q You would agree with that, wouldn't you?

10 A Uh-huh.

11 Q All right. Now, you indicated in your statement and,
12 I believe, you even testified to that and you said someone
13 was at your china cabinet. And that's in the kitchen;
14 right?

15 A In the kitchen next to the dining room table.

16 Q Okay. And I believe you told Mr. Fleming that that's
17 where you kept your money?

18 A Correct.

19 Q And you kept your money in a purse, as I understand
20 it; is that right?

21 A Uh-huh.

22 Q And was there a wallet in the purse?

23 A A wallet in my pocketbook.

24 Q Yes, ma'am. And sometimes you called your wallet a
25 purse -- I mean, excuse me. I'm sorry. I'm having

1 trouble.

2 Sometimes, in your purse, you called it a wallet and
3 other times you called it a billfold; right?

4 A Uh-huh.

5 Q But when we're talking about wallet and billfold,
6 just so I can understand, we're talking about the same
7 thing?

8 A Uh-huh.

9 Q Okay. And you said, in your statement, that someone
10 was at your china cabinet. And then the next sentence
11 that I read in your statement was, But I said my son is
12 off limits to my wallet. You said that someone was there;
13 right?

14 A Uh-huh.

15 Q But you said your son was off limits to your wallet;
16 right? That's what you said?

17 A Uh-huh.

18 Q And that's your son, Billy, that you referred to as
19 "Billy"; right?

20 A Yeah.

21 Q And I heard you say that earlier -- sometime earlier
22 you had suspected Billy of taking your money from you
23 before, but then you thought that somebody else did it; is
24 that right?

25 A Sure.

1 Q And Billy knew where you kept your money, didn't he?

2 A He did.

3 Q In the china cabinet?

4 A Uh-huh.

5 Q Okay. And so, back to the statement, when you're
6 trying to tell these officers back on November 13th of
7 last year, when you're trying to tell them the way this
8 happened, you said that someone -- you mentioned that
9 someone was at the china cabinet. And then the very next
10 thing you do is you talk about Billy. And you told us now
11 that the reason you were talking about Billy is because
12 you had suspected him before of getting your money from
13 your purse that was in your china cabinet?

14 A Correct.

15 Q Okay. Now, you, also, testified -- and I believe I
16 heard you testify when Mr. Fleming was asking you about
17 officers coming to your home at different times, you
18 mentioned something about you recognized this officer
19 right here?

20 A Uh-huh.

21 MR. HOWE: And I apologize. Help me with
22 pronunciation.

23 DEPUTY JUAN GALARZA: Deputy Galarza.

24 MR. HOWE: Galarza, Officer Galarza.

25 Thank you.

1 BY MR. HOWE:

2 Q You recognized him. And you were talking before,
3 when Mr. Fleming asked another question about Billy,
4 something about seeing this officer when Billy was
5 sleeping somewhere. Would you go on and tell us what
6 that's about?

7 MR. FLEMING: Your Honor, again, I'm going to object
8 to all this.

9 THE COURT: All right. Let me just talk to y'all
10 over here real quickly.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: All right. Ladies and gentlemen, we're
13 going to take just a quick recess to resolve a matter out
14 here.

15 Don't talk about the case. And continue to keep an
16 open mind. You'll be returning shortly.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 2:38 p.m.)

19 THE COURT: Okay. There was an objection made. We
20 had a bench conference. Mr. Fleming indicated that his
21 objection was based on an earlier in-limine ruling
22 regarding third-party guilt evidence. And Mr. Howe
23 responded that he believed the door had been opened by
24 Ms. Hopkins during her direct testimony.

25 I'll give both sides an opportunity to further

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1 elaborate on their arguments.

2 And, Mr. Howe, I'll give you an opportunity to
3 proffer the testimony. And my inclination is to sustain
4 the objection at this point. But I want to let y'all have
5 the opportunity to put whatever you need to on the record.

6 MR. HOWE: Thank you, Judge.

7 Would it benefit the Court in the ultimate ruling if
8 we go ahead and continue with the testimony?

9 THE COURT: Yes, sir. That's fine.

10 MR. HOWE: Yes, sir.

11 CROSS-EXAMINATION (IN-CAMERA)

12 BY MR. HOWE:

13 Q Let me see if I can get us back to where we are --
14 where we were, Ms. Hopkins.

15 A Excuse me.

16 Q Are you okay? Do you want some water?

17 THE BAILIFF: She's got some water.

18 MR. HOWE: She's got it. Okay.

19 BY MR. HOWE:

20 Q Ms. Hopkins, remember, we were talking about you
21 seeing officer -- the officer --

22 DEPUTY JUAN GALARZA: Galarza.

23 MR. HOWE: I can do better. I promise. But I'm
24 struggling. I apologize.

25 It's Galarza?

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1 DEPUTY JUAN GALARZA: Yes.

2 BY MR. HOWE:

3 Q And you were mentioning before Mr. Fleming asked you
4 another question about when Billy was sleeping. Could you
5 tell the Court now what was happening when Billy was
6 sleeping, what was going on, and why the officer was at
7 your -- in your presence?

8 A I --

9 MR. FLEMING: Your Honor, I'd like to object to one
10 thing. I never mentioned anything about Billy sleeping,
11 as Mr. Howe told it. I asked her, specifically, did she
12 ever remember talking to Officer Galarza after she was
13 robbed when he came out to the house. I never mentioned
14 anything about Billy sleeping.

15 THE COURT: Okay. Well, my memory is the same, but
16 the record will speak for itself.

17 MR. FLEMING: Yes, sir.

18 MR. HOWE: Your Honor, if I said that Mr. Fleming
19 asked when he was sleeping, that is incorrect. I was -- I
20 thought I was trying to cover it and say that that's what
21 she was testifying to about was Billy sleeping. Her
22 response was something about Billy sleeping, not
23 Mr. Fleming's question. So if I phrased the question
24 improperly, Mr. Fleming is absolutely correct.

25 THE COURT: Okay. Yes, sir.

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1 BY MR. HOWE:

2 Q You were talking about Billy sleeping and seeing this
3 officer, could you tell the Court about that?

4 A I was speaking on the times that -- when he came in,
5 he went in there into the bedroom and laid down. And I
6 had the TV on. And I had it on kind of loud. And he got
7 up and he opened the -- when he slung the door back, you
8 know, there was a little place like that on the wall. And
9 I had to call him about it.

10 Q You had to call the law about that?

11 A Uh-huh.

12 Q Okay. And is that when he went over next door --
13 Billy went next door to Joyce Epting's?

14 A Uh-huh, and Kevin's

15 Q And you called 911?

16 A Uh-huh.

17 Q And the police came?

18 A Uh-huh.

19 Q Some police officer came?

20 A Well, he didn't bring my key back to me.

21 Q Who didn't bring it back?

22 A The officer brought it back to me.

23 Q Okay. So the officer -- Billy didn't bring it back?

24 A Huh-uh.

25 Q Why would he have had your key?

1 A Because he carried it with him on the weekends when
2 he went to Whitmire to get back in when he come on the
3 weekends.

4 Q Okay. So Billy did have your key --

5 A Uh-huh.

6 Q -- on a regular basis. And he was staying with you
7 during that time?

8 A No. He wasn't staying with me at that time. He was
9 in Whitmire.

10 Q Okay. But he -- but the reason he had your key was
11 what?

12 A When he would go to Whitmire and all to get back in
13 when he come back in on the weekends.

14 Q And was he staying with you just before the November
15 11th incident?

16 A No, he wasn't.

17 Q Okay. Had he been with you any time shortly before
18 that?

19 A He hadn't.

20 Q Okay. You hadn't seen him?

21 A I hadn't seen him, hadn't seen him.

22 Q Okay. You hadn't seen him. But back whenever the
23 officer came whenever that date was, he had your key?

24 A He had my key.

25 Q And you had to send the officer next door to get it

1 back from him when he was over at Joyce Epting's?

2 A To get the key.

3 MR. HOWE: Judge, that would be, at this stage, what
4 we'd be proffering. And it will be my position -- well, I
5 don't know if you want to hear from -- he may --

6 THE COURT: No. You go ahead.

7 MR. HOWE: It would be my position that I understand
8 the Court's ruling with regard to us offering third-party
9 guilt evidence by calling witnesses on that issue. This
10 is cross-examination as a result of testimony. Whether it
11 was illicit from the Solicitor or not, it's cross -- it
12 was direct testimony from the Prosecution's witness.

13 Now, so with the other factors involved with the
14 testimony about suspecting that one time that her son,
15 Billy, had taken her money with the testimony in -- at
16 least, it would be a factual issue for the jury as to how
17 an entry was gained and whether or not the door was left
18 unlocked, which was not mentioned in the statement, or
19 whether entry was gained in some other fashion.

20 With all that, I would submit that on
21 cross-examination, at this stage, we're not introducing
22 evidence. We're cross-examining, and that we would be
23 entitled to cross-examine on anything that was brought out
24 on direct examination. And that's -- that would be our
25 position.

1 I understand the Court's ruling, at least, right now.
2 without a full proffer of other potential evidence is that
3 we can't introduce anything in our case. But this is
4 cross-examination and it's -- and I would submit that we
5 can't be prohibited from going into something that was
6 testified to. And that would be our position, Judge.

7 THE COURT: Thank you, Mr. Howe.

8 MR. FLEMING: Your Honor, again, you know, I asked a
9 specific question. And she started to blurt out something
10 else and I stopped her as quick as I could, Your Honor.

11 Again, what Mr. Howe has just brought out from
12 Ms. Hopkins on the stand is no different than what was
13 said earlier to this Court. And it has no effect and
14 has -- doesn't raise a reasonable inference or presumption
15 of innocence on the Defendant. Because it's dealing with
16 a matter where the victim, Ms. Hopkins, son came in, I
17 guess, mad or whatever and slammed the door and put a hole
18 in the wall. And that's all it was dealing with.

19 I don't see how that raises an inference or
20 presumption to his client. It does cast suspicion -- just
21 mere suspicion. And that's not admissible under the rule,
22 Your Honor. So that's what would -- that's what our
23 argument would be as to that.

24 Now, I understand that, you know, there was some
25 testimony -- or almost some testimony that she was getting

1 into about some money in the pocketbook. Well, I think
2 she has further stated that she found out that it wasn't
3 her son. It was somebody else that got the money out of
4 there. And she has no ill will against her son, Your
5 Honor.

6 But, again, I would say -- I would put forth that,
7 you know, your earlier ruling should stand. Because what
8 is being asked here is just trying to cast suspicion and
9 offers no reasonable inference or presumption to the
10 Defendant's innocence.

11 THE COURT: Any further argument?

12 MR. FLEMING: Nothing from the State, Your Honor.

13 MR. HOWE: Your Honor, I'm going to let Ms. Anderson
14 speak to it.

15 MS. ANDERSON: Just briefly, Your Honor.

16 THE COURT: Okay.

17 MS. ANDERSON: Just that even though your motion in
18 limine ruling stands, it doesn't aggregate the rules of
19 evidence and the ability to go into cross. Just under
20 brief research, State v. Rice, there was an issue of
21 third-party guilt. I suppose it was in limine. But it
22 was denied by the trial court. And then another issue was
23 brought up later in trial for impeachment purposes, but
24 dealt with third-party guilt.

25 The Defense attorney was allowed to go into the

1 testimony, even though it dealt with third-party guilt
2 because it had an impeachment quality. Just an analogy,
3 the motion doesn't disallow us to go into a regular
4 cross-examination since she testified on direct that there
5 was a -- that Officer Galarza responded to an episode
6 which occurred with her son, William Sizemore. And that's
7 all I have to add, Your Honor.

8 THE COURT: Well, how would that be -- I mean, if
9 it's not third-party guilt testimony, how is it relevant,
10 or how does it go to her bias, or testing her credibility
11 or otherwise constituting impeachment evidence?

12 MS. ANDERSON: I wasn't trying to propose it was
13 impeachment evidence. But just by analogy in State v.
14 Rice where it was allowed, that we'd still be allowed to
15 go into cross-examination.

16 THE COURT: Okay.

17 MR. FLEMING: Your Honor, I haven't seen the case,
18 but I would agree with that if I had asked the question
19 going into that area. I did not. My question was not a
20 question that went into that area, but a totally different
21 area. And, as soon as she made -- started commenting on
22 her son, that's when I stopped her.

23 Now, if my question would have been directed toward
24 her son and the incident with her son, I think that they
25 would be allowed to come in and do that. But that's -- my

1 question was not addressed to that area. And it's
2 different, I would think, than what's in the Rice case.

3 THE COURT: All right, again, I just -- in looking at
4 State v. Rice, and, State v. Cope, and Gregory, I just
5 don't find that there's in the record, as it stands now,
6 such proof connection to the crime by the alleged third
7 party as it tends to, clearly, point out that person is
8 the guilty party. And it would just be absolute
9 speculation, at this point, to try to link the son to the
10 crime.

11 I think that's exactly what the third-party guilt
12 rule was designed to prohibit. In part, because it
13 confuses the issues and could be misleading to the jury.
14 And while it is commendable for the Defense to try to
15 illicit such testimony, I just don't find it would be
16 proper under the rules.

17 So I'm adhering to my earlier ruling. And I sustain
18 the State's objection.

19 Okay. Anything else before we bring the jury back?

20 MR. FLEMING: Nothing from State, Your Honor.

21 MR. HOWE: Nothing.

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

23 (WHEREUPON, the jury came into open court at
24 approximately 2:56 p.m.)

25 THE BAILIFF: They're all present, Your Honor.

1 THE COURT: Yes, sir, Mr. Howe.

2 MR. HOWE: Thank you, Your Honor.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. HOWE:

5 Q Ms. Hopkins, after this happened, I think you would
6 agree there was no furniture broken, no damage to the
7 home, no damage to the door, window, anything like that;
8 correct?

9 A No.

10 Q Nothing was, actually, taken; right?

11 A No.

12 Q You had a phone that worked at the time, didn't you?

13 A I did.

14 Q Okay. And you even told -- according to your
15 statement, you told the intruder that you would -- that
16 you were going to call the police or call law enforcement
17 if they didn't leave; correct? That's what you said?

18 A Correct.

19 Q Okay. And then you said that you were attacked and
20 beaten; correct? I heard you say that.

21 A I was what?

22 Q That you were attacked after that, even though you
23 said, If you don't leave, I'm going to call the police?

24 A Uh-huh.

25 Q And then you said you got attacked?

MARILYN DIANE HOPKINS-CONT. CROSS BY MR. HOWE

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1 A Uh-huh.

2 Q Okay. And, even after the attack, you didn't call
3 the police, did you?

4 A I didn't.

5 Q Now, you testified, I believe, that after this
6 happened, your testimony was that you saw Kevin Epting at
7 the trailer park trying to sell tapes. That's what I
8 heard you testify to before lunch; right?

9 A After he left my way, he went down the other way and
10 he tried to sell them.

11 Q Okay. Now, this is 1:30, 1:40 in the morning; right?

12 A Right.

13 Q Okay. And would you tell the jury where at the
14 trailer park that was taking place?

15 A Maybe one trailer down from me. It would be the next
16 trailer on the right and the one over across from there.

17 Q Okay. I couldn't hear that last part of your answer.

18 A One trailer down from me on the right.

19 Q Yes, ma'am.

20 A And then there's another trailer there on the right.
21 And across from the other one on the right was another
22 one.

23 Q Okay. And you saw him -- so I assume you're telling
24 this jury that you -- after this happened, you looked
25 outside and saw, you say, Kevin Epting standing out there

1 selling -- attempting to sell some kind of tapes?

2 A No. He wasn't standing out there. He was standing
3 in his mother's car.

4 Q In his mother's?

5 A Car.

6 Q Car?

7 A He didn't drive. He didn't have no license.

8 Q But he was down there in his mother's car trying to
9 sell tapes?

10 A Correct.

11 Q Okay. And did the distance -- could you tell me how
12 far away you were to be able to see that?

13 A I couldn't see good because it was dark. But I got
14 hearsay he was down there, you know.

15 Q You got hearsay that he was down there?

16 A Uh-huh.

17 Q Okay. Well, that -- so let me get this straight now.
18 Because this is real important. You testified earlier
19 that you saw this and that's what you said under oath when
20 you -- like you were doing earlier when you put your hand
21 on that Bible; right?

22 A I put my hand on the Bible. I told the truth.

23 MR. FLEMING: Your Honor, I would object.

24 Could we have a side bar?

25 THE COURT: Okay.

MARILYN DIANE HOPKINS-CONT. CROSS BY MR. HOWE

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1 (WHEREUPON, a bench conference was held.)

2 BY MR. HOWE:

3 Q Ms. Hopkins, I don't want to put words in your mouth.

4 I'm not going to try to do that. But let me ask you this.

5 Now, you --

6 A Sure.

7 Q -- testified earlier that -- I thought -- when you
8 were talking to Mr. Fleming that you saw Kevin Epting down
9 there selling tapes. That's what you testified earlier to
10 before lunch; right?

11 A I was saying that he was down that way trying to sell
12 tapes after he left my way.

13 Q Okay. And you indicated that you saw him down there.
14 Because you were describing where he was in the car -- in
15 his mother's car down in front of his mother's --

16 A He was in his mother's car driving with no license or
17 nothing.

18 Q Okay. I understand that about the no license. We've
19 covered that. But you said you saw that. But, now,
20 you're telling the jury that you didn't see that?

21 A You can only see so far. And it was dark, you know.
22 The car was sitting down there.

23 Q Okay. But help me out. I don't want to -- we're not
24 going to sit here and argue about it all night. I don't
25 want to do that. But didn't you tell the jury earlier

1 that you saw it?

2 A I did.

3 Q Okay. That you saw it?

4 A Yes.

5 Q But, now, you're saying you just heard it. Because
6 when we started talking about how dark it was and how hard
7 it might be to see, now, you're saying you just heard it.
8 Is that what you're saying now?

9 A I'm just going to say I heard it.

10 Q You're just going to say you heard you?

11 A Uh-huh.

12 Q Even though, you would agree with me that before
13 lunch, you said, I saw it?

14 A Uh-huh. I'm going to say I heard it.

15 Q Okay. Now, what you've testified to today, including
16 what we just talked about, you're saying that all that is
17 true?

18 A True.

19 Q You're saying that what you said before lunch and
20 what you said now about any of these events, it's all
21 true?

22 A All true.

23 Q Even though -- now, you're telling this jury that
24 maybe what you said before lunch wasn't exactly true.
25 That's what you're saying now?

1 A Well, what I'm saying is it is true about the episode
2 with the tapes down at the trailer.

3 Q You're saying you saw it?

4 A I saw it. The car was parked down there from what I
5 could see from my porch.

6 Q So, now, you're telling us again -- and, again, I'm
7 not -- now, you're saying you saw it?

8 MR. FLEMING: Your Honor, I'm going to object again.
9 I'd like to talk about this at a side bar again as well,
10 Your Honor.

11 THE COURT: All right.

12 (WHEREUPON, a bench conference was held.)

13 BY MR. HOWE:

14 Q Ms. Hopkins, you saw Ms. Joyce Epting the morning of
15 November the 11th, didn't you?

16 A I most certainly did.

17 Q You called her to come to your home, didn't you?

18 A I did. I did not make dinner that day.

19 Q Okay. You called her to come to your home?

20 A I did.

21 Q All right. And she was at your home for a period of
22 time, wasn't she?

23 A Until my sister came over and took me to the
24 emergency room.

25 Q Okay. She was at your home?

1 A She was at my home.

2 Q Okay. On November the 11th?

3 A November the 11th.

4 Q And you never told Ms. Epting that her son had been
5 the person who had come into your home and attacked you
6 just hours before?

7 A I did not go that route telling her that. She would
8 say her son did not do that to me.

9 Q But you didn't tell her that?

10 A I didn't tell her that, no.

11 Q You invited her in your home?

12 A I invited her into my home. I thought the world of
13 her.

14 Q Okay. And you say that y'all did not have a meal?

15 A We did not have no meal.

16 Q Okay. So if -- I'll let you know now I'm going to
17 call Ms. Epting to testify. I'm going to put you on
18 notice now that I'm going to have her testify that y'all
19 had a meal and she was over there for some time.

20 A No. We didn't have no meal that day.

21 Q And that testimony is just as true as anything else
22 you've said; is that right, that you didn't have a meal?

23 A We did not have no meal. There was no meal cooked
24 that day.

25 Q All right. And --

MARILYN DIANE HOPKINS-CONT. CROSS BY MR. HOWE

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1 A That's the day my sister came over after the incident
2 occurred that night.

3 Q Okay. But that's not the day it was reported to law
4 enforcement, was it?

5 A Yes. It was reported to law enforcement. Because
6 she carried me to the emergency room later on that
7 afternoon.

8 Q On the 11th?

9 A On the 11th.

10 Q And not the 12th?

11 A Not the 12th.

12 Q You're sure about that as anything else you've
13 testified to?

14 A There's nothing else to testify to.

15 Q So how many times did Judy come to your house before
16 law enforcement got involved?

17 A She came to my house two times before the law
18 enforcement got involved --

19 Q Before?

20 A -- and investigated and made pictures and all.

21 Q Okay. Did she come -- and it's your testimony she
22 came on the 11th, the morning after this happened?

23 A Huh?

24 Q The morning after this happened?

25 A The morning after that happened.

1 Q And it's your testimony then she came another time?

2 A She came back later on in the afternoon and took me
3 to the emergency room. And she stayed over there.

4 Q And that would have been on the 11th?

5 A On the 11th.

6 Q According to your testimony?

7 A Uh-huh

8 MR. HOWE: I don't have any further questions at this
9 time, Judge.

10 THE COURT: Redirect, Mr. Fleming?

11 MR. FLEMING: Yes, sir, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. FLEMING:

14 Q Ms. Hopkins, you stated earlier that your son had
15 brought Kevin Epting over to your house on a number of
16 occasions; is that correct?

17 A On a number of occasions.

18 Q Okay. And, while he was over there with your son,
19 was it possible that he saw where you put your purse?

20 MR. HOWE: Objection, Your Honor. That calls for
21 speculation.

22 THE COURT: Overruled.

23 BY MR. FLEMING:

24 Q You can answer the question.

25 A Sure.

MARILYN DIANE HOPKINS-REDIRECT BY MR. FLEMING

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1 Q Let me let you look at your statement again. And
2 I'll let you borrow those, if you need them. Do you need
3 these glasses, Ms. Hopkins?

4 A Sure.

5 Q I'll let you borrow those.

6 A All right.

7 Q Thank you.

8 Now, you did not put in there that you heard someone
9 coming in the front door; is that correct?

10 A I didn't state that on there.

11 Q Okay. Did you tell the officers that?

12 A I did.

13 Q Okay. And you, also, didn't put in there that you
14 saw Kevin Epting with your purse in his hand; is that
15 correct?

16 A Huh-uh.

17 Q Did you tell the officers that?

18 A When they come out and investigated.

19 Q Okay. But you, also, didn't put anything in this
20 written statement about you possibly leaving the door
21 unlocked, did you?

22 A I didn't.

23 Q But did you tell the officers that?

24 A I did.

25 Q Let's get back to -- or go back to when Mr. Howe

1 questioned you about Mr. Epting and what he did after he
2 left. You stated that you saw him go down the street in
3 his mother's car; correct?

4 A Uh-huh.

5 Q Okay. And you didn't see him selling the tapes; is
6 that correct?

7 A I didn't see him selling them, but...

8 Q That's what you were told?

9 A Uh-huh.

10 MR. HOWE: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MR. FLEMING:

13 Q Is that what you were told?

14 MR. HOWE: Objection, Your Honor. Leading.

15 THE COURT: Sustained.

16 BY MR. FLEMING:

17 Q How did you find that out?

18 A From someone that lived down the street.

19 MR. HOWE: I object. It's hearsay then.

20 MR. FLEMING: It's already come in, Judge.

21 THE COURT: I'm going to -- I'll overrule the
22 objection.

23 BY MR. FLEMING:

24 Q So, earlier, when you testified that you saw
25 Mr. Epting down there, you were -- were you referring --

MARILYN DIANE HOPKINS-REDIRECT BY MR. FLEMING

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1 MR. HOWE: Objection, Your Honor. Leading.

2 THE COURT: He hasn't finished the question yet.

3 MR. HOWE: Okay.

4 BY MR. FLEMING:

5 Q Were you referring to Mr. Epting driving the car down
6 there?

7 MR. HOWE: Objection. Leading.

8 THE WITNESS: I was.

9 THE COURT: I overrule.

10 BY MR. FLEMING:

11 Q So when you stated that you saw Mr. Epting go down
12 there, you were not referring to seeing him selling
13 tapes?

14 MR. HOWE: Same objection, Your Honor. Leading.

15 THE WITNESS: No.

16 THE COURT: I sustain that objection.

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

19 THE COURT: Mr. Howe?

20 MR. HOWE: No recross, Judge.

21 THE COURT: All right. You may step down, ma'am.

22 MR. FLEMING: Your Honor, the State would call Judy
23 Prather to the stand.

24 THE BAILIFF: Step right up here and place your left
25 hand on the Bible and raise your right hand.

JUDY PRATHER-DIRECT BY MR. FLEMING

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1 WHEREUPON,

2 JUDY PRATHER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE BAILIFF: Now, have a seat.

6 MR. FLEMING: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. FLEMING: Thank you.

9 DIRECT EXAMINATION

10 BY MR. FLEMING:

11 Q Ms. Prather, where do you live?

12 A I live in Mountville, South Carolina, on [REDACTED]

13 [REDACTED]

14 Q Excuse me?

15 A On [REDACTED] [REDACTED] in Mountville, South Carolina.

16 Q Okay. And how long have you lived there?

17 A About 28 years.

18 Q Okay. And are you related to Marilyn Hopkins?

19 A Yes, sir.

20 Q How are you related to her?

21 A I'm her sister.

22 Q Okay. And, at some point in time, did she come to
23 live with you?

24 A Yes, she did.

25 Q Do you recall about when that was?

JUDY PRATHER-DIRECT BY MR. FLEMING

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- 1 A I can't remember the date, no, sir.
- 2 Q About how long did she live with you?
- 3 A She lived with me for almost a year.
- 4 Q Okay. And where did she move to after that?
- 5 A To Cross Hill to Ms. Simpson's trailer park.
- 6 Q Is that on --
- 7 A It's [REDACTED] [REDACTED] [REDACTED] --
- 8 Q Okay. On Connie Drive or --
- 9 A No. It's on [REDACTED] Cindy Drive.
- 10 Q [REDACTED] Cindy Drive?
- 11 A Yes, sir.
- 12 Q That's where she moved to?
- 13 A Yes, sir.
- 14 Q And where did she live prior to living with you?
- 15 A She lived in Greenville.
- 16 Q Okay. And why did she leave Greenville?
- 17 A Because her husband died and left her alone.
- 18 Q Okay. Now, in August of 2008, was your sister
- 19 diagnosed with cancer?
- 20 A Yes, sir, she was.
- 21 Q What kind?
- 22 A All I know is lymphoma. Cancer of the lungs is all I
- 23 can tell you.
- 24 Q Okay. Did she have to undergo treatment for that?
- 25 A Yes, she did.

1 Q Okay. Did you take her for any of those treatments?

2 A Yes, sir. Every treatment she went to, I took her.

3 Q Okay. Why did you have to do that?

4 A Because she can't drive. She's never drove.

5 Q Okay. And, getting toward November the 11th of 2008,
6 had she -- was she still taking treatments? Was she
7 finishing up her treatments?

8 A She was finishing them up. But she was still taking
9 them.

10 Q And had you noticed a change in her physically?

11 A Yes, sir, a great change.

12 Q And what was that?

13 A Do you mean pertaining to her cancer?

14 Q Yeah. Physically --

15 A She was real weak. She didn't have no hair. She
16 lost her hair. She had to wear a wig.

17 Q Okay. Anything else?

18 A Pertaining to the cancer?

19 Q Yes.

20 A She was just real weak, real tired, and just couldn't
21 hardly do for herself, you know. That's why I had to do a
22 lot for her.

23 Q All right. Well, now on November the 11th of 2008,
24 she's testified that that's the morning -- early morning
25 of November the 11th that Mr. Epting broke into her home.

JUDY PRATHER-DIRECT BY MR. FLEMING

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1 When did you come to find out about it?

2 A That morning. I called her to check on her and she
3 was, you know, real upset. And so I got in my car and
4 went over there.

5 Q On November the 11th?

6 A Yes, sir.

7 Q Okay. And what did you do when you got there?

8 A When I got there, I just said, Marilyn, what in the
9 world is wrong with you? Because I found her with two
10 black eyes, you know, a big knot on her head, a bruise on
11 her side and her leg, her glasses broke all to pieces.
12 And she was just in a state of shock.

13 Q Okay.

14 A So I got the cell phone -- well, my daughter was with
15 me. She called the Laurens County Police to come out
16 there.

17 Q Okay. Are you sure you're not confused about that?

18 A I may be confused about the date, but not about that,
19 no.

20 Q Okay. So --

21 A Because she was pitiful looking. She was in a state
22 of shock.

23 Q All right. Did you go over there the exact morning
24 after it happened, or was it later?

25 A The exact -- no, sir. It was the exact morning.

1 Q Are you sure?

2 A I'm sure.

3 Q Okay. Did you call the police on that exact day?

4 A Yes, I did. Now, I may have the dates wrong. I'm
5 not good at remembering dates. But, now, yes, sir, I went
6 over the same morning that she had told me she had been
7 broken into and somebody beat her up.

8 Q Okay. And you took her to the doctor?

9 A Yes, sir, after the police left. They stayed for a
10 long time. And I took her to the Laurens emergency room.

11 Q Did she tell you who had done that to her?

12 MR. HOWE: Objection, Your Honor --

13 THE WITNESS: Yes.

14 MR. HOWE: -- to what she told her.

15 THE COURT: Sustained.

16 BY MR. FLEMING:

17 Q Did you ask her who inflicted the injuries to her?

18 A Yes, sir, I did. I said, Marilyn, what in the world
19 happened to you? Who done this to you? You can't let
20 them get by with this. Why didn't you call me last night?
21 Those were my very words. And she said --

22 MR. HOWE: Objection.

23 THE COURT: What's the basis of your objection?

24 MR. HOWE: Objection. It's improper bolstering,
25 Judge.

JUDY PRATHER-DIRECT BY MR. FLEMING

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1 THE COURT: I don't know what she's going to say.

2 So --

3 MR. FLEMING: I don't know either, Your Honor.

4 THE COURT: Overruled.

5 BY MR. FLEMING:

6 Q Go ahead and answer.

7 A I just asked her, you know, what happened to her.

8 Because it scared me and upset me so bad. And she said
9 somebody broke in on her that night, beat her up, and was
10 trying to get in her pocketbook, and beat her up, you
11 know, broke her glasses, bruised her eyes, and all that.

12 And I said, Marilyn, why didn't you call me last
13 night? That was my very words. You asked for my very
14 words and that's what I said. She said, I was scared.

15 Q Okay. At what time -- approximately what time did
16 you take her to the doctor?

17 A The approximate time, I don't remember. But it was
18 late that afternoon.

19 Q Okay.

20 A Because we didn't get out of the emergency room until
21 it was after dark.

22 Q Okay. Did you -- did the police arrive before you
23 took her to the doctor or after?

24 A Yes, sir, before. And they stayed a good while.

25 Q And who was the officer that responded?

JUDY PRATHER-DIRECT BY MR. FLEMING

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1 A Sir, I can't remember all their names. But I think
2 one of them name was Bobby. And there was another one,
3 but I do not remember his name.

4 MR. FLEMING: I beg the Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 BY MR. FLEMING:

9 Q And, as far as your sister's injuries are concerned,
10 what did you observe?

11 A Well, I observed -- what I observed was trauma to me.
12 Because she had two black eyes that was swelled up. She
13 couldn't hardly see out of one of them. She had a bruise
14 on her head, a bruise on her side, and a bruise on her
15 leg. And her glasses was crushed. She couldn't even see
16 out of them. She can't see without them. Her whole face
17 was swelled up.

18 Q Again, what was -- what was her state when you got
19 there? How did you perceive her as being, other than the
20 two black eyes?

21 A In a state of shock like she was scared to death,
22 terrified. That's why I asked her why didn't she call me
23 before. But, by looking at her, she probably wasn't able
24 to call me before.

25 MR. HOWE: Objection, Your Honor. It calls for

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1 speculation on the part of this witness. I'd ask you to
2 instruct the jury to disregard that.

3 THE COURT: Okay. Ladies and gentlemen, disregard
4 that last statement.

5 BY MR. FLEMING:

6 Q Ms. Prather, let me show you the incident report on
7 this and --

8 MR. HOWE: I'm going to object to this, Your Honor,
9 unless she has personal knowledge of anything contained in
10 that incident report. And if we need to discuss this at a
11 side bar, I'd like to have the opportunity to do that.

12 THE COURT: Yes, sir.

13 Mr. Fleming, how would that be proper?

14 MR. FLEMING: Your Honor, I was just going to
15 question her not on what is in the body or the meat of the
16 incident report, but the dates and the times.

17 MR. HOWE: Your Honor --

18 THE COURT: I sustain the objection.

19 MR. HOWE: Thank you.

20 BY MR. FLEMING:

21 Q After you took your sister to the hospital,
22 Ms. Prather, what did you do after that?

23 A I took her home with me.

24 Q Okay. How long did she stay with you?

25 A Really, to tell you the truth, I don't know. But it

1 was probably three or four days, until she got better, and
2 got color back in her face and all, and her strength back.

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

5 THE COURT: Cross-examination.

6 MR. HOWE: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. HOWE:

9 Q Ms. Prather -- it's Prather, isn't it?

10 A Yes, sir.

11 Q Yes, ma'am. You said that you asked your sister why
12 she didn't call you. So she didn't call you around 1:40
13 to 1:45, or something like that, in the morning on
14 November the 11th, did she?

15 A To my knowledge, she may have. I just don't
16 remember.

17 Q Well, if she called you at 1:40 in the morning --
18 early morning hours of November the 11th to tell you that
19 she had been attacked by an intruder, you would have
20 remembered that, wouldn't you?

21 A If she had told me that, yes, sir, I would.

22 Q Okay. So she didn't -- so your testimony is that
23 you -- she didn't call you at any 1:40 in the morning
24 telling you she had been attacked?

25 A If she did, I don't remember.

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1 Q Well, that would be real important now. Help me out.

2 A Yes. It would be important. But I don't remember
3 her calling me.

4 Q Okay. And if she would have called you with
5 something that important --

6 A I would have been over there that night and called
7 the police, yes, sir.

8 Q Thank you, ma'am.

9 That's what I wanted to get to.

10 A That's exactly what I'd have done.

11 Q As a matter of fact, she didn't call you -- you came
12 over to see her --

13 A Yes, I did.

14 Q -- that next morning. And that would have been the
15 morning of November the 11th, when you say you discovered
16 her; correct?

17 A If you say so, sir. Because I can't remember dates.

18 Q Well, I understand. Well, let's do it another way.
19 I understand your situation about dates. I have that
20 problem, too.

21 But let me ask you this. You say it was the morning
22 after she had been attacked in the early morning hours of
23 the same morning is when you came over?

24 A Yes, sir.

25 Q You came over not as a result of her calling you --

1 A No.

2 Q -- you came over on your own?

3 A I came over because I called to check on her and she
4 was upset, very upset. She couldn't even talk. So I got
5 in my car and I went over there.

6 Q Okay. And you say that same day is when the law
7 came?

8 A Yes, sir, it was.

9 Q And it was November -- and so it would have been the
10 same day, regardless of whatever date it was?

11 A Whatever date.

12 Q It wasn't a whole day later?

13 A No, sir. It wasn't a whole day later. It was the
14 same identical day.

15 Q All right. And the trip to the emergency room was --
16 what emergency room, ma'am?

17 A Laurens County emergency room.

18 Q Okay. And you say you did that after law enforcement
19 was there?

20 A After they left, yes, sir.

21 Q Okay. And, as you said, you had to pretty much drive
22 her anyway; correct?

23 A Yes, sir. Because she don't -- she ain't never drove
24 in her life, yes, sir.

25 Q Yes, ma'am. And you took her if she had to go to

JUDY PRATHER-CROSS BY MR. HOWE

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1 cancer treatments or something like that?

2 A Twice a week.

3 Q Twice a week, you would have taken her?

4 A I had to take her. I was the only one to take her.

5 Q And so on November the 18th, which would have been
6 about a week after this incident, you took her to that
7 cancer visit with Dr. Funke?

8 A Yes. I took her there, one with Dr. Funke and one
9 with Dr. Vician -- I can't pronounce her name right, but
10 that's -- it's something like that.

11 Q So you would agree that probably -- yeah, I
12 understand. And so you would agree that the next time you
13 probably took her to a cancer doctor was about a week
14 after this happened; right?

15 A Yes, sir, approximately about a week.

16 MR. HOWE: That's all the questions I have for this
17 witness.

18 Thank you.

19 MR. FLEMING: No more questions, Your Honor.

20 THE COURT: All right. Thank you, Ms. Prather.

21 You may step down.

22 MR. HOWE: Judge, can I have just one moment?

23 THE COURT: Yes, sir.

24 MR. HOWE: I'll take just a second to go get
25 something, I think, I'm missing.

1 THE COURT: Yes, sir.

2 (Pause.)

3 MR. HOWE: Thank you.

4 MR. FLEMING: Your Honor, the State would call Deputy
5 Bobby Galarza to the stand.

6 THE BAILIFF: If you'll put your left hand on the
7 Bible and raise your right hand and turn that way.

8 WHEREUPON,

9 JUAN GALARZA,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 You may be seated.

13 MR. FLEMING: May it please the Court, Your Honor.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. FLEMING:

17 Q Deputy Galarza, who do you work for?

18 A I work for Laurens County Sheriff's Office.

19 Q And how long have you worked there?

20 A For about six years.

21 Q Okay. And what are your chief duties with the
22 Laurens County Sheriff's Office?

23 A Road patrol.

24 Q And have you been doing that the whole four years?

25 A Yes, sir.

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1 Q Okay. And did you work anywhere prior to the
2 Sheriff's Department?

3 A Yes, sir. I worked for Summerville Police Department
4 and Simpsonville at one time, their police department.

5 Q Okay. How long did you work for them?

6 A About a year and a half or so. And about two years
7 with the Summerville Police Department.

8 Q Okay. And, during your time working in law
9 enforcement, how many burglary cases have you been a part
10 of responding to?

11 A Countless, quite a few.

12 Q More than 20?

13 A Definitely.

14 Q Okay. Now, you received a call to a burglary that
15 occurred at ■ Cindy Drive, did you not?

16 A Yes, sir.

17 Q Did you respond there?

18 A Yes, sir.

19 Q Okay. And can you tell the jury the date and the
20 time that you responded?

21 A This -- the incident took place -- or the time I
22 responded -- the date I responded was November 12th, 2008.

23 Q Okay. At what time on November the 12th?

24 A It was at 3:00 in the afternoon on November the 12th,
25 3:13 to be exact.

1 Q Okay. So Ms. Prather and Ms. Hopkins are saying that
2 it was on the 11th, and they are confused; is that
3 correct?

4 MR. HOWE: Objection, Your Honor. That calls --

5 THE COURT: Sustained.

6 MR. HOWE: Thank you.

7 BY MR. FLEMING:

8 Q Is that different than the dates that they gave?

9 A Yes, sir. It is different than the dates that they
10 gave.

11 Q Okay. Now, when you went out there, who was the
12 first person that you talked to?

13 A I spoke with -- the complainant who made the call was
14 Ms. Judy Prather.

15 Q Okay. And, as a result of your conversation from --
16 with her, what did you find out?

17 A I found out -- she had explained to me that she had
18 gone over to check on her sister in reference to before
19 that --

20 MR. HOWE: I'm going to object to hearsay testimony.

21 MR. FLEMING: It's already been testified to.

22 THE COURT: Sustained.

23 THE WITNESS: That she got there --

24 THE COURT: I'm sorry. I sustained the objection.

25 Okay. So you have to ask another question.

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1 BY MR. FLEMING:

2 Q What was the -- you talked to Ms. Prather. What did
3 you do after you talked to Ms. Prather?

4 A After I spoke with Ms. Prather, I approached the
5 victim, Ms. Marilyn Hopkins. And I questioned her about
6 the incident and her injuries.

7 Q Okay. And what did you observe by just looking at
8 Ms. Hopkins when you saw her?

9 A I observed she had two black eyes. She had bruises
10 on her face area and, also, to her leg.

11 Q Okay. And did she state what had happened to her at
12 that time?

13 A Yes, sir, she did.

14 Q What was that?

15 A She stated to me that earlier on the -- November 11th
16 at about 1:30 a.m. or 1:45 a.m., somewhere around there,
17 she heard a noise in the kitchen. She got up to see what
18 was going on. And she was confronted with a white male
19 who she described as being Mr. Kevin Epting. She said she
20 saw him with her purse in his hands. And when she tried
21 to take it away from him, he assaulted her.

22 Q Okay. And did you check the house for any evidence
23 of a break-in?

24 A Yes, I did.

25 Q And what did you find?

1 A From my experience, I didn't see anything that was
2 forced on any of the locks or the doors, forced entry.

3 Q And did you bring that fact up to Ms. Hopkins?

4 A Yes, I did.

5 Q And what did she state?

6 A She said she wasn't sure if she had left the door
7 open -- unlocked. She thought she probably hadn't locked
8 it. But, at the time, she was not sure.

9 Q Okay. And how did Ms. Hopkins identify Mr. Epting as
10 the person who broke into her house?

11 A She identified him by knowing him being a neighbor.
12 She, also, went on saying about his tattoos and
13 describing -- giving me a description of what he looked
14 like and his tattoos especially.

15 Q Was that description accurate?

16 A Yes, sir. It was accurate at the time.

17 Q Okay. And what did you do after you had talked with
18 Ms. Hopkins? What did you do next?

19 A After talking to Ms. Hopkins and getting all her
20 information, then -- in the meantime, being a patrol
21 officer on the streets, I had to do other things. And the
22 very next day, on the 13th, I went in and obtained some
23 warrants. I, also, went back to Ms. Hopkins where I
24 retrieved a statement that she wrote for me.

25 Q Okay. Well, let's go back before you left the

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1 residence the day you met with Ms. Hopkins. Did you take
2 photographs?

3 A Yes, I did. I took photographs of her injuries and
4 pretty much of the kitchen showing more or less where the
5 incident took place.

6 Q Okay. And after that is when -- you said the next
7 day, you obtained warrants for Mr. Epting's arrest?

8 A Uh-huh.

9 Q Okay. Did you find him the day that you had the
10 warrants issued?

11 A Yes. We found him later on that morning. We found
12 him in another area.

13 Q And where was that?

14 A That was in the city of Clinton, South Carolina.

15 Q Okay. How far away was that from his mother's house?

16 A That's approximately -- I want to say 20 miles or
17 more.

18 Q Okay. Other than the physical injuries to
19 Ms. Hopkins, when you went there, initially, what did you
20 observe about her demeanor?

21 A The subject was very upset, very nervous, very
22 scared. She really didn't want to open up, at that time,
23 while I was there. It took a bit for her to open up and
24 give me the statement of what happened.

25 Q Okay. Now, did -- the victim, Ms. Hopkins, did she

1 tell you when you first met with her that she had heard
2 noises and that's why she got up?

3 A She said she heard noises coming from the kitchen,
4 the kitchen area.

5 Q Okay. Did you, at some point in time, present a
6 photo of the Defendant to Ms. Hopkins?

7 A I believe I did on the --

8 MR. HOWE: Objection, Your Honor. There's a matter
9 for the Court.

10 THE COURT: All right. I'll tell you what, ladies
11 and gentlemen, we're going to go ahead and take a short
12 recess at this time.

13 Don't talk about the case. And continue to keep an
14 open mind.

15 Thank you very much.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 3:45 p.m.)

18 THE COURT: Yes, sir.

19 MR. HOWE: Thank you, Your Honor.

20 Judge, even though I understand the Court's ruling
21 with regards to the evidence concerning the two prior
22 burglaries, I think I'm probably obligated to object to
23 any testimony about any kind of a photo. Because it may
24 imply or lead to evidence concerning my client having a
25 previous criminal history. And I would object to that at

1 this point.

2 You asked, I think, yesterday whether or not there
3 were any Neil v. Biggers issues. And I would agree there
4 are not. But this testimony here, I don't know exactly
5 where it's going. And I would object to that. Because it
6 seems to me if I don't, the implication may be that he has
7 a prior criminal history.

8 Now, based on your ruling, it's going to come out
9 anyway. But if somebody disagrees with your ruling, at
10 least, I'm protected directly with regard to that.

11 THE COURT: Yes, sir.

12 Mr. Fleming, where are you heading now?

13 MR. FLEMING: Your Honor, I was just bringing out the
14 fact that she did identify the Defendant by photograph as
15 well. And my understanding is that you already ruled that
16 I can prove the burglary by two prior burglaries, Your
17 Honor. And the case law backs your position on that. We
18 found a case that does back your position on your ruling,
19 Your Honor. And I'll be glad to give it to the Court.

20 So it's not any worse than what's going to,
21 eventually, come out anyway as far as the prior burglary
22 convictions, Your Honor. In fact, all I'm just going to
23 ask him is did she identify him by photograph. I'm not
24 putting the photograph in or anything. So I don't see how
25 that could be any more prejudicial than prior convictions.

1 THE COURT: Okay. So there's not any testimony about
2 where the photograph is coming from, or what kind of
3 photograph it was?

4 MR. FLEMING: No, sir.

5 THE COURT: Well, I overrule the objection.
6 Okay. Well, let's take about a 10-minute recess.
7 And how many more witnesses do you have?

8 MR. FLEMING: This is it for us, Your Honor.

9 THE COURT: How many do you anticipate having,
10 Mr. Howe?

11 MR. HOWE: Judge, we'll want to do the proffer.
12 But recognizing that -- and I need to find out if those
13 folks are here for that.

14 THE COURT: Okay. Well, that's fine.

15 MR. HOWE: But probably -- including that -- and
16 that, as I understand it, will be outside the presence of
17 the jury. You're probably talking -- including those,
18 you're probably talking five.

19 THE COURT: Okay.

20 MR. HOWE: And it may be -- I just need to find out
21 whether they're here.

22 THE COURT: That's fine.

23 MR. HOWE: Those are witnesses that were on stand-by.

24 THE COURT: Yes, sir.

25 Thank you.

1 (WHEREUPON, a break was taken.)

2 THE COURT: Okay. Anything before we bring the jury
3 back in?

4 MR. FLEMING: Only that for planning purposes, Your
5 Honor, that the State is willing to stipulate with the
6 Defense on the proffered witnesses about the testimony,
7 one that the 911 custodian will testify that that is a 911
8 CAD on a call received from [REDACTED] Cindy Drive on the date
9 that's on the CAD, Your Honor.

10 The State will, also, stipulate that the Sheriff's
11 Office did make a call out there. And he did go retrieve
12 the key from Ms. Hopkins -- I mean, from Ms. Epting from
13 across the street, and the son was over there asleep. And
14 we will stipulate to the --

15 MR. HOWE: Ron, can we just -- can I put it on the
16 record?

17 MR. FLEMING: Yes. I'm sorry.

18 MR. HOWE: Judge, I thought you just wanted to know
19 for planning purposes, we have agreed to that. So we
20 won't be calling those witnesses this afternoon.

21 THE COURT: Okay.

22 MR. HOWE: If I may handle the stipulations --

23 MR. FLEMING: I'm sorry.

24 MR. HOWE: -- and we can do it that way, because I
25 have a little bit better knowledge of them. After we

1 conclude with the State's last witness, I think, for the
2 afternoon --

3 If that's okay. I don't mean to cut you off. But
4 that -- I'll do it that way, because that will move it
5 along a little quicker.

6 MR. FLEMING: Yeah. That will be fine.

7 I'm sorry, Your Honor.

8 I think we left off where I asked him about the
9 photo, and the Court ruled in our favor on that.

10 THE COURT: Yes, sir.

11 All right. And I understand we haven't even gotten
12 to the Defense's case yet. But Mr. Mebane is not going to
13 be here tomorrow and he's helping me get together the
14 verdict form. And I'm just curious if you all know, at
15 this point, without tying anybody down, if there are going
16 to be any lesser included requests, or anything about the
17 verdict form that will be unusual or any --

18 MR. HOWE: We can't think of anything right now
19 regarding that the way the testimony is going.

20 THE COURT: So it's just burglary first and ABHAN?

21 MR. HOWE: Yes, sir.

22 THE COURT: Thank you.

23 All right. Anything else?

24 MR. FLEMING: Nothing from the State, Your Honor.

25 THE COURT: Okay. Bring the jury in, please.

JUAN GALARZA-CONT. DIRECT BY MR. FLEMING

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1 (WHEREUPON, the jury came into open court at
2 approximately 4:17 p.m.)

3 THE BAILIFF: All are present, Your Honor.

4 THE COURT: Thank you, sir.

5 Yes, sir, Mr. Fleming. You may resume.

6 MR. FLEMING: Thank you, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. FLEMING:

9 Q Deputy Galarza, I was asking you -- you showed a
10 photo to Ms. Hopkins of the Defendant; is that correct?

11 A That's correct.

12 Q And did she identify that person as the person who
13 burglarized her home?

14 A Yes, she did.

15 Q Did she recognize that person as the one who
16 committed the assault?

17 A Yes, she did.

18 Q Okay. Now, after that, you stated that you -- the
19 next day, you went and got warrants on the Defendant; is
20 that correct?

21 A Correct.

22 Q Okay. And did you assist in looking for the
23 Defendant to try to apprehend him and serve those warrants
24 on him?

25 A Yes. I was involved in the search.

1 Q Okay. And where did you go searching for the -- .

2 MR. HOWE: The question has been asked and answered.

3 It was asked and answered before our break, Your Honor.

4 MR. FLEMING: I think I asked him where did they find
5 him, Your Honor. I didn't ask him where they searched for
6 him.

7 THE COURT: Overruled. I'll let you ask that.

8 BY MR. FLEMING:

9 Q Where all did you search for him?

10 A Well, we had a group of myself and a couple of
11 investigators. We were searching. We started in the
12 Cross Hill area, more in the area where his mother lives
13 at --

14 MR. HOWE: I'm going to object, unless he has
15 personal knowledge of where they searched as to what other
16 officers may have done.

17 BY MR. FLEMING:

18 Q Where did you search?

19 A I searched in the area of the Defendant's mother's
20 home.

21 Q Okay. Anywhere else that you searched?

22 A Pretty much just looking around the area of Cross
23 Hill. Other officers were searching other places.

24 Q Okay. At any point in time, did you search at ■
25 ■■■■■ in ■■■■ ■■■■?

JUAN GALARZA-CONT. DIRECT BY MR. FLEMING

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1 A I did drive by there. There were other officers that
2 were already there.

3 Q Did you stop?

4 A I stopped, yes. I just stopped. I did not go into
5 the --

6 Q Why did you search at that address?

7 A According to my partners who were investigating that
8 part of the area --

9 MR. HOWE: Objection. Hearsay, "According to his
10 partners."

11 THE COURT: Yes, sir. Just limit it to personal
12 knowledge, please.

13 BY MR. FLEMING:

14 Q Did you have firsthand knowledge of who lived at that
15 residence?

16 A No, sir. I didn't have personal knowledge of it.

17 Q Okay. Did -- you said you stopped and got out; is
18 that correct?

19 A Yes, sir.

20 Q Other than any of your law enforcement co-employees,
21 did you talk to anybody else?

22 A No, sir.

23 Q Okay. Let me show you these photographs, Deputy
24 Galarza. Did you take those photographs?

25 A Yes, I did.

1 Q Okay. And what are they of?

2 A They're pictures -- photographs of the incident
3 location and, also, photos of the injuries that the victim
4 sustained.

5 Q Okay. And those were taken -- were those taken the
6 day that you responded to the call?

7 A Those were taken the day I responded to the call,
8 yes, sir.

9 Q Okay. And do those pictures accurately depict what
10 you saw there?

11 A Yes, sir.

12 MR. FLEMING: Your Honor, the State would move to
13 introduce these into evidence as State's Exhibit Nos. 2
14 and 3, I guess.

15 MR. HOWE: No objection, Your Honor.

16 THE COURT: All right. They're in evidence.

17 (WHEREUPON, State's Exhibit Nos. 2, and 3 were
18 marked for identification and admitted into
19 evidence.)

20 BY MR. FLEMING:

21 Q Deputy, I'll point you to this first picture on the
22 second row of this page here. What is that a photo of?

23 A That's a china cabinet.

24 Q Okay. And why did you take a picture of that china
25 cabinet?

JUAN GALARZA-CONT. DIRECT BY MR. FLEMING

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1 A Because, apparently, that's where -- her pocketbook
2 was somewhere in that area. And she, also, was hit in
3 that same -- assaulted near the cabinet.

4 Q Okay. And as you go back by that china cabinet back
5 through there, what's back there?

6 A That's the victim's bedroom back that way.

7 Q Okay. And the last two pictures at the bottom of
8 this page and the two pictures at the top of this page,
9 what are they?

10 A Those are photos of the victim, Ms. Hopkins,
11 injuries.

12 Q Okay. And what does this photo show here?

13 A That's a bruise to the leg where, apparently, she was
14 kicked.

15 Q Okay. And the other three photos?

16 A Those are photos of -- supposedly, she was punched,
17 assaulted with a fist.

18 MR. FLEMING: I beg the Court's indulgence, Your
19 Honor.

20 THE COURT: Yes, sir. Take your time.

21 (Pause.)

22 MR. FLEMING: Your Honor, the State would request to
23 publish these photos to the jury.

24 THE COURT: Okay. Yes, sir.

25 MR. FLEMING: The State has no further questions, at

1 this time, Your Honor.

2 THE COURT: Cross-examination.

3 MR. HOWE: Your Honor, would you want me to go on
4 while the photos are being --

5 THE COURT: Well, you can wait until everyone has
6 seen them.

7 MR. HOWE: -- passed, or wait until they're done with
8 that, so then I can question him?

9 THE COURT: Certainly.

10 MR. HOWE: Thank you.

11 (Pause.)

12 MR. HOWE: I think we're ready, Judge.

13 THE COURT: Go ahead.

14 MR. HOWE: Thank you.

15 CROSS-EXAMINATION

16 BY MR. HOWE:

17 Q Officer Galarza -- and I'm just going to call you
18 "Officer."

19 A Okay, sir.

20 Q That will help all of us. You indicated that --
21 according to the report, y'all received the call from the
22 complainant -- and that was Judy Prather; correct?

23 A Correct.

24 Q And you testified that that call was received on
25 November the 12th, which was on a Wednesday, and that was

JUAN GALARZA-CROSS BY MR. HOWE

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1 in the afternoon. And you said y'all were, actually,
2 dispatched about 3:13 p.m. in the afternoon; correct?

3 A Correct.

4 Q And the information that -- in your investigation was
5 that this incident had happened barely into November the
6 11th, at approximately 1:45 in the morning; correct?

7 A Correct, 1:30, 1:45.

8 Q 1:30 to 1:45?

9 A Yes, sir.

10 Q And so the -- so it's a fair statement then that the
11 report -- the information that you received, regardless of
12 the dates, was not the morning -- the same morning that
13 this incident occurred, it was the afternoon hours later;
14 correct?

15 A Correct.

16 Q In fact, I was trying to do the math. And help me if
17 I'm wrong. But the way -- let's do it this way. 1:30
18 a.m. on November the 11th until 1:30 a.m. on November the
19 12th would be 24 hours; right?

20 A Correct.

21 Q And then 1:30 in the morning on the 12th until 1:30
22 in the afternoon on the 12th would be another 12 hours,
23 wouldn't it?

24 A Correct.

25 Q So we're up to 36 hours; right?

1 A Yes, sir.

2 Q And then 3:13 in the afternoon on the 12th would be
3 another hour and a half, wouldn't it?

4 A Okay.

5 Q So something like 38 hours after the incident,
6 actually, occurred is when it was reported to law
7 enforcement; correct?

8 A Correct.

9 Q Not the next morning?

10 A No, not the next morning.

11 Q And the records that you keep in a case like this,
12 one of the things you do is you do an incident report;
13 right?

14 A Yes, sir.

15 Q Okay. And let me ask you while we're -- did you make
16 any other personal notes to record anything having to do
17 with conversations, anything to do with your investigation
18 that you could share with us that I have not seen through
19 what you call "discovery" where the law enforcement --
20 where the Solicitor gives us what they have?

21 A No, sir. All I've got is the statement that I got --
22 received and I typed, the report, and the supplement.
23 That's it.

24 Q Okay. So that incident report that you typed would
25 be an accurate reflection of the events as -- from your

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1 investigation back when that was done. And I believe the
2 incident report was done on November the 12th; correct?

3 A November the 12th, yes, sir.

4 Q All right. And, of course, then you indicated that
5 the next day, November the -- and, by the way, November
6 the 12th, that would have been sometime after you went out
7 to Cross Hill that you would have gone back to the office
8 and typed that in?

9 A Well, we try to do it that way. But, again, like I
10 said, I work patrol. So we have calls coming in. So I'm
11 not going to say I went right away and took care of this.
12 But, yes, sometime in the evening later on that evening.

13 Q Right. I guess the way I'm trying to put it is, you
14 would have gone back to the office and typed this and
15 reflected on what your investigation was and tried to do
16 it, rather than do it a year later?

17 A Sure. Definitely.

18 Q All right. And so it would have been sometime
19 after -- more than 38 hours later, but still within some
20 period of time closer than what you're testifying to now,
21 obviously?

22 A Yes, sir.

23 Q Okay. Now -- and, again, the only notes that you
24 have is the incident report, and then the statement that
25 you obtained, and other documents that you have, arrest

1 warrants, and stuff like that?

2 A Correct.

3 Q Okay. Now, I'm going to ask you a couple of things
4 about the incident report. You indicated in the -- and do
5 you have a copy of it so you can look along with me?

6 A Yes, sir.

7 Q Okay. You indicated in the incident report that
8 Ms. Hopkins stated that it was Tuesday, November the 11th,
9 at about 1:30 a.m.; correct?

10 A Correct.

11 Q And she heard a noise in the kitchen area; correct?

12 A Yes, sir.

13 Q And she got up from her bed to check in the kitchen
14 is what she said; correct?

15 A Correct.

16 Q And she didn't indicate that she heard the front door
17 open, did she?

18 A No, sir.

19 Q Okay. Because if she had said that -- indicated
20 that, that would have been important and you would have
21 made a record of that, wouldn't you?

22 A Yes, sir.

23 Q And she indicated that the subject had her purse;
24 correct?

25 A Correct.

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1 Q And, by the way, did you ever see that purse?

2 A Yes. I did see the purse.

3 Q Okay. And did you see the wallet, the billfold,
4 whatever you may call it? Were you able to see that?

5 A She showed me a few things. And, to my recollection,
6 I can't remember if the wallet was in --

7 Q Y'all didn't take any -- I didn't mean to cut you
8 off. Y'all didn't take them into evidence or anything
9 like that?

10 A No. We didn't take anything into evidence, no.

11 Q Okay. She indicated to you, also -- and I'm reading
12 from the last sentence of your incident report, Victim
13 Ms. Hopkins states that she has no idea how the subject
14 made entry into her residence. That's what she indicated;
15 correct?

16 A That's what she indicated.

17 Q She didn't tell you -- because you would have written
18 it down. She didn't tell you that, I left the front door
19 open. Because you would have made note of that in your
20 report, wouldn't you?

21 A Correct. She did -- she -- in fact, she wasn't sure
22 if she left the door unlocked.

23 Q But what you wrote on this incident report --

24 A Yes. I didn't put that part --

25 Q Yes, sir. Trying to -- knowing that things like this

1 come up later, what you put in the incident report was
2 that said she had no idea?

3 A That's true. Yes, sir.

4 Q You didn't put in the incident report that she said
5 that, I heard the front door open and I must have left the
6 front door open -- unlocked?

7 A No, sir. She didn't say that.

8 Q All right. Now, when you got to the -- to Cindy
9 Drive out there in Cross Hill, you say -- you know,
10 obviously, you took the photographs?

11 A Yes, sir.

12 Q Okay. And we've got the photographs. And she showed
13 you -- did you take any -- or call anybody in or either do
14 it yourself to do a dusting for any kind of fingerprints?

15 A The reason we didn't -- I did speak to a
16 supervisor --

17 Q Would your answer be "no" first?

18 A No, first.

19 Q Okay.

20 A The reason further for not doing fingerprints, first
21 of all, it was raining outside. The doors were all wet.
22 Okay. You try to come up with something. We don't have
23 the equipment to get fingerprints --

24 Q SLED does, don't they?

25 A SLED does, yes.

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1 Q And, if you called them in, they would come, I guess,
2 if you requested it, wouldn't they? I would hope.

3 A It would go through upper ladders, not myself. It
4 was questioned.

5 Q Okay. So is it a fair statement that none -- there
6 were no fingerprints taken of either the doorknob, or the
7 purse, or, in fact, anything in the home?

8 A No, sir.

9 Q Nothing was taken?

10 A No, sir.

11 Q And that was -- I guess you're saying that was a
12 judgment call by somebody else?

13 A Yes. And the only reason for that is it's a day and
14 a half later that it was called in. And she already had
15 grabbed the purse, used the purse, put her fingerprints
16 all over it herself, and cleaned up the area. So
17 whatever, if possible, was any prints, it would have been
18 gone.

19 Q Do you know that she had cleaned it up?

20 A According to what she told me. Well, you know --

21 Q Okay. I didn't see --

22 A -- picking up. Well, I --

23 Q I didn't see anything --

24 A -- didn't put anything about the prints. That's why
25 I didn't put anything else about cleaning up.

1 Q So that might have been one more reason why if y'all
2 had received the call the morning of that maybe you would
3 have had an opportunity to get fingerprints; right?

4 A Possibly, yes, sir.

5 Q Okay. Now, did you, actually, take Ms. Hopkins
6 statement?

7 A Yes, sir.

8 Q Okay. Now, I noticed that it's not -- the person who
9 witnessed the statement is her sister; correct?

10 A Yes, sir.

11 Q And that was done on the 13th?

12 A Yes, sir.

13 Q All right. Of November?

14 A Yes, sir.

15 Q In fact, I think -- let me put my hands on a copy.
16 It was about 12:45 p.m.; correct?

17 A I don't have a copy in front of me.

18 Q Let me show you so we can --

19 A I left my copy over there.

20 Q Okay. There you go.

21 A Well, this statement was done -- I left the statement
22 form behind. She wrote the statement. And I went later
23 on and picked it up. But that's when it was dated --

24 Q The time is 12:45 p.m. on the 13th, which is the same
25 day that Kevin got arrested?

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1 A Correct.

2 Q Okay. And when you give a statement form like that
3 to somebody who is the victim of some type of an assault,
4 do you explain to that victim -- because I think you've
5 indicated you've done a lot -- you've worked burglaries
6 before?

7 A Yes, sir.

8 Q How important is it to gather your thoughts and write
9 it down correctly and put everything in there. You do
10 that, don't you?

11 A Yes, sir.

12 Q Okay. And did you do that in this case?

13 A Yes, sir.

14 Q Okay. And, again, in that statement, there's no
15 mention -- you would agree there's no mention of the
16 door -- of her hearing the door being opened, no mention
17 of her saying that she left the door unlocked; correct?

18 A Correct.

19 Q Okay. And that was consistent with what you had
20 gathered earlier when you completed the incident report;
21 correct?

22 A Correct.

23 Q But, nonetheless, the statement still didn't say that
24 this happened in the early morning hours of November the
25 11th, at about 1:30 in the morning. And we, now, would

1 agree that that would be about 38 hours or more after
2 y'all got involved in the investigation?

3 A Yes, sir.

4 Q Okay. And did Ms. Hopkins tell you that she had
5 called her sister at 1:40 or something -- or called her
6 sister earlier that morning?

7 A Actually, Ms. Prather was the one who mentioned
8 something like that.

9 Q Okay. She called her at 1:40 in the morning?

10 A No, not the same day, no. But she mentioned of her
11 calling her. I don't remember what day, or if it was
12 later on that day.

13 Q Right. So Ms. Prather didn't tell you that,
14 actually, I called to check on her and then I went over
15 there? She didn't tell you that?

16 A She said she checked -- she went over to check on
17 her. Yes, I remember that.

18 Q Okay. And that she made a call -- the initial call?

19 A (There was no response.)

20 Q You don't remember --

21 A I can't remember that. I can remember that she did
22 say she went to check on her --

23 Q Y'all didn't get a statement from Ms. Prather, I
24 don't think, did you?

25 A No, sir. I don't believe we did.

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1 Q Okay. Now, did you question Ms. Hopkins about what
2 type of medication she was on in view of her cancer
3 treatment?

4 A They mentioned it. But it wasn't an investigation
5 form of the questioning, no, sir.

6 Q Okay. Now, the -- and you've taken the photographs.
7 There was no evidence of anything broken or moved around?
8 Of course, you got there 38 hours after the incident.

9 A Yes, sir. The only thing I recall seeing was her eye
10 glasses --

11 Q I'm sorry?

12 A Her eye glasses were the only thing that was broken.
13 But anything other than that, no, sir.

14 Q Did you take a photograph of the eyeglasses or
15 anything?

16 A Yes. We had taken photographs of that and the memory
17 card that we had got ruined. So we were not able to --

18 Q All right. Now, you testified earlier that Kevin
19 Epting was arrested in the Clinton area; correct?

20 A Correct.

21 Q Okay. I'm going to show you a supplemental incident
22 report that was provided through discovery. And it's got
23 you listed as the officer. Would that have been a report
24 that you would have generated, or someone else would have
25 generated?

1 A I did this.

2 Q Okay. And you were responding to Mr. Fleming's
3 questions about where he was arrested. And the report
4 indicates not in Clinton, but in Joanna --

5 A Joanna.

6 Q Correct?

7 A Yes, sir.

8 Q And are you aware that he had a family member living
9 in Joanna?

10 A Well, let me clarify something. I wasn't the one who
11 arrested him at that time.

12 Q Okay.

13 A So that's why I was thinking Clinton. The Joanna
14 area and Clinton is the same anyways.

15 Q Oh, it is? People in Clinton may disagree with you.

16 A I wasn't there at the time of his arrest.

17 Q But there would be no reason to think that was wrong?

18 A No, that's not wrong.

19 Q Okay. And when you said Clinton -- okay. Now, the
20 time of the arrest, I thought I heard you testify that he
21 was arrested sometime in the morning of the 13th. Is that
22 what I heard you testify to?

23 A Yes, sir.

24 Q Okay.

25 A Sometime in the morning, maybe afternoon.

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1 Q Okay. Well, that's -- morning, afternoon, that's
2 what I'm trying to decide and get you to help me with.

3 A It was on the 13th.

4 Q Let me ask you. Are you familiar with booking
5 reports?

6 A Yes, sir.

7 Q And that's the record of when somebody gets booked?

8 A Yes, sir.

9 Q All right. And do you have it in this case?

10 A Yes.

11 Q Okay. And would you tell the jury where it says,
12 Date and time of arrest, what time that would be?

13 A 3:30 -- no. I'm sorry. 1:30.

14 Q 1:30 in the afternoon?

15 A Yes, sir.

16 Q Okay. And that would be with -- and Ms. Hopkins
17 statement was at 12:45; is that correct?

18 A That's correct.

19 Q And the warrants were -- the warrant was, also,
20 obtained on that same day, which was the 13th?

21 A Yes, sir. Let me clarify something. On the
22 statement, the form was given to her on the 12th. It
23 was -- the weather was very bad. And the sister wanted to
24 get her to the doctor or hospital.

25 So what I did, I gave her the statement form and

1 asked her to do the statement. Apparently, she did it on
2 the 13th in the morning. And, for whatever reason, they
3 filled it out and signed it at that time. That doesn't
4 mean that it wasn't the same time it was filled out -- it
5 was signed and dated hours -- she could have done it the
6 night before and decided --

7 Q Nobody from law enforcement was there to supervise --

8 A No.

9 Q -- whether she even wrote it, or how she did it, or
10 anything?

11 A No. We had left her the -- like I said, we left her
12 the forms. The sister -- she went to her sister's house
13 and that's where she was. And that's where I picked it up
14 at.

15 Q Okay. Thank you.

16 Officer, help me with this. On a statement of that
17 nature, wouldn't it be kind of important that somebody
18 would be there from the Sheriff's Office asking questions,
19 following up with questions on the statement to get
20 details about it, and ask particular questions like, this
21 is 38 hours after the event when the report has been made?
22 Wouldn't it be important to have somebody there asking
23 questions, rather than just say, Here, take this blank
24 form and fill it out, and then get it back to us later on
25 when you can? Wouldn't that be --

1 A No, sir. It didn't go that way. I did my
2 investigation. I already had the information she gave me.
3 All I wanted was her statement for our records, which was
4 the same thing that she printed, precise, or close to it
5 anyways what she wrote. She missed a few things.

6 We're not advised to tell her how to write her
7 statement. It's got to come out of her own --

8 Q Right.

9 A So it's not like I'm going to sit there and coach her.

10 Q And I would never suggest that you would do that,
11 sir. But, I guess, my question is, did -- was somebody
12 there to ask further questions in the investigation to
13 follow-up on what was said in the statement?

14 A No, sir.

15 Q Okay. Thank you.

16 The -- and I've heard reference to going to the
17 hospital. And I would ask you, do you keep a separate
18 file on this, or do you just make a file and leave it at
19 the Sheriff's Office, or how does that work?

20 A Well, we have another deputy who takes care of these
21 General Sessions files, yes. I try to keep some for
22 myself, whatever I could at the moment and make copies of
23 whatever I can.

24 Q Have you seen or are you aware of any hospital report
25 in this case? Have you seen it?

1 A No, sir. I didn't see it.

2 Q Officer, let me ask you. You testified, I think,
3 that when you talked with Ms. Hopkins that she did not
4 want to open up, she didn't appear to want to open up; is
5 that correct?

6 A That's correct.

7 Q All right. Given the fact that this event was
8 reported to law enforcement over 38 hours after it
9 happened, did that not cause you to pause, or hesitate, or
10 question why y'all were receiving this information so
11 like -- I mean, so late, especially when she was not
12 opening up? Did you inquire and take on any further
13 investigation about it?

14 A Yes, I did. I questioned her in reference to that,
15 why it took her so long for her to call for help.

16 Q Right.

17 A And her response was she was scared, confused. She
18 was so scared that he may come back and hurt her.

19 Q Okay. There's no question that she had access to a
20 telephone that was shown on your thing; right, on your
21 investigation notes?

22 A Correct.

23 Q I've got it on the summary report. And there's no
24 question that y'all would have responded the evening of
25 the 11th?

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1 A We would have responded that same morning, yes, sir.

2 Q And so that's the only explanation you got?

3 A That's the only explanation I got. And, seeing her
4 in the state of mind she was in, I understood and
5 proceeded with the investigation.

6 Q Well, did it ever occur to you that she might have
7 possibly been covering up for somebody else?

8 A No, sir.

9 Q You didn't inquire about that?

10 A I didn't inquire about that. I didn't feel like I
11 had to. I felt --

12 Q Okay. You didn't feel like you had to?

13 A I didn't feel like I had to, no, sir.

14 MR. HOWE: Thank you.

15 That's all I have, Your Honor.

16 THE COURT: Redirect?

17 MR. FLEMING: Yes, sir, Your Honor. Just a couple of
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. FLEMING:

21 Q Deputy, regardless of -- and you have in your report
22 that she stated she heard a noise in the kitchen. And she
23 states that she heard a noise, somebody coming in the
24 door. Regardless of that, you're sure she heard a noise;
25 correct?

1 A Correct.

2 Q That was inside the house?

3 A That was inside the house, yes, sir.

4 Q And once she told you the whole story, at any time,
5 did she waffle or, you know, say, well, I don't know? Did
6 she do anything like that about the identity of who broke
7 into her house?

8 A No, sir. Once she started opening up and letting us
9 know about the incident and who was involved, she did not
10 hesitate.

11 Q And you stated you checked the property and there
12 weren't any signs. But she was pretty adamant about the
13 fact that she couldn't remember if she locked the door or
14 not, could she?

15 A Yes. She could not remember.

16 Q Okay. And, concerning the statement she gave, when
17 Mr. Howe asked you, you know, about other people giving
18 statements and everything. In your line of work, how
19 often do people -- what they tell you and stuff that they
20 put in their statement jive right to a T?

21 MR. HOWE: Objection, Your Honor. I don't know if
22 he's qualified to say that. And that question would be
23 irrelevant --

24 THE COURT: Okay. I sustain the objection.

25 MR. HOWE: Thank you.

JUAN GALARZA-REDIRECT BY MR. FLEMING

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1 BY MR. FLEMING:

2 Q The reason you didn't sit there with Ms. Hopkins and
3 fill out the statement that she gave is because you
4 already had all the details and they were sufficient?

5 A Yes, sir.

6 MR. FLEMING: I beg the Court's indulgence one
7 minute, Your Honor.

8 (Pause.)

9 MR. FLEMING: I have no further questions at this
10 time, Your Honor.

11 THE COURT: Mr. Howe?

12 MR. HOWE: No recross.

13 THE COURT: Okay. Thank you, Deputy.

14 You may step down, sir.

15 Yes, sir, Mr. Fleming.

16 MR. FLEMING: Thank you, Your Honor.

17 Your Honor, at this time, the State would move to
18 submit into evidence two records certified by the Clerk of
19 Court of two burglaries that the Defendant has committed
20 in the past. One was dated 8-12 of '04, Your Honor, for
21 burglary.

22 MR. HOWE: I want to be heard on this. Can we have a
23 conference briefly on that?

24 THE COURT: All right.

25 MR. HOWE: Just to clear up one little matter about it.

1 THE COURT: Okay.

2 (WHEREUPON, a bench conference was held.)

3 MR. FLEMING: Again, Your Honor, the State moves into
4 evidence two convictions on the Defendant for burglary.
5 One which was back in -- on 8-12 of 2004, Your Honor. And
6 the other conviction was March 8th of 1994, at this time.

7 THE COURT: Okay.

8 MR. HOWE: Subject to the previously stated
9 objection.

10 THE COURT: Yes, sir. Subject to prior argument and
11 objection by the Defense.

12 Anything further on behalf of the State at this
13 point?

14 MR. FLEMING: Nothing from the State. Your Honor.

15 THE COURT: All right. Ladies and gentlemen, we're
16 just going to go ahead and break for today. And just be
17 back in the jury room at 9:30. And we'll be completing
18 the case tomorrow morning.

19 Keep an open mind. You haven't heard the entire case
20 yet, obviously. And don't try to do any outside
21 investigations.

22 We'll see you back at 9:30.

23 Thank you very much.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 4:58 p.m.)

1 (WHEREUPON, State's Exhibit Nos. 4 and 5 were marked
2 for identification and admitted into evidence.)

3 THE COURT: Okay. Whenever you're ready.

4 MR. HOWE: Thank you, Your Honor.

5 As I understand it, the State is willing to stipulate
6 to certain facts, which would be proffered outside the
7 presence of the jury, that go to the efforts by the
8 Defense to introduce third-party guilt evidence. And by
9 proffering this evidence, of course, we would be
10 preserving the record. And by stipulation by agreement,
11 it would keep -- it would -- in the interest of time, it
12 would prevent the -- it would eliminate the necessity,
13 rather, for the witnesses to have to, actually, be called.

14 And if Mr. Fleming has any disagreement with what I'm
15 about to state, I suppose we can discuss that. But,
16 basically, Judge, the evidence that you heard in -- or
17 what you heard was presented in our argument that
18 Ms. Anderson presented on that issue.

19 We would have attempted to call a witness -- two
20 witnesses concerning a 911 complaint made by Marilyn
21 Hopkins on September 6th, 2008, at her address -- her home
22 at ■ Cindy Drive, Cross Hill, where the complaint had to
23 do with disorderly conduct, with the report to the 911
24 dispatch that Billy Sizemore was listed as a suspect. The
25 complaint said that this subject is her son. He is

1 showing out, knocked a hole in the wall. The subject is
2 now at the next door neighbor's and would like an officer
3 to come out.

4 We would have, also, called Officer Nelson, whose
5 first name escapes me. Mr. Fleming, I think, spoke with
6 him yesterday. He was the responding officer who would
7 have testified that he responded to the call.

8 Your Honor, we would, also, have called my client's
9 mother, Joyce Epting, to testify she was the neighbor
10 that -- where Billy Sizemore went to her home and was
11 asleep. And when the officer was called on to go to her
12 home to retrieve the house key to Ms. Hopkins house that
13 she woke up Billy Sizemore. And he returned the key to
14 the officer.

15 So that addresses that. And, perhaps, I need to, at
16 least, make the 911 report a part of the record in this
17 case.

18 THE COURT: Okay, sir.

19 MR. HOWE: Mr. Fleming has got a copy of it, I
20 believe, too. So if I could do that. And I'll hand that
21 to the court reporter.

22 MR. FLEMING: Well, it's a Court's Exhibit; correct,
23 Your Honor?

24 MR. HOWE: A Court's Exhibit?

25 THE COURT: That's fine, yes. It's not to go to the

1 jury.

2 (WHEREUPON, Court's Exhibit No. 1 was marked for
3 identification and admitted into evidence.)

4 MR. HOWE: And, Your Honor, we would, also, have
5 called two witnesses, David Davenport and Steven
6 Davenport, who were co-workers of Billy Sizemore, who
7 would have testified that Billy hated his mother, wanted
8 her dead, expressed his anger because she had harmed him
9 when he was a child. She was responsible for the way he
10 was, and that he wished that there was some way that he
11 could kill her.

12 And that would have been the testimony from,
13 essentially, both of those witnesses had we -- had that
14 matter gone the way we viewed it should have gone.

15 THE COURT: Yes, sir.

16 MR. HOWE: And what this does, Judge, then is this --
17 as I understand it, this would be a proffer of that
18 testimony for the purposes of the record.

19 THE COURT: All right.

20 MR. HOWE: I think that's it, Judge.

21 THE COURT: Okay. Thank you.

22 Let me go over with Mr. Epting his rights to testify
23 and not testify while we're at --

24 MR. HOWE: Do you want him to stand up, Judge?

25 THE COURT: He can stay seated. I'm just going to

1 ask that he be sworn in.

2 MR. HOWE: Stand up.

3 WHEREUPON,

4 KEVIN SHANE EPTING,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 THE COURT: Okay. You can stay seated.

8 Mr. Epting, tomorrow, when we resume the trial, it
9 appears the State is going to rest, which means it will be
10 the time for the Defense to put up any evidence it wishes
11 to. And that means you could testify. And whether you
12 testify or not is a personal right that you have. It's
13 your choice. And it's your case, so to speak.

14 So you have to make the decision as to whether you
15 wish to testify or not. I just want to go over with you
16 some of the consequences of testifying and not testifying
17 to make sure you understand what those are so you can make
18 a fully informed decision.

19 If I ask you something that you don't understand, or
20 you want me to repeat it, or if I'm just not making sense
21 to you, please, let me know and I'll try to rephrase it.
22 I'll, certainly, be glad to give you the opportunity to
23 confer with Mr. Howe or Ms. Anderson. And I just want to
24 make sure we're clear on that before we go any further.

25 Is that okay with you, sir?

1 DEFENDANT EPTING: Yes, sir.

2 THE COURT: All right. As I said, you have the right
3 to testify, take the stand, be sworn in, and have Mr. Howe
4 or Ms. Anderson ask you questions and give the jury your
5 version of the events, or whatever information you wish to
6 give them that would be relevant.

7 If you do that, of course, you'll be subject to being
8 cross-examined just as you've seen Mr. Howe cross-examine
9 the State's witnesses. You'd be subject to being
10 cross-examined by the Solicitor. And you could be asked
11 about anything that might bear on your credibility,
12 anything that might be relevant to this case, anything
13 that might show any bias or prejudice. And you,
14 certainly, could be asked about prior convictions, if they
15 met the criteria under Rule 609.

16 If you did not testify, the Court would tell the
17 jury, as I already have, that you don't have any burden of
18 proof. And the burden of proof is on the State. And you
19 don't have to testify. And, in fact, the Constitution
20 guarantees you the right to remain silent. And if you
21 chose to claim that right, they could not hold that
22 against you. That is, the jury could not hold that
23 against you. And they could not even discuss the
24 fact that you did not testify during their
25 deliberations.

1 Now, whether you testify, again, as I've said, is a
2 personal choice. It's a strategic choice you make after
3 you consult with your lawyer. And I know you've already
4 consulted with your lawyers about that, if I know Mr. Howe
5 and Ms. Anderson. And they do an excellent job. But I
6 just need to make sure you understand those rights and the
7 consequences of testifying, or not testifying.

8 Do you feel like you've understood everything I've
9 gone over with you?

10 DEFENDANT EPTING: Yes.

11 THE COURT: Do you have any questions of me about
12 your right to testify or not testify?

13 DEFENDANT EPTING: No, sir.

14 THE COURT: All right. And you don't have to tell me
15 what you're going to do right now. You can tell me in the
16 morning. But, if you have any questions of me in the
17 morning, after thinking about it overnight or anything
18 else that you wish to ask, I'll be glad to try to answer
19 it. Okay.

20 DEFENDANT EPTING: Okay.

21 THE COURT: Thank you, sir.

22 Anything further?

23 MR. FLEMING: Just for clarification, Your Honor, is
24 your -- after Mr. Howe proffered his evidence, is your
25 ruling still the same?

1 THE COURT: Yes.

2 MR. FLEMING: Thank you.

3 MR. HOWE: Your Honor, do you want to go ahead and
4 hear motions at the State's conclusion of the case?

5 THE COURT: Sure.

6 I'll let you rest in front of the jury, Mr. Fleming.

7 MR. FLEMING: Yes, sir.

8 MR. HOWE: Oh, I thought he had already done that.

9 THE COURT: I don't know if he, actually, put that --

10 MR. FLEMING: I don't think I did, Your Honor.

11 MR. HOWE: Well, let's just do it in the morning. We
12 can do it in the morning. It won't take but a second.

13 THE COURT: Well --

14 MR. FLEMING: That will be fine with me.

15 THE COURT: Okay. We'll do it before we bring the
16 jury out --

17 MR. HOWE: Since he formally hasn't done it. I
18 thought he had.

19 THE COURT: All right. Anything further?

20 MR. HOWE: No, sir.

21 MR. FLEMING: Nothing from the State, Your Honor.

22 THE COURT: All right. Thank you very much.

23 MR. FLEMING: Your Honor, I still have the
24 indictments -- I mean, yeah, the indictments and
25 the sentencing sheets. I was going to redact

1 those.

2 MR. HOWE: Just let us look at it and we'll make
3 sure.

4 MR. FLEMING: Okay. I just wanted to make sure that
5 y'all knew I had these --

6 MR. HOWE: Oh, yeah.

7 MR. FLEMING: -- and was going to be redacting them.

8 MR. HOWE: Right. Just show them to me in the
9 morning.

10 MR. FLEMING: Okay.

11 MR. HOWE: 9:30, Judge?

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. FLEMING: Your Honor, I'm sorry. Just right
15 quick. Just for information purposes to the Court, the
16 case law does say that you have to give the jury a
17 limiting instruction on these convictions.

18 THE COURT: Yes.

19 MR. FLEMING: That they're solely to be used as --
20 for purposes only to meet the elements of burglary first.
21 That's all they can be used for.

22 THE COURT: Yes, sir.

23 I'll have that in the charge.

24 And I'll do it tomorrow morning, too, before you
25 start your case.

1 MR. FLEMING: Thank you, Your Honor.

2 THE COURT: Thank you.

3 (WHEREUPON, the proceedings were concluded at
4 approximately 5:11 p.m., to be reconvened on
5 Friday, November 13, 2009.)

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1 FRIDAY, NOVEMBER 13, 2009

2 THE COURT: Is there anything before we bring the
3 jury in?

4 MR. FLEMING: Nothing from the State, Your Honor.

5 We're looking -- I'm letting the Defense look over
6 redacting the...

7 THE COURT: Well, in relation to that, do you want me
8 to tell the jury, at this point, Mr. Howe, that they can
9 only use the prior convictions to determine whether the
10 State has met its burden of proof as to one of the
11 elements of first-degree burglary and not show character
12 and, otherwise, give them a limiting instruction, or do
13 you want me just to do it in the general charge, or do you
14 want me to do both?

15 MR. HOWE: We'd like for you to do it now, Judge.

16 THE COURT: Do it now and at the charge?

17 MR. HOWE: Yes, sir.

18 THE COURT: All right.

19 MR. FLEMING: Your Honor, I -- the State would argue
20 that one time should be sufficient to -- I think if you do
21 it twice, you're giving the jury some kind of signal that
22 they shouldn't use the statements at all. I just don't
23 want to put some cloud over it by giving it more emphasis
24 by giving them that instruction twice.

25 THE COURT: Well, I don't think it would do that.

1 But, yes, sir, Mr. Howe.

2 MR. HOWE: Well, I was going to agree with you,
3 Judge. And I was going to say, you know, obviously, if
4 you charge that, then it seems like, to me, that when
5 you're going to -- it's going into evidence now.

6 THE COURT: Right.

7 MR. HOWE: And there would be -- obviously, when the
8 jury is seeing that would be a reason to do it, especially
9 when we're talking about a redacted sentence sheet, which
10 kind of calls attention to itself. And then when you --
11 I'm assuming that Mr. Fleming will request a charge on
12 burglary first that will include that.

13 So I would think then the limiting would be part of
14 that as well. So I agree with the Court.

15 THE COURT: I just don't want it to -- although I'm
16 confident that my charge is so scintillating that they
17 will hang on every word, I just don't want it to get
18 buried in a long soliloquy. So I think it's better to
19 tell them now and tell them again.

20 Are we ready?

21 MR. HOWE: Your Honor, I'm going to let Ms. Anderson
22 briefly speak to that.

23 THE COURT: Okay.

24 MR. HOWE: And any suggestions she may have about
25 the -- how the sentence sheets were redacted and, perhaps,

1 pass them up to the Court, and any comments you may have
2 about that.

3 THE COURT: Okay.

4 MR. HOWE: She's got some thoughts and I'll -- she
5 was trying to whisper them to me while I was doing this
6 other.

7 THE COURT: Yes, sir.

8 MS. ANDERSON: Your Honor, we're in agreement with
9 the stipulation for the sentence sheets with the exception
10 that we feel the indictments are unnecessary since they
11 reference other charges, and just to remove the range on
12 one of the sentence sheets for burglary. But, other than
13 that, we're fine with the sentence sheets being entered
14 into evidence.

15 MR. HOWE: Perhaps, y'all could walk up and show the
16 Judge what you're talking about.

17 (WHEREUPON, the attorneys approached the bench.)

18 THE COURT: All right. The Defense objects to the
19 inclusion in State's Exhibit Nos. 4 and 5 of the
20 indictments which allege other offenses, including larceny
21 or receiving stolen goods, arson, grand larceny,
22 possession of a firearm or knife during the commission of
23 a violent crime. The Defense wants to submit just the
24 sentencing sheet. It's been redacted that shows the
25 sentence for burglary and reflects the indictment number.

1 And it has been redacted as to the sentence imposed.

2 The State objects to the Defense's approach. And
3 I'll give Mr. Fleming or Ms. Anderson an opportunity to
4 put any further argument they wish to on the record at
5 this time.

6 MS. ANDERSON: Your Honor, just to have -- preserve
7 the record that our objection is based in large part that
8 it's not relevant for the indictment to be presented since
9 it includes other charges, which are not necessary to
10 prove two prior burglaries or a burglary first charge,
11 which we're here today for.

12 In addition, one of the sentence sheets reflects the
13 range for burglary. And that's not relevant to proving
14 two prior burglaries. We stipulate to having the sentence
15 sheets reflect the two prior burglaries. And that would
16 be sufficient for the State to prove burglary first.

17 MR. FLEMING: Your Honor, I would just stick to that,
18 you know, I think the indictments are relevant -- or are
19 necessary to come in to show that he was indicted for the
20 burglary and, subsequently, either was convicted or pled
21 guilty. And I think that's necessary for the jury when
22 they determine whether or not the burglary is based on two
23 prior convictions, Your Honor.

24 THE COURT: All right. Well, I think I would agree
25 with the Defense that the sentence sheet alone is

1 sufficient. There's no dispute that he has -- was
2 convicted, was indicted. And it's simply the way that
3 it's been put in as an exhibit. Putting in the indictment
4 itself, under these circumstances, is troublesome because
5 of the other offenses, which I think, under Rule 403,
6 would be severely prejudicial and outweigh any probative
7 value overwhelmingly.

8 So I'm going to just allow the sentence sheets to go
9 in as exhibits that show he was convicted and sentenced.
10 And, that way, we don't have the risk of the jury seeing
11 these other offenses that are not burglaries.

12 MR. FLEMING: Okay.

13 MS. ANDERSON: And the only other suggestion, I
14 think, was just an oversight and would be to black out the
15 range on one of the sentence sheets for the burglary.

16 THE COURT: Right. That's fine.

17 MR. FLEMING: Your Honor, we're going to have the
18 court reporter re-label these because the exhibit labels
19 were on the indictments.

20 THE COURT: Okay.

21 (WHEREUPON, State's Exhibit Nos. 4 and 5 were
22 re-labeled.)

23 THE COURT: How many witnesses are you going to have?

24 MR. HOWE: Three, Judge.

25 THE COURT: Anything else before we bring the jury in?

1 MR. FLEMING: Nothing from the State.

2 MR. HOWE: As I understand it, you're going to
3 rest and then send them right back out so we can do
4 motions.

5 Is that the way you want to do it?

6 THE COURT: Well, let's just go ahead and do the
7 motions right now.

8 MR. HOWE: Okay. That's fine.

9 THE COURT: Yes, sir. I'm sorry. I forgot about
10 that. We were talking about that yesterday afternoon.

11 But, yes, sir. We'll just assume he's -- Mr. Fleming
12 has rested. And I'll let you make your motions.

13 MOTIONS

14 MR. HOWE: Thank you, Judge.

15 Of course, we would be moving for a directed verdict
16 for the fact that the State has failed to present
17 competent evidence establishing the elements of either one
18 of the charges in this case.

19 Judge, I want to point out that we just had a
20 discussion about the two prior burglaries. And, of
21 course, we would have contended that that evidence would
22 not be appropriate and admissible in this case. It would
23 not be appropriate because it would have been so
24 prejudicial. We would, also, contend that the -- for the
25 other reasons set forth in the objections motion we had.

1 Those would, also, be appropriate grounds for the Court to
2 direct a verdict in this case.

3 THE COURT: All right. I find that there is
4 sufficient evidence under the standard in Rule 19 to send
5 the matter to the jury. I was relying on State v.
6 Simmons, 352 S.C. 342, to allow the State to prove
7 first-degree burglary either by the nighttime approach or
8 the two or more prior convictions approach.

9 And I will instruct the jury that they're only to
10 consider the prior convictions for purposes of whether the
11 State has met its burden of proof of first-degree burglary
12 and not consider them as proof that he -- Mr. Epting is
13 guilty of the current crime. And I'll instruct them again
14 about that during the general charge.

15 But, nevertheless, I do find there's sufficient
16 evidence to send the case to the jury, both direct and
17 circumstantial.

18 So anything further before we bring the jury in?

19 MR. FLEMING: Nothing, other than I would guess, Your
20 Honor, before I rest, you're going to give them the
21 limiting instruction on the --

22 THE COURT: Yes, sir, I will.

23 MR. FLEMING: Okay. Thank you, Your Honor.

24 THE COURT: Yes, sir. Bring the jury in, please.
25 Thank you.

1 (WHEREUPON, the jury came into open court at
2 approximately 9:49 a.m.)

3 THE BAILIFF: All are present, Your Honor.

4 THE COURT: Good morning, ladies and gentlemen.

5 Before we resume, let me talk to you just a moment
6 about one of the pieces of evidence in this case. As I
7 mentioned to you at the start of the case, you have to
8 confine your decision in this matter to the evidence. And
9 you will, also, remember that when you took your oath to
10 be sworn in, it stated, and you agreed, that you would
11 render a true verdict according to the law and the
12 evidence.

13 And yesterday, the State introduced a piece of
14 evidence that consisted of prior convictions of
15 Mr. Epting. And I need to make sure that you understand
16 for what purpose you can use those convictions. Sometimes
17 evidence comes in and it can be used just for a limited
18 purpose, and this is one of those instances.

19 In this instance, the prior convictions of Mr. Epting
20 can only be used by you to determine whether the State has
21 met its burden of proof that Mr. Epting committed
22 first-degree burglary in this case. And, by that, I mean
23 this, you cannot use those prior convictions as general
24 character evidence, and to infer from the fact that he's
25 been convicted before that he is guilty of this crime.

1 The prior convictions don't have anything to do with the
2 proof in this crime, except to allow you to determine
3 whether the State has met its burden of proof as to
4 whether Mr. Epting had committed first-degree burglary.

5 Now, why I'm telling you that is because, under the
6 statute of first-degree burglary, one of the ways the
7 State can prove that is to prove that a person committed a
8 burglary by proof of the following elements: First, that
9 a person entered a dwelling; second, that the person
10 entered a dwelling with the intent to commit a crime; and,
11 third, that the person who entered the dwelling had two or
12 more prior convictions for burglary.

13 So that evidence yesterday is -- was admitted just
14 for the limited purpose of allowing the State to prove
15 that Mr. Epting had two or more prior convictions for
16 burglary. It can only be considered by you for the
17 purpose of determining whether it satisfies that element
18 of the offense that makes it first-degree burglary if you
19 enter a dwelling without consent to commit a crime and you
20 have two prior convictions for burglary. It cannot be
21 used by you for any other purpose. It can't be used and
22 it was not offered by the State to prove that Mr. Epting
23 has a bad character, or that he committed the burglary on
24 this occasion.

25 So I want to emphasize that to you and remind you.

1 that you cannot use that evidence for any purpose other
2 than what it was offered for, and that is to prove the
3 State's case on first-degree burglary.

4 So, with that, is there any further instruction that
5 either side wishes at this time?

6 MR. FLEMING: Not from the State, Your Honor.

7 MR. HOWE: Nothing, Your Honor.

8 THE COURT: Okay. Yes, sir. Mr. Fleming, you may
9 continue.

10 MR. FLEMING: Thank you, Your Honor.

11 Your Honor, the State rests at this time.

12 THE COURT: All right. Ladies and gentlemen, the
13 State has rested. That means they've completed their
14 presentation of the evidence.

15 So, at this time, as I mentioned yesterday, the
16 Defense has the opportunity, but not the obligation, to
17 present any evidence they wish to.

18 So, Mr. Howe, or, Ms. Anderson.

19 MR. HOWE: Thank you, Your Honor.

20 We call Kevin Epting.

21 THE BAILIFF: Raise your right hand and face that
22 way.

23 WHEREUPON,

24 KEVIN SHANE EPTING,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 You may be seated.

3 DIRECT EXAMINATION

4 BY MR. HOWE:

5 Q Kevin, give us your full name.

6 A Kevin Shane Epting.

7 Q Kevin, how old are you?

8 A 46.

9 Q Okay. And have you grown up in Laurens County?

10 A Yes, sir.

11 Q Okay. Do you have family here?

12 A Yes, sir.

13 Q Who do you have in the way of family here?

14 A I have my mother and my brothers.

15 Q Okay. Your mom's name is what?

16 A Linda Joyce Epting.

17 Q Okay. Does she go by "Joyce"?

18 A Yes, sir.

19 Q Okay. And, during periods of your life, have you
20 lived with your mom?

21 A Yes, sir.

22 Q Okay. Now, let me ask you a couple of things first
23 of all, because we just saw -- and the Judge just told the
24 jury about the purpose for your previous convictions on
25 burglary. There's no question you -- in fact, you entered

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1 guilty pleas to those two burglaries; is that right?

2 A Yes, sir.

3 Q And there's no question about that?

4 A No, sir.

5 Q Did you commit this burglary and assault that we're
6 here on trial for today?

7 A No, sir.

8 Q Okay. Kevin, I want you to tell the jury, if you
9 can, your recollection of the events leading up to your
10 arrest and where you were at different points in time.
11 And I'll ask the questions, but I want you to do that.

12 Let me ask you. During the month of November of last
13 year, where -- you know, leading up before even the 10th
14 of November, where were you living?

15 A I lived at momma's. And I'd go stay with my
16 girlfriend.

17 Q Okay. And your girlfriend is who?

18 A Sharon Corley.

19 Q Okay. Now, your mother's address was what?

20 A [REDACTED] Cindy Drive.

21 Q [REDACTED]?

22 A Yes, sir.

23 Q Okay. And so it would have been a short distance
24 away from Ms. Marilyn Hopkins address?

25 A Yes, sir. Our driveway runs the same way.

1 Q The same way. How -- could you estimate -- tell the
2 jury about how far away the homes were.

3 A From here to that wall.

4 Q Okay. Now, how long -- do you know about how long
5 your mother had been living over there at Cindy Drive,
6 Cross Hill?

7 A 20 years.

8 Q Okay. And did she have -- did she own a home there?

9 A Yes, sir.

10 Q What kind of home?

11 A A mobile home.

12 Q Okay. And so were you in and out of going to see her
13 over that period of time that she lived there?

14 A Yes, sir.

15 Q All right. Now, did you have -- was there a time
16 when Ms. Hopkins moved there?

17 A She moved there about three years ago.

18 Q Okay. Did you meet her?

19 A No, sir. I just met her last year.

20 Q Last year?

21 A Yes, sir.

22 Q Okay. About when did you meet her last year?

23 A July.

24 Q All right. And, when you met her, would you tell the
25 jury how y'all got along?

KEVIN SHANE EPTING-DIRECT BY MR. HOWE

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- 1 A We got along just fine. I mean, I'd take her places.
2 I cut her grass. I took her to the doctor, took her to
3 get groceries, cut her grass regular, I mean, you know.
- 4 Q Right.
- 5 A If she needed something --
- 6 Q Did you know she was sick?
- 7 A Sir?
- 8 Q Did you know she was sick?
- 9 A Yes, sir.
- 10 Q All right. And did she have family that came around
11 to see her?
- 12 A Yes, sir. They come, you know, every few days or so.
- 13 Q Okay. Did you know Judy Prather?
- 14 A I never met her.
- 15 Q Okay. You're not saying she didn't go there, you
16 just never met her?
- 17 A I never met her.
- 18 Q Okay. And did you know her son, Billy?
- 19 A Yeah. I know Billy.
- 20 Q In fact, did y'all work together at some point?
- 21 A I got him a job at Wal-Mart.
- 22 Q Wal-Mart. What were y'all doing?
- 23 A The new Wal-Mart, we was building it. We was doing
24 electrical work, all the electrical work up there.
- 25 Q Now, and you say that you got along with Ms. Hopkins?

1 A Yes, sir.

2 Q Now, Kevin, if you could, tell us -- and we're
3 talking about a year ago today. In fact, you got
4 arrested, I believe, a year ago today; is that right?

5 A Yes, sir.

6 Q Did -- can you tell us where you stayed on Monday,
7 November the 10th, 2008?

8 A I stayed at Sharon Corley's.

9 Q Okay. Now, where did Sharon live?

10 A Sharon lived about two or three miles up the road
11 from momma's right there in Cross Hill.

12 Q Okay. What kind of vehicle were you driving then?

13 A I had a '96 Ford Ranger truck.

14 Q A truck?

15 A Yes, sir.

16 Q You didn't drive a car?

17 A No, sir.

18 Q Okay. And how did you get around? In that truck?

19 A Yes, sir.

20 Q All right. And so Monday, November the 10th, into
21 the early morning hours of Tuesday, November the 11th, you
22 were staying where?

23 A With Sharon.

24 Q Now, would you tell the jury what you remember about
25 your activities on that Tuesday leading up to staying over

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1 there that night?

2 A I woke up Tuesday morning. I fixed --

3 Q Okay. Let's go over Monday first.

4 A Monday. Okay.

5 Q Let's go over Monday, the day before, so the jury
6 will have, you know, an understanding. Okay. Tell us
7 about Monday and what you recall.

8 A Okay. Monday, well, the same thing. I woke up at
9 Sharon's. And I got up. And I fixed Sharon, me, and her
10 daughter breakfast. And I sent them off to work. She
11 went off to work about 7:00. And when she'd leave, I'd
12 leave. And I'd go by momma's.

13 And I went by momma's. And I called a good friend of
14 mine and got his son, who was about 17, Jordan Morris, to
15 come help me load some plywood up. I was working for
16 Steve Patterson, a Laurens City police officer. I was
17 building him a shop -- I was building him an office in his
18 shop up there on [REDACTED] [REDACTED].

19 So I went over and got -- I went to momma's and sat
20 at momma's for a few minutes, drank a cup of coffee or
21 something, you know, and just talked to her. Then I left
22 there and went and got Jordan and come back. I got -- all
23 the plywood was in my yard. And I loaded the plywood. We
24 went up there -- me and him went up there. And he helped
25 me tear walls out and stuff. We worked there all day

1 until about 6:00.

2 Sharon don't never get home until about 8:30. So I
3 went over there. And I had got a deer processed. So I
4 had laid it out that morning. So I went over there and
5 cooked deer for all of us, the kids and us. Sharon got
6 there about 8:30 or so. And we ate and everything, went
7 to bed. I got up the next morning and done started the
8 same routine again.

9 Q Okay. The next morning would have been Veterans Day,
10 Tuesday, November the 11th; is that right?

11 A Yes, sir.

12 Q And did you -- what -- tell the jury, basically, what
13 your activities were that day.

14 A I got up and done the same thing again. I always
15 fixed breakfast for Sharon while she's getting dressed and
16 everything. And I get Mik up and get her ready -- tell
17 her to get ready to go to school. And they leave. They
18 always leave. It's always the same time. At five after
19 7:00, she's leaving.

20 So I sat there and see them off and everything. And
21 I leave behind them usually. I might sit around and mess
22 around a minute and drink a cup of coffee or something.
23 Then I leave there and I go to momma's. I go over to
24 momma's. And I do the same routine again.

25 Q Did you -- all right. So you were there on Tuesday,

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- 1 November the 11th, at your mother's?
- 2 A Tuesday morning, I went there.
- 3 Q Okay. Did you see Ms. Hopkins?
- 4 A No, sir.
- 5 Q Okay. What time do you think you got to your
- 6 mother's?
- 7 A I got to momma's about 7:25, 7:30.
- 8 Q In the morning?
- 9 A Yes, sir.
- 10 Q Okay. And then did you stay there all morning or did
- 11 you leave?
- 12 A No, I left. I went back again. I done the same
- 13 process I done the day before. Because I was getting wood
- 14 and hauling wood back and forth to -- I'd go get Jordan to
- 15 help me load it. It was plywood. Three or four plywood
- 16 is pretty heavy.
- 17 Q Okay. Where did you spend Tuesday, the night of
- 18 Tuesday, November the 11th?
- 19 A I come and stayed at momma's. I come to watch the
- 20 country awards. And I stayed at momma's.
- 21 Q Okay. You came to watch what?
- 22 A The country awards.
- 23 Q The music awards?
- 24 A Yes, sir.
- 25 Q Okay. And that was last year on November the 11th,

1 on that Tuesday?

2 A Yes, sir.

3 Q And you stayed at your mother's that night?

4 A Yes, sir.

5 Q Okay. From November the 11th, that morning, until --
6 and even until that evening when you stayed at your
7 mother's, had you heard anything -- any claim that you had
8 gone over and burglarized and assaulted Ms. Hopkins?

9 A No, sir.

10 Q Did you see any law enforcement over there around the
11 house or anything like that?

12 A No, sir.

13 Q All right. What -- so you spent Tuesday night at
14 your mother's and you watched those awards?

15 A Yes, sir.

16 Q Okay. What did you do after that?

17 A I went to bed. And I got up early that morning and
18 run over to Sharon's, got them up, woke them up, fixed
19 breakfast, talked to her a little bit. I come back and
20 done the same routine again. I went back to Steve
21 Patterson's up there building that shop. I went back and
22 got Jordan, my little buddy. And he was up there kind of
23 helping me out a little bit.

24 Q Okay. And where did you spend November the 12th?

25 A I come back home that night. And Sharon come by and

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1 seen me. She come by the house on her way home. I was at
2 momma's. Because I was always messing around in the yard
3 or something. She come by and we sat there and talked a
4 little bit. And I went and stayed the night at momma's.

5 Q At your momma's. On November the 12th, that would
6 have been on the -- I believe the Wednesday; correct?

7 A Yes, sir.

8 Q Okay. Again, did you hear any claim, at that point
9 in time, that you had done this -- what you've been
10 charged with?

11 A No, sir.

12 Q All right. And tell us about your activities on
13 November the 13th, which would have been a year ago.

14 A Yes, sir.

15 Q Tell us about that.

16 A I got up at the same time at momma's. I run over to
17 Sharon's and talked to her, and got them up, and messed
18 around like the same -- I did that every day. And then I
19 got -- I left there. I didn't have to haul no more wood
20 or nothing.

21 So I got in momma's car. I told momma, I said, let
22 me drive her car. And I went and got my -- I went to my
23 little nephew's.

24 Q And who is your little nephew?

25 A Robin Epting.

1 Q Okay. Where does he live?

2 A He lives in Joanna. So I went over there to him --
3 with him. And Jordan didn't go with me that day. So I
4 went and got him, and we got in his car, and left. And we
5 were going to -- up to Steve Patterson's to work.

6 Q Okay. And what happens?

7 A I got a phone call that -- from law enforcement. And
8 I thought -- I just told them, I said, You're messing with
9 me. You know what I mean? I knowed I hadn't done
10 nothing. And the phone cuts off. And I went on about my
11 business and everything.

12 And I got my nephew, I guess, and after about an
13 hour, I told him I would take him back to his house. I
14 was going to take him back to, you know, get his car. I
15 was going over to momma's. I was going to go back to
16 momma's to see what was going on. I got back to where
17 momma's car was and drove Robin's. And they locked me up.

18 Q All right. You didn't do this?

19 A No, sir.

20 Q And the first you learned about it was when -- was
21 the phone call from whoever called you from law
22 enforcement?

23 A (Witness nodded.)

24 Q Well, what did they tell you?

25 A No. The first I learned about it was when I was

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1 asking them. They handcuffed me in the house.

2 Q Okay. When you got arrested?

3 A And I was asking them, What have you got me for?

4 Q Okay. I understand. What -- in your dealings with
5 Ms. Hopkins, what was her mental condition as far as you
6 knew?

7 A I think she was a little bit off. I mean, just --

8 MR. FLEMING: I object to that, Your Honor. That
9 calls for speculation on his part.

10 THE COURT: Overruled.

11 BY MR. HOWE:

12 Q How did she appear to you? What do you mean "a
13 little bit off"?

14 A She -- I don't know. She just -- well, like maybe
15 not off, just ain't -- she'd joke and mess around with
16 you, you know, with me. She'd joke and always -- you
17 know, she called me, you know.

18 If I would go over to momma's and she'd see me coming
19 and going or something, she'd call me 20 times, you know,
20 joking and stuff, messing around, you know, and call me.
21 She might call me and tell me she's got -- I'm the flower
22 company or something, you know. I've got some flowers,
23 you know, or something.

24 Q Did you have -- did you ever have any disagreements
25 with her or anything like that?

1 A No, sir. I ain't never had no problems with her.

2 MR. HOWE: Answer any questions that Mr. Fleming may
3 have for you, Kevin.

4 THE WITNESS: Yes, sir.

5 THE COURT: Cross-examination.

6 MR. FLEMING: Yes, sir, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. FLEMING:

9 Q Mr. Epting, you stated to Mr. Howe that during this
10 period of time, you were living with your mother; is that
11 correct?

12 A I was living with momma. And I'd stay at Sharon's a
13 lot, too.

14 Q Okay. And you met Ms. Hopkins in July of 2009 [sic]?

15 A Yes, sir.

16 Q Okay. And how did you met her? Was that through her
17 son?

18 A I would say more like momma probably.

19 Q Okay. Your mother?

20 A Yeah.

21 Q They were good friends?

22 A They was real good friends.

23 Q Okay. And how about you and Billy Sizemore, who was
24 the son to Ms. Hopkins, were y'all friends?

25 A Yeah. He'd come over, you know. And he'd stay with

KEVIN SHANE EPTING-CROSS BY MR. FLEMING

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1 his momma, you know, on weekends and stuff. And he'd come
2 over and he said, you know, he was hurting. And I said,
3 you know, Well, I'm working up here at Wal-Mart --

4 Q Had you ever been over to his mother's --

5 MR. HOWE: If he can finish his answer, Your Honor.
6 I don't know that he finished his answer.

7 MR. FLEMING: I'm sorry.

8 THE COURT: Okay. Yes, sir. Mr. Epting, you can
9 continue.

10 THE WITNESS: I told him -- you know, he was hurting
11 and everything. And I was working at Wal-Mart. And I
12 said, I probably can get you a job. And he said, I'd
13 appreciate it. And I worked on it and done that for him.

14 BY MR. FLEMING:

15 Q Okay. Did you ever go over to Ms. Hopkins house with
16 Billy Sizemore?

17 A Yes, sir.

18 Q How many times did you go over there?

19 A I can recall two times. And then he cooked chili
20 beans. I went over and eat beans with them. And I went
21 over and watched the race -- part of the race one day.

22 Q And was Ms. Hopkins there whenever you went over?

23 A Yes, sir.

24 Q Okay. And you knew where she keep her purse?

25 A No. I ain't going to say I knowed that.

1 Q Okay. Let's go on to -- you said you had a 1996 Ford.

2 Ranger at that time?

3 A Yes, sir.

4 Q And you were driving that?

5 A Yes, sir.

6 Q How -- did you have a driver's license at that time?

7 A No, sir.

8 Q So you were driving against the law?

9 A Yes, sir.

10 Q Why were your license suspended?

11 A I haven't had a license since '79. Just points. I
12 lost points to begin with.

13 Q Now, later on, why were they suspended?

14 A DUI's.

15 Q How many?

16 A I've got a few.

17 Q How many?

18 A I couldn't tell you.

19 Q Five?

20 A Probably.

21 Q Six?

22 A I couldn't tell you.

23 Q Let's go on to the week of Monday, November the 10th
24 of 2008. I think you stated that the night of the 9th,
25 you spent the night with Ms. McCorley [sic]; correct?

KEVIN SHANE EPTING-CROSS BY MR. FLEMING

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- 1 A Yes, sir.
- 2 Q And you woke up on the 10th. And she left for work.
- 3 And then a little while after that, you left for work and
- 4 went over to your mother's?
- 5 A Yes, sir.
- 6 Q And, according to your testimony, she only lives
- 7 two -- Ms. McCorley's house and your mother's house is
- 8 probably two to three miles apart?
- 9 A Yes, sir.
- 10 Q So it doesn't take long to get from one to the other?
- 11 A No, sir.
- 12 Q Less than five minutes?
- 13 A Yes, sir.
- 14 Q And then you stated that you, again, spent the night
- 15 with Ms. McCorley on the night of -- on the day of
- 16 November the 10th; correct?
- 17 A Yes, sir.
- 18 Q And then, on the morning of November 11th, you got
- 19 up, got dressed. And, after Ms. McCorley left, then you
- 20 left and went over to your mother's again?
- 21 A Yes, sir.
- 22 Q Okay. And then on Tuesday, November the 10th, at
- 23 that time -- or -- yeah. On Tuesday, November the 11th --
- 24 excuse me -- instead of going to Ms. McCorley's that
- 25 evening, you went and spent the night with your mother

1 that night?

2 A Yes, sir.

3 Q Which would have been the 11th, and then, on the
4 morning of the 12th?

5 A Yes, sir.

6 Q Okay. You're sure about that?

7 A Yes, sir.

8 Q No question?

9 A No question.

10 Q Okay. And how about your mother, what kind of car
11 does she have?

12 A She's got a '92 Buick.

13 Q A 1992 Buick?

14 A Yes, sir.

15 Q What color is it?

16 A Blue.

17 Q Okay. Is that what she has now?

18 A Yes, sir.

19 Q What did she have a year ago?

20 A A '92 Buick.

21 Q Same car?

22 A Yes, sir.

23 Q Okay. And you stated that you and Ms. Hopkins never
24 had any kind of disagreements or anything?

25 A No, sir.

KEVIN SHANE EPTING-CROSS BY MR. FLEMING

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1 Q In fact, you took her to the cancer doctor one day
2 with your mother?

3 A Yes, sir.

4 MR. FLEMING: I beg the Court's indulgence for one
5 moment.

6 THE COURT: Yes, sir.

7 (Pause.)

8 BY MR. FLEMING:

9 Q When you got arrested for this, how long did you --
10 or how many times did Ms. McCorley come over to see you in
11 the jail?

12 A A few months.

13 Q Just for a few months?

14 A She come to see me about nine months.

15 Q Nine months?

16 A Uh-huh.

17 Q When was the last time she saw you?

18 A August.

19 Q In August. Okay. Is -- what was your relationship
20 with her at that -- or prior to November the 13th, when
21 you got arrested?

22 A She was my girlfriend.

23 Q So when you went over to spend the night at her
24 place, you slept in the same bed?

25 A Yes, sir.

1 Q Okay. And, how about after November the 13th, what
2 was your relationship with her?

3 A It was still about the same. About the same, I
4 mean --

5 Q So you were her boyfriend and she was your
6 girlfriend?

7 A Well, sort of. I guess you could say that, or good
8 friend. I mean, I don't know where -- it might boil to an
9 end, you know.

10 Q Okay. Is that your understanding of your
11 relationship with her today?

12 A No. I just -- she's just my friend now, I guess, you
13 know. I mean, it wasn't -- really, back then, she always
14 told me, she said, I wanted more than she did. And she
15 said, I'd be a better friend than I can be in a
16 relationship. And that's one of the reasons that I didn't
17 stay over there all the time, you know. I stayed weekends
18 and stuff.

19 Q When did you stop being her boyfriend?

20 A I guess in August.

21 Q This past August?

22 A Yeah, I reckon.

23 Q So, from November the 11th until August, she came to
24 see you at the jail?

25 A Uh-huh.

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1 Q Do you recall how many times during that period that
2 she came to see you?

3 A She come every week.

4 Q Okay. Do you have tattoos on your legs?

5 A Yes, sir.

6 Q Both legs?

7 A Yes, sir.

8 Q You're sure -- you're positive that on the night of
9 November the 11th, you stayed at your mother's house that
10 night and slept there?

11 A Yes.

12 MR. FLEMING: The State has no further questions,
13 Your Honor.

14 THE COURT: Redirect?

15 MR. HOWE: No redirect, Your Honor.

16 THE COURT: Mr. Epting, you may step down.

17 Thank you.

18 MR. HOWE: Our next witness is sequestered.

19 THE COURT: Okay. Yes, sir.

20 (Pause.)

21 MR. HOWE: Judge, we would call Joyce Epting.

22 She's going to swear you in, the Clerk right there.

23 THE BAILIFF: Watch your step up there, please.

24 All right. Put your left hand on the Bible and raise
25 your right hand. And face this lady over here.

JOYCE EPTING-DIRECT BY MR. HOWE

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1 WHEREUPON,

2 JOYCE EPTING,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE BAILIFF: You can sit right here and speak into
6 the microphone.

7 MR. HOWE: Judge, I apologize for that. We went
8 looking for the wrong person.

9 THE COURT: That's fine.

10 DIRECT EXAMINATION

11 BY MR. HOWE:

12 Q Ms. Joyce --

13 A Yes.

14 Q -- I know sometimes you have a hard time hearing. So
15 I'll speak up. I'll do my best. And if you can't hear
16 anything from anybody, you let us know.

17 A Okay.

18 Q You're Joyce Epting; right?

19 A I'm Joyce Epting.

20 Q Okay. And Kevin is your son; right?

21 A That is my son.

22 Q All right. And, back in November of last year, where
23 were you living?

24 A I was living at Mary Simpson's trailer park --

25 Q Okay. And what is --

JOYCE EPTING-DIRECT BY MR. HOWE

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- 1 A -- for 20 years.
- 2 Q -- the road that it's on?
- 3 A Highway 72.
- 4 Q Okay. But what is the street that you lived on in
- 5 the trailer park?
- 6 A On Cindy Drive.
- 7 Q On Cindy Drive?
- 8 A Uh-huh.
- 9 Q Okay. And did you live close to Ms. Marilyn Hopkins?
- 10 A She was my next door neighbor.
- 11 Q Okay. And did you see her on a regular basis?
- 12 A I saw her on a regular basis. I ate with her. She
- 13 cooked me cornbread and everything.
- 14 Q Okay. And you got along with her?
- 15 A I got along with her just good.
- 16 Q Okay. And did you come to learn that she had been
- 17 diagnosed with cancer?
- 18 A Yes. She had one lung.
- 19 Q Okay. And did you and Kevin do things for her?
- 20 A Cut her grass. Kevin cut her grass. And I cut her
- 21 grass. I wrapped her pipes. And I did everything for
- 22 her.
- 23 Q Okay. Y'all got along pretty good?
- 24 A We got along just fine.
- 25 Q But how was her health?

1 A Her health was bad. She had a big oxygen tank
2 sitting right beside her bed and portable oxygen tanks,
3 which she would carry out for -- out on trips, you know,
4 and everything to the doctor. But she smoked three
5 cartons of cigarettes a month.

6 Q Okay. Now, Ms. Epting, going back to about a year
7 ago on Monday, November the 10th, did Kevin stay with you
8 that night?

9 A No.

10 Q Okay.

11 A No.

12 Q He wasn't with you?

13 A He stayed with Sharon, his girlfriend.

14 Q All right. And would he stay with her some?

15 A He stayed with her most all the time.

16 Q Okay. And, sometimes, he would stay with you?

17 A He come and checked on me.

18 Q Okay. About every day?

19 A Yeah. He come and checked on me that night, you
20 know, on Veterans Day, November the 11th.

21 Q In fact, November the 11th, where did he stay?

22 A He stayed at my house on November the 11th. He was
23 watching the music awards on TV at 10:00. And he come in
24 at -- he didn't come in until 10:00. And he didn't -- I
25 hadn't seen him on Monday.

JOYCE EPTING-DIRECT BY MR. HOWE

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- 1 Q Okay. On the Monday?
- 2 A Huh-uh.
- 3 Q Now, on -- but that night, on Veterans Day, he spent
- 4 the night with you?
- 5 A Yes, he sure did.
- 6 Q Okay. And the next night on November the 12th, that
- 7 Wednesday, did he stay with you again?
- 8 A I think that's when he got locked up.
- 9 Q Okay. You're not sure if he got locked up that
- 10 Wednesday or that Thursday?
- 11 A Huh-uh.
- 12 Q When did you -- did you happen to see Ms. Hopkins on
- 13 Tuesday, November the 11th, at any time?
- 14 A Yeah.
- 15 Q How did that happen?
- 16 A She called me up.
- 17 Q About what time?
- 18 A 9:00 or 9:30.
- 19 Q Okay. She called you up?
- 20 A She called me at 9:00 or 9:30.
- 21 Q And what did she say?
- 22 A She said, Joyce, I want you to come out here. I've
- 23 got something I've got to show you. And I said, I'll be
- 24 out there just in a few minutes.
- 25 And so I went on out there. I knocked on the door.

1 And when I knocked on the door, she come to the door with
2 two black eyes.

3 Q Okay.

4 A And she said, See what chemotherapy did to me. And
5 that's what she said to me.

6 Q Okay. What did you say?

7 A And I said, Well, I sure wouldn't take
8 chemotherapy --

9 MR. FLEMING: Your Honor, I have to object to all
10 this being hearsay.

11 THE COURT: Sustained.

12 MR. FLEMING: And I'd like an instruction for the
13 jury to disregard what she testified to as to what
14 Ms. Hopkins might have said.

15 THE COURT: All right. I --

16 MR. HOWE: Well, let me -- excuse me.

17 THE COURT: I sustain the objection. And the jury is
18 to disregard that.

19 BY MR. HOWE:

20 Q As a result, did you stay there with her that day for
21 a period of time?

22 A Until 12:00. We ate dinner together.

23 Q All right. Who cooked?

24 A She did.

25 Q What did you have?

JOYCE EPTING-DIRECT BY MR. HOWE

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1 A She had -- she cooked rice and gravy, cube steak,
2 string beans, tea, and corn bread. Now, that's what we
3 had for dinner at 12:00.

4 Q Okay. And did she -- did you ever, at any point in
5 time, learn that day that she was accusing Kevin of this
6 burglary -- these crimes?

7 A No. I didn't even know nothing about it. I didn't
8 even know nothing about it.

9 Q Okay. And did you -- did Kevin later that evening
10 stay at your house, next door to her, on Tuesday, November
11 the 11th?

12 A Tuesday, November the 11th?

13 Q Yeah.

14 A Oh, he spent the night with me that night on Tuesday,
15 November the 11th. He came in at 10:00 checking on me.

16 Q Okay. And did you --

17 A Because I done had two heart attacks.

18 Q Did you, also, see him on the next day, on the 12th?

19 A I saw him on the 12th.

20 Q And then, at some point in time, he got arrested?

21 A Yeah.

22 Q You don't remember whether it was the 13th, or the
23 12th?

24 A No. I can't remember.

25 Q All right. Now, after Kevin got arrested -- did

1 Marilyn still try to stay in touch with you after Kevin
2 got arrested?

3 A Oh, say that again.

4 Q After Kevin got arrested, did Marilyn still stay in
5 touch with you?

6 A Oh, she left that day and went to her sister's, Judy
7 Prather's.

8 Q Well, did she still try to contact you?

9 A She never has contacted me. I got run off. Mary
10 Simpson run me off.

11 Q Okay. You haven't spoken with her since then?

12 A No, I haven't.

13 MR. HOWE: All right. Answer any questions that
14 Mr. Fleming might have for you.

15 THE WITNESS: Yes, sir.

16 THE COURT: Cross-examination.

17 MR. FLEMING: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. FLEMING:

20 Q Ms. Epting --

21 A Yes.

22 Q -- you say you were friends with Ms. Hopkins?

23 A Yes, I sure was.

24 Q How long were y'all friends?

25 A For a good while. I don't know how long she stayed

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1 over there, you know. I know Marilyn -- I mean,
2 [inaudible] Skeen stayed over there for four years. And I
3 was getting them mixed up. But she stayed over there a
4 good while.

5 Q Were you friends with her prior to her moving there?

6 A I was friends with her all the time. I wrapped her
7 pipes and everything.

8 Q Yeah. But I'm saying, before she moved to Cindy
9 Drive, were you friends with her prior to that?

10 A I didn't even know her.

11 Q Okay. And you and your son took her to one of her
12 cancer treatments; is that correct?

13 A Camping trips?

14 Q Cancer trips, where she got treated for cancer?

15 A No, I sure didn't.

16 Q Y'all didn't take her?

17 A No, I sure didn't.

18 Q And --

19 MR. HOWE: Judge, I'm not posing an objection. But
20 I'm not sure she understood the question.

21 MR. FLEMING: I thought I put it forward to her.

22 BY MR. FLEMING:

23 Q Did you take -- did you and your son ever take
24 Ms. Hopkins to her cancer treatment?

25 A No, we sure didn't.

1 Q Okay. And, on November the 10th, which was a Monday,
2 did Kevin spend the night at your house that night?

3 A Sir?

4 Q Did your son spend the night at your house on
5 November the 10th?

6 A Huh-uh.

7 Q He didn't?

8 A He sure didn't. He stayed with Sharon.

9 Q Okay. How about the night before that, did he spend
10 the night with you?

11 A The night before that?

12 Q Yeah.

13 A No.

14 Q How about the 11th, that night, did he spend the
15 night with you?

16 A At 10:00, he come in checking on me.

17 Q Okay. And what time did you go to bed?

18 A I went to bed at about 12:00.

19 Q About 12:00?

20 A 12:00.

21 Q And was Kevin still there when you went to bed?

22 A Do what?

23 Q Was Kevin still at your house when you went to bed?

24 A Yes, he was.

25 Q Okay. And I believe you stated that on November the

JOYCE EPTING-CROSS BY MR. FLEMING

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1 11th, you had gone over to Ms. Hopkins house; is that
2 correct?

3 A November the 11th?

4 Q Yeah.

5 A On Tuesday, Veterans Day?

6 Q No. Wednesday would have been -- yeah.

7 A I went over there on Tuesday. She called me to come
8 over there. She had something she had to show me.

9 Q But you stated, at that time, she had two black eyes?

10 A Yes. I went over there and knocked on her door. She
11 said she had something she wanted to show me. And I
12 knocked on her door. And she said --

13 Q Well, don't go into anything she might have said. I
14 want you to -- what did you see? You saw her with two
15 black eyes?

16 A Two black eyes.

17 Q Okay. And you're positive it was on the 11th?

18 A I know it was on the 11th.

19 Q How do you know that?

20 A How do I know that? Because I know. I mean, I keep
21 a check of calendars and everything else. I know when
22 Veterans Day is because I give to it -- give to Veterans
23 Day every time because they help me.

24 Q Okay. So how about on November the 12th, did you see
25 Ms. Hopkins on that day?

- 1 A She left before dark that night to go to Judy
2 Prather's house, her sister's.
- 3 Q And did you see police over there that day?
- 4 A Huh-uh.
- 5 Q You didn't?
- 6 A I didn't see no police, not at all.
- 7 Q Would you have seen them if they had been over there?
- 8 A If they had been over there, I probably would have
9 seen them, you know. I mean, if I looked out the window,
10 I would.
- 11 Q Did Sharon/Corley come over -- ever come over to your
12 house?
- 13 A Do what?
- 14 Q Sharon Corley or McCorley?
- 15 A Yes, sir, she does.
- 16 Q She did?
- 17 A She did.
- 18 Q How many times has she been to your house?
- 19 A She's been to my house lots of times.
- 20 Q Really?
- 21 A Yes. Because she goes with my son.
- 22 Q She goes -- she still does?
- 23 A Uh-huh.
- 24 Q Okay. And you stated that you never talked to --
- 25 A Sir?

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1 Q You stated that you never talked to Ms. Hopkins after
2 your son was arrested; is that correct?

3 A I never have talked to her after he was arrested, no.

4 Q Okay.

5 A Because I saw her that evening, you know. I went
6 home. Whenever it was, I went home. And that's the last
7 time I saw her.

8 MR. FLEMING: I beg the Court's indulgence, Your
9 Honor.

10 THE COURT: Yes, sir.

11 (Pause.)

12 BY MR. FLEMING:

13 Q Ms. Epting, did you talk to any law enforcement
14 officers after this incident occurred?

15 A When they come and locked me up.

16 Q When they come and locked you up?

17 A Uh-huh. They come and locked me up.

18 Q What did they lock you up for?

19 A I mean, they didn't lock me up. But they took me in
20 the car and took me over there to Sharon's house. And a
21 black cop was really nice to me. He's the one that said,
22 I'm going to take you back home. And he took me back
23 home.

24 Q All right. Did -- so you talked with police
25 officers. Do you recall who you talked to?

1 A I don't know. I don't remember names or anything.
2 But he was a black cop. And he took me home. And he
3 said, I'm taking you home. And he took me home and let me
4 out. Because I was fixing to cook ribeye steak.

5 Q Okay. And did you know why they had picked you up?

6 MR. HOWE: Objection, Your Honor.

7 THE WITNESS: No. I didn't know. I --

8 MR. HOWE: Objection, Judge. A matter for the Court,
9 if we can have it.

10 THE WITNESS: I didn't know why they picked me up --

11 THE COURT: Hold on. Ma'am --

12 THE WITNESS: I didn't --

13 THE COURT: Ma'am, just hold on.

14 Ladies and gentlemen, I'm going to ask you to go back
15 to the jury room. Don't talk about the case and continue
16 to keep an open mind.

17 Thank you very much.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 10:39 a.m.)

20 THE COURT: Yes, sir, Mr. Howe.

21 MR. HOWE: Thank you, Your Honor.

22 May it please the Court.

23 I don't know where this is going. But I've never
24 been provided any information whatsoever by the
25 Prosecution as to any statement that they may have

1 obtained, oral or written, from Ms. Epting. I've never
2 been provided anything whatsoever on that. I think I
3 would have been entitled to have information on that in
4 preparation of this case. I would have been able to
5 question Ms. Epting about it.

6 So I would object to the State going into any
7 questions concerning any conversations she may have had
8 with law enforcement. Because we've never been provided
9 this when we filed discovery in this case. And I think --
10 I believe, under the rules, we would be entitled to know
11 about that.

12 MR. FLEMING: There is no written statement, Your
13 Honor. That's why he didn't get any. There's no written
14 statement concerning her, you know.

15 She brought the fact up that the police came by, and
16 picked her up, and took her over there. And I think I'm
17 allowed to go into that.

18 MR. HOWE: Your Honor, in response to that, she
19 brought it up upon questioning by Mr. Fleming. And,
20 again, this would be a surprise to us. We've never been
21 provided with any such information.

22 MR. FLEMING: Again, there's no written --

23 THE WITNESS: It's a surprise to me, too --

24 THE COURT: Ma'am --

25 MR. HOWE: You need to -- Ms. Epting --

1 Let me handle this, Judge, please.

2 THE COURT: All right.

3 MR. HOWE: You just need to not say anything until
4 you're asked questions. Okay.

5 THE WITNESS: Okay.

6 MR. HOWE: All right. Thank you.

7 THE COURT: So there is no statement?

8 MR. FLEMING: No, sir.

9 THE COURT: You're just going to ask her if she
10 was --

11 MR. FLEMING: Yeah. I want to know -- I was going to
12 ask her what the police talked to her about. There is no
13 written statement, Your Honor, that was taken from her.

14 MR. HOWE: Judge, I'm going to object. If he's going
15 to be asking what the police said to her, I'm going to
16 object to that as being hearsay, anything the police may
17 have said to her. It's going to be hearsay.

18 THE COURT: Well, I'm having a hard time seeing how
19 this is being relevant to anything.

20 I mean, what -- they just questioned her. Are you
21 going to ask her if she was questioned?

22 MR. FLEMING: Yes, sir.

23 I'm going to ask her did they -- one, did they inform
24 her of why they were talking to her, and that they were
25 looking for her son. And then just go in on that and what

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1 she, actually, told the police when she found that out.

2 THE COURT: Mr. Howe.

3 MR. HOWE: Again, Judge, I'm going to object to
4 anything the police may have stated to her, because that
5 would be hearsay. That was something that seems like, to
6 me, should have come out in the Prosecution's case in
7 chief on anything they did in this case. That's going to
8 be hearsay if they ask her what the police said to her.

9 MR. FLEMING: I don't think it's hearsay, Your Honor,
10 to ask her was it her understanding that they came to talk
11 to her because they were looking for her son for a
12 burglary charge. We already know that's why they're
13 there.

14 THE COURT: Well, why don't you go ahead and ask her
15 what you plan to ask her in front of the jury so we can
16 kind of see where it's going.

17 MR. FLEMING: Okay.

18 CROSS EXAMINATION (IN-CAMERA)

19 BY MR. FLEMING:

20 Q Ms. Epting, on the 13th, did the police come and see
21 you that day?

22 A Yeah. They knocked on my door.

23 Q And, I think, you testified you went with them?

24 A I didn't know why I was going with them for.

25 Q Yes, ma'am. Did you go with the police, though?

- 1 A I did..
- 2 Q And where did you go with them?
- 3 A I went to his girlfriend's house.
- 4 Q Okay. And did you find out, at that time, that they
- 5 were looking for your son, Kevin?
- 6 A No. They didn't tell me.
- 7 Q They didn't tell you?
- 8 A They did not tell me nothing.
- 9 Q So at no time did they tell you they were looking for
- 10 him for a burglary charge?
- 11 A They didn't tell me nothing.
- 12 Q When did you find out that they were looking for him
- 13 for a burglary charge?
- 14 A Whenever I got back home and he let me out. I -- it
- 15 was a long time before I found out what they were looking
- 16 for him for.
- 17 Q Well, how long?
- 18 A A long time. I don't know how long.
- 19 Q Days? Weeks? Months?
- 20 A No -- well, that day sometime.
- 21 Q That day?
- 22 A Yeah.
- 23 Q And how did you find out?
- 24 A I don't know. I don't know who told me or anything
- 25 like that. And I said, Well, why in the world didn't she

JOYCE EPTING (IC)-CROSS BY MR. FLEMING

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1 come over there and tell me? Because she's my friend.

2 You know what I mean? Because a friend will tell a
3 friend.

4 Q So did you find out from police officers, or did you
5 find out from somebody else?

6 A The police officers didn't tell me nothing. They
7 just brought me back home. And they never said a word to
8 me about nothing.

9 Q Is this the officer that brought you back home right
10 here?

11 A No.

12 Q It's not?

13 A No, no.

14 Q Okay. And so you're telling this Court that you
15 didn't learn from police officers that they were hunting
16 for your son, Kevin, for a burglary charge?

17 A Say that again.

18 Q So it's your testimony that the police did not tell
19 you that they were looking for your son for a burglary
20 charge?

21 A No. They did not tell me nothing.

22 Q Were you not curious of why they took you over to
23 Corley's house?

24 A I was wondering, you know. And I was squalling, and
25 squalling, and squalling. I mean, I couldn't keep a

1 straight face.

2 Q And you don't know who told you that they were
3 looking for Kevin for a burglary charge?

4 A Huh-uh.

5 Q You just don't know?

6 A I don't know who told me.

7 Q Okay. After you found out that Kevin had a burglary
8 charge, did you call police and tell them that he was --
9 that he had spent the night over at Sharon Corley's that
10 night, supposedly?

11 A I didn't call nobody. Because I was too upset to do
12 anything.

13 MR. FLEMING: That's, basically, it, Your Honor.

14 MR. HOWE: I would renew the objection. And I would,
15 also, say I question how this is relevant as well, Judge.
16 It's what she knew about why they were arresting him, and
17 who it came from. I don't see how that's relevant to
18 whether or not -- to this particular case.

19 THE COURT: Mr. Fleming.

20 MR. FLEMING: Yes, sir, Your Honor.

21 THE COURT: What's your response to that?

22 MR. FLEMING: Your Honor, I think it's very relevant.
23 Because it goes to her credibility of the facts of the way
24 they happened, according to her, Your Honor. Clearly, she
25 got picked up by law enforcement on the 13th. But she

JOYCE EPTING-CONT. CROSS BY MR. FLEMING

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1 can't tell this Court why they picked her up. She can't
2 tell this Court from whom she learned about Kevin Epting
3 being charged. I think that goes to credibility.

4 THE COURT: All right. I'll let you ask it.

5 Let's take about a five-minute recess.

6 Thank you.

7 MR. HOWE: Ms. Epting, if you'll just sit up there
8 while we take a five-minute break. Don't talk to anybody.

9 THE WITNESS: Okay.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Okay. Bring the jury on in.

12 Thank you.

13 (WHEREUPON, the jury came into open court at
14 approximately 10:57 a.m.)

15 THE BAILIFF: All present, Your Honor

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

17 Yes, sir, Mr. Fleming.

18 MR. FLEMING: Thank you, Your Honor.

19 CONTINUED CROSS-EXAMINATION

20 BY MR. FLEMING:

21 Q Ms. Epting, we were talking a few minutes ago. And I
22 asked you, on the 13th -- and we were talking about the
23 police came over to your house on November the 13th;
24 correct?

25 A Yeah.

1 Q Okay. And did you know why they had come over there?

2 A No, I sure didn't.

3 Q They didn't tell you?

4 A They didn't tell me nothing.

5 Q Okay. And did you go with them somewhere?

6 A Squalling. I cried, and cried, and cried. And I
7 went on with them.

8 Q Where?

9 A I didn't want to go.

10 Q You went where?

11 A Over to his girlfriend's house.

12 Q Okay. This whole time, they didn't tell you why they
13 were getting you to go over there?

14 A No. They didn't tell me nothing.

15 Q Okay. And when did you come to find out that they
16 were looking for Kevin?

17 A Oh, I don't know when. You know, it's been over a
18 year.

19 Q Was it that day, days later, weeks later?

20 A Sometime that night I found out.

21 Q Okay. Did you find out from police?

22 A No.

23 Q Okay. Who did you find out from?

24 A I don't know. I don't know.

25 Q You don't know?

JOYCE EPTING-CONT. CROSS BY MR. FLEMING

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- 1 A No. I don't know.
- 2 Q Okay. But you do know you went over to Marilyn
3 Hopkins on the 11th?
- 4 A Veterans Day, I went to her house and eat.
- 5 Q So on -- after you found out that they were looking
6 for your son, Kevin Epting, for burglary charges, did you
7 tell the police, at any time, that he had spent the night
8 with Sharon Corley on the night of the 10th?
- 9 A I didn't tell nobody nothing.
- 10 Q Ma'am?
- 11 A I did not tell nobody anything.
- 12 Q Okay.
- 13 A I was too upset to do anything.
- 14 Q Do you love your son, Kevin?
- 15 A What?
- 16 Q Do you love your son, Kevin?
- 17 A More than life itself.
- 18 Q Would you do anything for him?
- 19 A I'd do anything for him.
- 20 Q You'd do anything to keep him out of jail?
- 21 A No, I sure wouldn't.
- 22 Q You wouldn't?
- 23 A No, no.
- 24 Q Okay.
- 25 A If he's guilty, he should serve the time. But I --

1 Q Ma'am?

2 A He ain't on account of this.

3 Q Ma'am, I couldn't understand you. What did you say?

4 A Huh-uh.

5 Q So, Ms. Epting, there was really no kind of squabble
6 between you and Ms. Hopkins, y'all were good friends?

7 A We were good friends.

8 Q And no squabbles between Kevin and Ms. Hopkins?

9 A No.

10 Q So --

11 A He cut her grass and everything.

12 Q So there wouldn't be any reason for her to lie about
13 this?

14 MR. HOWE: Objection, Your Honor. That calls for
15 speculation. She can't --

16 THE COURT: Sustained.

17 THE WITNESS: She has lied.

18 THE COURT: Sustained.

19 MR. FLEMING: No further questions, Your Honor.

20 THE COURT: Mr. Howe.

21 MR. HOWE: Just brief follow-up.

22 REDIRECT EXAMINATION

23 BY MR. HOWE:

24 Q Ms. Epting, did you and Kevin take Ms. Hopkins to the
25 doctor?

JOYCE EPTING-REDIRECT BY MR. HOWE

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1 A No.

2 Q You never took her to the doctor that you remember?

3 A No.

4 MR. HOWE: All right. That's all I have.

5 THE WITNESS: We sure didn't.

6 THE COURT: Any recross?

7 MR. FLEMING: No recross, Your Honor.

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

9 Ms. Epting, you may step down, ma'am.

10 Thank you.

11 THE WITNESS: Sir?

12 THE COURT: You can step down.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you.

15 MR. HOWE: We call our next witness, Sharon Corley.

16 THE COURT: All right.

17 THE BAILIFF: Put your left hand on the Bible and

18 raise your right hand. And face that lady over there,

19 please.

20 WHEREUPON,

21 SHARON CORLEY,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 THE BAILIFF: Just have a seat right here and speak

25 into the microphone.

DIRECT EXAMINATION

1
2 BY MR. HOWE:

3 Q Your name, please?

4 A Sharon Corley.

5 Q Sharon, let me ask you a little bit about you. How
6 old are you, please, ma'am?

7 A 38.

8 Q Okay. And where do you live?

9 A At [REDACTED] [REDACTED] [REDACTED] in Cross Hill, South
10 Carolina.

11 Q All right. And about how long have you lived there?

12 A 11 years.

13 Q Where did you go to school?

14 A Clinton High School.

15 Q Okay. And what year did you graduate?

16 A 1989.

17 Q And do you have children?

18 A I do. I have two.

19 Q Okay. And their ages?

20 A I have a 19-year-old son, Darrell, who's serving his
21 country in the Army in Virginia right now. And my
22 daughter is 14.

23 Q Okay. And does your daughter live with you?

24 A She does.

25 Q Where do you work?

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1 A I work for Donna Jackson. She's an attorney in
2 Clinton.

3 Q Okay. What do you do there?

4 A I'm a paralegal.

5 Q All right. And do you have another job that you had
6 at one time that -- or do you still have that job?

7 A I was teaching at Piedmont Wilderness Institute,
8 which is a reform school. It's a residential placement
9 for teenage boys in DJJ custody.

10 Q Okay. The Department of Juvenile Justice?

11 A Yes, sir. I taught English there for nine months
12 last year.

13 Q Last year?

14 A Uh-huh.

15 Q During the time that these events that we're talking
16 about were going on?

17 A Yes, sir.

18 Q Okay. You know, of course, Kevin Epting and his
19 mother; correct?

20 A I do.

21 Q All right. And there's been some testimony already.
22 Would you describe -- let's cover it -- back in November
23 of last year, would you describe your relationship with
24 Kevin?

25 A We had become friends about July and developed a

1 close friendship. We became intimate November 1st --
2 well, actually, October 31st, probably, Halloween night.

3 Q All right. And did that relationship continue until
4 the time that he was arrested on this charge?

5 A Yes, sir.

6 Q Okay. After he was arrested, did you -- there's
7 already been testimony, of course, that he was in jail.
8 Did you continue to visit him in the jail?

9 A Yes, sir, I did.

10 Q Okay. And did that continue on a regular basis?

11 A Yes, sir.

12 Q Okay. And for a period of time?

13 A Yes.

14 Q Okay. And, you know, are you still visiting him in
15 the jail now?

16 A I have not for sometime.

17 Q Okay. Has the relationship changed, I guess you
18 would say, seeing how he's in jail?

19 A Well, right. I haven't been able to see him as
20 often. So we haven't been able to develop that
21 relationship or maintain that day-to-day friendship that
22 we had before.

23 Q All right. Do you still consider him a friend?

24 A Absolutely.

25 Q Okay. Well, Sharon, of course, let me ask you this

SHARON CORLEY-DIRECT BY MR. HOWE

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1 right off the bat. Based on the relationship then and
2 now, are you here to tell anything that's not true to help
3 him?

4 A Of course not.

5 Q Okay. You have your own reputation?

6 A I absolutely do.

7 Q All right. Are you proud of the work that you do?

8 A I am. I'm, also, a member of the board of trustees
9 for the Laurens County Safe Home. So I would never
10 support somebody in attacking a woman. I'm, also, the
11 mother of a beautiful 14-year-old daughter. So I'm very
12 sensitive to womens issues. I would never, never defend
13 Kevin if I thought there was any chance that he had hurt a
14 woman.

15 Q Now, back in November of 2008, was Kevin staying with
16 you during some of that time in November of 2008?

17 A Yes, sir.

18 Q Okay. Do you recollect -- starting maybe around even
19 the 9th of November, do you recollect when you would have
20 had occasion to see Kevin and under what circumstances?

21 A What day of the week was that?

22 Q November the 9th would have been Sunday.

23 A A Sunday, yes, sir. My stepfather's father passed
24 away. We attended a funeral in Florence. And my daughter
25 stayed home. And she spent half the day with Kevin. They

1 were over at Dottie Morrow's house cutting trees. And
2 Mikalah was with him half the day.

3 And when I got home, sometime that evening probably
4 5:00, he was there. And we cooked supper and ate together
5 that night. And he spent the night with me that night,
6 Sunday.

7 Q That Sunday. Now, did anything unusual happen that
8 day, the next Monday -- the following Monday? And I'll
9 ask you, did you work?

10 A I did. I worked Monday.

11 Q Okay. Do you recall what your activities were?
12 Anything special?

13 A I got up that morning. As I recall, Kevin fixed
14 breakfast, toast and coffee. And I went to PWI and worked
15 all day. I --

16 Q PWI being Piedmont Wilderness Institute?

17 A I'm sorry, Piedmont Wilderness Institute. Yes, I
18 did. I was in the classroom all day. I don't have access
19 to a telephone there. So I didn't have any contact with
20 anybody throughout the day on Monday.

21 Monday evening -- at that time that I was working at
22 PWI full-time, I was still working at the law office in
23 the evenings going back and catching up some things. So I
24 spent some time at the law office that evening. And I got
25 home -- it was around 8:00.

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1 My sister had come by looking for a coffee cup that
2 she had left in my car. And she called me from there at
3 work and told me that she wanted some help finding the
4 coffee cup. And Kevin was there cooking supper for my
5 children and for Jordan Morris, who's Dottie Morris son.
6 And I talked to him on the phone then. So that was
7 around -- I don't know -- 6:30, 7:00. And then I got home
8 about 8:00. And he was there. And they had already
9 eaten.

10 So I ate leftovers while Kevin cleaned up and we
11 talked. I did give him some money for some shirts. I had
12 gotten some -- at Piedmont Wilderness, they require you to
13 wear uniforms with stitching on them. And I had some over
14 at Carolina Stitches that I needed picked up the following
15 morning. So I did give Kevin \$40 to pick up those shirts
16 for me at Piedmont Wilderness, which he did the following
17 morning.

18 Q And where did Kevin spend Monday night?

19 A He spent the night with me.

20 Q Okay. And you're absolutely sure about that?

21 A Positive.

22 Q Okay. And do you recall about what time y'all went
23 to bed or anything like that?

24 A I got home about 8:00. We ate. He cleaned up the
25 kitchen. We talked. We took showers, got ready for bed.

1 So we were in bed by 10:00, and talked, and were asleep by
2 11:00.

3 Q Okay. And do you recall anything else that happened
4 after 11:00 that night?

5 A I do. About 4:00 in the morning, I woke up because
6 it was really, really cold. And Kevin was sleeping. And
7 I woke him up. And I said, Did you turn off the heat?

8 And he said, It's freezing in here. Why would I turn
9 off the heat?

10 I said, I don't know, but I think it's hot -- it's
11 cold in here.

12 And he said, No, I didn't.

13 And I said, Well, go check it and see if it's on.

14 And he said, I'm not getting up. It's cold.

15 And I said, Well, I'm not going to get up either.
16 It's cold.

17 So we didn't get up. But I was restless for the rest
18 of the night because of the cold.

19 Q Now, let me ask you. How long have you been a single
20 parent?

21 A 19 years. My son is 19 years old.

22 Q All right. Would you consider yourself a heavy
23 sleeper or a light sleeper?

24 A Anything wakes me up. I'm a very light sleeper.
25 I'm, also, accustomed to sleeping alone. So having

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1 somebody else sleep with me, it makes me an even lighter
2 sleeper than I ordinarily would be.

3 Q If Kevin had gotten up and had gone anywhere that
4 night, would you have noticed that?

5 A Absolutely, without a doubt. His truck is, also,
6 loud. If he had gotten in his truck and driven away, it
7 would have woken everybody up.

8 Q Okay. And that was the vehicle that he was driving?

9 A Yes, sir.

10 Q Now, tell us what happened the next morning.

11 A Tuesday morning, we woke up. Kevin woke the kids up.
12 My son didn't have school that day so there was a little
13 commotion about his being woken up when it wasn't necessary.

14 My daughter did get up and get ready for school.
15 Kevin fixed us breakfast. And we talked about picking up
16 the shirts for Piedmont Wilderness. And I went to work.
17 And I don't know what anybody else did past that point,
18 because I was in the classroom and didn't have access to a
19 telephone.

20 Q Okay. And where did -- did you see Kevin the night
21 of November the 11th?

22 A That's Tuesday?

23 Q Yeah.

24 A I did not see him on Tuesday. I talked to him on the
25 phone when I got home from work --

1 Q That night?

2 A That evening, I did. No, I saw him Tuesday morning
3 when we got up.

4 Q Right.

5 A And then I worked late. I, actually, teach a family
6 solutions class at -- for DJJ on Tuesday nights. So I got
7 out late. It was about 9:00 when I left the courthouse.
8 That class is taught here. And I left the courthouse
9 about 9:00. So it was late when I got home. I texted
10 Kevin and asked him if he was still up. And he said that
11 he was and that after I got settled in, I could give him a
12 call.

13 So I got my shower, got something to eat, and laid
14 down. And I can't say exactly what time it was, sometime
15 after 10:00, I talked to him on the phone. We talked
16 until about 11:00. And then I went to sleep.

17 Q Okay. Now, on Wednesday, November the 12th, did you
18 have an opportunity to see Kevin?

19 A I did. I worked at the law office that night. I
20 worked at Piedmont Wilderness. And when I got off there
21 at 4:00, I drove over to the law office and worked until
22 about 8:00.

23 My daughter had gone to church in town. I picked her
24 up at church that night. And she and I went by Kevin's
25 house and he was working in the yard and had been out

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1 there. He had some other people out there. And they were
2 stripping wire. They were doing something. I don't know.
3 But he was working in the yard out there. And we stood
4 out there and visited for a little while, probably half an
5 hour or so.

6 Q Okay. But he didn't spend November the 12th with
7 you, did he? Is that --

8 A No, sir. Actually, that Monday night, when Marilyn
9 claims he attacked her was the last night that he spent
10 with me.

11 Q Okay. On.-- now, we're into Thursday, November the
12 13th. And that's when he got arrested that day?

13 A Yes.

14 Q Did you happen to see him that day?

15 A Wednesday?

16 Q On Thursday, November the 13th?

17 A No, I didn't. I worked that day. And my son called
18 me at work and told me what had happened.

19 Q Okay. Now, after you learned that he was arrested --
20 about when did you learn the circumstances of the arrest?

21 A It was really confusing there for a little while. My
22 son called me at Piedmont Wilderness --

23 Q You can't say what your son said because there might
24 be an objection to that. But you --

25 A Well, that's how I learned that he -- well, that's

1 how I learned that the police were looking for him.

2 Actually, they had not made an arrest at that point.

3 So I did try to call Kevin on his cell phone to find
4 out what was going on. And I wasn't able to reach him,
5 undoubtedly, because they already had him in custody. I
6 don't know.

7 So I wasn't allowed to visit until Saturday. I did
8 talk to Kevin on the telephone. And he told me that he
9 had been accused of attacking somebody. And when he told
10 me the date that they said that -- he said, It was Monday
11 night they claim that I did this. And I, actually,
12 laughed. At that point, we didn't realize that he was
13 going to be sitting in jail for a year for something he
14 hadn't done. And I said, Oh, good. You were with me.
15 That's great. Because he couldn't possibly have done it.
16 There was just no chance that he could have done it.

17 Q And did -- once you learned that and knew that --
18 knew the time -- and you say you learned about that that
19 Saturday; is that correct, more of the circumstances?

20 A I talked to him on the phone. I think it was Friday
21 when I, finally, got to talk to him on the phone. And he
22 told me that. He didn't have the warrants.

23 So we didn't know any details. And I didn't know who
24 his accuser was at that point. So it was Saturday before
25 I got any real details. Jordan Morris and I went over to

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1 the jail and we visited with Kevin. And he had the
2 warrant with him up there then. And he told me who the
3 investigator was and who, the accuser was, the date, the
4 warrant number, that sort of thing. So when Jordan and I
5 left the -- should I continue?

6 Q Yeah.

7 A Okay. When Jordan and I left the jailhouse, I had
8 some errands to run in town. And he and I talked. And we
9 said, This is just too ludicrous to be believed. I wasn't
10 sure if the police had made something up, or if Marilyn
11 had. I just could not understand how this lie could just
12 be carried on this far.

13 So I thought if I talked to Marilyn that maybe we
14 could make some sense of it and understand why she would
15 tell these things. So we went over there. Jordan and --
16 Joyce, who is Kevin's mother, and Marilyn lived in a
17 trailer park. And their trailers were adjacent to one
18 another. So Jordan went over to Joyce's house while I
19 went to Marilyn's. And I introduced myself, my name. I
20 said, I'm Sharon Corley. And she said --

21 MR. FLEMING: Your Honor, I'd object to hearsay.

22 THE COURT: Sustained.

23 BY MR. HOWE:

24 Q You can't say what she said. I'll tell you, we just
25 won't go into that conversation.

1 A Okay.

2 Q But let me ask. After you learned a little bit more
3 details, did you attempt to contact law enforcement and
4 give them information on where Kevin was when this
5 happened?

6 A I didn't just attempt. I, actually, had a 30- to
7 40-minute conversation with Officer Galarza.

8 Q Okay. And do you know him?

9 A No, I don't. In fact, I didn't know that's who that
10 was. I only talked to him on the phone. I've never met
11 with him in person.

12 Q Okay. And what was the gist of your conversation?

13 A Well, first, I did try to contact him over the
14 weekend. After I had met with Kevin and spoken with
15 Marilyn, I did try to call him then. And he wasn't
16 available. He just wasn't on duty over the weekend.

17 So the dispatcher asked me to call back on the Monday
18 when he was on duty. And I did that. When I got off work
19 at Piedmont Wilderness on Monday, I went over to the
20 jailhouse to pick up Kevin's personal belongings. And, on
21 the way there, I called dispatch and asked to have Officer
22 Galarza return my phone call. And he did do that
23 immediately. He called me within five minutes.

24 I introduced myself to him. And I said, I have some
25 information relevant to this investigation that you're

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1 conducting. You have arrested Kevin Epting. You have him
2 in custody. And I want you to know that he couldn't
3 possibly have committed the crime that you're accusing him
4 of because he was with me at the time that it, supposedly,
5 occurred. And he said --

6 MR. FLEMING: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. HOWE:

9 Q As a result of that conversation, did -- were you
10 ever asked to come to law enforcement and make a formal
11 statement or anything of that nature?

12 A Absolutely not. And I offered to do so.

13 Q Okay. As a result of that conversation, did you form
14 an opinion as to whether or not this officer was
15 interested in talking with you?

16 A He wasn't at all. He was not at all interested in
17 the truth.

18 Q Okay. Now, that would have been a few days after
19 Kevin's arrest?

20 A That was Monday. Kevin was arrested on Thursday. So
21 I attempted to call on Sunday. And then I, finally, did
22 have that conversation with him on Monday. And that was
23 almost exactly a year ago. And I have yet to speak to
24 Officer Galarza or any other investigator. Nobody has
25 ever talked to me about it.

1 MR. HOWE: Okay. Answer any questions Mr. Fleming
2 may have for you.

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

4 MR. FLEMING: Your Honor, may it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. FLEMING:

8 Q Ms. Corley, let's go back to talking about when you
9 first met Kevin Epting. Where did you meet him, or how
10 did you meet him?

11 A I, actually, met him through a mutual acquaintance.
12 And I met him at my own home.

13 Q Okay. And y'all became friends. And then you stated
14 that on October 31st, y'all became intimate at that time;
15 is that correct?

16 A Yes.

17 Q Okay. And were y'all exclusive?

18 A Yes, sir.

19 Q Okay. And how long did you stay exclusive?

20 A Well, we were only together that two weeks before he
21 went to jail.

22 Q Well, how long after that did you remain true to him
23 and exclusive?

24 A By circumstance until May.

25 Q Okay. So May of 2009. And, by circumstance, that's

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1 the only reason that your relationship changed; is that
2 correct?

3 A We didn't have a discussed established relationship.
4 It wasn't as if we ever sat down and said we're going
5 steady or, you know, we're going to be together forever.
6 In fact, the opposite. We had discussed, you know, our
7 feelings and our interests in pursuing that relationship.
8 And I had strong feelings for Kevin. They're just not
9 romantic ones.

10 Q Okay. But for him going to jail, your
11 relationship -- intimate relationship would not have
12 ceased; is that correct?

13 A Well, we'll never know that, because he was arrested.

14 Q Okay.

15 A Unfortunately, I wished that we had been allowed to
16 explore that relationship. But, unfortunately, he's been
17 incarcerated. And we never had that opportunity.

18 Q How many times did you see him in jail?

19 A I don't know exactly. From November until April,
20 December, January, February, March, and April, and then
21 two weeks, so five times four. Approximately, 25 times.

22 Q Okay. And, after he was arrested, you went and saw
23 him the first time that you could?

24 A Absolutely, yes.

25 Q Okay. And I assume y'all talked about his charges

1 and his case, at that time, when you went?

2 A Yes, sir, we did.

3 Q You did. And, at that time, did you offer to give
4 him assistance on his case?

5 A What sort of assistance?

6 Q Any kind of assistance. Did you --

7 A Well, certainly, even then, I planned to testify when
8 he came to trial. We had no idea it would be a year
9 later. But, certainly, I intended to testify that he was
10 with me at the time of the crime.

11 Q As far as, you know, getting, say, a private
12 investigator, did you help him with that?

13 A I would have, but I just don't have the resources to
14 do that.

15 Q Okay.

16 A And I wasn't sure it was necessary.

17 Q I'll let you look at those right there. Do you
18 recognize those papers?

19 A Yes, sir. They're sign-in sheets from the jail.

20 Q Is that your signature on them?

21 A Yes, sir.

22 Q And I think they have a copy of your driver's license
23 down at the bottom; is that correct?

24 A Yes, sir. They make a copy every time you visit.

25 MR. FLEMING: Your Honor, I'd like to move these

SHARON CORLEY-CROSS BY MR. FLEMING

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1 visitation records into evidence as a State's Exhibit at
2 this time.

3 THE COURT: Any objection?

4 MR. HOWE: No objection.

5 THE COURT: All right. They're in evidence.

6 (WHEREUPON, State's Exhibit No. 6 was marked for
7 identification and admitted into evidence.)

8 BY MR. FLEMING:

9 Q How far did you live from Ms. Epting's house on Cindy
10 Drive?

11 A Three miles.

12 Q Three miles?

13 A Yes, sir.

14 Q It takes you less than five minutes to get there?

15 A Yes, sir.

16 Q At the time that you were romantically involved with
17 Mr. Epting, did you know of his prior burglary
18 convictions?

19 A I knew that he had some convictions. I didn't know
20 details.

21 Q Okay. Did you know that he didn't have a license?

22 A Yes, sir, I did know that.

23 Q And did you know it had been suspended for numerous
24 DUI's?

25 A I didn't know any details about that either.

1 Q Okay. And you stated that the week of November the
2 10th, 2008, he, actually -- Mr. Epting, actually, spent
3 the night with you the night of November the 9th, and then
4 again on the night of November the 10th; correct?

5 A Yes, sir.

6 Q Okay. And, again, you stated that you were exclusive
7 with Mr. Epting up until May; is that correct?

8 A Yes, sir.

9 Q That's not exactly true, though, is it? Because you
10 were having a relationship with Mr. Darrell Miller on or
11 around March of 2009; isn't that correct?

12 A Y'all, Darrell Miller is my 19-year-old son.

13 Q I'm sorry. I read it wrong. Eric Culbertson?

14 A I was not involved in a sexual relationship with Eric
15 Culbertson. I dated Mr. Culbertson approximately eight
16 years ago. He and I, actually, lived together for two
17 years. He fell on some hard times. But Mr. Culbertson is
18 now married and has Hepatitis C. So, no, I was not
19 sexually involved with him.

20 Q Okay. So you didn't -- on March the 15th, you didn't
21 get mad at him about a watch that you thought another
22 woman had given him, and y'all got into a physical
23 altercation at that time?

24 A That's not how that happened, no.

25 Q Okay. You stated that after you found out about

SHARON CORLEY-CROSS BY MR. FLEMING

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1 this, you talked with Deputy Galarza that Monday after
2 Mr. Epting was arrested; is that correct?

3 A Yes, sir.

4 Q And you stated, at that time, that you told him that
5 Mr. Epting stayed with you the night of the 10th; is that
6 correct?

7 A Yes, sir.

8 Q Did you talk with anybody else about it?

9 A I talked with everybody else about it.

10 Q Specifically, who --

11 A And I have for the last year. I've discussed it with
12 everyone I've come in contact with.

13 Q Because I thought that when Mr. Howe asked you did --
14 he asked you did anybody else in law enforcement or
15 anybody else ask you --

16 A Nobody interviewed me. Nobody was interested. I,
17 actually, last week was at a vigil for the Laurens County
18 safe home and ran into law enforcement officers there and
19 discussed this with them at random. Because I'm so
20 outraged at this injustice that I was, actually, talking
21 to anybody that I thought might have the slightest
22 interest.

23 Q Okay.

24 A Of course, they're not -- they don't have the
25 authority to do anything about it. It's not their

1 investigation. But I, certainly, took every opportunity
2 to discuss it with anybody.

3 Q Well, that's not exactly true, though, is it?
4 Because I called you on two separate occasions and asked
5 you to come in and talk with me and you declined, did you
6 not?

7 A I did.

8 Q You, also, testified that you went over to
9 Ms. Hopkins home later and talked with her; is that
10 correct?

11 A On Saturday, I did, yes, sir. Later than what, I
12 don't know.

13 Q Without going into anything, you, actually -- without
14 going into what she may have said, you, actually, tried to
15 persuade her to change her story, did you not?

16 A I absolutely did not. In fact, since you asked, she
17 said over and over, I'm not going to change my story.
18 And, every time she said, I'm not going to change my
19 story, I said, I'm not asking you to.

20 Q Okay.

21 A I'm merely telling you that what you're saying is
22 inconsistent with what I know to be true. It was then and
23 it is now.

24 Q Actually, when you and I talked on the phone, you
25 told me, at that time, that there's no way a jury would

SHARON CORLEY-CROSS BY MR. FLEMING

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- 1 believe that old woman over you; correct?
- 2 A She's a liar.
- 3 Q Is that what you told me?
- 4 A It is.
- 5 Q But you don't know the lady, do you?
- 6 A Do I know her personally?
- 7 Q Yeah.
- 8 A I do. I met her that day.
- 9 Q Yeah. But, before that, you never met her --
- 10 A No. I don't have a relationship with her at all, no,
- 11 I don't.
- 12 Q And, again, on the night of November the 11th,
- 13 Mr. Epting did not spend the night with you that night,
- 14 did he?
- 15 A On the 11th? Tell me what day of the week that was.
- 16 Q That would have been on a Tuesday night.
- 17 A That's correct. He did not stay with me Tuesday.
- 18 Q Ms. McCorley, after you went to visit Ms. Hopkins,
- 19 didn't deputies call you concerning that?
- 20 A No, sir.
- 21 Q They never did?
- 22 A No, sir.
- 23 Q They didn't talk to you about you going over there
- 24 and harassing her?
- 25 A I never harassed her. And, no, nobody talked to me

1 about that.

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

4 MR. HOWE: Brief follow-up.

5 REDIRECT EXAMINATION

6 BY MR. HOWE:

7 Q Sharon, let me ask you, did you -- you went to see
8 Ms. Hopkins before you had the conversation with this
9 officer --

10 A Yes, sir, I did.

11 Q Okay. And did y'all discuss the fact that you had
12 been to see Ms. Hopkins?

13 A Absolutely, yes.

14 Q Okay. What did he say to you, and what was your
15 response about you going to see Ms. Hopkins?

16 MR. FLEMING: I would object to hearsay.

17 MR. HOWE: It's in response to the question.

18 THE COURT: All right. Overruled.

19 Go ahead.

20 BY MR. HOWE:

21 Q About what -- what did this officer say to you in the
22 telephone conversation about you going to see Ms. Hopkins?

23 A He said, That's -- he said, I could charge you with
24 witness tampering or obstruction. And I said, I've done
25 neither. I'm only interested in giving you the truth of

SHARON CORLEY-REDIRECT BY MR. HOWE

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1 this story. But he said that, actually, in relation to
2 something I told him that she had said.

3 Q Okay. Now, as far as when Mr. Fleming asked you
4 about his attempts to contact you, would you tell the jury
5 when that took place?

6 A Oh, it was last week.

7 Q And that was after this case was set for trial?

8 A Actually, I apologize. What is today's date?

9 That was October 26th, I think, when I talked to
10 Mr. Fleming for the first time.

11 Q Okay. And that was after the case had been scheduled
12 for trial?

13 A Yes, sir.

14 Q What was -- what did you determine his purpose was,
15 at that point in time, to talk with you?

16 A That he wanted to pick apart my testimony and wanted
17 me to help him build a case against Kevin.

18 Q All right. And do you think there's anything you
19 could have told Mr. Fleming that would have all of the
20 sudden, after the case was set for trial, change his
21 opinion on whether or not he was going to prosecute Kevin?

22 MR. FLEMING: I would object --

23 THE WITNESS: Apparently not, no.

24 MR. FLEMING: -- that calls for speculation.

25 THE COURT: All right. Sustained.

1 BY MR. HOWE:

2 Q Let me ask you. You got a subpoena; correct?

3 A Yes, sir.

4 Q Okay. Was it a subpoena even for a term of court?

5 A No, it was not.

6 Q Okay. And what did you later determine in your
7 investigation of that and whether or not you even had to
8 come to court when court was not going on for --

9 A That it was not a lawful subpoena --

10 MR. FLEMING: Your Honor, I would object. I'd like
11 to have a side bar on that.

12 THE COURT: Okay.

13 (WHEREUPON, a bench conference was held.)

14 MR. HOWE: I think I'm complying with the Court's
15 ruling.

16 BY MR. HOWE:

17 Q Sharon, you learned that -- was that, in your
18 opinion, even a lawful subpoena --

19 MR. FLEMING: Your Honor, I object.

20 THE COURT: Okay. Yes, you can just ask her if she
21 was subpoenaed or not.

22 BY MR. HOWE:

23 Q Were you subpoenaed?

24 A To be here this week?

25 Q Yes.

SHARON CORLEY-REDIRECT BY MR. HOWE

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1 A I was.

2 Q Were you subpoenaed when court was not going on?

3 A Subpoenaed to come to Mr. Fleming's office?

4 Q Right.

5 A I was.

6 Q Now, again, that was for him to get ready for trial?

7 A Exactly.

8 Q So when Mr. Fleming has asked you whether or not you
9 were trying to not cooperate with law enforcement, not to
10 give your side of the story that's just because you
11 wouldn't talk to him; is that true?

12 A And I did talk to him on the phone. We had a couple
13 of civil conversations. And he took one comment I made
14 completely out of context. We had civil conversations.

15 I told him, at that time, that Kevin was with me,
16 that there was no way he could have been anywhere else,
17 that I don't believe anybody would believe Marilyn because
18 her story is not the least bit credible. And, instead,
19 he's taken that out of context.

20 I told him then, I said, You know what's infuriating
21 to me and the reason that I don't want to talk to you
22 right now is that I would have told this story for free a
23 year ago. I called your investigator and I gave him all
24 of these details. I told him every single thing I knew.
25 And they didn't act on that. Kevin has been sitting in

1 jail for a year for a crime he didn't commit.

2 Q Thank you.

3 A And Mr. Fleming told me, I got your name from Chip.

4 MR. HOWE: Thank you.

5 THE COURT: Yes, sir, Mr. Fleming.

6 MR. FLEMING: Just a couple recross, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. FLEMING:

9 Q Ms. Corley, when we talked, you, actually, said that
10 the jury was not going to believe that woman over you?

11 A How could they possibly believe her?

12 Q I'm not asking that. I'm asking you, is that what
13 you said?

14 A Yes, sir.

15 Q Okay. And we further discussed about you coming in.
16 And I told you -- did I not tell you that I'm not out to
17 convict an innocent man, I want justice; is that correct?

18 A You did tell me that and, yet, here we are --

19 Q Thank you.

20 A -- with you doing that very thing.

21 MR. HOWE: No redirect.

22 THE COURT: Okay. Thank you, Ms. Corley.

23 You may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Okay. Yes, sir, Mr. Howe.

1 MR. HOWE: The Defense rests, Your Honor.

2 THE COURT: Any reply from the State?

3 MR. FLEMING: Yes, sir.

4 Can we take a break and -- so I can go organize.

5 THE COURT: We'll take a short recess, ladies and
6 gentlemen.

7 Don't talk about the case. And continue to keep an
8 open mind.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 11:39 a.m.)

11 THE COURT: Okay. Let's take about five minutes.

12 (WHEREUPON, a break was taken.)

13 THE COURT: Does the State have some reply?

14 MR. FLEMING: Yes, sir, Your Honor.

15 THE COURT: What would that be?

16 MR. FLEMING: I have two witnesses. One would be
17 Deputy Ted Richardson with the Sheriff's Office, and the
18 other one would be Deputy Galarza on reply, Your Honor.

19 THE COURT: And what are they replying to?

20 MR. FLEMING: They're going to reply to a couple of
21 things. Well, Mr. Richardson will reply to the fact that
22 he was involved and on the case, specifically, after the
23 warrant was obtained and looking for Mr. Epting. And that
24 they did tell his mother why they were looking for
25 Mr. Epting, as well as he will, also, testify that

1 Ms. Corley never contacted him about being an alibi
2 witness. And that he had received a call concerning Ms.
3 Corley harassing the victim, Your Honor.

4 Mr. -- or Deputy Galarza will testify that, again,
5 Ms. Corley did not tell him anything about being an alibi.
6 And, specifically, he had called her up the time she is
7 talking about to warn her about obstruction of justice,
8 and trying to tamper with a witness, and put pressure on
9 the witness to change her story, Your Honor. He will,
10 also, testify to that -- and, again, about Ms. Hopkins [sic]
11 being informed of why they were looking for her son, Your
12 Honor.

13 And I think that's about it, Your Honor.

14 THE COURT: Okay. Bring the jury on in.

15 Thank you.

16 MR. HOWE: My objections, I suppose I can make at the
17 appropriate time, or do you want me to go ahead and do
18 that now?

19 THE COURT: Well, what --

20 MR. HOWE: Relevancy.

21 THE COURT: Go ahead. The relevance?

22 MR. HOWE: Yes, sir.

23 THE COURT: Okay. Well, let's see how far it goes.

24 (WHEREUPON, the jury came into open court at
25 approximately 11:52 a.m.)

1 THE COURT: I asked Mr. Bolt just to have y'all write
2 down someone to be the foreperson of the jury.

3 Mr. Darby, you've been elected --

4 JUROR #45, CHARLES DARBY: Yes.

5 THE COURT: -- and you'll just be the liaison between
6 the Court and the jury. If you have a question or if
7 anyone on the jury has a question you need to ask me, just
8 send it by way of a note. I can only respond in writing
9 or on the record out here.

10 JUROR #45, CHARLES DARBY: Yes, sir.

11 THE COURT: All right. Thank you very much.

12 The Defense has rested. And, now, the State has the
13 opportunity to present reply.

14 Yes, sir.

15 MR. FLEMING: Thank you, Your Honor.

16 We would call Ted Richardson to the stand, please.

17 THE COURT: All right.

18 THE BAILIFF: Please raise your right hand and place
19 your left hand on the Bible.

20 WHEREUPON,

21 LUTHER T. RICHARDSON,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 You may be seated.

25 MR. FLEMING: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. FLEMING: Thank you.

3 DIRECT EXAMINATION

4 BY MR. FLEMING:

5 Q Mr. Richardson, could you give your full name for the
6 record, please?

7 A Luther T. Richardson.

8 Q Okay. And, Mr. Richardson, where do you work?

9 A With the Laurens County Sheriff's Office.

10 Q Okay. And how long have you worked for them?

11 A Approximately 16 years.

12 Q Okay. And what are your duties with the Sheriff's
13 Department?

14 A I'm the captain of the community services division.

15 Q And what does that entail?

16 A We have school resource officers. I manage that, as
17 well as all community events. And we have deputies at the
18 hospital. And that's my main job.

19 Q Okay. And are you, also, in your duties called upon
20 to conduct investigations?

21 A That's correct. I assist with that.

22 Q Okay. And were you involved in the investigation of
23 Kevin Epting concerning the burglary at the home of
24 Marilyn Hopkins?

25 A I was involved in serving the warrants, trying to get

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1 the warrants served, yes.

2 Q Okay. So previous testimony has set forth that
3 warrants were retrieved on the 13th of November, 2008,
4 and, at that time, the Sheriff's Department was seeking
5 Mr. Epting to serve those warrants on him; is that
6 correct?

7 A That's correct.

8 Q Okay. And were you involved in that?

9 A I was.

10 Q Okay. Could you tell this Court and the jury what
11 your involvement included on that?

12 A My involvement, I was contacted by Deputy Galarza
13 about this situation about trying to get these warrants
14 served. We went -- myself, along with several other
15 deputies went to -- I believe it was Mr. Epting's mother's
16 residence to try and locate him. He was not there. We
17 checked the residence. And we became aware of a possible
18 girlfriend that lived somewhere close by. And I think
19 Ms. Epting showed us where the girlfriend lived. And we
20 went there to check that address as well.

21 Q Okay. And did you inform Ms. Epting why y'all were
22 looking for Mr. Epting?

23 A Yeah. She was informed that we had some arrest
24 warrants, yes.

25 Q And whenever you left there, where did y'all go?

1 A We went down Highway 72 towards the lake. It was
2 approximately three miles from where Ms. Epting lived to
3 the girlfriend's residence.

4 Q And that residence was whose residence?

5 A I can't recall the name off the top of my head. It
6 was the girlfriend of Mr. Epting.

7 Q Okay. And when y'all went down there, did Ms. Epting
8 accompany y'all?

9 A Yeah. She showed us because she really couldn't
10 explain to us very well exactly where it was at. So I
11 think she rode down there in the patrol car to show us
12 where it was at.

13 Q Okay. So did she ride with you?

14 A I don't think she rode with me. She didn't ride in
15 my vehicle. She rode in another vehicle.

16 Q Okay. And was Mr. Epting at that address?

17 A He was not there.

18 Q Okay. And did you later apprehend Mr. Epting?

19 A He was apprehended approximately a few hours after
20 that. He was, actually, in Joanna, I think, riding around
21 with -- we, also, had some other officers from the warrant
22 division that were, also, following up some leads to try
23 to --

24 MR. HOWE: Judge, I'm going to object unless -- as
25 far as the apprehension, unless this officer has personal

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1 knowledge as to how that took place.

2 THE COURT: All right.

3 MR. HOWE: If he didn't -- because I'm hearing that
4 he did not, actually, participate in the actual serving of
5 the warrants and apprehending him.

6 THE COURT: Sustained.

7 BY MR. FLEMING:

8 Q Were you part of apprehending Mr. Epting?

9 A I was. I showed up at the residence at the same
10 time. Two other officers were, actually, there maybe a
11 minute or so before I got there.

12 Q And what type of vehicle had Mr. Epting been driving
13 in?

14 A I believe it was a Blazer, some type of Blazer, some
15 type of SUV, a sport utility vehicle. I think it was his
16 nephew -- he was riding around with his nephew.

17 Q Okay. Was his --

18 MR. HOWE: Judge, I'm going to object to him
19 testifying about riding around with his nephew, unless he
20 has personal knowledge of that, too. And I would ask the
21 jury to disregard that.

22 THE COURT: All right. Go ahead.

23 BY MR. FLEMING:

24 Q Without going into anything that you have no personal
25 knowledge of, was -- when you got to where Mr. Epting was,

1 was his mother's car there?

2 A If I remember correctly, it was there.

3 Q Okay. Now, later on, after he was apprehended, did
4 you get a call concerning Ms. Corley trying to influence
5 Ms. Hopkins --

6 MR. HOWE: Objection. Leading question, Your Honor.

7 THE COURT: Well --

8 MR. HOWE: He's leading.

9 THE COURT: I understand.

10 I sustain the objection.

11 BY MR. FLEMING:

12 Q Did you get a call concerning -- or did you get a
13 call later on from Ms. Hopkins?

14 A I did.

15 Q Okay. And what was that concerning?

16 A It was concerning --

17 MR. HOWE: Objection. That calls for hearsay, Your
18 Honor.

19 THE COURT: How would that be admissible?

20 MR. FLEMING: Your Honor, he's not going to testify
21 to what she said. He's just going to testify to what his
22 knowledge became after that.

23 THE COURT: I sustain the objection.

24 BY MR. FLEMING:

25 Q What did you do after talking with Ms. Hopkins?

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1 A After talking with Ms. Hopkins, it was clear to me
2 that Ms. Corley had planned to visit Ms. Hopkins residence
3 and discuss the matter of this case.

4 Q Did you later on talk to Ms. Corley?

5 A I did not talk to Ms. Corley.

6 Q Okay. Have you ever talked to Ms. Corley?

7 A I believe I talked to Ms. Corley the day that we were
8 at her residence on the phone. I think her son was there.
9 And I think she phoned -- or he phoned her, I believe.
10 And I believe I talked to her on the phone that day.

11 Q And, at any time when you talked to her, did she ever
12 give you an alibi for Mr. Epting?

13 A She did not. I believe I talked to her -- I think
14 her son called there -- called to wherever she was at. I
15 don't know if he called her work, or on the cell phone, or
16 what. And I think I talked to her and asked her about,
17 you know, the whereabouts of Mr. Epting and why we were at
18 that residence.

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

20 THE COURT: Yes, sir.

21 MR. HOWE: Briefly.

22 CROSS-EXAMINATION

23 BY MR. HOWE:

24 Q Is it Captain?

25 A Yes, sir.

1 Q Okay. Captain Richardson, just so that we can clear
2 things up. Kevin was arrested, I believe you would agree,
3 on -- well, let me just show you this. Are you familiar
4 with those type of documents?

5 A That's correct.

6 Q A booking report?

7 A That's correct.

8 Q And it shows the time and date of the arrest?

9 A That's correct.

10 Q Okay. It was November 13th?

11 A That's correct.

12 Q And the approximate time of arrest, according to that
13 official record, is what?

14 A 1:30.

15 Q 1:30 p.m.?

16 A That's correct. The times could vary. It could be
17 the time they came to the jail. It could be the time that
18 the officer estimated that they were, actually, arrested.

19 Q And the arrest warrant was actually -- you're
20 familiar with arrest warrants, too; correct?

21 A That's correct.

22 Q And that was obtained by Officer Galarza?

23 A That's correct.

24 Q He was the chief investigating officer; correct?

25 A That's correct.

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1 Q So any information concerning the case as far as
2 alibi or anything else would be furnished to him; correct?

3 A That's correct.

4 Q Okay. And the date of the arrest warrant is, also,
5 November 13th; correct?

6 A The day of what now?

7 Q The arrest warrant that was issued by the Judge?

8 A The day, yeah. It's right here.

9 Q Yes, sir. Same day, November 13th?

10 A That's correct.

11 Q All right. So both the arrest warrant issued and
12 arrest made were on the same day. And that was during
13 daylight working hours; correct?

14 A That's correct.

15 Q Okay. As a matter of fact, you testified that when
16 you were at Ms. Corley's home, she was, actually, I
17 believe, at work. She was not at the home; correct?

18 A She was not there. That's correct.

19 Q And, as far as you know, she could have been at work,
20 because that was during normal daylight working hours?

21 A That's correct.

22 Q Okay. And, at that point in time, you were -- I
23 heard you testify that you, basically, were assisting with
24 getting warrants served?

25 A That's right.

1 Q That was the extent of your role in this case;
2 correct, serving the warrants?

3 A That was the extent of it at that time, yes.

4 Q At that time. Okay. And you never told anybody that
5 you were the lead investigator on the case because that
6 has remained with Officer Galarza; correct?

7 A Did I ever tell anybody that I was the
8 lead investigator?

9 Q Yes, sir.

10 A I don't think I ever told anybody I was the lead
11 investigator, no.

12 Q Right. Okay. So -- and, as a matter of fact, when
13 you were going to serve the arrest warrant and -- let
14 me -- the only conversation you've had with -- that you
15 say that you've had with Ms. Corley was when you were
16 trying to get her assistance in locating Mr. Epting;
17 correct, because y'all were at her home?

18 A That's correct. We were there. And I believe her
19 son was there. And I think he called her on the phone.
20 And I think I talked with her, too.

21 Q And you didn't share with her all the details of the
22 case as far as what the allegations were, when the
23 allegations would have taken place, you didn't share all
24 that with her, because that wasn't your job at that point
25 in time; right?

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1 A That's right.

2 Q Okay. So if there would have been any discussions
3 about an alibi or Ms. Corley telling you, well, he wasn't
4 there, y'all didn't -- she didn't even have the details of
5 the arrest at that point in time, did she?

6 A That's correct.

7 MR. HOWE: Okay. Thank you.

8 That's all the questions I have.

9 THE COURT: Anything further?

10 MR. FLEMING: A couple follow-up questions.

11 REDIRECT EXAMINATION

12 BY MR. FLEMING:

13 Q Captain Richardson, when you spoke to Ms. Corley, did
14 you identify yourself?

15 A I'm sure I did.

16 Q Okay. You told her that you were Captain Richardson
17 with the Laurens County Sheriff's Office; correct?

18 A I'm sure I told her something to that effect, yes.

19 Q Okay. So she knew you were involved in the case?

20 A She knew I was a police officer, yes, and we were
21 there, you know --

22 MR. HOWE: Objection to what she might have known.
23 That would call for speculation, Judge. And I'd ask the
24 jury to disregard that.

25 THE COURT: Okay. Overruled.

1 BY MR. FLEMING:

2 Q You identified yourself as a deputy; correct?

3 A That's correct.

4 Q You identified yourself by name?

5 A That's what I normally do. I mean, I would say this
6 is Ted Richardson with the Sheriff's Office. That's what
7 I normally do.

8 Q You informed her that you were looking for Kevin
9 Epting?

10 A That's correct.

11 Q Did you tell her why you were looking for Kevin Epting?

12 A I might have told her that we had some warrants.
13 But, I mean, I didn't go into the details of the situation
14 with her, no.

15 MR. FLEMING: No further questions.

16 MR. HOWE: No recross, Judge.

17 THE COURT: All right. Thank you, Mr. Richardson.
18 Yes, sir.

19 MR. FLEMING: Thank you, Your Honor.

20 We would call Deputy Galarza to the stand.

21 DIRECT EXAMINATION

22 BY MR. FLEMING:

23 Q Deputy, could you take us through, on the 13th, when
24 you got the warrant and were looking for Kevin Epting?

25 A Well, I obtained the warrant early in the morning

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1 hours. I then went back to the Sheriff's Office where I
2 gathered a few officers to help me out in finding
3 Mr. Epting.

4 We, from there, went to Cross Hill where his
5 mother -- to his mother's residence because, apparently,
6 that's where he was living at. And we started our search
7 from there.

8 Q And when you got to the residence of Ms. Epting, did
9 you tell her why you were there?

10 A Well, I, personally, myself did not speak to
11 Ms. Epting. I believe at the time -- the first few guys
12 that spoke to her was Captain Richardson --

13 MR. HOWE: Objection then. It would be hearsay if
14 this officer testifies what another officer may have told
15 Ms. Epting.

16 THE COURT: Okay.

17 BY MR. FLEMING:

18 Q Without going into what somebody --

19 A No. I, personally, did not --

20 THE COURT: Hold on just a second. You need to get a
21 little closer to the microphone, sir.

22 Thank you.

23 Go ahead.

24 THE WITNESS: I, personally, did not talk to
25 Ms. Epting at that point.

1 BY MR. FLEMING:

2 Q Okay. And was Mr. Epting there at her home?

3 A No, sir.

4 Q Was Ms. Epting's vehicle there at the home?

5 A As I can recall, no.

6 Q Okay. Where did you go after that?

7 A From there, we went to -- again, other officers took
8 off. And we all ended up at the girlfriend's house at the
9 time.

10 Q Was Ms. Epting in your accompaniment over -- to go
11 over there?

12 A She was not, at the time, in my vehicle not going
13 towards the girlfriend's house, no.

14 Q When you got there, was Ms. Epting there along with
15 you and the other officers?

16 A Yes, she was.

17 Q And what did you do at that time?

18 A At that time, Captain Richardson, again, went
19 in pretty much what -- he talked to whoever was in the
20 house. I didn't go -- personally, I didn't go into the
21 house. So he did speak to the son and Ms. Corley.

22 Q What did you do while all that was going on?

23 A While that was going on, I was standing outside. I
24 met up with Ms. Epting then. And, from there, it was said
25 that Mr. Epting was not at the house. I then took

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1 Ms. Epting and put her in my car and drove her back home.

2 Q So you were the one that drove Ms. Epting back home?

3 A Yes, sir.

4 Q On the way back taking her home, did you talk with
5 her?

6 A She was upset. As I recall, she was upset because
7 what was explained to her and the reason that we were --
8 her son, Mr. Epting, was being looked for and the
9 warrants.

10 Q Okay. So, at that point in time, she had been told
11 that warrants were issued against her son?

12 MR. HOWE: Objection, Your Honor. That calls for
13 this officer to speculate. Because he said he didn't tell
14 her. And that would be hearsay. And that's, also, leading.

15 THE COURT: You can rephrase the question.

16 MR. FLEMING: Thank you.

17 BY MR. FLEMING:

18 Q Did you discuss warrants being issued against
19 Mr. Epting with Ms. Epting on the way back?

20 A On the way back home taking -- bringing Ms. Epting
21 back home, yes, sir.

22 Q You did?

23 A Yes, sir.

24 Q After you took Ms. Epting back home, what did you do
25 at that point in time?

1 A At that point in time, we just continued to search
2 for Mr. Epting around the Cross Hill area.

3 Q Okay. And, eventually, did you find him?

4 A He was found through other officers.

5 Q Okay. Were you there when he was apprehended?

6 A No, sir.

7 Q Okay. And, after that, at some point in time, did
8 you have a conversation with Ms. Corley?

9 A Yes, three days later.

10 Q Okay. And what did that conversation consist of?

11 A The conversation, as far as I can recall, it was
12 about her asking -- obstructing because she -- there was a
13 call made to me through the complainant that
14 Ms. Corley had contacted --

15 MR. HOWE: I'm going to object to hearsay. If he's
16 going to testify to whatever the complainant said, that
17 would be hearsay.

18 THE COURT: I sustain the objection.

19 THE WITNESS: There was a call placed to me in
20 reference about Ms. Corley harassing the victim.

21 MR. HOWE: Same objection, Judge.

22 THE COURT: Sustained.

23 BY MR. FLEMING:

24 Q Without going into that, Deputy, what was your
25 conversation with Ms. Corley?

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1 A My conversation with Ms. Corley was pretty much about
2 staying away from Ms. Hopkins, the victim.

3 Q Okay. And what else did it consist of? Anything?

4 A It consisted pretty much of that. And I believe she
5 may have said something about Mr. Epting possibly trying
6 to say that he wasn't there. That 30- to 40-minute
7 conversation, it's not true. It never happened.

8 Q Okay. So you weren't on the phone with her for 30,
9 40 minutes?

10 A No, sir.

11 Q At any point in time, did she offer an alibi to you
12 and state that he was with her the night that this,
13 supposedly, occurred?

14 A The conversation was so fast. I don't remember her
15 saying anything like that.

16 Q Okay. At any other time, did she come to you stating
17 that she was an alibi witness, and that he was with her on
18 the night that this burglary occurred?

19 A After that conversation we had that one day, that was
20 the only time I heard from her. And, again, upon my
21 advice, she was to stay away or she would be charged for
22 obstructing.

23 Q Okay. Deputy, I want to show you the incident report
24 that you filled out concerning this --

25 MR. HOWE: Objection, Your Honor. I don't think that

1 would be proper reply testimony.

2 THE COURT: Sustained.

3 MR. FLEMING: I have no further questions, Judge.

4 THE COURT: All right. Cross-examination.

5 MR. HOWE: Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. HOWE:

8 Q Briefly, Officer, as I heard you say, the
9 conversation that you said that you had with Ms. Corley,
10 you started off, you said, As far as I can recall pretty
11 much about the -- you were indicating to her that you
12 would -- you were telling her that you could charge her
13 with obstruction of justice for talking with a witness in
14 the case; correct?

15 A Correct.

16 Q All right. Now, and you, also, said that you don't
17 remember exactly what all the conversation was about. But
18 you said that you believed that she did tell you something
19 about Kevin Epting not being involved in this. You
20 remember that because you said you believe that; correct?

21 A Not all of exactly what you said. But there was some
22 conversation about Mr. Epting.

23 Q Right. Because most of the conversation -- and so if
24 she told you that, you don't remember all the details
25 about it because your focus, at that point in time, was

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1 trying to get her not to get involved in this case any
2 more to ask questions of the witness -- of your witness;
3 correct?

4 A No, sir. My point was to get her to get away from
5 the victim.

6 Q Right. To get away from the victim. So you pretty
7 much blew her off on anything she wanted to tell you about
8 an alibi, didn't you, sir?

9 A I don't feel like I did that. But it wasn't my
10 intentions for that, sir.

11 Q Okay. And because, as you recall, your conversation
12 was mainly about telling her to leave Ms. Hopkins alone
13 and if she told you anything else, you didn't want to hear
14 it because y'all had already arrested somebody, hadn't
15 you?

16 A He was arrested, yes, sir.

17 MR. HOWE: Thank you.

18 That's all the questions I have.

19 MR. FLEMING: A couple follow-up, Your Honor.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. FLEMING:

23 Q At any point in time, did she say he was with me the
24 night that this, supposedly, occurred?

25 A Again, we did speak about Mr. Epting briefly.

1 Whether she said that or not, I don't recall.

2 Q So you don't know if she gave you -- told you --

3 MR. HOWE: Objection. That's a leading question,
4 Your Honor. And it's been asked and answered.

5 THE COURT: Sustained.

6 BY MR. FLEMING:

7 Q Did she mention to you about the fact that Mr. Epting
8 was claiming he was innocent?

9 MR. HOWE: Objection, Your Honor.

10 THE WITNESS: I don't remember her mentioning that to
11 me.

12 THE COURT: Overruled.

13 BY MR. FLEMING:

14 Q And, when you talked to her concerning the victim,
15 did you state to stay away from her, or did you tell her
16 she needed to quit harassing her?

17 A I believe I told her both ways, stay away, stop
18 harassing the victim.

19 MR. FLEMING: Thank you.

20 No further questions, Your Honor.

21 MR. HOWE: Nothing.

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

23 You can step down.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Any further reply?

1 MR. FLEMING: Nothing from the State, Your Honor.

2 THE COURT: Okay. Ladies and gentlemen, we're going
3 to take a brief recess. And then we're going to come back
4 with the closing arguments of the lawyers. And I'll give
5 you an instruction on the law. And the case will be in
6 your hands for deliberations.

7 So just take a brief recess, stretch your legs. And
8 we'll resume in about five minutes.

9 Thank you.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 12:19 p.m.)

12 THE COURT: Okay. Any motions or matters?

13 MR. HOWE: Yes, sir.

14 THE COURT: All right. Go ahead.

15 MR. HOWE: Judge, I need to renew the motion that I
16 made --

17 THE COURT: Hold on one second.

18 (WHEREUPON, the Bailiff approached the bench.)

19 THE COURT: Now, wait a minute. Hold on a second.

20 Let's go ahead and put this on the record.

21 Mr. Bolt, the alternate said something to you.

22 Go ahead.

23 THE BAILIFF: On the way out, as the jury was going
24 out, the alternate stopped me and she said, I have a
25 complaint.

1 And I said, What have you got?

2 And she just said, I have a complaint on who they
3 selected as the foreman.

4 And I said, Why?

5 She said, He's been sleeping just about the whole --
6 a good bit of the time that the trial was going on.

7 And that was, basically, the conversation.

8 And I said, Well -- I did say this. I said, Well,
9 how did y'all go about selecting the foreman?

10 She said, Well, I'm just the alternate. They
11 selected him.

12 That was her comment to me, Judge.

13 THE COURT: All right. Thank you.

14 Yes, sir. Your motion.

15 MOTIONS

16 MR. HOWE: Thank you, Judge.

17 I would renew the motion made and ask, again, that
18 the Court direct a verdict of not guilty based on the
19 evidence that's been presented now that all the evidence
20 has been presented in the case.

21 Judge, and I, also, want to add an additional ground
22 that I would contend is appropriate in the case now that
23 we have put up testimony. Your Honor, by the ruling by
24 allowing the burglary second -- excuse me, the other
25 two -- the two prior burglaries to be introduced into

1 evidence, it, basically, put the Defense in a position
2 where the Defendant had to testify to respond to those
3 allegations, as well as anything else.

4 What I'm trying to -- the best argument I can make on
5 that is that when that comes in, it eliminates one of the
6 reasons you don't call a Defendant anyway, so the
7 Prosecution can't go into prior record, even though it's
8 for impeachment purposes only. But when that comes in,
9 it, basically, puts the Defense in a position where the
10 harm has already been done. And it eliminates that option
11 of not having the Defendant testify. And I would make
12 that as an additional ground for the motion I have at this
13 time.

14 THE COURT: Okay. Thank you, sir.

15 I respectfully deny the motions.

16 Anything further?

17 MR. FLEMING: Nothing from the State, Your Honor.

18 THE COURT: All right. Are y'all ready to proceed
19 with closing arguments?

20 MR. HOWE: Judge, do you want to cover charges?

21 THE COURT: I'll be glad to look at whatever you've
22 got.

23 MR. HOWE: I'll hand it up.

24 Ron, have you seen it?

25 MR. FLEMING: Yes.

1 MS. ANDERSON: It's just a proposed alibi charge.

2 THE COURT: All right. I'll be glad to charge that.
3 I think it's better than the one I have, so.

4 And I was just going to charge, you know, burglary
5 first, ABHAN, and, of course, proof beyond a reasonable
6 doubt, and presumption of innocence, and all the standard
7 criminal law principles.

8 MR. HOWE: Yes, sir.

9 And you were going to renew the limiting instruction
10 with regard to that?

11 THE COURT: Yes, sir.

12 MR. HOWE: I think that's all we have in the way of
13 requests, Your Honor.

14 THE COURT: All right.

15 MR. FLEMING: The State feels confident in your
16 charges, Your Honor. We would -- the State would waive
17 opening on the law and just finish up last.

18 THE COURT: Yes, sir. You can bring them on back in.
19 Thank you.

20 (WHEREUPON, the jury came into open court at
21 approximately 12:26 a.m.)

22 THE COURT: Ladies and gentlemen, we've now reached
23 the point in the trial where the lawyers are going to give
24 their closing arguments.

25 Mr. Howe.

CLOSING ARGUMENTS

MR. HOWE: Thank you, Your Honor.

May it please the Court.

Mr. Foreman, and, ladies and gentlemen, thank you all, again, very much for your patience in this case. I know you had to get up and sit down, you know, go out and come back in. That's a typical trial. The lawyers try their best to try to keep things going the way that we think that the rules allow. And, of course, the Judge makes the ultimate decision. But, you know, there's a purpose behind that madness that you see sometimes in doing that.

But I want to thank you again on behalf of Kevin Epting. In fact, I thank you on behalf of the system that we have that brings y'all in here under these circumstances, and for being the jury in this case. I appreciate it very much.

The way the rules work, this is the last chance that I will get to say anything to y'all. There has to be a final ending just like -- although we may have wanted to call witnesses to respond to the response you heard a minute ago, the rules say, no, at some point in time, it has to end. It doesn't go on forever.

So, you know, this is the last chance that I'll get to speak on behalf of Kevin Epting and argue his position

1 in this case. There may be times that I'd like to get up
2 and say what if, but I won't have that opportunity again.
3 So I hope, ladies and gentlemen, for the next couple of
4 moments that y'all will listen to what I'm going to tell
5 you on behalf of my client.

6 You heard testimony and you're going to have
7 documents showing that Kevin Epting has pled guilty to two
8 burglaries before. So let's go ahead and deal with that.
9 He's done that. He told you he pled guilty to them. He
10 admitted his guilt. He told you, in this case, that he
11 did not do this. That's what he told you. And the Judge
12 has already told you, and he's going to tell you again,
13 that the fact that he pled guilty to two previous
14 burglaries does not make him guilty of this.

15 Under the law having to do with burglary, it's
16 something that can be proven to establish why this case
17 becomes a burglary first degree. And that's the sole
18 purpose. And the Judge is going to tell you that. But we
19 have to deal with that. Because what I'm asking y'all to
20 do and what I think the law says is don't say, okay, well,
21 if he's committed two burglaries before, then, you know,
22 he probably did this one, too. Because that's not what
23 the law says. And I'm asking y'all to be fair-minded
24 jurors and to look at it in that way. Because that's,
25 basically, what the Judge is going to tell you with regard

1 to the law.

2 Now, the Judge is going to tell you the law is --
3 that he told you at the very beginning of the case. And
4 that is that Kevin Epting, who is a citizen, who is a
5 human being, comes into this Court and he is presumed
6 innocent of the charge, just like anybody who gets charged
7 with a crime. And unless the State can prove to your
8 satisfaction and all of you agree beyond a reasonable
9 doubt that he has committed these offenses, then you're
10 required, under the law, to find him not guilty. And that
11 is the law that all -- that is the law. That's the way it
12 is. We don't convict people on what might have happened,
13 what probably.

14 We don't convict people based on that. We don't
15 convict them on a previous record or anything like that.
16 We convict people only if jury's find beyond a reasonable
17 doubt! That's the law.

18 Now, in doing that, the Judge has already told you
19 y'all decide the facts in the case. Y'all decide the
20 facts, whatever the facts are. That's y'all's job to do
21 that. And, in doing that, now is the time for me --
22 because it is our last opportunity to give you some things
23 that I want you to consider in the case in deciding
24 whether or not the State has met its burden in this case.

25 You heard testimony from the various witnesses. And

1 what do you know? You know that the -- this event has
2 been testified -- that there's been testimony that this
3 occurred in the early morning hours of November the 11th,
4 2008, at about 1:30, 1:40. And you heard that there was
5 no report to law enforcement until 38 hours later,
6 November the 12th, after 3:00 in the afternoon. And you
7 heard that.

8 You heard the testimony from Ms. Hopkins. And y'all
9 have a right to, of course, remember it the way you heard
10 it. But, as I heard her testimony, one of the things she
11 indicated was that she called her sister that morning,
12 earlier that morning. I believe that's what I heard. Her
13 sister doesn't remember getting such a phone call.
14 Remember, I asked her, I said, you know, If you had
15 received a phone call like that, you would have remembered
16 it? Yes. I believe she indicated she would have called
17 the law. She would have done something then. That's what
18 you heard.

19 You heard Ms. Hopkins testify. And we, also, asked
20 her about what she had given in her statement. Her
21 statement was given back in time when this thing happened.
22 And she indicated, in her statement, that she heard
23 something in the kitchen. And you're going to have an
24 opportunity to look at the exhibit, State's Exhibit No. 1,
25 which was the layout of the home, and see that the kitchen

1 is in a separate room from where the front door was. The
2 front door lead to the living room. And that that's what
3 she heard. And then she said that someone was at
4 the cabinet.

5 And she, also, then in her statement indicated that
6 her son, Billy, who she said knew where her purse was kept
7 in the cabinet, that her son, Billy -- she said in her
8 statement that Billy is off limits to my wallet, or
9 billfold, or whatever it's called. And you have a right
10 to consider that in deciding what is truly going on in
11 this case. You have a right to consider it.

12 She indicated in her statement -- in both the
13 statement and in the conversation with the officer that
14 she didn't know how somebody got in. And this is
15 important for this reason, I would submit to you, because
16 that's something that an officer doing an investigation
17 would want to explore further. He didn't have any idea.
18 Because everybody agrees that there was no damage
19 whatsoever to the home, no damage, no door, no window,
20 nothing like that. And she said she had no idea how
21 someone got in.

22 I think -- and I would submit to you that that's
23 important. And it's important for the following reason
24 because, at some point in time, somebody has realized,
25 well, that's a problem we've got to deal with. So, now,

1 when this case goes to trial, conveniently, there's a
2 recollection now that, well, the door was unlocked. The
3 door was unlocked. That comes up conveniently now. And I
4 would submit to you that that factor, like a lot of these
5 factors, would cause a reasonable fair-minded jury, who's
6 not for one side or the other, who's following the law in
7 this case, proof beyond a reasonable doubt, to hesitate to
8 convict, to hesitate to act in this case, those
9 discrepancies.

10 Because when trying to figure out what happened that
11 this thing went on for 38 hours and wasn't reported, was
12 there a cover-up? Was it somebody else? What was going
13 on? We've got a -- you've got a right to inquire about
14 that. And you've got a right to say, Hey, that causes me
15 to hesitate to convict in this case because I've got
16 serious questions about it.

17 If you recall, she had her phone. She even said she
18 used the phone to call her sister. Law enforcement wasn't
19 called. Her sister said, I came over. Her sister was
20 confused on the date. But I came over. She thinks it was
21 the next day, although it wasn't reported to the officer.
22 The next day would have been November the 11th, the next
23 morning. The sister said that. Although, clearly, the
24 records show that it was November the 12th when her sister
25 reported it.

1 The sister came over. And then law enforcement is,
2 finally, called in this case. Because, clearly, there's
3 got to be some explanation for Ms. Hopkins condition. But
4 my question to you is, who is she covering for in this
5 case? Who?

6 She -- Ms. Hopkins told you that she had -- you
7 recall the conversation that I had with her -- that she
8 saw Kevin selling tapes after 1:30 in the morning out at
9 his home. When I asked her about that -- because then it
10 was apparent that there might be some question about
11 whether she could see that. Then she said, Well, I heard
12 it. Then she said she saw it. I don't know what she -- I
13 never could understand what the -- I never could
14 understand why that was important.

15 But it's important from this perspective, this is a
16 lady testifying to what happened to her. And she has
17 thrown in something that just makes absolutely no sense.
18 No sense, you know. And I would submit to you, as
19 fair-minded jurors, that that in and of itself may, also,
20 cause you to hesitate to convict, to hesitate to act in
21 this case. It makes no sense.

22 Her sister said that they went to the hospital.
23 Remember, I asked the officer, I said, Well, do you have
24 any records showing when the hospital visit was, when it
25 took place? Those records weren't submitted in this case.

1 Wouldn't that be important to you in trying to learn
2 everything about the case to have all the evidence, to
3 have the records, and see what was disclosed to the
4 doctor, what the report was on what happened, if this --
5 because that was close in time.

6 Because we know when patients go to doctors, to the
7 ER, whatever, they ask what happened. That wasn't done in
8 this case. You don't have the opportunity to have those
9 medical records. And, remember, the State has got the
10 burden of proof. They've got to come in here and present
11 stuff. And I would ask you again, as fair-minded jurors
12 in this case, would that not cause you to hesitate in this
13 case.

14 All that, ladies and gentlemen, and then we have the
15 investigation itself. And that was part of the
16 investigation. The investigation where the officer
17 involved took no fingerprint.

18 Remember, now, we know that Kevin Epting had a
19 criminal history, because that was brought out later.
20 They took no fingerprints. They didn't even make an
21 effort to do anything like that. He gave some explanation
22 for it, that it was raining or whatever. They took no
23 prints. The didn't do anything like that. Wouldn't you,
24 I would submit, in this case, say, you know, before I'm
25 going to convict somebody of first-degree burglary with

1 all these questions and all these reasons, why don't we
2 have that?

3 Now, I know the argument is going to be, well, they
4 don't have to do it. And, fingerprints, you know, that's
5 just other stuff. Sometimes you can't get them and all
6 that. But, you know, again, this is a first-degree
7 burglary case. There was no effort to do it.

8 It's just like there was no effort to talk with
9 Ms. Corley, other than to talk to her about, don't go talk
10 with Ms. Hopkins. Don't see her. Don't have anything to
11 do with that. You heard -- and that brings us to the rest
12 of the case. You got to hear the Prosecution's case,
13 everything they could put forward. And I would submit
14 that by itself, all these things that I brought out, would
15 cause a fair-minded jury to hesitate to act.

16 But then what have you got on top of that? On top of
17 that, you've got Kevin Epting who came into court and
18 testified to what happened. You've got his mother who
19 came into court and testified to where he was on those
20 specific days and what happened.

21 And you've got Sharon Corley, who testified. And she
22 was outraged that she really hadn't been -- that nobody
23 had given her any consideration. I suppose she should
24 have done more. She should have put a billboard out, or
25 she should have done something else, put out a newspaper

1 add, or something like that to make it known. She
2 contacted the investigating officer, her testimony was.
3 Regardless of what somebody recalls about the length of
4 the conversation, her purpose for calling was to tell that
5 officer, listen, he was with me. I know he was with me.
6 And he pretty much blew her off. He pretty much blew her
7 off. And I would submit to you that that in and of itself
8 should cause you to hesitate to convict in this case.

9 And I would, finally, say that as fair-minded jurors,
10 ladies and gentlemen, her testimony about where he was --
11 regardless of what you think of Kevin Epting or even his
12 mother, you know, regardless of what y'all think, her
13 testimony is entitled to just as much credibility as
14 anybody else in this case. Just as much credibility,
15 she's entitled to. They all are. And, if that is the
16 case, I would submit to you that in and of itself should
17 cause you to hesitate to act.

18 Now, this is the last -- this is it. I don't get to
19 say anything more. I guarantee you that if I could, I
20 would after Mr. Fleming gets done. But I don't get that
21 chance.

22 So I thank y'all very much for listening to me.
23 You've been very patient. I appreciate it very much. The
24 system appreciates it. And Kevin and his family
25 appreciate it.

1 Thank y'all.

2 THE COURT: Thank you, Mr. Howe.

3 MR. HOWE: Yes, sir.

4 THE COURT: Mr. Fleming.

5 MR. FLEMING: Thank you, Your Honor.

6 Ladies and gentlemen, I, too, want to thank you for
7 being here and doing your duty. I know it's a tough job.
8 It's part of our legal system. It's part of our duties as
9 a citizen to come in and be ready for jury service and
10 perform that duty, and sit on the jury to hear cases. And
11 it's very important to our judicial system.

12 Now, I told you in the beginning that I call this
13 case the case of grandma and the big bad wolf. And
14 Mr. Howe accused me of demonizing the Defendant, Kevin
15 Epting. Ladies and gentlemen, I didn't do that. I have
16 not demonized him. He's put -- he's brought all this on
17 himself. He's brought on all this. He's brought on the
18 demonizing by breaking into a 56-year-old woman's house,
19 who has cancer, who's weaker than he is, to steal her
20 money and he beats her up. He doesn't hit her one time.
21 He doesn't just hit her twice. He hits her multiple
22 times, ladies and gentlemen. Multiple times, he hits her.

23 Now, as I, also, told you, he not only has demonized
24 himself by doing that, he's, also, demonized himself by
25 committing two other previous burglaries to make this a

1 burglary first degree. That's where the demonization is
2 coming in, ladies and gentlemen.

3 Now, as I, also, told you, Mr. Howe is going to try
4 to get your attention away from the pertinent facts, the
5 real facts. And he's done a good job of that. He's
6 already turned the television on to divert your attention.
7 One, with dates. The State has never tried to hide any of
8 that from you, ladies and gentlemen. We haven't tried to
9 hide any of that from you at all.

10 Excuse me for one second. Let me get my paper here.

11 Both Ms. Hopkins and her sister are adamant that this
12 thing occurred the night before the day she went to the
13 hospital and they called the police. So, in other words,
14 what they're saying is that this occurred in the night at
15 1:45 in the morning, or 1:30 in the morning on the 11th.
16 That's what they told you on the stand.

17 Now, the incident report states that it happened --
18 the incident date is 11-11-2008 at 1:45 to 11-12. Okay.
19 Mr. Howe is trying to confuse you with these dates. And
20 Deputy Galarza testified that, yeah, well, he interpreted
21 it as being 1:30, 1:45 in the morning of November the
22 11th. In other words, the 10th would have been up to
23 12:00. And then 1:45, 1:30 on the 11th is when this
24 occurred.

25 Now, ladies and gentlemen, on these incident reports,

1 they have the incident date from when it occurred until
2 another time, a disposition date -- I'm sorry, a dispatch
3 date, a dispatch time, time arrived, and departure time.
4 All of those dates, the date of dispatch, dispatch time,
5 the time arrived, and the departure time, there can be no
6 doubt about those because of 911 records. Okay. The only
7 date that there could be a possible error in is the time
8 that it occurred.

9 Now, ladies and gentlemen, I put to you that there
10 was a miscommunication --

11 MR. HOWE: Objection, Your Honor. He's arguing
12 things that are not in evidence.

13 THE COURT: Well, I'll sustain.

14 MR. FLEMING: I'm arguing the difference between the
15 dates, Your Honor. That's, basically, what I'm arguing.

16 THE COURT: All right. Well, the jury will determine
17 what their memory is of the evidence.

18 Go ahead.

19 MR. FLEMING: On -- what we have here is a difference
20 in testimony in the officer and the two women. And it's
21 possible that there could have been a miscommunication --

22 MR. HOWE: Your Honor, I don't want to keep
23 interrupting, but the same objection.

24 THE COURT: Okay. I understand.

25 Thank you.

1 MR. FLEMING: That's something for you to take into
2 consideration.

3 Let's look at the other evidence that has been
4 presented. Because it doesn't matter what date it
5 occurred on, ladies and gentlemen. It doesn't matter.
6 Because the point of the matter is that Ms. Hopkins,
7 clearly, identified the Defendant as the person being in
8 her house that was trying to steal her money and beat her
9 up. Mr. Howe is trying to get you away from that fact and
10 focus in on the date. Don't do that.

11 Even if I were to commit an armed robbery, and one of
12 you were the witness, and three days later you come up and
13 say, well, I saw Mr. Fleming rob the Little Cricket. I
14 don't know what date it was on, but he did it. It doesn't
15 matter what day I did it on. I still did it. I still did
16 it, ladies and gentlemen.

17 Mr. Howe is trying to confuse you as well with the
18 statement of Ms. Hopkins and what she told police
19 officers. In her statement, she doesn't say anything
20 about leaving the door unlocked. But she did tell Officer
21 Galarza that the day he came out and responded. He
22 testified to that. So there's no question about, you
23 know, whether or not -- because there was no damage. We
24 know that it's possible that she thinks she left her door
25 unlocked. And that's how he got in.

1 He, also, points to the fact that, well, she first
2 testified that she saw him go down there and sell tapes.
3 And then she says, well, they told her. And I was getting
4 a little confused myself. And I know she did. But I
5 think she cleared that up in that she saw him drive a car
6 down there and someone else told her that he was down
7 there selling tapes, ladies and gentlemen. The whole
8 time, she is adamant about who it was that broke in her
9 house and gave her two black eyes. Nothing about that
10 changed, ladies and gentlemen. Throughout this trial,
11 she's always contended that he is the one.

12 Well, let's look. Why would she lie about that?
13 Why? They did everything they could to her. I mean, they
14 cooked for her. They took her to the doctor. They cut
15 her grass. There's no other reason that she would say
16 that it happened, except that it happened. She has no
17 motive to lie. No motive at all.

18 Well, let's look at Mr. Epting's witnesses. You've
19 got his mother, who states that the police showed up and
20 they don't even tell her why they're there. And then you
21 hear the police say, no, we told her why we were there.
22 She states that Epting was over there and spent the night
23 at her house on the 11th, which coincides with what
24 Ms. Hopkins said and what Ms. Prather is telling you. You
25 heard her say that -- she said that there was no quarrels

1 between her and Ms. Hopkins, or her son and Ms. Hopkins.

2 Then you hear Ms. Corley come up and testify, ladies
3 and gentlemen, that she was in a relationship with the
4 Defendant. And she is now stating that he was with her on
5 the night of the 10th. He probably was. And she stated
6 that she -- he went and spent the night at his mother's on
7 the 11th, the date that coincides with what both of these
8 ladies are telling you.

9 She states that she tried to tell law enforcement
10 that she was an alibi witness. She didn't tell Deputy
11 Richardson. Deputy Galarza says he doesn't recall
12 anything about her saying she was an alibi witness. He
13 remembers discussing with her the fact that she had tried
14 to go over to Ms. Hopkins house and change her -- get her
15 to change her testimony.

16 And all the witnesses that the Defense has put up,
17 the mother and Ms. Corley, those are biased witnesses,
18 ladies and gentlemen. They have a close relationship with
19 the Defendant. They don't want to see him go to jail.

20 You heard, also, Ms. Corley say, I tried to call her
21 on two different occasions, not last week, as first was
22 heard, as Mr. Howe said. But it was a couple of weeks
23 ago. And she admitted that she stated that y'all wouldn't
24 believe that old woman over me. And then I stated to her
25 that I wanted to hear her story, because I'm not out to

1 convict an innocent person.

2 I want justice. That's what we're here for, ladies
3 and gentlemen, is justice. That's what you have to
4 determine. We don't have to prove this beyond any doubt.
5 We just have to prove it beyond a reasonable doubt, a
6 doubt which will make you firmly convinced of the guilt
7 that arises above that threshold.

8 Let's look at what a burglary first degree is. As I
9 told you in beginning arguments, and the Judge will
10 instruct you on this, a burglary first is a person breaks
11 into the dwelling of another person. One, armed or they
12 become armed while in there. Two, they use violence
13 against somebody that's not a participant of the crime.
14 Three, they have two or more prior convictions. And,
15 four, it happens at night. They are there. They break in
16 at night or they remain there during the night.

17 Now, ladies and gentlemen, you've got the two prior
18 convictions. Those are in evidence. The conviction for
19 burglary in 1994, and a conviction for burglary in 2004,
20 ladies and gentlemen. There are your elements. We know
21 he was the one that broke in. Ms. Hopkins is adamant
22 about that. We know he broke in at night because of the
23 time that's been given into evidence. We know he has two
24 prior convictions because that is in evidence, ladies and
25 gentlemen. He's guilty of burglary first degree because

1 he broke in and caused physical harm to Ms. Hopkins. He
2 caused physical harm to a 56-year-old lady that had
3 cancer, that was going through chemotherapy, and was weak
4 and was older than him. He was stronger than her. So
5 he's guilty of burglary.

6 Now, ABHAN. ABHAN, what we have to prove is that
7 there was an unlawful and intentional infliction of bodily
8 harm or bodily injury to a person of another accompanied
9 by circumstances of aggravation, such as the use of a
10 deadly weapon, infliction of serious bodily injury, intent
11 to commit a felony, disparity in the ages and the physical
12 differences of the parties. Those are just a few.

13 Well, there's three of those that the State has
14 proven, ladies and gentlemen. One, serious bodily injury,
15 two horrendous black eyes, bruises on the leg. It was
16 done while he was going in there with the intent to
17 burglarize and steal money from her. That's the second
18 one. A difference in sexes and difference in physical
19 attributes of each party. We know that he's a
20 40-something year old, a healthy male individual. She was
21 56 at the time and undergoing chemotherapy, which was
22 taking its toll on her physically. She was weak.

23 Now, the Judge will instruct you that the State has
24 the burden to prove those things beyond a reasonable
25 doubt. And the State feels like we've done that, ladies

1 and gentlemen. Reasonable doubt is not beyond a shadow of
2 a doubt, like I told you. It's just a doubt that would
3 make you hesitate to act, or above and beyond a doubt, or
4 that leaves you firmly convinced of the Defendant's guilt,
5 ladies and gentlemen.

6 You've got Ms. Hopkins, the grandma suffering from
7 cancer. She goes to bed and hears something. And it
8 doesn't matter if it was the door or some noise in the
9 kitchen, ladies and gentlemen. But there was some noise
10 that got her up. She goes in and looks and she sees Kevin
11 Epting with her pocketbook. She states to that person, My
12 son is off limits to that. Get out. You're not supposed
13 to be here. Get out or I'm going to call the law.

14 At which time, Mr. Epting, the big bad wolf, starts
15 beating her numerous times. And I know you've heard the
16 story, ladies and gentlemen. But, at the end of Little
17 Red Riding Hood and the big bad wolf, it turns out good.
18 Because the woodman comes along and takes care of the
19 wolf. Ladies and gentlemen, you are that woodman. You
20 are the woodman to take care of this matter. Do we want
21 any other grandma's subjected to the big bad wolf?

22 Thank you very much.

23 THE COURT: Thank you, Mr. Fleming.

24 Ladies and gentlemen, I'm going to ask you to go to
25 the jury room. And don't talk about the case yet. We'll

1 take a brief recess. And then we'll come back and give
2 you the instruction on the law. We're going to have lunch
3 brought in for you. Ms. Lancaster is in the process of
4 arranging for that.

5 So just go take a brief break. And we'll be right
6 back and I'll give you the instruction on the law. Don't
7 start talking about the case yet, please.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 1:03 p.m.)

10 THE COURT: Mr. Darby was asleep during both sides of
11 closing argument. I thought he might even start drooling
12 at one point. But if he slept through y'all's closing
13 argument, I don't know what he'll do during my charge.
14 He'll probably start snoring. But, you know, it's been
15 brought to my attention. I did not notice him dozing off
16 earlier. But I wasn't watching over them like a hawk. I
17 was trying to listen to the testimony.

18 So the lady who mentioned it to the Bailiff described
19 herself as the alternate. And I have not even made the --
20 or had the Clerk make the selection that needs to be made
21 pursuant to Section 14-7-1340 to determine if she is the
22 alternate, because we had the two.

23 So does either side have anything they want to put on
24 the record, at this point, about -- my intent would be
25 just to replace Mr. Darby and let them choose a new

1 foreperson.

2 MR. FLEMING: I have no objection to that, Judge.

3 MR. HOWE: Judge, my only -- I don't know whether
4 it's sleeping or whether he's just closing his eyes and
5 listening. I mean, I just don't know.

6 I mean, would the Court not be inclined to inquire
7 further about that? I mean, he may be listening to
8 everything we say.

9 THE COURT: Well, I understand the distinction. And
10 I know that in State v. Smith, that was the distinction
11 that the trial court made, that a juror appeared to be
12 dozing off, but then she would lean down and pick up her
13 pad and write notes. And the trial court, I think,
14 concluded that she was not sleeping.

15 But, here, I watched him pretty closely. And his
16 eyes were rolling back in the back of his head about like
17 my eight-month-old does. So I concluded he was asleep
18 based on his mannerisms, body movements. And I just don't
19 see any way he wasn't.

20 MR. HOWE: Are we down to one alternate? Is that --
21 am I correct?

22 THE COURT: Well, if he's excused, then the other --
23 we would not have any alternates.

24 MR. HOWE: Well, we were down to one before that
25 because one had already been --

1 THE COURT: Well, technically, right.

2 MR. HOWE: Yes.

3 THE COURT: But we did not -- you know, the statute
4 requires that the alternate be drawn by -- if a regular
5 juror member becomes unavailable to continue, which we had
6 here, at one point, who was excused after selection, you
7 know, the statute says that there's supposed to be a
8 drawing to determine who, between the remaining
9 alternates, becomes the next regular juror. We had not
10 done that because there was no reason to do it yet.

11 MR. HOWE: Yes, sir.

12 THE COURT: So, right, if we excuse Mr. Darby, there
13 will be no alternates.

14 I'll be glad to bring him out here and ask him, if
15 you want me to. And he may change my mind. I don't know.

16 MR. HOWE: I would ask you to do that.

17 THE COURT: Okay. Just ask Mr. Darby to come on out
18 then.

19 Thank you.

20 MR. HOWE: Your Honor, I'm assuming you will let him
21 know that it is not coming from either side.

22 THE COURT: I'll be glad to do that.

23 MR. HOWE: Yes, sir.

24 (WHEREUPON, Juror #45, Charles J. Darby entered the
25 courtroom.)

1 THE COURT: Yes, sir. Mr. Darby, I noticed that you
2 were asleep or appeared to be asleep during the closing
3 arguments.

4 JUROR #45, CHARLES DARBY: I'm sorry. I have apnea.

5 THE COURT: Oh, do you?

6 JUROR #45, CHARLES DARBY: Yes. I can't help it.

7 THE COURT: Oh, okay. And --

8 JUROR #45, CHARLES DARBY: That's the reason I'm no
9 longer in the trucking industry.

10 THE COURT: Oh, I see. But that does -- that
11 condition does make you doze off?

12 JUROR #45, CHARLES DARBY: Yes. I can't help that.
13 I'm sorry.

14 THE COURT: Well, that's okay. I'm not criticizing.
15 But you weren't able to hear all the arguments?

16 JUROR #45, CHARLES DARBY: Not all of them.

17 THE COURT: Okay. Well, I wish you luck with that
18 condition. I know that's challenging to have. And I do
19 think we're going to have to excuse you from here, just
20 because we have to maintain that, you know, someone has
21 heard all the evidence and the proceedings. And, please,
22 don't take it personally. It's just one of those things.

23 JUROR #45, CHARLES DARBY: I'm disabled for it.

24 THE COURT: Yes, sir. Well, I empathize with you.
25 And I'll just ask that if you need to talk to

1 Ms. Lancaster about anything you need to get that you, you
2 know, performed your jury service, she'll be glad to
3 arrange that.

4 JUROR #45, CHARLES DARBY: Thank you.

5 THE COURT: Thank you, sir.

6 JUROR #45, CHARLES DARBY: Is she gone?

7 THE COURT: No. She's still here. Mr. Bolt can help
8 you.

9 JUROR #45, CHARLES DARBY: He can tell me where I
10 need to go?

11 THE COURT: Yes, sir.

12 JUROR #45, CHARLES DARBY: Thank you.

13 THE COURT: Thank you, Mr. Darby.

14 JUROR #45, CHARLES DARBY: I appreciate it.

15 (WHEREUPON, Juror #45, Charles Darby exited the
16 courtroom.)

17 THE COURT: Okay. Anything for the record?

18 MR. HOWE: Nothing. I'm appreciate -- just I'm
19 satisfied with the response now, Judge.

20 THE COURT: That's a tough condition to have, I'm
21 sure.

22 THE BAILIFF: Your Honor, do you want them to elect
23 another foreman?

24 THE COURT: Yes, sir.

25 THE BAILIFF: I'll go ahead and tell them to go ahead

1 and elect a new foreman.

2 And Ms. Lancaster hasn't gotten back. I'm going to
3 keep him in a room back here until she can talk to him.
4 He's in a separate room. He's in a separate jury room.

5 THE COURT: Okay.

6 (Pause.)

7 THE BAILIFF: They had already selected one.

8 THE COURT: Okay. They can come on back in now.

9 Ms. Gary is the alternate -- I mean, the foreperson,
10 excuse me.

11 (WHEREUPON, the jury came into open court at
12 approximately 1:14 p.m.)

13 CHARGE ON THE LAW

14 THE COURT: Ladies and gentlemen, you, now, have
15 heard all the evidence and the closing arguments of the
16 lawyers. It's now my duty to instruct you on what the law
17 is that applies to this case. And it's your duty to find
18 the facts from the evidence in this case. And, to those
19 facts, you must apply the law. And you must apply the law
20 as I give it to you.

21 You should not be concerned with what the law should
22 be, but with what the law is. And you must not be
23 concerned, in this case, or influenced by any personal
24 likes, or dislikes, or prejudice, or undue sympathy. And
25 that means you must decide this case solely on the

1 evidence and according to the law. And you recall you
2 took an oath to do just that when we began this matter
3 yesterday.

4 Now, please, do not read into these instructions or
5 into anything I may have said or done during the course of
6 this trial as indicating to you any opinion I might have
7 on the facts of this case. I'm not allowed to have an
8 opinion on the facts that I can share with you. Because
9 our Constitution makes you the sole and exclusive judge of
10 the facts. You and you alone are the judges of what the
11 facts are.

12 Now, how do you decide what the facts are? You do
13 that by weighing or evaluating the evidence you've heard
14 during the course of this trial. It is a mental process.
15 I can't give you a set of scales to take back in the jury
16 room and let you conduct experiments. It is, instead, a
17 mental process. And you weigh and evaluate the evidence
18 by simply using your good common sense, and sound
19 judgment, and your life experiences.

20 Now, as I told you, the evidence, from what you may
21 determine what the facts are in this case, consists of two
22 sources, sworn testimony of witnesses and exhibits. Those
23 are the only things you can use to determine what the
24 facts are in this case.

25 As I mentioned to you at the start of the case, the

1 lawyers are not witnesses. So what they say is not
2 evidence. They're trying to help you interpret the
3 evidence. And you should pay careful attention to what
4 they said, but remember that they are not witnesses. So
5 if your memory differs from theirs, your memory of the
6 facts -- or the evidence, rather, controls. Likewise, do
7 not hold it against the lawyers for making objections.
8 They have a duty. And they're sworn to uphold that duty
9 to object to evidence when they think it's improper. And
10 I know you would not hold it against them for doing their
11 job.

12 Now, there is, of course, in any case not only
13 different sources of evidence, but different types of
14 evidence. And what I'm talking about is direct evidence
15 and circumstantial evidence. Direct evidence is the
16 testimony of a person who asserts or claims to have actual
17 and direct knowledge of a fact, such as an eyewitness.
18 Circumstantial evidence, on the other hand, is indirect
19 evidence. Or put another way, circumstantial evidence is
20 proof of a chain of facts and circumstances from which you
21 could find that another fact exists, even though it has
22 not been proven to you directly.

23 The law makes no distinction between the weight or
24 value to be given to either direct or circumstantial
25 evidence. You're entitled to consider both kinds of

1 evidence. Nor is there a greater degree of certainty
2 required of circumstantial evidence. You must weigh all
3 the evidence, in this case, in light of reasoned common
4 sense and experience. After you have weighed all the
5 evidence, if you're not convinced of Mr. Epting's guilt
6 beyond a reasonable doubt, you must find him not guilty.
7 On the other hand, if you are so convinced, then it would
8 be your duty to find him guilty.

9 Now, in determining what the facts are, you will have
10 to, by necessity, determine which testimony to believe and
11 which not to believe. You may disbelieve all or part of
12 any witnesses testimony. You may believe all of a
13 witnesses testimony, disbelieve all of it, or believe
14 parts of it and disbelieve other parts. Because you are
15 the sole and exclusive judge of the credibility of all the
16 evidence.

17 In determining whether someone is credible, I gave
18 you some tools you could use at the outset. I'm not going
19 to repeat those to you, because I know you heard me the
20 first time. But bear in mind that in determining
21 credibility, it's not proper to count the witnesses for
22 each side. That would not be a proper way to determine
23 credibility. Instead, you would do it in a sound and
24 rational way, and not arbitrarily.

25 The law, in this case, regarding criminal cases, I've

1 already gone over with some of that law with you at the
2 beginning. And let me just remind you of some of those
3 principles that are fundamental to our system. First of
4 all, the mere fact that Mr. Epting was indicted and
5 charged, in this case, is not evidence. It doesn't even
6 create a suspicion of guilt. As I mentioned to you, the
7 indictment is simply the formal way a case begins. And
8 the fact that he was charged cannot be used by you as
9 evidence or considered by you as evidence of guilt in this
10 case.

11 Mr. Epting pled not guilty. And that placed the
12 burden of proof on the State. And Mr. Epting, like any
13 person charged with a crime, is presumed innocent. And
14 that presumption of innocence is not some legal
15 technicality. It is, instead, a valuable and fundamental
16 right that all citizens enjoy. And Mr. Epting is presumed
17 innocent not only now, but even into your deliberations,
18 as I mentioned to you. And that presumption of innocence
19 can only be removed if you find the State has proven each
20 and every element of the crime beyond a reasonable doubt.

21 Now, ladies and gentlemen, I've talked to you about
22 this phrase, "reasonable doubt." And I know you've heard
23 it during the trial. And let me define it for you
24 briefly. A reasonable doubt is the kind of doubt that
25 would cause a reasonable, sincere, honest, and

1 conscientious person to hesitate to act in an important
2 matter in their own affairs. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt.

5 And, of course, there are few things that we know
6 with absolute certainty in the world. And the law does
7 not require proof that overcomes every possible doubt in a
8 criminal case. And if, based on your consideration of the
9 evidence, you are firmly convinced of Mr. Epting's guilt,
10 you must find him guilty. On the other hand, if you think
11 there is a real possibility that he is not guilty, you
12 must give him the benefit of that doubt and find him not
13 guilty.

14 A reasonable doubt may arise from the evidence or
15 from a lack of evidence. And Mr. Epting is entitled to
16 every reasonable doubt that may appear in the case. And
17 that means that upon any issue of fact that is essential
18 to a conviction, you have a reasonable doubt as to how
19 that issue should be resolved, it's your duty to resolve
20 that doubt in favor of Mr. Epting.

21 Now, there are two indictments, in this case,
22 burglary first degree and assault and battery of a high
23 and aggravated nature. I'm going to go over the law that
24 applies to each of these crimes and give you the elements
25 of these crime that the State must prove beyond a

1 reasonable doubt. But, bear in mind, as I said at the
2 beginning, you must make your decision as to each charge
3 separately. You must weigh the evidence separately as to
4 each charge and not let your decision on one charge
5 influence your decision on the other.

6 The verdict form I have prepared is asking you to
7 answer two questions, that is whether Mr. Epting is guilty
8 or not guilty on the burglary charge, and on the assault
9 and battery of a high and aggravated nature. And that's
10 just a reminder that you must weigh these charges
11 separately and weigh the evidence that is related to them
12 separately.

13 Now, as far as the charge of first-degree burglary,
14 in order to convict Mr. Epting of that, the State must,
15 first, prove beyond a reasonable doubt that Mr. Epting
16 entered a dwelling without consent. A dwelling is defined
17 as any building or portion of a building in which a person
18 ordinarily sleeps. A building constructed as a dwelling
19 but has never been occupied cannot be considered a
20 dwelling for purposes of burglary. But a building is a
21 dwelling even if the residents are temporarily absent from
22 the building. In order to prove that the Defendant
23 entered the dwelling, the State does not have to show the
24 Defendant's entire body entered the dwelling. The
25 smallest entry is sufficient.

1 Now, the State must next prove beyond a reasonable
2 doubt that Mr. Epting intended to commit a crime, either a
3 felony or a misdemeanor at the time of the alleged entry.
4 The mere entry into a dwelling without consent is not
5 burglary. If the intent to commit a crime is formed after
6 the entry, it is not burglary. On the other hand, if the
7 Defendant intended to commit a crime at the time of the
8 entry, it is a burglary, even if the intent was abandoned
9 after the entry occurred. It does not matter what the
10 intended crime -- that the intended crime was not
11 completed. Intent may be shown by acts and conduct of the
12 Defendant and other circumstances from which you may
13 naturally and reasonable infer intent.

14 Now, finally, the State must prove beyond a
15 reasonable doubt either that, one, the Defendant has a
16 prior record of two or more convictions for burglary
17 and/or housebreaking. Now, evidence of prior offenses, as
18 I've already emphasized to you, was not offered to prove
19 that Mr. Epting has a bad character, or to prove that he
20 committed the burglary on this occasion. The prior
21 convictions may be considered by you only for the limited
22 purpose of determining whether it satisfies that element
23 of the offense that makes it first-degree burglary if you
24 enter a dwelling without consent to commit a crime, and
25 you have two prior convictions for burglary and/or

1 housebreaking.

2 Before you can even consider the evidence of the
3 Defendant's prior burglary and/or housebreaking
4 convictions, you must first find that the State has proven
5 beyond a reasonable doubt that a burglary was committed by
6 the Defendant. If you find beyond a reasonable doubt that
7 the burglary was committed, then you may consider the
8 evidence of the prior convictions as evidence of one of
9 the circumstances that would make the burglary
10 first-degree burglary. If you do not find beyond a
11 reasonable doubt that the Defendant committed these
12 alleged prior offenses, then you cannot return a verdict
13 of first-degree burglary on this theory.

14 Now, the State, alternately, asserts that the
15 Defendant entered or remained in the dwelling in the
16 nighttime. Nighttime is the period between sunset and sun
17 rise during which there's not enough daylight to recognize
18 a person's face, except by artificial light or moonlight.

19 So just to summarize, the State, in order to convict
20 Mr. Epting of first-degree burglary, must prove beyond a
21 reasonable doubt, first, that Mr. Epting entered a
22 dwelling without consent. Second, that at the time he
23 entered the dwelling, he intended to commit a crime. And
24 the Defendant, Mr. Epting, either had two or more prior
25 burglary or housebreaking convictions, or he made the

1 . entry during the nighttime.

2 Now, the second offense that is charged is assault
3 and battery of a high and aggravated nature. This offense
4 is defined as an unlawful act of violent injury to the
5 person of another accompanied by circumstances of
6 aggravation. An assault occurs when a person unlawfully
7 attempts or offers to commit a violent injury upon another
8 and has the present ability to complete the attempted
9 injury. An assault is the intentional creation of a
10 reasonable fear of immediate bodily harm. It is not
11 necessary that the attempted injury or harm, actually,
12 take place. For example, if I walk up to you and when we
13 are within arms reach, I draw back to hit you, that is an
14 assault.

15 A battery is the unlawful touching of another person
16 by a person who has committed an assault. An unlawful
17 touching can be caused by part of the accused's body, or
18 by any object that the accused puts in motion. A battery
19 is the completion of the assault by using or applying
20 force to another person, however slight, in a rude, angry,
21 or resentful manner without legal justification for doing
22 so. Using my earlier example, if I carry through the
23 assault by hitting you, then that is a battery.

24 The State must, also, prove a circumstance of
25 aggravation. Circumstances of aggravation include the use

1 of a deadly weapon, the intent to commit a felony, the
2 infliction of serious bodily injury, great disparity
3 between the ages or physical conditions of the parties,
4 difference in gender of the parties, purposeful infliction
5 of shame and disgrace, and the resistance of lawful
6 authority. Those are only examples of the circumstances
7 of aggravation.

8 Now, in any criminal case, the State must prove
9 criminal intent beyond a reasonable doubt. And criminal
10 intent is always a matter that the jury must determine
11 from the circumstances. And there's no way to prove
12 intent to a mathematical certainty. We, certainly, can't
13 dissect someone's brain and determine what they had in
14 mind at a particular moment in time.

15 So the law says that criminal intent may be inferred
16 or implied from the circumstances. It is not necessary to
17 establish intent by direct and positive evidence. But
18 intent may be proven by inference in the same way as any
19 other fact by taking into consideration the acts of the
20 parties and all the facts and circumstances. Criminal
21 intent is a mental state of conscious wrongdoing. It is
22 up to you to determine what the Defendant intended to do,
23 based on the circumstances.

24 Now, the Defense has raised alibi as a defense to the
25 charges. In order to establish an alibi, it must be shown

1 that the Defendant was at another specified place at the
2 time the crime was committed, and that it was, therefore,
3 impossible for the Defendant to have been at the scene of
4 the crime. There's no burden on the Defense to prove an
5 alibi. The burden is on the State to prove beyond a
6 reasonable doubt that the Defendant was, actually, present
7 at the scene of the crime, actually, participated in it,
8 and was not somewhere else.

9 Now, that covers all the substantive law. And let me
10 just give you a few words regarding your deliberations.
11 Keep in mind, ladies and gentlemen, that you were chosen
12 not because both sides wanted you to be partisans or
13 advocates for their position in this case. You were
14 chosen because both sides believed you could be fair and
15 impartial, and you could decide this case without any
16 preconceived ideas, without any bias or prejudice, and
17 that you could be open minded.

18 And that means you just use your experiences in life,
19 and your good common sense, and your sense of logic and
20 reason. And once you bring those things to bear on the
21 evidence you've heard during this trial, you'll be able to
22 determine the facts of this case. And once you determine
23 the facts, you take the law I've just given to you and
24 apply it to those facts. And once you do that, you'll be
25 able to reach a decision and a verdict.

1 If you went to the dictionary and looked up the term
2 "jury," you would see that it derives from an old word
3 that used to mean, a company of people who were sworn to
4 render a true answer. And you've been sworn to render an
5 answer based on the law and the evidence. And you have
6 been sworn to determine whether the State has met its
7 burden of proving guilt beyond a reasonable doubt. So
8 that is your task.

9 And the genius of our jury system is it allows 12
10 people from different backgrounds, and life experiences,
11 and perspectives to come together to discuss the evidence,
12 talk about it, and, ultimately, reach a verdict. We call
13 them deliberations for a reason. You're to consider the
14 evidence in this case carefully and deliberately, and
15 discuss it in a calm, thorough, and courteous manner.
16 And, remember, you're not partisans or advocates for
17 either side. You are, instead, judges, judges of the
18 facts. Your sole interest is to determine the facts in
19 this case from the evidence, and determine whether the
20 State has met its burden of proof.

21 Now, remember that your vote is, in the end, just
22 that, your vote and no one elses. So remember that you
23 must decide this case for yourself. But you should do so
24 only after you've impartially considered all the evidence,
25 discussed it fully with your fellow jurors, and listened

1 to their views. Don't be afraid to change your mind if
2 the discussion persuades you it should. But don't
3 surrender an honestly held belief simply to get the case
4 over with, or to reach a unanimous verdict. This is an
5 important and only day in court for the State and
6 Mr. Epting. And I know that you will give them the fair
7 and impartial consideration that they deserve.

8 Now, as I mentioned before, if it becomes necessary
9 for you to communicate with me at some point during your
10 deliberations, or you have a question, and, hopefully, you
11 won't, but if you do, remember, first of all, that the
12 record is closed in this matter. I can't give you any
13 more evidence. There are not going to be any more
14 witnesses. You'll have to rely on your memory regarding
15 the witness testimony. And if something was referred to
16 during the trial that's not an exhibit, I can't give it to
17 you. So the record is closed.

18 Second, if you do need to contact me, you can only do
19 so in writing.

20 And, Ms. Gary, you're the Forelady. So you'll be the
21 one sending communication. And it has to be in writing.
22 And I can only respond in writing or out here in open
23 court on the record. And, please, don't ever tell me how
24 you are divided, if you are divided. I don't need that
25 information.

1 I thank you for your attention. And I know I've told
2 you ad nauseam not to talk about the case and keep an open
3 mind. And I'm going to ask you to go back to your jury
4 room right now and don't talk about the case, because I
5 have one final matter to take up out here. But once you
6 receive all the exhibits, that will be your signal that
7 you can begin deliberating. And, as I said, the Clerk,
8 Ms. Lancaster, has ordered lunch, and it should be here
9 momentarily.

10 Thank you for your attention.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 1:34 p.m.)

13 THE COURT: Any objections or exceptions to the
14 charge?

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

16 MR. HOWE: No, sir.

17 THE COURT: Okay. This is the verdict form again. I
18 think y'all have already approved it.

19 MR. FLEMING: Yes, sir.

20 THE COURT: And make sure all the exhibits are there.
21 And then if they are --

22 MR. FLEMING: They are.

23 I think it's State's Exhibit Nos. 1 through 6?

24 THE COURT REPORTER: Yes.

25 MR. FLEMING: Are we at ease, Your Honor?

1 THE COURT: Yes.

2 (WHEREUPON, the proceedings were recessed at
3 approximately 1:39 p.m.)

4 QUESTION FROM THE JURY

5 THE COURT: We have Mr. Epting present and all
6 counsel present.

7 We have a note from the jury that I'll make a Court's
8 exhibit. And the note is as follows, "Can we get a copy
9 of the police report and witness statement, please?" And
10 then it says, "Jury vote is seven guilty, five not guilty.
11 Thanks."

12 Now, I thought we had gotten the sleeping juror off
13 the jury. Because I do remember, specifically, telling
14 the jury that, among other things, at the close of my
15 charge that I couldn't give them anything that was
16 referred to during the trial that they didn't already have
17 back there as an exhibit, and not to tell me how they
18 stood, if they ever had to communicate with me.

19 So all I know to do is write them back and say, "The
20 record is closed. Do not inform me of how the jury
21 stands."

22 Does anybody have any other suggestion?

23 MR. FLEMING: The State has no objection to that.

24 MR. HOWE: We don't have any objection, Judge.

25 THE COURT: All right. I'll let you all look at this

1 before I send it back and make them Court's Exhibits, if
2 you all approve it.

3 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were marked
4 for identification and admitted into evidence.)

5 THE COURT: I mean, I don't want them to think they
6 can't tell me that they're deadlocked. I don't -- that's
7 why I worded it like I did.

8 MR. FLEMING: Yes, sir.

9 The State has no objection to that, Your Honor.

10 MS. ANDERSON: No objection, Your Honor.

11 THE COURT: Okay. You can take that back.

12 Thank you.

13 We'll be at ease.

14 (WHEREUPON, the proceedings were recessed at
15 approximately 3:40 p.m.)

16 THE COURT: Okay. I understand we have a verdict.
17 Yes, sir. Mr. Bolt, you can bring the jury on in, sir.

18 (WHEREUPON, the jury came into open court at
19 approximately 4:10 p.m.)

20 THE BAILIFF: All present, Your Honor

21 THE COURT: I understand we have a verdict.

22 Has the jury reached a unanimous verdict, Ms. Gary?

23 JUROR #5, SHIRLEY GARY: Yes, sir.

24 THE COURT: If you'll hand it to Mr. Bolt, we will
25 receive it and publish it.

VERDICT

THE CLERK: In the case of the State v. Kevin Shane Epting, case 2009-GS-30-0190 and 0191.

As to the charge of burglary, indictment number 2009-GS-30-0190, we, the jury, unanimously find the Defendant guilty.

As to the charge of assault and battery of a high and aggravated nature, which is indictment number 2009-GS-30-0191, we, the jury, unanimously find the Defendant guilty.

Ladies and gentlemen, the verdict that I just published, if that was your verdict in the jury room, would you, please, signify by your upraised right hand.

(WHEREUPON, all jurors raised their right hand.)

THE CLERK: Thank you.

THE COURT: Okay. Any matters or motions before the jury is discharged from the State?

MR. FLEMING: Nothing --

MR. HOWE: Not before the jury is discharged.

MR. FLEMING: Nothing from the State, Your Honor.

THE COURT: Is there any request for a poll?

MR. HOWE: No, sir.

THE COURT: All right. Ladies and gentlemen, thank you for your service this week. And I --

THE CLERK: I've got their checks.

1 THE COURT: And she'll have your checks ready for
2 you.

3 And we appreciate the time that you spent this week.
4 And have a good weekend.

5 Thank you.

6 (WHEREUPON, the jury was excused from court at
7 approximately 4:13 p.m.)

8 THE COURT: Yes, sir, Mr. Fleming.

9 MR. FLEMING: Nothing from the State, Your Honor.

10 THE COURT: Are you ready for sentencing?

11 MR. FLEMING: Yes, sir.

12 Well, I'm getting the sentencing sheets right now,
13 Your Honor.

14 THE COURT: Are there any motions?

15 MS. ANDERSON: Yes, Your Honor.

16 THE COURT: Yes, ma'am.

17 MOTIONS

18 MS. ANDERSON: I have a motion for a judgment
19 notwithstanding the verdict renewing Mr. Howe's arguments
20 during the directed verdict motion regarding the
21 third-party guilt issue renewing what we had previously
22 submitted during arguments before the Court.

23 In addition, renewing the prior objection for the
24 admission of the burglaries. And the new argument being
25 that the Solicitor, during his closing argument, argued

1 facts not admitted during the trial when he referenced
2 that maybe it was the 12th, not the 11th. That had not
3 been mentioned. And, during testimony, attempts to
4 reconcile their discrepancy between the date on the
5 indictment and their testimony at trial that maybe it was
6 the 12th explaining why there was a delay between
7 reporting the burglary and the assault from the incident
8 date.

9 THE COURT: Thank you, Ms. Anderson.

10 Well, you and Mr. Howe did an outstanding job on
11 behalf of Mr. Epting. I do find that the issue was one
12 for the jury. And to the extent I'm going to interpret
13 your motions for new trial as well, I just simply think
14 that it was a jury question. It came down to credibility,
15 which is within the exclusive province of the jury. And I
16 don't think there was any errors that would allow me to
17 grant any post-trial relief.

18 So thank you.

19 MR. HOWE: Do you want us to stand up here, Judge?

20 THE COURT: Yes.

21 Yes, sir, Mr. Fleming.

22 MR. FLEMING: Thank you, Your Honor.

23 Your Honor, you heard the facts pretty much
24 everything in this case dealing with the burglary and the
25 ABHAN, Your Honor.

1 What I think we should do now -- I think it's
2 imperative that the Court hear his extensive record, Your
3 Honor. And I will attempt to inform the Court of what
4 that is. I just beg the Court's indulgence for just a few
5 minutes, Your Honor, so I can get to it.

6 (Pause.)

7 MR. FLEMING: Your Honor, starting with some of his
8 out-of-state convictions, he does have a felony maiming
9 charge -- or felony maiming conviction in Newport News in
10 1983. He's got a possession with intent to distribute
11 marijuana in Newport News in 1984, Your Honor. He has a
12 driving under the influence in Danielsville, Georgia, it
13 looks like in 1987; driving while suspended in the same
14 jurisdiction, Your Honor. It looks like another driving
15 under the influence in Georgia, Your Honor, in 2002.
16 Unlawful possession of liquor, Your Honor. He's got
17 resisting arrest, driving left of center, driving under
18 suspension more than first. And I don't see a date on
19 those, Your Honor. Driving under the influence more than
20 first in 1989, Your Honor; possession of marijuana in
21 1979, Your Honor; obstructing police in 1980; failure to
22 stop in 1980, Your Honor. And all these are in South
23 Carolina, Your Honor. I'm sorry. Habitual offender,
24 1983; public drunk, 1989; resisting arrest in, 1989, Your
25 Honor; receiving stolen goods in 1990; resisting arrest in

1 1991; shoplifting in 1991; burglary second, 1994; driving
2 under the influence, 1994; driving under the influence
3 fourth, driving under the influence fifth as well, driving
4 under the influence sixth in 1997; giving false
5 information in 1997, Your Honor; burglary second, again,
6 in 2004, Your Honor; simple possession of marijuana, 2004;
7 resisting arrest, 2004. He has other minor traffic
8 offenses, Your Honor. That's it.

9 Your Honor, considering the facts of the case, you
10 know, the age of the victim, her physical health at that
11 time, we think that this is a very serious case and
12 that any kind of sentence should reflect the seriousness
13 of this case and his past criminal history, Your Honor.

14 The victim is not here. I think she got worn out
15 yesterday and didn't feel good. And that's the reason
16 she's not here today. Otherwise, I think she would be
17 here to address this Court.

18 So the State's position is that any sentence given by
19 this Court should be a heavy sentence and that would be in
20 line with the acts perpetrated and the past criminal
21 history, Your Honor.

22 THE COURT: Thank you, Mr. Fleming.

23 Yes, sir, Mr. Howe.

24 MR. HOWE: Thank you, Your Honor.

25 May it please the Court.

1 Of course, we have to accept the jury's verdict in
2 this case. I do point out, when the criminal history was
3 being provided to the Court, that most of it has to do
4 with alcohol-related offenses. The two burglaries, of
5 course, that were presented in Court were non-violent
6 burglaries.

7 Judge, this, actually, would be his -- from what I
8 heard, as far as I know, the first violent offense that
9 Kevin has ever been convicted of. And he will turn 47 on
10 November the 20th. So he does have a lengthy history of
11 mostly alcohol- and drug-related type offenses, as you've
12 heard, and some theft, of course. But there's nothing of
13 a violent nature. This offense by -- you know, of course,
14 is different. It is treated as that. But, in considering
15 his past history, I would ask the Court to consider that
16 as well.

17 So, Judge, as far as sentencing is concerned, in view
18 of his age and those other factors, I would ask the Court
19 to consider those factors in sentencing. I'm not about to
20 suggest to the Court what the sentence should be. I'll
21 leave that to the Court. I've explained to him, as I
22 understand it, that with burglary first that there is a
23 minimum of 15 years, which is substantial when you serve,
24 basically, 85 percent of that. It's a violent crime. And
25 if he received a 15-year sentence, he would be over 60

1 years old before his release from the Department of
2 Corrections.

3 THE COURT: Thank you, Mr. Howe. And thank you,
4 again, for your fine representation.

5 Mr. Epting, I'll be glad to hear anything you'd like
6 to say, sir.

7 MR. HOWE: Judge, I've told him just to refrain from
8 saying anything.

9 THE COURT: Okay.

10 MR. HOWE: Obviously, there would be things that
11 might need to be said. But I think he probably would
12 be -- it would be in his best interest to not get into
13 that, at this point in time.

14 THE COURT: Okay.

15 MR. HOWE: And that would be with no disrespect to
16 this Court. I just think it's --

17 THE COURT: No. I can -- I understand the reasons
18 why he may not want to --

19 MR. HOWE: Yes, sir.

20 THE COURT: And I respect that. I'm not -- he,
21 certainly, has the absolute right to exercise his right to
22 a jury trial.

23 SENTENCING

24 THE COURT: On the burglary first, the sentence is
25 you be committed to the Department of Corrections for a

1 period of 20 years. And, on the assault and battery of a
2 high and aggravated nature, the sentence is you be
3 committed to the Department of Corrections for a period of
4 10 years, concurrent.

5 Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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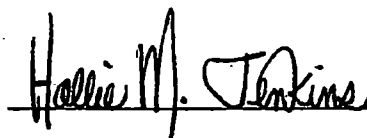
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens County, South Carolina, on the 10th, 12th and 13th days of November, 2009.

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

March 16, 2010



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

WITNESSES

Juan Galarza
Laurens County Sheriff

WARRANT NUMBER

J615302 *True Bill*

Juan G. Bunn
Foreman of the Grand Jury
Date: *2/6/09*

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2009

Indictment # 09CS30- *0190*

THE STATE *IC*

vs.

Kevin Shane Epting

INDICTMENT FOR

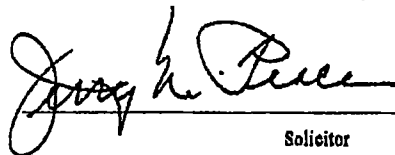
BURGLARY
16-11-0311

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****BURGLARY
16-11-0311**

At a Court of General Sessions, convened on the 6th day of February, 2009 the Grand Jurors of Laurens County present upon their oath:

That Kevin Shane Epting, did in Laurens County, state aforesaid, on or about the 11th day of November, 2008 with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Marilyn Hopkins, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

WITNESSES

Juan Galarza
Laurens County Sheriff

WARRANT NUMBER

J615303 True Bill

John A. Brown
Foreman of the Grand Jury
Date: 2/4/09

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2009

Indictment # 09GS30- 0191

THE STATE

IC

vs.

Kevin Shane Epting

INDICTMENT FOR

**ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE**
17-25-0

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

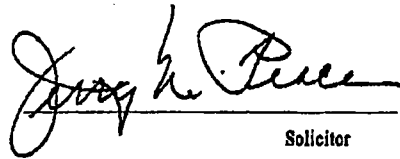
**ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE**

17-25-0

At a Court of General Sessions, convened on the 6th day of February, 2009 the Grand Jurors of Laurens County present upon their oath:

That Kevin Shane Epting, did in Laurens County, state aforesaid, on or about the 11th day of November, 2008 willfully and unlawfully commit an act of violent injury to the person of another, to wit: Marilyn Hopkins, accompanied by circumstances of aggravation, the use of a deadly weapon, and/or the infliction of serious bodily injury, and/or the intent to commit a felony, and/or the great disparity between the ages and physical conditions of the parties, and/or the difference in sexes, and/or indecent liberties or familiarities with a female, and/or the purposeful infliction of shame and disgrace, and/or resistance of lawful authority, in violation of the laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



George H. Pence

Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Kevin Shane Epting

AKA: _____

Race: CAU Sex: M Age: 46DOB: 1962 SS#: [REDACTED]Address: Sidney Dr.Cross Hill, SC

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS30-0191A/W#: J615303Date of Offense: 11/11/2008S.C. Code § : C/L 17-25-0CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ABHIAN (0-10 years)in violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Fleming, RonDefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-65-190☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 132.90Ryan W. Lancaster
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 211318Sentence Date: 11/13/09

SCCA/217 (07/2008)

FOR MY EN W. LANCASTER

STATE OF SOUTH CAROLINA

COUNTY OF Laurens

Kevin Shane Epting 245196
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

) IN THE COURT OF COMMON PLEAS

) 2015 FEB 23 P 3:29

) 2015 -CP30-128

) LAURENS COUNTY
) CLERK OF COURT 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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Laurens County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-30-0190
 - (b) 2009-GS-30-0191
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-13-2009 20 Years Burglary
 - (b) 11-13-2009 10 Years Concurrent, Abba

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 10-22-2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unPublished
- ii. Per:CURIAM
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Denied The effective Assistance of Counsel At Trial
 (b) Denied The effective Assistance of Counsel At Sentencing
 (c) Denied The effective Assistance of Counsel of Appeal

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) counsel failed To competently Argue Pre-Trial MOTIONS
 (b) Counsel failed To Investigate ~~Thorough~~ Thoroughly
 (c) See: MEMORANDUM

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) DUE TO THE GROSS Ineffective ASSISTANCE OF COUNSEL
- (b) THESE ISSUES OTHERWISE ARE THE PROPER AVENUE
- (c) AS PCR IS THE REMEDY CURE

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Pro-Se

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. CLAUDE H. HOWE III
 - ii. LAWELLE DURANT Appellate Defender
 - iii. P.O. Box 11589 Columbia SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. Trial - Sentencing
 - ii. Appeal - Final Brief
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction vacated, New trial and/or Re-Sentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of LAURENS2015 -CP30-128
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.

Kerri S. Epting

SWORN to and subscribed before me this 17th
day of February, 2015.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

LAURENS COUNTY
CLERK OF COURT

2015 FEB 23 P 3:29

LYNN W. LANCASTER

4015 - ~~CP30~~ - 128

**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.

Kevin S. Epting
Applicant

SWORN or affirmed to and subscribed before me this
17th day of February, 2015.

Susan H. Frye
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

LAURENS COUNTY
CLERK OF COURT

2015 FEB 23 P 3:29

LYNN W. LANCASTER

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

2015 FEB 23 P 3:30

Kevin Shane EPTING, 245196

Petitioner
LAURENS COUNTY
CLERK OF COURT

-VS-

Case No. 2009-GS-30-0190

2009-GS-30-0191

STATE OF SOUTH CAROLINA

Respondent,

MEMORANDUM IN SUPPORT OF
FOR APPLICATION PURSUANT TO § 17-27-20.

NOW COMES into Court Kevin Shane EPTING (Herein -after "Applicant") and appearing through Pro-se representation and respectfully enters before this Honorable Court the MEMORANDUM IN SUPPORT OF PER APPLICATION PURSUANT TO § 17-27-20 et., also to be considered in further support of the Grounds, Facts, Issues and Argument of Law as relied upon by Applicant to show his Conviction and Sentence must be vacated due to the denial of his Sixth Amendment right to the effective assistance of counsel as protected by the United States Constitution applicable to the State the Fourteenth Amendment. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984); Grier v. State, 299 S.C. 321, 384 S.E. 2d 722 (S.C. 1989).

In further support thereof Applicant submit the following:

I AM JAGG

REASON TO GRANT RELIEF

The Following Grounds have been previously raised in the attached hereto Post-Conviction Relief Application. Applicant incorporated by reference each of the previously raised Grounds, Facts, and Issues together with this Memorandum to be Considered by this Court in its determination pursuant to § 17-27-80.

Also see: Pruitt v. State, 423 S.E. 2d 127 (1982); Bryon v. State, 493 S.E. 2d 500 (1997).

GROUND DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL IN VIOLATION OF SIXTH OF THE UNITED STATE CONSTITUTION.

GROUND SENTENCE VIOLATES DUE PROCESS AND CRIMINAL LAW SECTION § 16-11-311 AS DECLARES IN HAIR V. STATE, 406 S.E. 2d 352 (S.C. 1991)

GROUND DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL DURING THE DIRECT APPEAL PROCESS.

SUPPORTING FACTS

Counsel Claude H. HOWE, III and D. Katherine Anderson, represented Applicant during his trial. Counsel HOWE was in fact lead Counsel throughout the proceedings

and therefore due to the circumstances as
relied upon in this ineffective assistance claim
Applicant reference to "Counsel" for the purpose of
grounds relates to Counsel Claude H. HOWE, III.

HAM JADE

TABLE OF AUTHORITIES

Cases

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JAM JACEL

STATEMENT OF THE CASE

An Laurens County Grand Jury indicted Kevin Shane Epting on February 6th, 2009 For First-Degree Burglary, AN ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. He went to trial before Judge D. Garrison Hill and a jury on November 10, 12, and 13, 2009. The jury found him guilty on the Burglary First and the sentenced him to imprisonment for twenty years and on the assault and battery of a high and aggravated nature and the sentenced to ten years concurrent. Petitioner appeals follows:

DID THE TRIAL COURT ERR IN FAILING TO ALLOW REQUESTED MATERIAL(S) TO GO BACK INTO JURY ROOM, AND TRIAL COURT ABUSE OF DISCRETION WHERE NO EXHIBITS WAS AVAILABLE FOR THE JUDGES OF THE FACTS TO VIEW?

At Trial, Trial Court INSTRUCTED THE JUDGES OF THE FACTS TWO SET OF INSTRUCTIONS AS TO EVIDENCE BEING PRESENT INTO JURY ROOM. Any time there is a trial in General Sessions Court there are two judges. There is the Judge of the Law, And the Judges of the Facts. The Judge of the Law have three main duties; (1) The first is to try to move thing along efficiently, (2) The second is to rule on whether evidence is admissible or not And (3) The third and last role is to be the Judge of the Law. And that means at the end of the case, I will give you the Law that you are to APPLY to the Facts of this case, my Final instructions to you, the Jury are the Judges of the Facts. R.P. 63 Ln. 13-25, R.P. 64 Ln. 1-21.

In the Particular case, an exhibit introduced into evidence and admitted into evidence is simply a physical tangible thing, something you can see, feel, or touch. You will use to determine what the facts are in this case. It will be back in the jury room with you at the end of the case with a sticker on it that says exhibit number 50 and 50.

GOVT WMT

The ONLY two things you can consider in determining what the facts of this case, are sworn witness testimony and exhibits. R.P. 65 Ln. 3-25

Article 4, section 1. Full Faith and Credit shall be given in each state to the Public Acts, Records, and Judicial Proceedings of each other state. And the Congress May by General Laws Prescribe the manner in which such Acts, Record and Proceedings shall be proved, and the effect thereof.

At the end of trial / While in the Jury room, the Bailiff was notified by the Jury to present the trial Court a note and question requesting to view the exhibits of the Police report and witness statement. Please! the note read "Jury vote is Seven Guilty Five not Guilty. Thanks

the Trial Court replied" saying I thought we had gotten the sleeping juror off the jury. The Trial Court wrote back to the jury and say, The record is closed, And do not send me no more note on how the ~~story~~ stands. R.P. 338 Ln. 4-24

In re Winship, 397 U.S. 353, 364, 90 S.Ct. 1068, 25 L.Ed 2d 368 (1970) the Constitution gives a criminal defendant the right to demand that a Jury Find him Guilty of all the elements of the crime with which he is charge. Const. Amend U.S.C.A. 6-14

TECVT MIVIT

DID THE TRIAL COURT COMMIT REVERSIBLE
ERR TO SENTENCE PETITIONER UNDER THE
ASSUMPTION OF FIRST DEGREE BURGLARY.
WHERE CO-CONSPIRATOR CALL POLICE
THIRTY-EIGHT HOURS IN DAYTIME HOURS?

Petitioner contends that the trial court relied on State v. Simmons, 352 S.C. 342, to allow Respondent to prove First Degree Burglary either by the nighttime approach or the two or convictions approach. R.P. 198 Ln. 3-8

The petitioner point to the fact in Simmons, supra. The defendant in that case pled guilty to Common Law Burglary in Year 1982, which is equivalent to First-Degree Burglary nighttime. But the two convictions Respondent relied on to support First-Degree Burglary in Petitioner case were classified Second-Degree Burglary nonviolent. See S.C. Code Ann. § 16-1-70.

It was ~~referred~~ in the record, The Petitioner has a conviction dated August 12, 2004 for second degree burglary nonviolent, and one dated March 8th 1994 on second degree burglary nonviolent under subsection 16-11-312(A). R.P. 181 Ln. 16-25, R.P. 182 Ln. 1-9, R.P. 344 Ln. 1-6.

Pursuant to the South Carolina Constitution second degree burglary under subsection 16-11-212(A) is not equivalent to First-degree burglary in C.L.S. 16-1-60. See Hair v. State, 406 S.E.2d 332 (S.C. 1991).

BOYD WAT

AS to the Variance between Nighttime and Daytime . .
 There's shouldn't be any debate on the Fact of time,
 Cause the record reflect the Complainant (Ms. Prather)
 Call Laurens County Sheriff's office on date of November
 12th 2008 at 3:15 P.M. The Co-Conspirator states the
 burglary occurred at 1:30 A.M. on date November 11th 2008.
 R.P. 162 Ln. 24, 25 - R.P. 163

The victim (Ms. Hopkins) agree with the record, There's
 no damage to the home, no damage to the door, window
 are any other property disturbed, Ms. Hopkins admit she
 told the intruder to leave her house are she will call
 the Police. R.P. 122 Ln. 4-18. Ms. Hopkins testified that
 Petitioner at her house to sell tapes in trailer park
 in early morning hours. R.P. 123 Ln. 5-25, R.P. 124 Ln. 1-16.

It's a Fact Officer Galarza testified it was raining
 he arrived at Ms. Hopkins home on date November 12th
 2008. Therefore, during the winter months when it
 rain its dark. R.P. 168 Ln. 20-22

Petitioner trial counsel rendered ineffective assistance
 by failing to request the trial Court to ask Fact-
 Finding whether the Guilty Verdict meant burglary in
 the Daytime rather than burglary in nighttime, see
State v. Sowell, 85 S.C. 278, 67 S.E. 316. and Wertz v. State,
 (S.C. 2002) 349 S.C. 291, 562 S.E. 2d 654

RECVT INVIT

WAS THE TRIAL COUNSEL'S INEFFECTIVE FOR
 FAILING TO MOTION AND OR SUBPOENA A
 EXPERT WITNESS ON THE SUBJECT OF ABHIAN?

On November 12, 2008, The Complainant (Ms. Prather) call
 Laurens County Sheriff's Office to report an ASSAULT
 AGGRAVATED. In the record Ms. Prather states she
 arrived at her sister (Ms. Hopkins) residence and found
 her with two Black eyes and Bruises around about
 the face area and left leg. R.P. 137 Ln. 5-25.

On November 13th 2008, The Victim (Ms. Hopkins) and Ms.
 Prather are Co-conspirator that made a Hearsay
 statement together. Petitioner Point to the error and
 prejudice. It's a fact not one Law enforcement
 officer been present where the two sister made the
 statement and signed it. R.P. 176 Ln. 7-25, R.P. 177 Ln. 1-14.

The Co-conspirator testified in the record that they
 went to Laurens County Emergency room on the
 date of November 11, 2008. R.P. 127 Ln. 14-24, R.P. 129
 Ln. 3-11, R.P. 138 Ln. 8-10, R.P. 144 Ln. 15-17. Ms. Hopkins
 testified to the fact that her sister (Ms. Prather) came
 to her house two times before law enforcement got
 involved. R.P. 129 Ln. 15-18

REC'D MAIL

Ms. Hopkins testified to the fact that her sister Ms. Prather did a independent investigation prior to Officer Galarza by taken pictures of her injuries. R.P. 129 Ln. 15-25. Officer Galarza testified to the fact he took pictures and photograph of Ms. Hopkins injuries. R.P. 151 Ln. 1-5

In this Particular case, other than the False Statement by Ms. Prather and Ms. Hopkins of the underlying facts. The Record reflect Co-conspirator testified that they went to Laurens County Emergency Room dated November 11, 2008. But no evidence was proffer such as document(s), data to prove that fact. R.P. 177 Ln. 15-25.

Evidently, Petitioner Trial Counsel knew or should have known a Expert witness was necessary to determine veracity of Ms. Hopkins injuries or whether not Ms. Prather took her sister to hospital on November 11th and November 12th 2008. It is a fact the Expert witness could have save opinion on Age of bruise to face and Leg. Doctor Vician and Dr. Funke or Specialists and testify to the

Fact Ms. Hopkins injuries were result From chemotherapy and Radiation due to lung cancer. R.P. 89 Ln. 3-13, R.P. 144 Ln. 25, R.P. 145 Ln. 1-26. And if Ms. Hopkins did visit Laurens County Emergency room on 11th November 2008. The Hospital report could had show in data Base. See RULE SCRE. 702. RULE 703, SCRE

Pursuant to Rule 403. SCACR and Strickland v. Washington the Petitioner Counsel lack deficiency in displaying exhibits to rebutted Respondent proffer evidence and Failure to do so is prejudice.

TECVT WVT

DID THE COURT OF APPEAL ERR IN FINDING
THE TRIAL COURT COMMITTED A PREJUDICIAL
ERR IN EXCLUSION OF DEFENSE EVIDENCE
OF THIRD-PARTY GUILT?

On November 12, 2009, the State requests For a Motion
in Limine to exclude a 911 CAD - Call that occurred
in September 2008, which was two months prior to
the incident to thus trial. R.P. 34 Ln. 8-25, R.P. 35
The Petitioner Point to the Facts surrounding his
Case. Trial Counsel was ineffective failing to
conduct a investigation on Ms. Hopkins, son
Mr. Sizemore concerning his where-about on
night of November 10th and early morning hours
of November 11th 2008.

It is a Fact the Lauren County Law Enforcement
did not collect any evidence such a blood, hair
samples "Cause" Prior to Ms. Prather and victim
(Ms. Hopkins) calling the Police November 12th 2008
The Co-Conspirator's Cledn everythings UP
inside home. R.P. 169

Pursuant to Holmes v. South Carolina 547 U.S. 319,
126 S. Ct. 1727 U.S.S.C. 2006 (The United States Supreme
held that exclusion of Defense evidence of third-
Party Guilt denied defendant of a Fair trial

RECVT WVT

CONCLUSION

For the foregoing reasons, Petitioner's Convictions should be reversed, and he should be granted a new trial.

2017 MAR 14

14

LYNN W. LANCASTER

2015 -CP30-128

STATE OF SOUTH CAROLINA IN THE COURT OF Common Pleas
 COUNTY OF LAURENS

2015 FEB 23 P 3:30

Kevin Shane EPTING, 245196

Petitioner, LAURENS COUNTY
 CLERK OF COURT

CASE NO. 2009-GS-30-D190

2009-GS-30-D191

- VS -

STATE OF SOUTH CAROLINA

Respondent,

CERTIFICATE OF SERVICE

I, Kevin Shane EPTING, 245196, do hereby certify on this
17th day of February 2015, I served the foregoing Petition For
 Post-Conviction RELIEF and AFFIDAVIT in support of, as well as a
 certificate of service in this matter by depositing a true copy of
 it in the United States Mail, Postage Prepaid on 2/17/2015,
 addressed to the following indicated below:

1) ALAN WILSON
 Attorney General
 P.O. Box 11549
 Columbia, S.C. 29211-1549

3) LYNN W. LANCASTER
 Clerk of Court - Laurens County
 P.O. Box 287
 Laurens S.C. 29360

2) General Sessions
 100 Hillcrest Square
 P.O. Box 287
 Laurens, SC 29360

5/ Kevin Shane EPTING, 245196
 KEVIN SHANE EPTING
 MURRAY 192-A
 4460 Broad River Road
 Columbia, SC 29216

Sworn and Subscribed to before me
 this 17th day of February 2015

Susan N. Frye
 Notary Public For South Carolina
 My Commission Expires

My Commission Expires
 March 3, 2018

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS 2015 FEB 23 P 3:30

Kevin Shane EPTING, 245196

LAURENS COUNTY
Petitioner, CLERK OF COURT

- vs -

STATE OF SOUTH CAROLINA

Respondent,

AFFIDAVIT OF
KEVIN EPTING

I, Kevin Shane Epting, 245196, do hereby swear attest
depose and say the truth to the following.

- 1.) That the indictment returned by the Grand Jury in his case does say allege Fact - First-Degree Burglary with element of two-Prior Convictions For Burglary in violation of Code Section 16-11-311
- 2.) That second-Degree Burglary nonviolent is not equivalent to First-Degree Burglary.
- 3.) That the indictment returned by the Grand Jury in his case say allege Fact - offense element the entering or remaining occurred in the nighttime, ~~but~~ the owner was present during incident and did not call police. It's a Fact, thirty-eight hours later Ms. Prather call police in the daytime hours and not nighttime.

4.) That the indictment returned by the Grand Jury in his case say ALLEGE Marilyn Hopkins suffered injury From An Assault And BATTERY OF A HIGH AND AGGRAVATED NATURE. But no evidence of documents, DATA OF SUCH to Prove Ms. Hopkins was seen at Laurens County Emergency room dated November 11 to November 13th 2008.

5.) That the Petitioner (Epting) requested Trial Counsel Claude Howe, III, Pursuant to IN RE DAVIS, For his Complete File related to indictment 2009-GS-30-0190 and indictment 2009-GS-30-0191 dated November 21, 2014 by Laurens County Clerk of Court LYNN N. LANCASTER.

6.) That the Petitioner (Epting) sent Second Notice requesting Trial Counsel Claude Howe, III, Pursuant to IN RE DAVIS, For his Complete File to indictment 2009-GS-30-0190 and indictment 2009-GS-30-0191 dated November 21, 2014 by Laurens County Clerk of Court LYNN N. LANCASTER.

7.) That the Trial Counsel Claude Howe, III was ineffective in his duties to not request the assistance of investigator to retrieve and/or all material(s), dated November 11th to November 13th 2008 and "Cause" Counsel "Action" was deficient it Prejudice in having a Fundamental Fair Trial.

8.) That the Trial Counsel was ineffective in his duties for not requesting a investigator to question Marilyn Hopkins, son Billy Sizemore, regarding to this whereabouts on November 11th 2008 and "Cause" no "Action" was taken Petitioner suffer Prejudice.

Sworn and Subscribed to before me
this 10th day of February 2015
Audrey H. Dye
NOTARY PUBLIC For South Carolina
My Commission Expires March 5, 2018

s/ Kevin Epting
Kevin Shane Epting

BAIL set by

Judge
on
Type and Amount:
Name of Surety:

PRELIMINARY HEARING held by

Judge
on
Defendant Attorney:
Decision:

DISPOSITION before

Judge
on
by
(indicate jury trial, bench trial, plea, not pros., etc.)
Disposition:
Sentence:

JURORS

WITNESSES

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

CODEFENDANTS

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS) FOR THE EIGHTH JUDICIAL CIRCUIT

THE STATE)

v.)

Kevin Epting,)
Defendant)

INDICTMENT NO.
2009-GS-30-190 and 191

Order

1999 FEB 13 A 10:02

2009 FEB 13 A 10:02

LAURENS COUNTY
CLERK OF COURT

This matter is before the Court on the motion of the defendant for an order for release of the following records:

This matter, therefore, is before the Court pursuant to 42 U.S.C. 290dd-3 and 290ee-3 and pursuant to 45 C.F.R. 1640512 (e) of the Privacy Standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and applicable State Law, including but not necessarily limited to S.C. Code Section 19-11-95, authorizing the above-referenced providers to make disclosure of all information and the records of the diagnosis and treatment of the person listed above. This order applies to both medical records and mental health records.

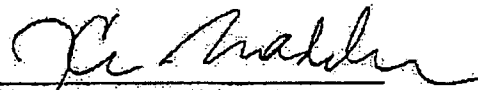
In accordance with 42 U.S.C. 290dd-3(b)(2)(c) and 42 CFR Ch.1 Section 2.64 and 45 C.F.R. 164.512(e) and applicable State Law, I find that the information and records are relevant to the above captioned proceeding and that the records are more probative than prejudicial. Further, I find that there is good cause to authorize the disclosure of the information sought, that there are no other means for Plaintiff or Defendant to obtain the information, that the public interest and the need for disclosure out-weighs the potential injury to the individual, the patient-physician relationship, and the treatment service. In authorizing the disclosure, no party to this action shall disclose any of the records or information released in any manner whatsoever other

than in the course of these proceedings. Further, said information shall be destroyed following case closure. This Order shall apply to the production of any and all documents produced pursuant to this order and said documents shall be released.

Therefore, it is ordered that the above-named service providers and their employees and/or agents shall be and are hereby authorized and ordered to disclose any and all records and any and all information in their possession and/or custody relating to the diagnoses and treatment of the identified person to the appointed defense counsel and the prosecutor.

It is further ordered that that no party to this action shall disclose any of the records or information released in any manner whatsoever other than in the course of the proceedings. The parties may provide copies of the materials to experts retained to assist with the prosecution or defense of the case. The defendant may view these materials but he shall not have a copy. Further, said information shall be destroyed following case closure.

IT IS SO ORDERED.



The Honorable Cordell Maddox
Presiding Judge
Eighth Judicial Circuit

2/12, 2009
Laurens, South Carolina

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCLP & GS
Page 2 of 2

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

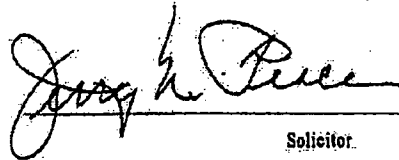
COUNTY OF LAURENS

BURGLARY
16-11-0311

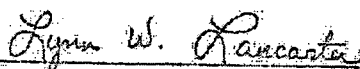
At a Court of General Sessions, convened on the 6th day of February, 2009 the Grand Jurors of Laurens County present upon their oath:

That Kevin Shane Epling, did in Laurens County, state aforesaid, on or about the 11th day of November, 2008 with a prior record of two or more convictions for burglary and/or housebreaking, willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, or the entering or remaining occurred in the nighttime, the said dwelling being owned and/or occupied by Marilyn Hopkins, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Juan Galarza
Laurens County Sheriff

WARRANT NUMBER

J615302

*True Bill**Juan A. Burn*

Foreman of the Grand Jury

Date: *2/6/09***VERDICT**

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2009

Indictment # 09GS30- *0190***THE STATE**

vs.

Kevin Shane Epling

*IC***INDICTMENT FOR****BURGLARY**
16-11-0311

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Kevin Shane Epting

AKA:

Race: CAU Sex: M Age: 46DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS30-0190A/W#: J615302Date of Offense: 11/11/2008S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 7th (15y-Life)in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Fleming, RonDefendantAttorney for DefendantSC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCA Surcharge)

TOTAL

\$

\$

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$

\$5

\$103.90

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

A TRUE COPY OF ORIGINAL

Lynn W. LancasterLynn W. Lancaster☐ Appointed PD or appointed other counsel §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21 1 1 3 1 8Sentence Date: 11/13/09

SCCA/217 (07/2008)

Clerk of Court/ Deputy Clerk

Court Reporter: Holly Jenkins

386

096530 - 0190

General Sessions Tracking Sheet
Indictment # 0000GS30

Name: Epting, Kevin Shane

AKA:

Addr: [REDACTED]

Warrant/Ticket # J615302

Date of Arrest: 11/13/2008

Date of Offense: 11/11/2008

Date Rcv by Clerk: 11/14/2008

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0079/Burglary / Burglary (After June 20, 1985) - First degree

SSN#: 000-00-0000

Sex: M Race: W

DOB: [REDACTED]

DL#

Indictment # 0000GS30

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- Disposition
- ☒ 1. Guilty plea
 - ☒ 2. Trial -- guilty 11/13/09
 - ☐ 3. Trial -- not guilty
 - ☐ 4. Dism/Not Pros/Pros Ended Explain: _____
 - ☐ 5. Judicial Commitment Explain: _____
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded Explain: _____
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear Explain: _____
 - ☐ 10. Other Explain: _____

Judge:

D. Garrison Gail

Court Reporter:

Hollie Jenkins

Defense Atty:

Chip Gove

Solicitor:

Counts: Code:

Sentence:

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCEP & GS

ARREST WARRANT

J-615303

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

THE STATE

against

Kevin Shane Epting

Address:

Phone: SSN:

Sex: M Race: W Height: 5 10 Weight: 180

DL State: DL #:

DOB: Agency ORI #: SC0300000

Prosecuting Agency: Laurens County Sheriff's Office

Prosecuting Officer: J R Galarza - 2150

Offense: Assault / Assault and battery of a high and aggravated nature (ABHAN)

Offense Code: 0013

Code/Ordinance Sec: CL, 17-25-0030

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on 11-13-08 KEVIN S EPTING

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
100 Hillcrest Square
P.O. Box 287
Laurens, SC 29360

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

Personally appeared before me the affiant J R Galarza

being duly sworn deposes and says that defendant Kevin Shane Epting

did within this county and state on or about 11/11/2008

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Laurens

in the following particulars:

DESCRIPTION OF OFFENSE Assault / Assault and battery of a high and aggravated nature (ABHAN)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on November 11, 2008, in the city/county of Laurens, one Kevin Shane Epting did intentionally commit a battery upon Marilyn Diane Hopkins by beating her about the face and head causing injuries, the act being aggravated in that severity of the injuries to the victim being a 56 yr old elder who has cancer and no ability to defend herself.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

Affiant's Address 216 West Main Street

Laurens, SC 29360

Affiant's Telephone (864)984-4967

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/11/2008 defendant Kevin Shane Epting

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Laurens) as set forth below.

DESCRIPTION OF OFFENSE: Assault / Assault and battery of a high and aggravated nature (ABHAN)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/13/2008

Signature of Issuing Judge (L.S.)

Paul Dean Lyles Magistrate

Judge Code: 5787

Judge's Address P.O. Box 925

Laurens, SC 29360

Judge's Telephone (864)683-4485

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 510

AFFIDAVIT

LAURENS COUNTY
CLERK OF COURT

LYNN W. LANCASTER

008 NOV 14 P 1 30

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County Clerk & GS

BAIL set by

Judge

T.H. Goshall

on

11-13-08

Type and Amount:

25,000.00

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defendant Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LAURENS	)	FOR THE EIGHTH JUDICIAL CIRCUIT
THE STATE	)	
v.	)	INDICTMENT NO.
	)	2009-GS-30-190 and 191
	)	Order
Kevin Epting,	)	
Defendant	)	

1/21/11 AM 10:02

2009 FEB 13 A 10:02

LAURENS COUNTY
CLERK OF COURT

This matter is before the Court on the motion of the defendant for an order for release of the following records:

This matter, therefore, is before the Court pursuant to 42 U.S.C. 290dd-3 and 290ee-3 and pursuant to 45 C.F.R. 1640512 (e) of the Privacy Standards promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and applicable State Law, including but not necessarily limited to S.C. Code Section 19-11-95, authorizing the above-referenced providers to make disclosure of all information and the records of the diagnosis and treatment of the person listed above. This order applies to both medical records and mental health records.

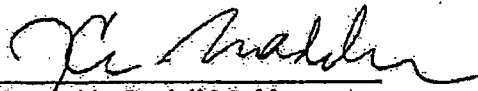
In accordance with 42 U.S.C. 290dd-3(b)(2)(c) and 42 CFR Ch.1 Section 2.64 and 45 C.F.R. 164.512(e) and applicable State Law, I find that the information and records are relevant to the above captioned proceeding and that the records are more probative than prejudicial. Further, I find that there is good cause to authorize the disclosure of the information sought, that there are no other means for Plaintiff or Defendant to obtain the information, that the public interest and the need for disclosure out-weighs the potential injury to the individual, the patient-physician relationship, and the treatment service. In authorizing the disclosure, no party to this action shall disclose any of the records or information released in any manner whatsoever other

than in the course of these proceedings. Further, said information shall be destroyed following case closure. This Order shall apply to the production of any and all documents produced pursuant to this order and said documents shall be released.

Therefore, it is ordered that the above-named service providers and their employees and/or agents shall be and are hereby authorized and ordered to disclose any and all records and any and all information in their possession and/or custody relating to the diagnoses and treatment of the identified person to the appointed defense counsel and the prosecutor.

It is further ordered that that no party to this action shall disclose any of the records or information released in any manner whatsoever other than in the course of the proceedings. The parties may provide copies of the materials to experts retained to assist with the prosecution or defense of the case. The defendant may view these materials but he shall not have a copy. Further, said information shall be destroyed following case closure.

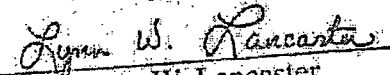
IT IS SO ORDERED.



The Honorable Cordell Maddox
Presiding Judge
Eighth Judicial Circuit

2/12, 2009
Laurens, South Carolina

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

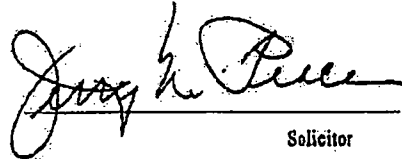
ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

17-25-0

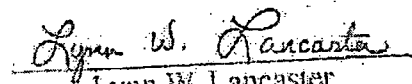
At a Court of General Sessions, convened on the 6th day of February, 2009 the Grand Jurors of Laurens County present upon their oath:

That Kevin Shane Epling, did in Laurens County, state aforesaid, on or about the 11th day of November, 2008 willfully and unlawfully commit an act of violent injury to the person of another, to wit: Marilyn Hopkins, accompanied by circumstances of aggravation, the use of a deadly weapon, and/or the infliction of serious bodily injury, and/or the intent to commit a felony, and/or the great disparity between the ages and physical conditions of the parties, and/or the difference in sexes, and/or indecent liberties or familiarities with a female, and/or the purposeful infliction of shame and disgrace, and/or resistance of lawful authority, in violation of the laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Juan Galarza
Laurens County Sheriff

WARRANT NUMBER

J615303 True Bill

Juan A. Brown
Foreman of the Grand Jury
Date: 2/6/09

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2009
Indictment # 09GS30- 0191

THE STATE IC

vs.
Kevin Shane Epting

INDICTMENT FOR

**ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE
17-25-0**

STATE OF SOUTH CAROLINA

COUNTY OF Laurens
STATE VS.Kevin Shane Epting

AKA:

Race: CAU Sex: M Age: 46DOB: [REDACTED] SS: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09GS30-0191A/W#: J615303Date of Offense: 11/11/2008S.C. Code §: C/L 17-25-0CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ABHJ (0-10 years)in violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Fleming, RonDefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-65-190☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.90
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 103.90

Lynn W. Lancaster
Clerk of Court/ Deputy ClerkCourt Reporter: Hollie Jenkins

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc, Rehab, or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: A TRUE COPY OF ORIGINALLynn W. LancasterLynn W. Lancaster
Laurens County CCCP & GS☐ Appointed PD or appointed other counsel \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE Tom / mJudge Code: 211 318Sentence Date: 11/13/09

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF GENERAL SESSIONS

2009-GS-30-0190, 0191

The State of South Carolina,
Plaintiff,

v.

VERDICT FORM

Kevin Shane Epting,
Defendant.

1. As to the charge of burglary, (Indictment No. 2009-GS-30-0190), we the jury unanimously find the Defendant

X GUILTY

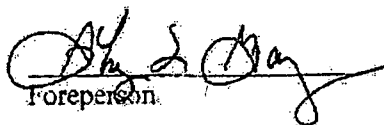
____ NOT GUILTY

2. As to the charge of assault and battery of a high and aggravated nature, (Indictment No. 2009-GS-30-0191), we the jury unanimously find the Defendant:

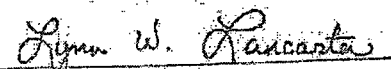
X GUILTY

____ NOT GUILTY

November 13, 2009
Laurens, South Carolina


Foreperson

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCLP & GS

096530-0191

395

General Sessions Tracking Sheet
Indictment # 0000GS30

Name: Epling, Kevin Shane

AKA:

Addr: [REDACTED]

SSN# 000-00-0000

Sex: M Race: W

DOB: [REDACTED]

DL# /

Warrant/Ticket # 1615303

Date of Arrest: 11/13/2008

Date of Offense: 11/11/2008

Date Rcv by Clerk: 11/14/2008

Magistrate: Clerk Of Court, C.P., G.S., And Family Court

Counts: Code: 0013/Assault / Assault and battery of a high and aggravated nature (ABHAN)

Indictment # 0000GS30

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

Disposition

- ☒ 1. Guilty plea
- ☒ 2. Trial -- guilty 11/13/09
- ☐ 3. Trial -- not guilty
- ☐ 4. Dism/Not Pros/Pros Ended Explain: _____
- ☐ 5. Judicial Commitment Explain: _____
- ☐ 6. Judicial Dismissal
- ☐ 7. Remanded Explain: _____
- ☐ 8. Dismissed at Prelim
- ☐ 8. No Bill
- ☐ 9. Failure to Appear Explain: _____
- ☐ 10. Other Explain: _____

Judge: D. Darrius Hill

Court Reporter: Hollie Jenkins

Defense Atty: Chip Gove

Solicitor: _____

Counts: _____ Code: _____

Sentence: _____

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
 Lynn W. Lancaster
 Laurens County CCCP & GS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	2015-CP-30-128
Kevin Shane Epting,	)	
S.C.D.C. No. 245196,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed February 23, 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 Laurens County Clerk of Court. Applicant was indicted at the February 2009 term of the Laurens County Grand Jury for Burglary (2009-GS-30-0190) and Assault and Battery of a High and Aggravated Nature (ABHAN) (2009-GS-30-0190). Applicant was represented by Claude H. Howe, III, Esquire, and H. Katherine Anderson, Esquire. On November 10-13, 2009, Applicant proceeded to a jury trial before the Honorable D. Garrison Hill. Applicant was found guilty as indicted. Judge Hill sentenced Applicant to twenty years on the burglary charge and ten years on the ABHAN charge, to run concurrently.

Applicant timely filed a notice of appeal. The South Carolina Court of Appeals affirmed the convictions and sentences on March 7, 2012. State v. Epting, Op. No. 2012-UP-152 (Ct. App. filed March 7, 2012). LaNelle DuRant of the South Carolina Commission on Indigent Defense, Appellate Division, filed a petition for rehearing which the Court of Appeals denied on

May 25, 2012. Applicant's appellate counsel appealed the rehearing denial, and the South Carolina Court of Appeals granted the petition for writ of certiorari on April 16, 2014. By Order filed October 22, 2014, the South Carolina Supreme Court dismissed the writ of certiorari as improvidently granted. The Remittitur was issued October 22, 2014.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "Denied the Effective Assistance Counsel at Trial"
 - a. "Counsel failed to competently argue pre-trial motions"
 - b. "Counsel failed to investigate thoroughly"
2. "Denied the Effective Assistance of Counsel at Sentencing"
3. "Denied the Effective Assistance of Counsel of Appeal"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the Laurens County Clerk of Court records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, 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 ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that

cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's trial and appellate counsel were ineffective.

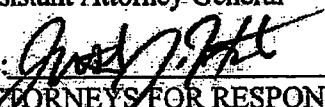
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
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August 18, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
KEVIN SHANE EPTING	)	
(#245196),	)	
	)	
Petitioner,	)	FIRST AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	C/A No. 2015-CP-30-128
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

The Petitioner, while reserving motions filed and to be filed, and while reserving his right to further amend his Application for Post-Conviction Relief, would respectfully allege and show unto the Court as follows:

INCORPORATION OF PETITIONER'S PRIOR PLEADINGS

1. The Petitioner hereby incorporates into this his First Amended Application for Post-Conviction Relief all allegations contained in his pro se Application for Post-Conviction Relief (and in the corresponding pro se Memorandum) dated February 17, 2015, and filed with the Court on February 23, 2015.

FOR A FIRST ALLEGATION

2. The Petitioner hereby incorporates Paragraph 1 into this his First Allegation as if fully set forth herein verbatim.

3. The Petitioner is informed and believes that his trial attorneys, Claude H. Howe, III, and D. Katherine Anderson, were ineffective because they:

A. Failed to object during the State's closing argument when the solicitor said

the victim "has no motive to lie." See Trial Transcript, page 313, lines 12-17.

This constituted improper burden shifting by the solicitor and improper vouching for the victim's credibility by the solicitor, especially in a he said/she said case with no forensic evidence indicating the Petitioner committed the crime. Furthermore, the trial judge had prevented the Petitioner from introducing third-party guilt evidence that the victim's son had assaulted the victim, when there was evidence demonstrating prior difficulties between the victim and her son and evidence that the victim believed her son may have previously stolen money from her wallet/billfold. The victim's desire to protect her son was the victim's "motive to lie," but the Petitioner was prohibited from presenting evidence about third-party guilt and therefore could not respond to the victim having "no motive to lie";

- B. Failed to object during the State's opening statement when the solicitor, referring to the fairy tale "Little Red Riding Hood," called the Petitioner "the big bad wolf" and called the victim "grandma." See Trial Transcript, page 71, line 23 – page 79, line 2. This was improper use of a nickname;
- C. Failed to object during the State's closing argument when the solicitor again called the Petitioner "the big bad wolf" and called the victim "grandma." See Trial Transcript, page 309, line 5 – page 317, line 22. This was improper use of a nickname;
- D. Failed to object during the State's closing argument when the solicitor said, "Do we want any other grandma's [sic] subjected to the big bad wolf?" See

2

Trial Transcript, page 317, lines 20-21. This was a "Golden Rule" argument which impermissibly appealed to the passion of the jurors by asking them to "speak up" for other elderly grandmothers who may potentially become victims of the Petitioner or other people, because every juror has a grandmother; and

- E. Failed to ask the Court to prohibit the witnesses from mentioning the Petitioner's prior record (other than the two (2) burglary convictions relied upon by the State to prove burglary 1st degree); and failed to object when the solicitor asked the Petitioner about his driving offenses during cross-examination (see Trial Transcript, page 216, lines 6-22) and when the solicitor asked defense witness Sharon Corley about the Petitioner's driving offenses during cross-examination (see Trial Transcript, page 263, lines 21-25). It was bad enough that the jury heard about the Petitioner's burglary convictions, but this testimonial evidence made the Petitioner out to be a drunk.

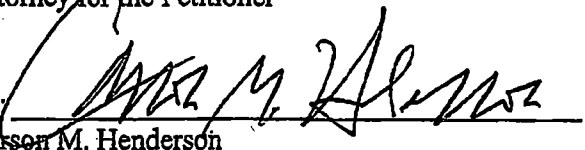
PRAYER

WHEREFORE, the Petitioner prays:

1. That this Court grant judgment to the Petitioner, vacate the Petitioner's conviction, and grant the Petitioner a new trial.
2. For such other and further relief as this Court deems just, proper, and equitable.

THE HENDERSON LAW FIRM, P.C.

Attorney for the Petitioner

By: 

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Greenwood, South Carolina

February 17, 2016

State of South Carolina)	In the Court of Common Pleas
County of Laurens)	Eighth Judicial Circuit
	2015-CP-30-0128

Kevin Shane Epting,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

June 8, 2016
Greenwood, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Carson M. Henderson, Esquire
Attorney for Applicant

Justin J. Hunter, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:07 a.m.)

MR. HUNTER: May it please the ---

THE COURT: Mr. Hunter.

MR. HUNTER: --- Court, Your Honor? The next case is *Kevin Epting v. State of South Carolina*, 2014-CP-30-128. He was indicted by the Laurens County Grand Jury for first-degree burglary and -- I'm sorry; got this wrong -- and ABHAN. He was represented by Mr. Chip Howe.

On November 10th through 13th, 2009, he proceeded to a jury trial before Judge Hill and was found guilty as indicted. He was sentenced to 20 years on the burglary charge and 10 years concurrent on the ABHAN charge.

He did file a direct appeal. The Court of Appeals affirmed his convictions March 7th, 2012. A petition for rehearing was filed, which was then granted but subsequently dismissed as improvident -- improvidently granted. The remittitur was issued October 22nd, 2014.

He filed this current action on February 23rd, 2015. He is present today, represented by Mr. Carson Henderson.

THE COURT: And Mr. Henderson?

MR. HENDERSON: Yes, sir. Your Honor, I'd call my first witness.

THE COURT: All right.

MR. HENDERSON: I call Mr. Howe.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 5

1 (Whereupon, the witness came forward.)

2 CLAUDE HOWE, III, having been first duly sworn,
3 testified as follows:

4 MR. HENDERSON: And, Your Honor, would you prefer me
5 to stand or to sit? Because it looks like I'm almost
6 looking down on witnesses. I'll -- I'll do whatever His
7 Honor wants.

8 THE COURT: Whatever -- no. I'm going to let you do
9 whatever ---

10 MR. HENDERSON: Okay.

11 THE COURT: --- you want.

12 MR. HENDERSON: Then, I think it might be easier to be
13 eyeball to eyeball, Your Honor. That's -- if ---

14 THE COURT: All right.

15 MR. HENDERSON: --- that's okay with the Court so ---

16 THE COURT: It is okay.

17 MR. HENDERSON: Okay.

18 (Off the record briefly.)

19 DIRECT EXAMINATION

20 BY MR. HENDERSON:

21 Q Mr. Howe, please state your full name for the record.

22 A Claude Hamilton Howe, III.

23 Q And -- and you represented -- or did you represent
24 Kevin Epting?

25 A I represented Kevin in his trial.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 6

1 Q And prior to trial, did you know Kevin?

2 A I did.

3 Q Okay. And I believe this trial was back in 2012?

4 A 2009, I think.

5 Q 2009? I -- my apologies.

6 A Yeah. And I'm -- I'm looking at the transcript, so

7 ---

8 Q You're absolutely correct. My bad.

9 And what was Kevin indicted for?

10 A I believe I heard the assistant attorney general
11 announce that correctly. I think -- I think it was first-
12 degree burglary and an assault charge. I don't remember
13 whether it was a old "assault and battery intent to kill"
14 or whether it was just ABHAN. And there may have been some
15 other charges too. So I -- I better -- I better let you
16 guys help me out with that, because I don't -- I don't have
17 that.

18 THE WITNESS: And, Judge, let me say at the beginning,
19 just -- just for the record so we know, that this case was
20 scheduled for a PCR term in February of 2016 before Judge
21 Hocker. And I wrote Judge Hocker, as well as Mr. Henderson
22 and -- and Mr. Hunter -- Assistant Attorney General Hunter
23 to let them know that my actual file, we could not locate
24 at the P.D. office. And I -- I still have been unable to
25 locate it. I've got the transcript. And I -- I'm -- it --

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 7

1 with -- with a little prompting, I can -- I can testify as
2 to the -- the matters in this case. What happened was, in
3 -- in my view -- and -- and I want to get this on the
4 record so it would be fair to Kevin. And it -- because he
5 asked for the -- a copy of the file.

6 I felt there was a strong basis for the appeal. And
7 -- and I attempted to get the file to another attorney to
8 handle the appeal. And we just can't find it at the P.D.'s
9 office. And -- and -- and -- and -- and so that -- that's
10 been going on. But again, I can -- I can testify with a
11 little assistance from all parties involved as to the
12 issues that I think will be before Your Honor today.

13 THE COURT: All right. Thank you, Mr. Howe. Mr.
14 Henderson?

15 Q And -- and did you have cocounsel, Mr. Howe?

16 A Kate Anderson assisted in the case. I don't know if
17 she actively participated in examining any witnesses. But
18 she sat with me throughout the trial and in preparation for
19 that.

20 Q Is -- is -- is it fair to say that -- that you and Ms.
21 Anderson put up a vigorous defense?

22 A We -- we did.

23 Q Okay. And -- and -- and tell the Court a little bit
24 about this third-party guilt.

25 A Okay.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 8

1 Q I -- I know it stands out in your mind. And -- and
2 actually, that was the issue for the direct appeal. But
3 let His Honor know a little bit about the third-party-guilt
4 issue.

5 A I -- I -- I will. And -- and -- and forgive me if I
6 -- if I don't recall the exact names. I know the last -- I
7 -- first names -- last name was Davenport. Davenport was a
8 son of -- of Marilyn, the alleged victim in the case. And
9 it was our theory of the defense to explain why she would
10 name Kevin to -- what -- as the person who attempted to
11 assault her and -- and commit the offense that -- that --
12 that her own son had done this and she didn't -- and -- and
13 once she regained her senses, if you will, she did not want
14 to tell on him.

15 There were -- we -- we felt like we could have
16 produced some evidence that they were not getting along
17 that well. We felt like it would produce evidence that --
18 that Kevin had no beef, no -- no disagreement with -- with
19 Marilyn. And we attempted to introduce -- elicit testimony
20 from Davenport and another individual who was -- and I -- I
21 -- I can't recall that name, but it's in the transcript.

22 Judge -- Judge Hill denied our -- our -- our -- would
23 not allow us to introduce the third-party-guilt evidence.
24 But we did, we think, properly preserve for appeal that
25 issue because I was allowed to -- to basically proffer what

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 9

1 I believe those witnesses would've testified. And we felt,
2 had we been allowed to go forward in front of the jury with
3 that, it would've assisted us in raising a reasonable
4 doubt, particularly with other evidence that was before the
5 Court and jury in the case.

6 But Judge Hill denied our motion. And I strongly felt
7 -- and -- and respectfully still do -- that that evidence
8 should have been allowed to go before the jury in -- in
9 Kevin's trial.

10 Q In -- in fact, you had a 911 recording where the
11 victim had called, representing her son as assaulting her,
12 didn't you?

13 A I believe so. I believe ---

14 Q And -- and -- and Judge Hill just would not let that
15 into evidence?

16 A Judge Hill took a pretty hard line on the third-party-
17 guilt issue. And, of course, we knew with case law at the
18 time that it was -- it was -- it's -- it's not easy to
19 establish third-party guilt, and -- and he ruled against
20 us.

21 Q And is it fair to say that based upon your
22 investigation, that you believed that the victim had a
23 motive to lie, to protect her son?

24 A I did -- I did.

25 Q And that's why you were trying to get in this third-

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 10

1 party-guilt evidence?

2 A Exactly.

3 Q And -- and -- and you understand and my client
4 understand that -- that issue has been litigated and ruled
5 against us?

6 A Yes. And -- and that's why, again, going back to the
7 issue concerning -- I was hoping that -- that -- that
8 somebody would take a good look at that issue on appeal.
9 And -- and -- and I had conversations with another attorney
10 who I felt was well-versed in appellate issues. And again,
11 I -- I -- I don't know what happened to the file. But that
12 would've been the emphasis, of course, with the transcript
13 and all on going forward in appeal.

14 Q Can you tell the Court a little bit about the victim's
15 testimony? How would you describe her testimony?

16 A Well, she came -- they wheeled her in, in a
17 wheelchair, as I recall. And she came across as being very
18 sympathetic. She was frail; she was sick. And -- and I
19 think the claim was -- and it may -- the -- the -- the
20 position was that she had cancer.

21 And she -- her -- her testimony was such that -- that
22 I don't think it was as clear as -- as it could've been. I
23 thought it was somewhat confusing. I thought I had raised
24 enough issues.

25 But the problem we had with it was that she -- she was

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 11

1 a very sympathetic witness, in view of her physical
2 condition. Just rolling her in, in a wheelchair and all
3 that was something we knew we had to deal with.

4 Q Now, isn't it fair to say that it was some day and a
5 half after whatever happened to her before she reported
6 this to the police?

7 A I -- I believe that's correct.

8 Q Okay. And to the best of your recollection, was there
9 any evidence tying Mr. Epting going into her home? And by
10 that, I mean was there fingerprint evidence? Was there any
11 other DNA evidence? Any other forensic evidence?

12 A Not that I recall at all in the case.

13 Q Is it fair to say that the only evidence that Mr.
14 Epting committed this crime was out of the victim's mouth?

15 A Pretty much, that's it.

16 Q Okay. Did Mr. Epting testify in his defense?

17 A I don't -- I -- I can't recall. I'm going to have to
18 look real quick. Help me out with that.

19 Q I will represent to you that he did

20 A Okay. All right.

21 Q --- and that ---

22 A Well, I won't ---

23 Q But I want you to look at the transcript ---

24 A All right.

25 Q --- to confirm ---

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 12

1 A Thank you.

2 Q --- that.

3 A Let me -- and that's something I should've done before
4 I came in here today. Yes. I see that, page 202 through
5 214. He did.

6 Q And do you recollect what Mr. Epting's position was on
7 whether or not he committed this crime?

8 A His position was very clearly that he didn't commit
9 the crime. I know that.

10 Q Okay.

11 A And -- and -- and -- and between Mr. Epting and
12 Sharon, his ---

13 Q Let -- let me stop you right there.

14 A Okay.

15 Q Did Mr. Epting put up an alibi witness?

16 A He did.

17 Q And who was that alibi witness?

18 A Sharon Corley, who was actually a legal secretary for
19 a -- a lawyer in Clinton by the name of Donna Jackson. I
20 knew Sharon. I had known Sharon since she was young. And
21 I thought she would and did make a very -- make -- was a
22 very credible witness, in my opinion.

23 Q So is it fair to say that this is the proverbial "he
24 said/she said" case?

25 A It is.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 13

1 Q Okay. Any doubt about that?

2 A Nothing that I could see that would make -- make that
3 any different.

4 Q Okay. Now, Mr. Howe, you've seen my amended petition
5 in this matter. I believe I mailed you a copy.

6 A I think so.

7 Q And -- and -- and I want to discuss a couple things in
8 the amended petition with you, okay?

9 A All right.

10 Q And I -- and I will call attention to various portions
11 of the transcript, which is cited in my petition.

12 A Okay.

13 Q In the amended petition. I'm sorry.

14 A Okay.

15 Q Let's turn to page 313.

16 A (Complied.)

17 Q And I -- I want you to read lines 12 through 17 to
18 yourself.

19 A Yes. I've read it.

20 Q Okay. And -- and -- and is it fair to say that the
21 solicitor, in his closing argument, argued along the fact
22 of why would the victim lie about this.

23 A Correct.

24 Q And you did not object to it.

25 A I did not.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 14

1 Q Okay. And -- and keep in mind, one of -- is it fair
2 to say that one of the premises of your defense was that
3 her motive to lie was to protect her son?

4 A Yes.

5 Q And -- and by this point in the trial, Judge Hill had
6 gutted that defense, correct?

7 A Gutted that defense. And here I am, sitting there in
8 closing and probably still not agreeing with that -- that
9 and probably should've jumped up and objected to what
10 Fleming said -- or at least have tried to.

11 Q So you're wanting to put up evidence of her motive to
12 lie?

13 A Exactly.

14 Q Your case has been gutted -- or that defense has been
15 gutted?

16 A That part of it had been gutted.

17 Q And yet the solicitor stands up and says, "This lady
18 has no motive to lie"?

19 A Exactly.

20 Q Okay. And -- and is it fair to say that's somewhat of
21 an ambush that you can't respond to?

22 A Well, I should've objected to it somehow. I agree.
23 But I don't know -- I -- I -- I'm sitting here today in
24 hindsight, still wrestling with how that could've been
25 addressed.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 15

1 Q And -- and -- and -- and you agree, by the solicitor
2 arguing that to the jury, that that's a form of burden-
3 shifting?

4 A I would agree with you.

5 Q And you would agree that the solicitor arguing that's
6 a form of improper vouching and bolstering the state's
7 witness?

8 A Should've objected to -- on that basis.

9 Q And -- and -- and -- and you didn't do it?

10 A I did not.

11 Q Okay. And I want to turn to a variety of other -- if
12 Judge Hill had let you put up that defense, do you think
13 there's a reasonable chance that we would've had a
14 different verdict?

15 A I -- I would like to think so. I would've liked to
16 have had that opportunity.

17 Q And if you had objected to this or asked for a
18 mistrial or -- or something, do you think there would've
19 been reasonable chance that something different would've
20 happened, other than these guilty verdicts?

21 A I can't speculate on ---

22 Q Okay.

23 A --- that. I would say there -- there's always a
24 chance. I don't ---

25 Q All right.

DIRECT EXAMINATION BY MR. HENDERSON, - CLAUDE HOWE, III 16

1 A --- know how much of a chance. I don't know how the
2 Court would've ruled on my objection.

3 Q But you agree, you should've objected?

4 A I -- I -- I agree ---

5 Q Okay.

6 A --- in hindsight. I wish I had objected to that -- at
7 that ---

8 Q Okay.

9 A I wish I would've at that time.

10 Q And I want to turn to the next issue in -- in the
11 amended petition that -- do you recall that during the
12 course of the trial, that the solicitor repeatedly calls --
13 referring to Little Red Riding Hood, he -- the solicitor,
14 constantly calls Mr. Epting the "big bad wolf"?

15 A Right.

16 Q And calls the victim "grandma"?

17 A In the -- yes.

18 Q And -- and he does that repeatedly. And actually, I
19 cite the -- the instances of that in my amended petition.

20 A Okay.

21 Q And -- and -- and did you object to any of that?

22 A I did not.

23 Q Okay. And I want to turn to page 317 of the
24 transcript. And again, we're still during the state's
25 closing argument. I want you to read lines 20 through 21

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 17

1 ---

2 THE COURT: Which page?

3 Q --- to yourself.

4 MR. HENDERSON: On page 317.

5 Q Mr. Howe, if you'd read lines 20 and 21 to yourself.

6 A Yes. I've read them.

7 Q And it says (As read): "Do we want any other grandmas
8 subjected to the big bad wolf?"

9 A (Nodded head up and down.)

10 Q And you didn't -- is that a "yes"?

11 A Yes. I -- I -- I acknowledge that's in there. And I
12 should've objected ---

13 Q You didn't ---

14 A --- to that.

15 Q --- object to that?

16 A Exactly.

17 Q And -- and -- and -- and you ---

18 A I wish ---

19 Q --- would agree ---

20 A --- I would've.

21 Q And -- and you -- you agree, wouldn't you, that that's
22 a form of a golden-rule argument, for -- for asking the
23 jurors to put themselves in the shoes of the victim?

24 A Put the shoes in -- I -- I -- well, the way I read it,
25 it -- it told the jury they're the woodmen and the woodmen

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 18

1 ought to take care of the matter and not -- not have
2 grandma subjected to that. So not necessarily in the shoes
3 of victim, but in the -- somebody who could've stopped this
4 thing. So ---

5 Q Right.

6 A --- either -- either way, I -- I understand what
7 you're saying. It's something that -- that I believe I
8 should've objected to.

9 Q Because all of us have a grandma? I mean, if you're
10 putting yourself in the shoes to protect grandma, all of us
11 have a grandma; is ---

12 A I ---

13 Q --- that fair to say?

14 A Understood.

15 Q All of us have two grandmothers, at least, so -- and
16 you didn't object to that?

17 A Didn't object.

18 Q Okay. And -- and then, my next ground is that there
19 was a -- and -- and I know they were trying Mr. Epting on
20 first-degree burglary based upon his prior burglary
21 convictions.

22 A Yes.

23 Q So obviously, it's damaging enough that they hear aob
24 his two prior burglary convictions?

25 A Yes.

DIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 19

1 Q Do you agree with that?

2 But also, you let in other evidence about other
3 criminal activity, bad conduct, that you didn't object to;
4 is it fair to say?

5 A You're going to have to be more specific about that.
6 I'm not following you.

7 Q Okay. There was a lot of testimony by him not having
8 a driver's license, driving illegally, driving under
9 suspension. Do you recollect that?

10 A I -- I think there was some testimony about that. I
11 -- I -- I would respectfully disagree with you that that
12 ---

13 Q Okay.

14 A --- would be enough to cause any issues in the case.

15 Q Okay. That -- that -- but you didn't object to any of
16 his ---

17 A I didn't ---

18 Q Okay.

19 A --- object to any reference to that.

20 Q And -- and -- and again, Mr. Howe, I want to be clear
21 that you believe that this is a "he said/she said" case?

22 A Yes.

23 Q And -- and that if you would've had the opportunity to
24 put up her motive -- why -- why victim had the motive to
25 lie, you wanted to?

CROSS-EXAMINATION BY MR. HUNTER - CLAUDE HOWE, III 20

1 A We sure did.

2 Q And likewise, if you couldn't put it up, is it your
3 opinion that the state shouldn't have been able to comment
4 on it?

5 A Now, I would agree with you on that now.

6 Q And you didn't object to it?

7 A I did not.

8 Q Okay.

9 MR. HENDERSON: If I may have one moment, Your Honor.

10 THE COURT: All right, sir.

11 (Whereupon, Mr. Henderson and the applicant
12 conferred.)

13 MR. HENDERSON: If I may have one moment, Your Honor.
14 Let me . . .

15 (Off the record briefly.)

16 MR. HENDERSON: I don't have any further questions at
17 this time, Your Honor.

18 THE COURT: Cross-examination?

19 MR. HUNTER: I think I'll sit as well ---

20 THE COURT: All right.

21 MR. HUNTER: --- if that's okay.

22 THE COURT: You may.

23 CROSS-EXAMINATION

24 BY MR. HUNTER:

25 Q Good morning, Mr. Howe.

CROSS-EXAMINATION BY MR. HUNTER - CLAUDE HOWE, III 21

1 A Good morning.

2 Q As far as your strategy of third-party guilt is
3 concerned, do you think there's anything else that you
4 could've done to -- to be able to present that during
5 trial?

6 A We made the argument. We were allowed -- and I
7 thought it was -- I -- I thought it was a pretty good
8 concession I got out of the prosecutor to allow us to
9 proffer what those witnesses would have said to put the
10 issue before the jury. So on that issue, I -- the --
11 hindsight, I -- I wish I could've somehow been more
12 persuasive with Judge Hill. That's the only thing I can
13 say.

14 Q Okay. Now, as far as the "no motive to lie" part, the
15 -- the sentence on page 313, you've stated you believe you
16 should've objected to that?

17 A I do. I do.

18 Q Do you think that -- and since we're going with
19 hindsight now, do you think that a mistrial would've been
20 granted or at least the objection would've been sustained?

21 A I can't -- I can't -- I can't answer that how -- how
22 the Court ruling -- but I -- I just have to candidly say
23 that I should've objected to at least put that issue before
24 the Court.

25 Q Okay. Now, as far as the big-bad wolf and grandma

1 statements are concerned, at least in the -- I believe they
2 were in the opening and the closing. Do you agree that
3 clearly these were in the context of Little Red Riding
4 Hood? He wasn't just calling him a wolf?

5 A I think he was referring to Little Red ---

6 Q Okay.

7 A --- Riding Hood. I would agree with you on that.

8 Q Okay. And so in -- considering that context, do you
9 think that it was -- that those comments were so damaging
10 that you didn't get a fair trial?

11 A I can't -- I can't say for sure. Hindsight tells me,
12 with everything the way this trial went -- and it's just
13 like many other trials, Assistant Attorney General.

14 They're -- I wish I would objected -- I wish I
15 would've objected to it in his opening. I wish I would've
16 objected to it every time he referred to it. And that's
17 where I sit today.

18 Q Okay. And -- but clearly at -- at the time, you
19 didn't think you needed to object?

20 A I -- either -- either I didn't think or I wasn't
21 listening properly. I -- I -- I try to be as alert as I
22 can and listen to everything. I -- I -- hindsight just
23 tells me I should've -- I should've done it. I can't tell
24 you exactly what my thought process was at that point in
25 time.

CROSS-EXAMINATION BY MR. HUNTER - CLAUDE HOWE, III 23

1 Q Okay. And with this golden-rule argument, I believe
2 it's the last sentence of the state's closing that we
3 talked about: "Do we want any other grandmas subjected to
4 the big bad wolf?"

5 Again, do you believe that objecting in -- in front of
6 the jury on the last sentence of a closing argument -- do
7 you think that that objection would've been sustained or
8 that the -- the outcome would've been different?

9 A Again, I can't say. I -- I wish I had at least -- now
10 -- now, looking back on everything, I wish I had at least
11 done it. I -- and I'm going to tell you, the -- back then,
12 law -- lawyers didn't object as much -- or at least to --
13 to closing arguments as -- as -- as folks are doing now.

14 So today, if you gave me an opportunity to do that,
15 I'd do it. I can't say exactly what my thought process was
16 then. And I can't sit here and tell you whether or not it
17 would've mattered, whether or not Judge Hill would've ruled
18 in my favor, or anything like that. But now, sitting here
19 today, I'm telling you I wish I'd have done it.

20 Q But -- and just to be clear: So you're saying,
21 essentially around that time, it wasn't your normal
22 practice to object during closing arguments?

23 A It was -- it -- it would've been unusual to do so.
24 I'll say -- I -- I think that -- that's a -- a -- as honest
25 a statement as I can give you.

1 I -- I won't say that I never did it. Because
2 sometimes you felt like, when you did it, you just called
3 more attention to it if you lost your ruling.

4 Q Okay.

5 A I didn't like -- I don't like -- I didn't like to try
6 cases for appeal.

7 Q Okay.

8 A I was trying to win the case at trial.

9 Q And that kind of brings me to my next point with the
10 brief mention of his driver's license suspension and his
11 DUIs. Do you think objecting to that would've just brought
12 it out -- brought out an unrelated charge unnecessarily?

13 A I -- I -- again, I didn't consider that that
14 important. And I still don't to this day. One would argue
15 -- and certainly, Mr. Henderson would've argue -- I
16 should've -- should've done everything to keep out any kind
17 of allegation of -- of making Kevin look worse.

18 I can't tell you what -- what the result would've been
19 if I had objected. I can't tell you, I mean, if it
20 would've changed anything.

21 Q Okay.

22 MR. HUNTER: I have no more questions, Your Honor.

23 THE COURT: Any redirect?

24 MR. HENDERSON: Very briefly, Your Honor.

25 THE COURT: Yes, sir.

REDIRECT EXAMINATION BY MR. HENDERSON - CLAUDE HOWE, III 25

REDIRECT EXAMINATION

BY MR. HENDERSON:

Q Going back to this page 317, where we -- where you talked about the woodmen of the world -- you know, actually, you know, I had quoted the last two lines. But you're right that you were going back a few more lines beforehand?

A Right. Okay.

Q Is it fair to say the solicitor is basically asking the -- the jury to take matters into their own hands and -- in -- in -- in ---

A That's more ---

Q --- so many ---

A --- the way I read it.

Q It's more of a -- somewhat of a vigilante argument.

A I -- I -- I -- I -- I see your point. I guess you could -- one could argue that's what it meant.

Q And -- and you just didn't object to any of that ---

A I ---

Q --- closing? Okay.

A I didn't object. And hindsight ---

Q Okay.

A --- says I should've.

Q Okay.

MR. HENDERSON: I don't think I have anything further,

1 Your Honor, for Mr. Howe.

2 MR. HUNTER: Nothing else from the state.

3 THE COURT: Thank you, sir. You may step down.

4 THE WITNESS: Thank you, Judge.

5 (Whereupon, the witness exited the witness stand.)

6 MR. HENDERSON: I would call Mr. Epting, Your Honor.

7 THE COURT: All right, sir.

8 (Off the record briefly.)

9 (Whereupon, the witness came forward.)

10 KEVIN EPTING, having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HENDERSON:

14 Q Mr. Epting, please state your full name for the
15 record.

16 A Kevin Epting.

17 Q And -- and -- and you have filed this PCR action,
18 correct?

19 A Yes, sir.

20 Q You testified in your own defense?

21 A Yes, sir.

22 Q You put up an alibi witness?

23 A Yes, sir.

24 Q You know, the victim in this matter testified you did
25 it?

DIRECT EXAMINATION BY MR. HENDERSON - KEVIN EPTING 27

1 A Yes, sir.

2 Q You testified you didn't do it?

3 A Yes, sir.

4 Q And -- and -- and you would agree with me that there
5 was no forensic evidence linking you to this event, be it
6 fingerprints, DNA, nothing along those lines?

7 A Yes, sir. Right.

8 Q Okay. And -- and -- and you still take the position
9 you didn't do this crime?

10 A Yes, sir.

11 Q Okay. And you understand that the rulings made by
12 Judge Hill have been appealed?

13 A Yes, sir.

14 Q And -- and we've got a final ruling on that matter.
15 You -- you understand that? His Honor can't reverse Judge
16 Hill's ruling. You understand that?

17 A Yes, sir.

18 Q But -- but you still feel like -- do you believe that
19 Mr. Howe should've objected to all these instances that we
20 were talking about?

21 A Yes, sir.

22 Q Okay. Do you believe this was a "he said/she said"
23 situation?

24 A Yes, sir.

25 Q And -- and -- and by Mr. Howe not objecting, do you

1 believe that prejudiced you at trial?

2 A Yes, sir.

3 Q And -- and are you asking for His Honor to grant you a
4 new trial?

5 A Yes, sir.

6 Q Okay. And -- and -- and we've discussed the
7 ramifications of that, haven't we?

8 A Yes, sir.

9 Q Okay. And you still want His Honor to grant you a new
10 trial?

11 A Yes, sir.

12 Q Okay. Now, you don't have -- you -- you -- you're not
13 mad at Mr. Howe, are you?

14 A No, sir.

15 Q You like ---

16 A I know ---

17 Q --- Mr. Howe?

18 A --- me and Howe -- I've -- I've been knowing him for
19 years.

20 Q Yeah. But you just believe that he should've objected
21 on all these instances we just discussed?

22 A Yes, sir. Everything.

23 Q And -- and he didn't do that?

24 A He didn't do it.

25 Q And -- and ---

DIRECT EXAMINATION BY MR. HENDERSON - KEVIN EPTING 29

1 A I don't feel a fair trial.

2 Q And -- and -- and you believe that your trial was
3 unfair because ---

4 A Yeah.

5 Q --- of that?

6 A Yes, sir.

7 Q And you believe your trial was -- you -- you were
8 prejudiced because of that?

9 A Yes, sir.

10 Q Okay.

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

13 THE COURT: Cross-examine?

14 MR. HUNTER: Nothing from the state.

15 THE COURT: All right. Thank you, sir. You may step
16 down.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: And any -- anything else, Mr. Henderson?

19 MR. HENDERSON: No, sir, Your Honor, other than -- and
20 -- and -- and I think, looking at priority of arguments, I
21 -- I'm just really concerned about this motive, meaning
22 that -- that I accept Judge Hill's ruling. I'm stuck with
23 it from our Supreme Court, who denied cert.

24 But again, if -- if Mr. Howe is stuck with his ruling,
25 by golly, the state needs to be stuck with his ruling.

1 Because if he doesn't have -- if he can't bring up motive
2 to lie, the state can't come up and say she's got no motive
3 to lie.

4 THE COURT: Well, let -- let me ask ---

5 MR. HENDERSON: But ---

6 THE COURT: --- let me ask the state if they want to
7 put up any evidence first, any ---

8 MR. HENDERSON: Oh, I'm sorry.

9 THE COURT: --- additional evidence.

10 MR. HUNTER: No, Your Honor.

11 THE COURT: All right. So we're doing closing
12 arguments, then. Okay.

13 MR. HENDERSON: Okay. I'm sorry. I'm jumping ---

14 THE COURT: I ---

15 MR. HENDERSON: --- the gun.

16 THE COURT: I cut you off.

17 MR. HENDERSON: No. No. No. No. I'm -- you're
18 right. I'm -- I didn't expect there to be any witnesses.

19 THE COURT: I didn't -- I didn't ---

20 MR. HENDERSON: But -- but you never know.

21 Your Honor -- and -- and -- and again, I think with
22 the -- with the defense having their hands tied behind
23 their back, wanting to put up evidence of motive to lie, in
24 fact, Your Honor, if you look at the transcript, there's
25 plenty of proffered evidence about what her son had done to

1 her, to his own mama, very recently and the bad
2 relationship that they had. But if that's being gutted, by
3 golly, the solicitor should not be able to then stand up
4 and say she's got no motive to lie and then Mr. Howe not
5 object to it.

6 Because -- because again, this is a "he said/she said"
7 case, Your Honor. Again, there is no physical evidence
8 that my client did anything here. This is -- this is a --
9 it's her testimony versus my client's testimony and the
10 alibi witness's testimony.

11 And -- and -- and again, I think, when you look at
12 these close-call cases, when the state is out here burden-
13 shifting and bolstering and vouching for the state's
14 witness, knowing that the defense can't put up evidence to
15 counter that because the judge has already suppressed it, I
16 mean, that's fundamentally unfair. And -- and -- and I
17 think Mr. Howe said he should've objected to that; probably
18 should've asked for a mistrial because of that. Because
19 he's put in a position where -- where my client's just
20 sitting there helpless, can't do anything.

21 Then, we've got these nickname issues, Your Honor.
22 You know, if you -- if -- even if His Honor doesn't believe
23 -- if -- sees it in the context of Little Red Riding Hood,
24 the nicknames in and of themselves, but there comes to the
25 point where I'm thinking he's asking the jury to put

1 themselves into the shoes of grandmama and the vigilante
2 woodmens to go out here and -- and seek punishment and to
3 do punishment on somebody -- specifically, my client. And
4 -- and again, Mr. Howe didn't object to that. And again,
5 that's all the more damning, Your Honor, because this is a
6 "he said/she said" case with no outside evidence to support
7 that my client did anything.

8 And -- and then, I -- and I understand Mr. Howe's
9 concerns about, you know, my client's driving record being
10 introduced, that he doesn't -- doesn't put a lot of stock
11 in that. And -- and I will conceded that that is my
12 weakest argument, Your Honor.

13 But -- but as it relates to this motive and kind of
14 this golden rule, I mean, I think my client's been
15 fundamentally prejudiced by Mr. Howe's failure to object to
16 that and him not being able to -- and not being able to
17 respond to the motive argument, Your Honor.

18 THE COURT: All right. Thank you.

19 MR. HUNTER: Yes, Your Honor. I -- and I'm just going
20 to kind of go in order like he did.

21 First, about the no motive to lie, that -- you know,
22 alleging that it's bolstering or vouching, Your Honor, it's
23 -- it's the state's position that for vouching, the -- you
24 know, the -- the state has to put kind of the -- the
25 government's prestige behind it or -- or have personal --

1 make personal assurances or -- or imply that there's
2 information that the jury doesn't know. But, Your Honor,
3 this one sentence. The -- the state would just argue that
4 that doesn't rise to the level of vouching. He's just
5 going off of, I guess, his interpretation of the facts
6 behind this case. So -- so we just argue it doesn't rise
7 to that level.

8 As far as the big bad wolf and grandma comments are
9 concerned, Your Honor, you know, it's our position it's --
10 it's clearly, you know, the state's attempting to make an
11 analogy with a -- a -- this case and compare it to a fairy
12 tale where there's a home invasion on an elderly woman.
13 And -- and, you know, our -- our courts have held, I guess,
14 much worse to be okay, such as calling the defendant a
15 hyena or cockroaches.

16 Here, it's -- it's clearly in context. I -- and the
17 state would argue that there's not -- there's not enough to
18 show that -- that that -- when reading the opening and
19 closings at a whole, that those comments so infected the --
20 the jury as to make the result unreliable.

21 Your Honor, as far as the golden-rule argument goes,
22 the state would just argue that he's not asking the jurors
23 to put themselves in the -- the victim's shoes or appeal to
24 their, you know, passions or prejudices. First -- and --
25 and -- first, the state would argue that he's clearly just

1 wrapping up his "Little Red Riding Hood" analogy, as
2 effective or not effective as that was. He's just wrapping
3 that.

4 And -- and also, there's a case, *State v. Durden*, that
5 held that closing arguments do not prejudice a defendant
6 where the Court held that the state may tell the jury that
7 the people look for them for protection against crime and
8 may illustrate the effects of their verdict on the
9 community or society generally with respect to obedience to
10 and enforcement of the law.

11 Your Honor, we feel that that's pretty analogous here
12 that he's not -- it -- it's not the typical golden-rule
13 argument, where you're asking them to place themselves in
14 their shoes. He is saying -- just like *Durden* said was not
15 prejudicial, that there's sort of the -- you know, the
16 community looks to them for protection with their
17 decisions.

18 And again, as far as the prior DUIs go, these were
19 very small, very short statements made during, I believe,
20 Mr. Epting and Ms. Corley's cross-examination. You know,
21 the state would argue that -- that objecting to that would
22 just bring that out even further. And -- and -- and also,
23 the fact that he did have those has no bearing on whether
24 or not he committed the first-degree burglary or the ABHAN.

25 So -- so we argue he was not prejudiced there. There

1 wasn't -- you know, the -- there wasn't really any evidence
2 that showed that that affected the jury's decision. And
3 clearly, it's -- it's -- it's so unrelated that it wasn't
4 show a propensity to commit those crimes either way.

5 Your Honor, that's the -- that's the state argument.
6 And -- and if you would like, we could certainly brief the
7 issues. But that's all the state has right now.

8 MR. HENDERSON: Very briefly, Your Honor.

9 THE COURT: Yes, sir.

10 MR. HENDERSON: Again, even if you're wrapping up the
11 "Little Red Riding Hood" story, we know what the woodmen
12 did to Little Red Riding Hood. When he's asking the jury
13 to be the woodmen and basically do that to Mr. Epting --
14 and -- and -- and again, you are asking the jury to go here
15 and be vigilantes and -- and to put themselves into the
16 shoes to -- to go out here and do this stuff and
17 specifically do it to Mr. Epting. And again, Mr. Howe
18 didn't object to that. And that -- and -- and that's our
19 concern, Your Honor.

20 THE COURT: You know, when I was an attorney
21 practicing law, I don't recall ever finishing a case
22 without saying to myself, Why'd I do this or shouldn't I
23 have done that? And since I've been a judge, I -- you
24 know, at the conclusion of most trials, you -- you wonder
25 oftentimes why an attorney did this or why didn't he or she

1 do that.

2 A postconviction applicant is -- is not entitled to
3 have a perfect attorney. I find he had a fair trial in
4 this case. I agree with the arguments made by the state in
5 this case about the vouching, the burden-shifting, the -- I
6 don't see there was a golden-rule violation.

7 Even if he had objected to the statement about no
8 reason to lie, I don't -- I don't think there's any
9 possible way a judge would've granted a mistrial.

10 For all of those reasons, I feel compelled to deny the
11 applicant's postconviction relief petition. And, Mr.
12 Hunter, if you'd please prepare an order.

13 MR. HUNTER: Yes, Your Honor.

14 (Whereupon, the proceeding was concluded at 10:47 a.m.)

15 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 6TH
DAY OF JUNE, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 2, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

Kevin Shane Epting,
S.C.D.C. No. 245196,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE EIGHTH JUDICIAL CIRCUIT

2015-CP-30-128

ORDER OF DISMISSAL

LAURENS COUNTY
CLERK OF COURT

2016 JUL 14 A 11:36

LYNN W. LANCASTER

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 23, 2015. Respondent made its Return on or about August 19, 2015. An evidentiary hearing into the matter was convened on June 8, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, 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, Chip Howe, Esquire, also testified. This Court had before it a copy of Applicant's records from the Laurens 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 Laurens County Clerk of Court. Applicant was indicted at the February 2009 term of the Laurens County Grand Jury for Burglary (2009-GS-30-0190) and Assault and Battery of a High and Aggravated Nature (ABHAN) (2009-GS-30-0190). Applicant was represented by Claude H. Howe, III, Esquire, and H. Katherine Anderson, Esquire. On

November 10-13, 2009, Applicant proceeded to a jury trial before the Honorable D. Garrison Hill. Applicant was found guilty as indicted. Judge Hill sentenced Applicant to twenty years on the burglary charge and ten years on the ABHAN charge, to run concurrently.

Applicant timely filed a notice of appeal. The South Carolina Court of Appeals affirmed the convictions and sentences on March 7, 2012. State v. Epting, Op. No. 2012-UP-152 (Ct. App. filed March 7, 2012). LaNelle DuRant of the South Carolina Commission on Indigent Defense, Appellate Division, filed a petition for rehearing which the Court of Appeals denied on May 25, 2012. Applicant's appellate counsel appealed the rehearing denial, and the South Carolina Court of Appeals granted the petition for writ of certiorari on April 16, 2014. By Order filed October 22, 2014, the South Carolina Supreme Court dismissed the writ of certiorari as improvidently granted. The Remittitur was issued October 22, 2014.

PCR Application

On February 23, 2015, Applicant filed an application for post-conviction relief alleging ineffective assistance of counsel. On February 19, 2016, Applicant filed an Amendment. His grounds are consolidated as follows:

1. "Denied the Effective Assistance Counsel at Trial"
 - a. "Counsel failed to competently argue pre-trial motions"
 - b. "Counsel failed to investigate thoroughly"
2. "Denied the Effective Assistance of Counsel at Sentencing"
3. "Denied the Effective Assistance of Counsel of Appeal"
4. Failed to object during the State's closing argument when the solicitor said the victim "has no motive to lie." See Trial Transcript, page 313, lines 12-17. This constituted improper burden shifting by the solicitor and improper vouching for the victim's credibility by the solicitor, especially in a he said/she said case with no forensic evidence indicating the Applicant committed the crime. Furthermore, the trial judge had prevented the Applicant from introducing third-party guilt evidence that the victim's son had assaulted the victim, when there was evidence demonstrating prior difficulties between the victim and her son and evidence that the victim believed her son may have previously stolen money

from her wallet/billfold. The victim's desire to protect her son was the victim's "motive to lie," but the Applicant was prohibited from presenting evidence about third-party guilt and therefore could not respond to the victim having "no motive to lie";

5. Failed to object during the State's opening statement when the solicitor, referring to the fairy tale "Little Red Riding Hood," called the Applicant "the big bad wolf" and called the victim "grandma." See Trial Transcript, page 71, line 23 - page 79, line 2. This was improper use of a nickname;
6. Failed to object during the State's closing argument when the solicitor again called the Applicant "the big bad wolf" and called the victim "grandma." See Trial Transcript, page 309, line 5 - page 317, line 22. This was improper use of a nickname;
7. Failed to object during the State's closing argument when the solicitor said, "Do we want any other grandma's [sic] subjected to the big bad wolf?" See Trial Transcript, page 317, lines 20-21. This was a "Golden Rule" argument which impermissibly appealed to the passion of the jurors by asking them to "speak up" for other elderly grandmothers who may potentially become victims of the Applicant or other people, because every juror has a grandmother; and
8. Failed to ask the Court to prohibit the witnesses from mentioning the Applicant's prior record (other than the two (2) burglary convictions relied upon by the State to prove burglary 1st degree); and failed to object when the solicitor asked the Applicant about his driving offenses during cross examination (see Trial Transcript, page 216, lines 6-22) and when the solicitor asked defense witness Sharon Corley about the Applicant's driving offenses during cross-examination (see Trial Transcript, page 263, lines 21-25). It was bad enough that the jury heard about the Applicant's burglary convictions, but this testimonial evidence made the Applicant out to be a drunk.

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.



Counsel failed to object during the State's closing argument when the solicitor said the victim "has no motive to lie."

Applicant alleges that Counsel was ineffective for failing to object to improper vouching when the assistant solicitor argued during his closing argument that the victim "has no motive to lie." See Trial Transcript, page 313, lines 12-17. Applicant alleged that since the trial judge prevented him from introducing third-party guilt evidence showing that the victim would have a motive to lie, this comment was an improper response by the State. Counsel testified that the trial judge not allowing Applicant to present evidence of third party guilt hindered Applicant's defense concerning the victim's motive. Counsel testified that he should have objected to this comment but testified that he cannot speculate as to whether Applicant suffered unfair prejudice as a result. He testified that he cannot say whether or not a mistrial would have been granted if he had objected to the State's statement.

This Court finds Counsel was not ineffective for failing to object because the State's remark does not rise to the level of improper vouching. A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. *Smith v. State*, 375 S.C. 507, 522, 654 S.E.2d 523, 531 (2007) (citing *State v. Copeland*, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.* (internal citations omitted). A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. *Matthews v. State*, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). However, "[a] solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." *Smith* at 523, 654 S.E.2d at 531-32 (quoting *Matthews* at 276, 565 S.E.2d at 768 (2002)). "A prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by

making explicit personal assurances, or indicating that information not presented to the jury supports the testimony." Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).

This Court finds that the State's comment that the victim had "no motive to lie" does not rise to the level of improper vouching by the State. This Court finds that there is no indication that the solicitor made this statement based on personal assurances, the government's prestige, or by indicating there was information not presented to the jury to support the statement. This Court also finds that the solicitor's short statement did not infect the trial with unfairness as to result in a denial of due process. As such, this Court finds that Counsel was not ineffective for failing to object to the statement. This Court also finds that Applicant has failed to show that he suffered prejudice by Counsel's failure to object to the statement at issue because he has failed to show that the outcome of the trial would have been different had Counsel objected to the solicitor's statement. Accordingly this allegation must be dismissed.

Counsel failed to object during the State's opening statement and closing argument when the solicitor, referring to the fairy tale "Little Red Riding Hood," called the Applicant "the big bad wolf" and called the victim "grandma."

Applicant alleged that Counsel was ineffective for failing to portions of the State's opening statement (See Trial Transcript p. 71, l. 23 – p. 79 l. 2) and closing argument (See Trial Transcript p. 309, l. 5 – p. 317, l. 22) where the State referred to Applicant as the "big bad wolf" and the victim as "Grandma." Counsel testified that he did not object to these statements but believes in hindsight that he should have objected. He also testified that he cannot say for sure whether Applicant was unfairly prejudiced by these statements.

Prior to the opening statements, the trial judge informed the jury, "An opening statement is simply a way for the lawyer to give you a road map as to what they think the evidence is going to show in this trial and what the issues will be." Trial Transcript p. 69, ll. 17-19. Prior to the



closing arguments, the trial judge informed the jury that they will "hear the closing arguments of the lawyers where they will try to help you understand the evidence and interpret it, and tell you what they think your verdict should be." Trial Transcript p. 70, ll. 14-16.

A solicitor's "argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences to it." State v. Webb, 389 S.C. 174, 178-79, 697 S.E.2d 662, 664 (Ct. App. 2010) (citing State v. Rudd, 355 S.C. 543, 549, 586 S.E.2d 153, 156 (Ct.App.2003)). The appropriateness of a solicitor's ... argument is a matter left to the trial court's sound discretion. Id. (internal citations omitted). "Improper comments do not require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. (citing Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004)).

This Court finds that Applicant's argument is without merit. This Court finds that Counsel was not ineffective for failing to object because, when read in context, the solicitor's comments involves his attempt to make a comparison between Applicant's case and the *Little Red Riding Hood* fairy tale, as both involve the home invasion of an elderly woman. This Court finds that the solicitor was not trying to inflame the passions or prejudices of the jury by calling Applicant a wolf because it was in the context of an analogy. This Court further finds that even if such comments were objectionable, the few times they were used during the State's opening statement and closing argument did not so infect the trial that the jury's verdict is deemed unreliable as the trial judge properly informed the jury of the presumption of innocence and the burden of proof. As such, this Court finds that Applicant has failed to show that he was prejudiced by Counsel's actions in this regard. Accordingly, this allegation must be dismissed.



Counsel failed to object during the State's closing argument when the solicitor said, "Do we want any other grandma's [sic] subjected to the big bad wolf?"

Applicant alleged that Counsel was ineffective for failing to object to the State's closing argument when the solicitor said "Do we want any other grandma's [sic] subjected to the big bad wolf?" See Trial Transcript, page 317, lines 20-21. Applicant argues that this statement constituted an impermissible "Golden Rule" argument which impermissibly appealed to the passion of the jurors by asking them to "speak up" for other elderly grandmothers who may potentially become victims of the Applicant or other people, because every juror has a grandmother. Counsel testified that he did not object to this statement but should have. He testified that it may constitute a Golden Rule argument but the solicitor was not necessarily asking the jury to place themselves in the shoes of the victim. Counsel testified that it was unusual to object during a closing argument.

A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (internal citations omitted). The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom. Id. "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." Id., 383 S.C. at 515-16, 680 S.E.2d at 914 (citing State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)). The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. Id., 383 S.C. at 516, 680 S.E.2d at 915.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective in this regard. This Court finds that, when read in context, the solicitor was



concluding the his *Little Red Riding Hood* analogy and not appealing to the passions or prejudices of the jurors or asking them to place themselves in the victim's shoes. This Court finds that Counsel was not ineffective for failing to object to the State's comment. Further, this Court finds that Applicant has failed to prove that he was prejudiced by Counsel's actions as Applicant has failed to show that the comment infected the trial with unfairness as to make his conviction a denial of due process. See State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (holding that the solicitor's closing argument did not prejudice the defendant, where the Court held that "the State may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and enforcement of, the law"). This Court finds that the trial judge properly informed the jury of Applicant's presumption of innocence and the State's burden of proof, and Applicant has failed to show that the outcome of the trial would have been different but for Counsel's actions in this regard. Accordingly, this allegation must be dismissed.

Counsel failed to ask the Court to prohibit the witnesses from mentioning the Applicant's prior record (other than the two (2) burglary convictions relied upon by the State to prove burglary 1st degree) and failed to object when the solicitor asked Applicant and a defense witness about Applicant's driving offenses.

Applicant alleged that Counsel was ineffective for failing to ask the trial court to prohibit witnesses from mentioning Applicant's prior record and failing to object when the solicitor asked Applicant about his driving offenses during cross examination (See Trial Transcript, page 216, lines 6-22) and when the solicitor asked defense witness Sharon Corley about Applicant's driving offenses during cross-examination (see Trial Transcript, page 263, lines 21-25). During cross examination, the solicitor asked Applicant the following:

Solicitor:	How — did you have a driver's license at that time?
Applicant:	No, sir.
Solicitor:	So you were driving against the law?

Applicant: Yes, sir.
 Solicitor: Why were your license suspended?
 Applicant: I haven't had a license since '79. Just points. I lost points to begin with.
 Solicitor: Now, later on, why were they suspended?
 Applicant: DUI's .
 Solicitor: How many?
 Applicant: I've got a few.
 Solicitor: How many?
 Applicant: I couldn't tell you.
 Solicitor: Five?
 Applicant: Probably.
 Solicitor: Six?
 Applicant: I couldn't tell you.

Trial Transcript p. 216, ll. 6-20.

During cross examination of a defense witness, Sharon Corley, the solicitor asked Ms. Corley the following:

Solicitor: Okay. Did you know that he didn't have a license?
 Ms. Corley: Yes, sir, I did know that.
 Solicitor: And did you know it had been suspended for numerous DUIs?
 Ms. Corley: I didn't know any details about that either

Trial Transcript p. 263, ll. 21-25.

At the PCR hearing, Counsel testified that he did not object to these two instances of the State asking about Applicant's prior DUI offenses. Counsel testified that he did not believe that the testimony at issue was that important or would cause issues in Applicant's case.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for failing to object to the testimony concerning Applicant's DUI offenses. This Court finds that even if Counsel should have objected to the testimony, Applicant has failed to prove that he was prejudiced. See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) ("Unfair prejudice means an undue tendency to suggest decision on an improper basis."); State v. Johnson, 293 S.C. 321, 324, 360 S.E.2d 317, 319 (1987) ("[E]vidence of other crimes or prior

bad acts is inadmissible to show criminal propensity."); State v. Gore, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984) (stating when a "previous alleged bad act is strikingly similar to the one for which the appellant is being tried, the danger of prejudice is enhanced"). This Court finds that Applicant did not suffer unfair prejudice as the brief questioning concerning Applicant's prior DUI offenses did not suggest that he was guilty of burglary or that he had a propensity to commit the burglary. This Court finds that Applicant has failed to prove that the outcome of the trial would have been different and accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

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

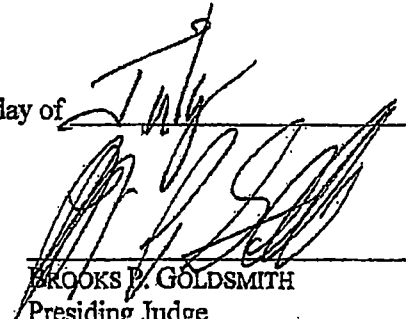


of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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 7 day of July, 2016.


 BROOKS P. GOLDSMITH
 Presiding Judge
 Eighth Judicial Circuit

_____, South Carolina

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 Lynn W. Lancaster
 Laurens County CCCP & GS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
KEVIN SHANE EPTING	)	
(#245196),	)	
	)	
Applicant,	)	
	)	APPLICANT'S MOTION TO RECONSIDER
v.	)	
	)	C/A No. 2015-CP-30-128
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

The Applicant Kevin Shane Epting, by and through his attorney of record, respectfully asks the Court to reconsider its Order of Dismissal dated July 7, 2016, wherein the Court dismissed the Applicant's PCR application. The Applicant's attorney received the Order of Dismissal in the United States mail on Monday, July 18, 2016 (from the Laurens County Clerk of Court) and on Wednesday, July 20, 2016 (from the Office of the Attorney General).

The Applicant submits that the Court should reconsider its Order and thereafter amend its Order as follows:

1. To find that the Applicant's trial counsel's performance was deficient, to find that the Applicant was prejudiced by trial counsel's deficient performance, and to find that, but for trial counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different. The Court's Order, regarding all grounds for relief raised by the Applicant, overlooked trial counsel's testimony about this being a he said/she said case, which is well supported by the trial transcript.

2. The victim didn't report the crime until more than a day after the crime occurred. There was no physical or forensic evidence linking the Applicant to the crime. The Applicant

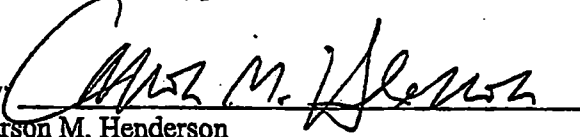
testified and presented an alibi defense. The Applicant's former girlfriend, who worked for an attorney in Laurens, testified that the Applicant was with her when the crime occurred and could not have committed the crime. Taking this into account, the Applicant was prejudiced when trial counsel didn't object to the solicitor's closing argument that the victim "has no motive to lie." The solicitor and trial counsel knew there was information not presented to the trial jury about the victim's motive to lie, because the trial judge had prevented trial counsel from arguing the victim's son's third-party guilt to the trial jury. There had been prior difficulties between the victim and her son,, and there was evidence that the victim believed her son may have previously stolen money from her wallet/billfold. Trial counsel acknowledged that he should have objected when the solicitor said the victim "has no motive to lie."

3. The solicitor's opening statements and closing argument referring to "Little Red Riding Hood" were prejudicial because the solicitor told the trial jury that the victim "has no motive to lie," when in fact the victim did have a motive to lie, namely to protect her son. Trial counsel knew that the victim had a motive to lie, yet trial counsel didn't object to any of these statements and arguments by the solicitor.

4. To find that there is a reasonable probability that the result at trial would have been different if trial counsel had objected at all times when trial counsel testified that he should have objected.

RESPECTFULLY SUBMITTED.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Applicant

By 
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Greenwood, South Carolina

July 25, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	2015-CP-30-128
Kevin Shane Epting,	)	
S.C.D.C. No. 245196,	)	
	)	
Applicant,	)	
	)	RETURN TO APPLICANT'S
v.	)	MOTION TO RECONSIDER
State of South Carolina,	)	
	)	
Respondent.	)	

In response to Applicant's Motion Pursuant to Alter or Amend the Judgment dated July 25, 2016, Respondent would show this Court:

I.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 23, 2015. Respondent made its Return on August 18, 2015. An evidentiary hearing into the matter was convened on June 8, 2016, at the Greenwood County Courthouse. Applicant was present at the hearing and represented by Carson Henderson, 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, Chip Howe, Esquire, also testified. The Court denied relief by an order filed July 14, 2016 and Respondent served this order on opposing counsel.

II.

First Respondent submits that the Order of Dismissal signed by Judge Brooks Goldsmith contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d

241 (1991). Respondent submits that this Court properly ruled on all issues and Applicant's motion should be denied.

Respondent contends that the Court ruled correctly in finding that solicitor's argument that the victim had "no motive to lie" was not improper. The Court correctly found that this comment did not rise to the level of improper vouching as there was no indication that the solicitor made this statement based on personal assurances, the government's prestige, or by indicating there was information not presented to the jury to support the statement. Also the Court correctly found that the solicitor's short statement did not infect the trial with unfairness as to result in a denial of due process.

Respondent contends that the Court correctly ruled that the solicitor's comments referring to Little Red Riding Hood were not prejudicial. Respondent argues again that these comments were not made to inflame the passions or prejudices of the jury but simply made to make a comparison between the set of facts in Applicant's case and the *Little Red Riding Hood* fairy tale. Respondent contends that when read in context, these minor comments did not infect the trial to make the jury's verdict unreliable.

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III.

Accordingly, all issues were correctly ruled upon by this Court and the motion to reconsider should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737

October 28, 2016

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
2015-CP-30-128

KEVIN SHANE EPTING

Applicant,

ORDER DENYING MOTION TO RECONSIDER

v.

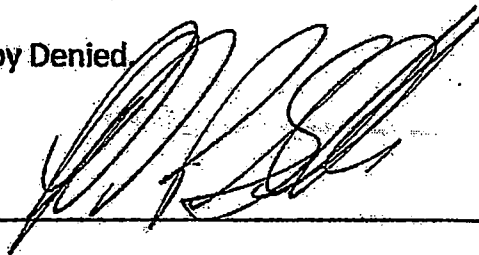
STATE OF SOUTH CAROLINA

Respondent,

This matter comes before the court upon Applicant's Motion To Reconsider the order of this court dated July 7 , 2016. Both parties filed briefs. After considering oral argument as well as the briefs submitted, I find no reason to alter or amend the prior order of this court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED;

The Applicant's Motion To Reconsider is hereby Denied.



Brooks P. Goldsmith, Circuit Judge

March 10, 2017

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Lynn W. Lancaster
Laurens County CCCP & GS

LAURENS COUNTY
CLERK OF COURT

2017 MAR 15 A 10:59

LYNN W. LANCASTER