

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Horry County

Roger E. Henderson, Circuit Court Judge

DAYTON CARANDO FRINKS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001778

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2013-GS-26-00189; 00190

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
DAYTON CARONDO FRINKS, JR.) May 16, 2013
Conway, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Circuit Judge.

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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JURY IN/COURT TO JURY

1 **THE COURT:** All right, is the State ready to proceed?

2 **MS. LIVESAY:** We're ready, Your Honor.

3 **THE COURT:** Is the Defendant ready?

4 **MR. GALMORE:** Yes sir.

5 **THE COURT:** The Defendant is in the courtroom?

6 **MR. GALMORE:** Yes sir.

7 **THE COURT:** Bring the jury.

8 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** Good morning, Mr. Foreman, and ladies and
11 gentlemen of the jury. I want to thank all of you here
12 again. I, and the attorneys, appreciate your service here,
13 understanding it's at a considerable inconvenience to your
14 personal lives, to your business, and to your daily pursuits,
15 but thank you for your services.

16 Swear the jury, please.

17 **THE DEPUTY CLERK:** Please stand and raise your right
18 hand.

19 **(THE JURY WAS PLACED UNDER OATH BY THE DEPUTY CLERK OF**
20 **COURT.)**

21 **THE COURT:** Mr. Foreman, ladies and gentlemen,
22 recognizing that this may be the first time you've had to
23 serve as a juror, certainly in a criminal case, let me tell
24 you how we will proceed, hoping it will help you follow the
25 various elements of the case better.

COURT TO JURY

1 As I told you yesterday under voir dire, this Defendant
2 is charged with two separate indictments. One is burglary.
3 One is kidnapping, and to both of these indictments, this
4 Defendant specifically pleads not guilty.

5 Now, there are several important issues that you need to
6 know about even before we begin, and I'll go into detail with
7 them at the end of the testimony. First, this Defendant, and
8 all defendants who come into court in South Carolina, is
9 presumed innocent, and that presumption of innocence remains
10 with him throughout the trial until you, the jury, if ever,
11 convinces him by evidence to your satisfaction unanimously
12 beyond a reasonable doubt.

13 The State of South Carolina represented by the
14 Solicitor, Ms. Livesay, has the burden, if she can, of
15 proving him guilty to your satisfaction beyond a reasonable
16 doubt.

17 Now, from this moment on, you twelve are the sole and
18 only finders of the facts in this case. There is nobody now
19 in this wide world, including this Judge, that can tell you
20 what the facts are.

21 You may well say, well, Judge, we just got here and just
22 had our egg biscuits in there. We don't know a thing about
23 this case, and I understand that. Well, under our procedure,
24 various witnesses will be called to the stand, testify,
25 thereafter cross-examined under oath. Certain documents may

COURT TO JURY

1 or may not be introduced into evidence, which may be
2 published at the time, but they will be with you in the jury
3 room. You will consider these documents and consider all of
4 the testimony of the various witnesses who have testified.

5 With regards to witnesses, you are the sole judges of
6 their credibility, believability. You bring your common
7 sense to bear and in your life's experiences when you come
8 into Court, and we all know that in our experiences in life
9 when folks tell us things, we size them up.

10 Sometimes we say, well, do you know what you're talking
11 about? Is there some reason that you want me to believe one
12 witness against another? Is this witness biased or
13 prejudiced? Is the testimony of one witness consistent with
14 the testimony of other witnesses?

15 You may use other things to judge credibility or
16 believability. I leave that up to you, but I say that you're
17 the sole judges of the facts in the case and you will
18 determine the facts from the witness' testimony and other
19 things introduced. You are the sole judges of the
20 credibility and believability of every witness.

21 You may believe one witness against that of many, or the
22 other way around. Certainly, you do not determine the truth
23 or falsity of a matter by counting up the number of witnesses
24 who may or may not have testified.

25 Thank you so much.

COURT TO JURY
STATE'S OPENING STATEMENT (LIVESAY)

1 You have sworn the jury?

2 **THE DEPUTY CLERK:** Yes sir.

3 **THE COURT:** You may call your witness -- may have your
4 opening statement.

5 **MS. LIVESAY:** Thank you, Your Honor.

6 **THE COURT:** Let me explain this, too. In our policy,
7 the State of South Carolina will make just a short opening
8 statement as to what her position is. This will help you
9 follow the testimony.

10 Mr. Galmore, representing the Defendant, will make an
11 appropriate opening statement. Thereafter, we'll take the
12 testimony. At the conclusion of the testimony, I will charge
13 you the law with regard to any issues, and Counsel for State
14 and Defendant will be offered an opportunity to make a final
15 summation.

16 Ms. Livesay, you may proceed.

17 **MS. LIVESAY:** Thank you, Your Honor.

18 Ladies and gentlemen of the jury, you've already heard
19 that you are here for a burglary first case and a kidnapping
20 case. I'm going to start off by telling you exactly what
21 burglary first is. It is an unlawful entering. That means
22 this person does not have consent to go into a home.

23 That means they have entered that home without the
24 homeowner's consent. They have entered it with the intent to
25 commit a crime, and in burglary first, they have done it

STATE'S OPENING STATEMENT (LIVESAY)

1 during the nighttime hours. That's what burglary first is.
2 Burglary is exactly what you would think it is. It's going
3 into somebody's house without permission at night.

4 Now, a kidnapping is exactly what you would think that
5 is. That is confining somebody to a certain area and not
6 allowing them to leave. Now, a kidnapping can be a range of
7 ways of confining somebody. It can be holding them. It can
8 be locking them in an area, or it can be holding them at
9 gunpoint.

10 That person is doing something to confine that victim's
11 movements. That victim is not free to leave. That's what
12 kidnapping is. For some reason, that person cannot leave.
13 He is at that defendant's will.

14 Now, I'm not going to get into the facts of this case a
15 whole lot because like Judge Cottingham told you, you're
16 going to hear it from the witness stand, but you're going to
17 hear from the victims in this case, Elias Michaels and his
18 wife, Billie Jo, that they were semi-retired. They moved to
19 the Longs area of Horry County. They were living there.

20 They got up that morning. Ms. Michaels went to work.
21 Her husband, Elias, was home all day. Around six o'clock,
22 they closed the blinds. They start cutting the lights off,
23 and they go out to eat. They come back around nine o'clock.
24 It's nighttime. He lets his wife out to get out of the car
25 to go into the house to turn the alarm off while he parks the

STATE'S OPENING STATEMENT (LIVESAY)

1 car in the garage.

2 You're going to hear that she goes in the house, she's
3 turning the alarm off, he pulls his car into the garage and
4 he gets out. When he gets out, he has a little tap on the
5 shoulder. When he turns around to see who's tapped him on
6 the shoulder, it's a man in a dark hoodie and a Halloween
7 mask, and an automatic weapon. That's what you're going to
8 hear.

9 There were two other guys standing behind this guy.
10 He's going to tell you, our garage -- we have two cars in the
11 garage, and it's such a small area that you only can go
12 through single file, so he says I'm going into the house, I
13 get that tap on the shoulder, and when I turn around to see
14 who it is, it's a guy with a hoodie on, and a Halloween mask
15 covering from here up, and an automatic weapon.

16 He's going to tell you he held me at gunpoint and told
17 me shhh, to get in the house. He's going to tell you that I
18 saw two guys standing behind him. I didn't get a great look
19 at them, but I saw that they both had guns. He's going to
20 tell you that he held me at gunpoint. I was backing up
21 towards the house. My wife was already in the house.

22 He's going to tell you at that time I get back to the
23 door, I take the gun, I do his arm like that, I run into the
24 house and shut the door and lock it. My wife calls 911.
25 You're going to hear the 911 tape she -- she makes to 911

STATE'S OPENING STATEMENT (LIVESAY)

1 telling what happened. You're going to hear his testimony
2 and his description of who held him at gunpoint that night.

3 Now, you're going to hear that the guy had a mask on and
4 a hoodie, so he could only see from here down. He's going to
5 tell you I didn't know who that guy was. I didn't know his
6 name. All I could do is give a description, so when 911 is
7 called, the Horry County Police come out to investigate this
8 person and this kidnapping.

9 When that guy, when that Defendant came in behind him in
10 the garage at nighttime with that gun, that was burglary
11 first. When he held him at gunpoint, that was kidnapping.
12 There's no doubt those two were there, burglary first when he
13 came in that garage at nighttime with that weapon, burglary
14 first. When he held him at gunpoint, that's kidnapping.
15 There's no doubt about that.

16 The question is who did it. This is a who did it type
17 case. You're going to find when the investigators showed up
18 and they moved around the house and they were trying to
19 collect evidence, they found what we find a lot in burglary
20 cases, a cut screen. The screen and the back window was cut,
21 and the screen on their screened-in porch was cut open. The
22 glass on that window was broken. You're going to learn that.

23 When they came, they did what we always do or what you
24 would expect them to do, they tried to take fingerprints.
25 Who cut this screen? Who broke this window? Who was at this

STATE'S OPENING STATEMENT (LIVESAY)

1 house that night? And they were able to lift a fingerprint
2 off that window.

3 You're going to learn that they ran that fingerprint
4 through AFIS, which is a log that S.L.E.D. holds a
5 fingerprint, and you're going to hear they got a match and
6 they developed a suspect, and that fingerprint belonged to
7 Dayton Frinks, the Defendant sitting right over there.

8 You're going to learn when they drove up that night they
9 didn't see an unusual crime. They didn't see one person.
10 She got out of that car, walked into the garage, opened the
11 door, and never saw a soul. They're going to tell you when
12 we drove up, we didn't see anybody, and we didn't see any
13 unusual property.

14 You're going to learn that Dayton Frinks is back there
15 trying to break into that house. He heard that garage door
16 open, and him and his two buddies came around, and when they
17 saw Mr. Michaels get out of the car, they were right by him.

18 There's going to be a lot of evidence presented about
19 the description of the Defendant. You're going to hear a lot
20 about that fingerprint, and you're also going to hear the
21 statement that this Defendant made.

22 After you hear all this evidence, I'm going to come back
23 in closing, review it all with you and ask you to find him
24 guilty. I appreciate your attention.

25 **THE COURT:** Thank you, Ms. Livesay.

DEFENDANT'S OPENING STATEMENT (GALMORE)

1 Mr. Galmore.

2 **MR. GALMORE:** May it please the Court..

3 We know that many of you have never been on a jury
4 before. You're new to all of this, so what I'd like to do in
5 my opening statement is explain to you a little bit about how
6 the court system works, what the jury process is, and what
7 your role and your responsibilities are as jurors, because
8 everyone in the courtroom has a role to play. Everyone in
9 here has a responsibility to the Court.

10 For example, Madam Court Reporter, her job is to take a
11 transcript of everything that's said today and to maintain
12 any exhibits that are introduced through the witness stand so
13 that we will have a record of these proceedings.

14 The bailiffs -- your deputies, their job is courthouse
15 security, to make sure that you're satisfied, to make sure
16 that nobody is trying to influence the jurors, so we all have
17 jobs to do in this courtroom today.

18 Your Honor, his role is the arbiter between the parties.
19 If for some reason Ms. Livesay and I have some type of a
20 disagreement, you've seen it on T.V. before where somebody
21 stands up and says objection. The Judge is the person that
22 decides what we should do, so he's sort of like a referee at
23 a football game.

24 Now, your job is the most important because what the
25 Judge will also do is give you the law. That kind of doesn't

DEFENDANT'S OPENING STATEMENT (GALMORE)

1 make sense, but let me try to explain it to you. Your job is
2 to take the facts that are presented from the witness stand,
3 and only the facts that are presented from the witness stand,
4 and apply those facts to the law to decide a verdict in this
5 case.

6 Yesterday the Judge told you not to discuss the case
7 with anybody, even amongst yourselves, and there's a reason
8 for that, because the evidence comes from him. It doesn't
9 come from television. It doesn't come from the Internet.
10 The evidence comes from the witness stand, but there's also
11 another reason for that. This is kind of hard for people to
12 comprehend, but right now we're looking at twelve jurors and
13 we're having one trial, but that's not really what's going on
14 here.

15 What we're really doing is having twelve little trials
16 because each one of you has to decide for yourself what the
17 verdict should be. There are twelve individuals with twelve
18 hearts and twelve minds, and you're going to listen to this
19 evidence and you might come up with twelve different
20 conclusions, but as a juror, that's what your job is.

21 That's why you're not discussing it with other people.
22 You decide for yourself what you think the verdict is, and
23 then once you start your deliberations, you go into the back
24 and you try to convince or persuade your other jurors to see
25 your point of view.

DEFENDANT'S OPENING STATEMENT (GALMORE)

1 Let me give you an example. If the Judge says, in
2 giving you the law, the Judge says it is illegal to possess
3 marijuana, and we have a trial and we put up police officers
4 that had stopped this fellow, searched his pocket, pulled out
5 this green stuff that looked like marijuana.

6 Then they put up a certified chemist who has training in
7 detecting drugs, and the chemist says I tested that green
8 stuff that the officer gave me and I tell you as an expert it
9 was, in fact, marijuana.

10 And the Judge that's giving you the law says it is
11 illegal to possess marijuana. Your job as jurors is to apply
12 the facts to the law. The facts are he's pulled over, he has
13 marijuana in his pocket. He has something in his pocket;
14 that something is marijuana. You apply those facts to the
15 law that the Judge has given you and you determine if this
16 person is guilty or not of possession of marijuana.

17 Now, as jurors, you cannot say I think it should be okay
18 to smoke weed, so I'm not going to find him guilty. That is
19 to say your job is not to create the law. Your job is to
20 apply the law that is given to you.

21 Likewise, you can't say, well, I think he did it. I
22 think they did a pretty good job, so I'm just going to go
23 ahead and give it to them. That's not how it works, and
24 nobody is trying to hide the ball from you in this case. It
25 comes down to a very simple thing. They have a fingerprint.

DEFENDANT'S OPENING STATEMENT (GALMORE)

1 The fingerprint is Dayton Frinks' fingerprint. The question
2 is, is he one of those three guys that went into that house.

3 Now, I tell you I don't think a fingerprint on a window
4 is proof that he entered the home. The question for you, you
5 can't say, well, he might have did it, he could have did it,
6 maybe he did it. That's good enough for me. Because the
7 Judge is not going to tell you that the law says he might
8 have did it is good enough.

9 The Judge has already told you the State has to prove
10 their case beyond a reasonable doubt. What does that mean?
11 It's a complex legal term. I figured out a half-way decent
12 way to explain it, sort of like football. Everybody knows
13 football. A football field is a hundred yards from end to
14 end.

15 Now, in civil cases, the standard of proof is by a
16 preponderance of the evidence, and what that means, if we're
17 talking football, it means you get to the fifty yard line and
18 just get one toe over, fifty-one to forty-nine, close enough.
19 That's in a civil case. This is not a civil case. This is a
20 criminal case, because the outcome is different.

21 In a civil case, you win some money. In a criminal
22 case, it's your freedom. Therefore, the standard of proof in
23 a criminal case is beyond a reasonable doubt. That's not the
24 fifty yard line. It's way up here. They don't have to score
25 a touchdown because that would mean beyond all doubt.

DEFENDANT'S OPENING STATEMENT (GALMORE)

1 I could say I doubt there are fish in the Waccamaw
2 River, but that would kind of be a stupid doubt, but in this
3 case, you have to be firmly convinced that the police have
4 arrested the right man. They have to be close enough to
5 where you feel like on the next play, they're going to score.
6 You can't just throw it out there, and that is what we have
7 today.

8 Again, nobody is trying to hide anything from you. What
9 they have is a single fingerprint, and I tell you that
10 fingerprint on the outside of the home is not proof that he
11 was one of these three people that went into this man's
12 garage. I am sorry that he has been burglarized, but that
13 doesn't mean that Dayton Frinks was the person that did it.

14 I hope that I've given you a little bit of insight on
15 what your -- on what your role is as jurors. It is an
16 important role. We take it seriously. I'm sure you will all
17 take it seriously.

18 You have no friends to reward. You have no enemies to
19 punish. Your job is simply to tell the State either you
20 proved your case or you didn't prove the case. I submit to
21 you today I will come back at the closing statement and say
22 it again, they cannot and will not be able to prove their
23 case. Thank you for your time and attention.

24 **THE COURT:** Call your witness.

25 **MS. LIVESAY:** Thank you, Your Honor.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 The State calls Elias Michaels to the stand.

2 **ELIAS MICHAELS**, being first duly sworn, testifies
3 as follows:

4 **DIRECT-EXAMINATION BY MS. LIVESAY:**

5 Q. Mr. Michaels, tell the jury how old you are?

6 A. I am sixty-six.

7 Q. And where do you live?

8 A. I live at 926 Foxtail Drive in Longs, South Carolina.

9 Q. And who else lives in that house with you?

10 A. My wife.

11 Q. How long have y'all been there?

12 A. We've been there now eight years.

13 Q. How long?

14 A. Eight years.

15 Q. Okay. And where did you move from?

16 A. We moved from New Jersey.

17 Q. Okay. And if you don't mind, describe that house to
18 the jury.

19 A. It's a one-family house. It's got three bedrooms and
20 two baths. It's an open cathedral ceiling, and it's just one
21 story.

22 Q. And are there neighbors on both sides of you?

23 A. In my area, there's nobody. It's an open field on
24 both the left and the right side of the house.

25 Q. Okay. And is that neighborhood well-lit?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. No. It's a new area of Long Bay Golf Club, so we're
2 in the section that's under development, and there's very few
3 -- very little lighting around the area.

4 Q. So on the side that you drive up to come home, is the
5 field on that side?

6 A. The major portion of the field is there because it's
7 under- -- it's not developed yet. They started building
8 townhomes at the very far end, and they never got anywhere as
9 near as close to the house as they should.

10 Q. And when you're driving up, can you see the side of
11 your house and the front of your house?

12 A. Yes. When you drive up with the field being so open,
13 you can definitely see that portion of the house.

14 Q. And what is behind your house?

15 A. I've got a pond that's off the property just behind
16 the house.

17 Q. Okay. And how would you describe that road going up
18 to your house? Is that a very busy road or ---

19 A. No. It's basically just a section of the road that
20 brings you to the front of the development, and just a few
21 people around the back end of the area use that road to come
22 and go.

23 Q. Now, is this a subdivision you live in?

24 A. Yes.

25 Q. What is it called?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Long Bay Golf Club.

2 Q. Now, is your house towards the back of that
3 subdivision?

4 A. Yes, it is. It's in the back corner of that area.

5 Q. Now, if you don't mind telling the jury, do you
6 remember what you were doing on November 12th of last year?

7 A. Well, at the time I wasn't working, so I basically
8 would just hang around the house and do things there and sit
9 and watch television. My wife would get up in the morning
10 and leave for work, and she'd be home about five-thirty.

11 Q. Okay. And do you remember what happened that night?

12 A. Well, we -- we went out to dinner. It was my mother's
13 birthday, so we were taking her for dinner. We left the
14 house about six, had dinner, and on the way home at nine
15 o'clock, nine-thirty, is when this incident occurred.

16 I had a Buick Enclave SUV, which is pretty large, so it
17 takes up a lot of room in the garage, so what I used to do is
18 I'd have to pull out to let my wife get into the car, and
19 when we got home, I'd let her off so she can go in the house
20 and then I could pull in the garage and then enter the home.

21 That night what I did was just that. I stopped at the
22 front of the garage, let her off so she can go in and turn
23 the burglar alarm off and turn the lights on, and then I
24 proceed to pull and park the car inside the garage.

25 As I was doing that and I pulled in and got out of the

ELIAS MICHAELS - DIRECT BY LIVESAY

1 car, I felt somebody tap me on the shoulder, and at first I
2 thought it was just a neighbor who had something to say, and
3 when I turned around, I was confronted with an individual
4 wearing a hoodie and a semi-Halloween mask, and he had a gun
5 that was within inches of my face, so I pretty well
6 concentrated on that individual.

7 And I noticed that there were two other people about a
8 half a car length behind because they were standing near the
9 rear of the cars, and the first thing that the person said
10 was he wanted to make sure that I didn't yell out, I guess,
11 because he kept shushing me. He kept pushing up his finger
12 and saying shhh, and very softly saying get in the house.

13 At that time I just kept asking him what did he want,
14 what did he want me to do, just tell me what you want, and at
15 the same time, I just kept backing up, looking him straight
16 in the face, wondering what's going on, and as I did, I just
17 kept trying to move the gun away from my face so that, you
18 know, I didn't know if I was going to get shot, I was going
19 to get hit, but I kept backing up and he kept following right
20 up to me, so I was pretty well concentrated on what he looked
21 like.

22 The other individuals, since there's very little room
23 between the two cars, were kind of walking behind him, but
24 they stayed about, I would say, maybe seven or eight feet
25 behind him, but I did notice that they all had guns, so this

ELIAS MICHAELS - DIRECT BY LIVESAY

1 was a serious situation that I didn't want to aggravate.

2 And then I realized that as I was getting closer to the
3 door -- the door from the garage into the house is a steel-
4 encased door. It has metal -- a metal door, and I just
5 thought, well, if I could get in the house and slam the door,
6 even if he shot, maybe the door would give me some
7 protection, and I just kept backing up and asking him, and
8 when I got close enough to the door where I could reach the
9 handle, I kind of pushed the gun away from my face and
10 quickly opened and slammed the door and locked it.

11 And as I was closing the door, I did see that he reached
12 for the door, I guess to try and stop it, but I didn't feel
13 anything, and when I locked the door, I felt the handle to
14 make sure that he wasn't jiggling it to get in, and I yelled
15 for my wife to dial 911 and to get my weapon in case I needed
16 it if he broke in, and she dialed 911 to call the police.

17 And at the same time, I did call my neighbor across the
18 street that could see in my garage to see if they were still
19 there, because I couldn't tell since there's no glass or
20 window to look into the garage.

21 The garage is fully lit inside with the garage door
22 opener. The light was still on, and there's two one-hundred-
23 watt light bulbs in there, and I did see that the individual
24 was about my height or a little bit taller, not as heavy as I
25 am, thinner.

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1 And the two individuals, one was about the same size and
2 a little bit thinner, and the other one was a little shorter
3 and thin, so -- but I could tell from the portion of the face
4 that the mask did not cover and the way he was shushing me, I
5 could see his -- his -- the angular of his face.

6 I could tell the lips were kind of full, and when he
7 shushed me, he kind of like puckered, you know, when you're
8 trying to shhh, that kind of thing, so I did notice that, and
9 I did tell the police about his -- his physical build.
10 And then we just waited for the police to -- to arrive.

11 Q. Okay. Now, you said that he had an angular face? Is
12 that how you ---

13 A. Yes. It's like a triangle. It kind of comes to a
14 pointed chin and elongated. I mean, it's not round; it's not
15 full. It didn't have heavy cheeks, but it's very
16 distinctive, so it's not hard to recognize.

17 Q. And could you -- did he have on gloves? Do you
18 remember?

19 A. No, he didn't have gloves on because I could see when
20 he put his hand up to shush me that there were no gloves on
21 his hands.

22 Q. Could you see if he was white, or black, or Hispanic,
23 or ---

24 A. You could tell definitely. I mean, I could see his
25 face was black. His hands were black. He wasn't a Caucasian

ELIAS MICHAELS - DIRECT BY LIVESAY

1 or a white individual.

2 Q. And what did the gun look like?

3 A. It looked like an automatic. It was either brushed
4 aluminum or nickel-plated. It was a silver-type gun, and it
5 was an automatic. I mean, you could tell it wasn't a
6 revolver.

7 MS. LIVESAY: Your Honor, I'm going to have Dixie mark
8 these photographs so I can show them to the Defendant, and
9 Mr. Galtore has already seen them.

10 THE COURT: Yes Ma'am.

11 (PHOTO MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
12 IDENTIFICATION ONLY.)

13 (SIX PHOTOS MARKED AS STATE'S EXHIBIT NUMBER 2 THROUGH 7
14 FOR IDENTIFICATION ONLY.)

15 Q. Mr. Michaels, I'm showing you -- I'm going to go in
16 order for Dixie. I'm showing you what's been marked as
17 State's Exhibit Number 1. Do you recognize it?

18 A. Yes. That's the window. That was -- the screen was
19 cut. A portion of the glass in -- in -- because there's
20 latticework between the two panes of glass since it's
21 insulated glass, the outer portion was broken, and that piece
22 was laying between the two pieces of glass.

23 Q. Do you recognize it?

24 A. Yes.

25 Q. Has it been altered in any way? Is that the way it

ELIAS MICHAELS - DIRECT BY LIVESAY

1 looked the night of the incident?

2 A. That's the way it looked, yes.

3 MS. LIVESAY: Your Honor, at this time, the State
4 wishes to place into evidence State's Exhibit Number 1 and
5 publish it to the jury at the appropriate time.

6 THE COURT: You may do so and may publish.

7 Mr. Foreman, ladies and gentlemen, anything introduced
8 into evidence, they may show it at this time, but it will be
9 with you in the jury room during your deliberations.

10 You may publish.

11 MS. LIVESAY: Thank you, Your Honor.

12 (PHOTO ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
13 1.)

14 Q. And what I'm going to have you do is look at State's
15 Exhibits 2 through 7 and let the Court know if you recognize
16 them and if these are authentic ---

17 THE COURT: You are introducing 2 through 7 at this
18 time?

19 MS. LIVESAY: Yes sir, Your Honor. Thank you, Your
20 Honor.

21 THE COURT: And you've seen these, Mr. Galmore?

22 MR. GALMORE: Yes sir.

23 MS. LIVESAY: Your Honor, at this time, then I'm going
24 to go ahead and place them into evidence and publish them to
25 the jury.

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1 **THE COURT:** Yes Ma'am.

2 **MS. LIVESAY:** Can I have him step down, Your Honor,
3 because these are all pictures.

4 **THE COURT:** I understand, and he is entitled to do
5 that.

6 **(SIX PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT**
7 **NUMBER 2 THROUGH 7.)**

8 Q. Mr. Michaels, I'm going to hold up what's been put in
9 as State's evidence Number 1. If you don't mind, tell the
10 jury what that is a picture of.

11 A. That is the window in the back of the house where they
12 slashed the screen so that they could try and break in
13 through the glass and to the window.

14 Q. And were you home all day that day?

15 A. Yes, I was. And that room is a Carolina Room with a
16 T.V., and I spent most of the afternoon in that room watching
17 television.

18 Q. During that day did you see or hear anything out of
19 the ---

20 A. No, I did not.

21 Q. Okay. And before you left your house that night, was
22 this screen cut or the glass broken?

23 A. No, it was not.

24 Q. Okay. So the screen was cut, and this panel of glass
25 was broken?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Yes.

2 Q. And this is outside the window on the back of your
3 house ---

4 A. Yes.

5 Q. --- where the pond is?

6 A. Yes.

7 Q. Now, I'm going to show you what's been marked as
8 State's evidence Number 5. Do you recognize that?

9 A. Yes, I do.

10 Q. And if you don't mind, tell the jury what that is a
11 picture of.

12 A. Driving up from Route 9 into the development and
13 coming up to the house, this is the screened room that's at
14 the back of the house and this is the field that hasn't been
15 developed on yet, coming up. That's the electric boxes.

16 Q. So this is basically the back of your house, is that
17 correct?

18 A. Yes.

19 Q. That's your screened-in porch?

20 A. Yes.

21 Q. And there's no houses beside you or directly behind
22 you?

23 A. No, there is not.

24 Q. Now, I'm showing you now what's been marked as State's
25 Exhibit Number 3. Do you recognize this?

1 A. Yes, I do.

2 Q. And tell the jury what that is a picture of.

3 A. That's a view from the screened room in the back of my
4 house out to the pond that's behind me, and I believe this is
5 also the screen that they cut when they couldn't get through
6 the glass. It appears that they sliced that screen to get
7 into the screened room, because we have French doors there,
8 so I guess they were going to try and break into the house at
9 that point.

10 Q. Now, that next day, was this screen sliced when you
11 looked at it ---

12 A. Yes.

13 Q. --- in the daylight?

14 A. Yes.

15 Q. Now, and you had been home all day. Was that screen
16 tampered with before you left the house?

17 A. No, it was not.

18 Q. Now, I'm showing you what's been marked as State's
19 evidence Number 2. Can you tell the jury why that window is
20 significant?

21 A. Well, this is the window that they broke. This is the
22 screen that was in front of it that they sliced, and this is
23 the pane of glass that they broke to try and get into the
24 house, and that's right at the corner of the screened room.
25 That's one of the darkest areas at the house at that time.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. So just so I'm clear and the Court is clear, this
2 window here, this picture, ---

3 A. Is this, and that's the pane, the upper quadrant of
4 that window.

5 Q. And this window is in the back of the house?

6 A. Yes.

7 Q. Have you had any lights or did you have any lights at
8 that time?

9 A. Not in the back of the house there, no.

10 Q. And I'm showing you what's State's evidence Number 7,
11 because we've just talked about that window. Can you tell
12 the jury what you notice?

13 A. Yes. This window, when I was having it repaired,
14 since we didn't open it -- these windows are, you pop the
15 thing and the window opens up so that you can clean it from
16 the inside and you don't have to remove the screen.

17 And when we did that when the window was being replaced,
18 I noticed this portion of the insulation on the window is all
19 cut and marled up, so it appears that when they cut the
20 screen, they were trying to force a knife between the two
21 panes of glass to unlock the window, I guess, and they
22 weren't successful, so they let that be, and that's when they
23 tried to get in through the screened room and the French
24 doors, but we noticed that that was kind of forced with some
25 kind of ---

1 Q. Okay. So the only way, just so I'm clear, the only
2 way that you can touch the inside of this pane is from the
3 inside of the house to do it ---

4 A. Well, they had to cut the screen because there's no
5 access to that, and that portion, you know, it's always --
6 every few weeks we clean those windows up, and you have to do
7 it from the inside of the house.

8 Q. Okay. So there's no way to touch that window without
9 either cutting the screen or taking it down from the inside?

10 A. Yes.

11 Q. And have you had screens on that window since you've
12 been living in that house?

13 A. Yes.

14 Q. Has it ever been cut before?

15 A. No.

16 Q. Now, I'm showing you what's been marked as State's
17 evidence Number 6. Is that your garage?

18 A. Yes, it is.

19 Q. If you don't mind, does that light -- does that come
20 on every time the garage door opens?

21 A. Yes, opens and close, or if you walk in front of the
22 sensors that there are there, obviously that light comes on,
23 and that light has two one-hundred-watt light bulbs, one in
24 the front and one in the back, so that garage lights up
25 pretty well.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. And was this light on that night?

2 A. Yes, it was.

3 Q. And if you don't mind, there's only one car in there
4 now, but the night of the incident, how many cars were there?

5 A. Well, there were two, and the Buick Enclave was the
6 car I had at that time and not this one, and you can see the
7 tire marks that my wife's car leaves, so you know that it's
8 only this little narrow area to walk through, so that's what
9 forced the three people be single file in the garage.

10 Q. And is that why you let your wife off early?

11 A. Yes, because the car -- there's shelving in the
12 garage, so there's no way she would be able to open the door
13 and get out of the car, so I had at that time to pull out of
14 the garage, let her off to get out or to get in.

15 Q. And is this the door here that you went into?

16 A. Yes.

17 Q. And where does that door go into in your house?

18 A. That opens up directly into our kitchen.

19 Q. Now, if you don't mind, tell the jury again what
20 State's evidence Number 4 is a picture of.

21 A. This is the screened room, the double French doors,
22 and I assume this is what they were trying to break into
23 because the metal chairs that we have around the furniture
24 back there were kind of spread around inside the screened
25 room, so I think what might have happened is they may have

ELIAS MICHAELS - DIRECT BY LIVESAY

1 tried to use one of those metal chairs to break the glass,
2 but I think we interrupted them when we got home and my wife
3 went in the house.

4 Q. Now, this screen, was this cut?

5 A. It was. This screen, you can see that it's clearer
6 than the others because it's fresh and it doesn't have all
7 that pine ---

8 Q. Now, this door here on the side, is that the door that
9 goes into ---

10 A. Into the screened room, and that's a double lock.
11 There's a door handle lock and then there's a deadbolt lock
12 on it, and that door was open when we got home and the police
13 searched the area, so when the got into the screened room and
14 they saw us come home, they must have ran out that door to
15 run up the side of the house and wait for me to get out of
16 the car.

17 Q. Now, before you left the house that night, you had
18 been home all day. Was that screen cut before you left the
19 house?

20 A. No, it was not.

21 Q. Okay.

22 A. And the door was not open. We keep that door locked.
23 The only time I unlock it basically is because there's a
24 barbecue out there.

25 Q. And when you got home, the screen was cut and the door

ELIAS MICHAELS - DIRECT BY LIVESAY

1 was open?

2 A. Yes.

3 MS. LIVESAY: Can I mark this, Miss Dixie, please.

4 (LARGE DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 8 FOR
5 IDENTIFICATION ONLY.)

6 MS. LIVESAY: At this time I'm going to show it to the
7 victim and let him point out where his house is on this map.

8 THE COURT: You may do so.

9 MS. LIVESAY: And I'm showing it to Mr. Galmore.

10 THE COURT: And you may introduce it and then publish
11 it.

12 MS. LIVESAY: Thank you, Your Honor.

13 Q. Do you mind stepping down one more time, Mr. Michaels,
14 and I'm going to go get a pen.

15 And I'm showing you what's been marked as State's
16 evidence Number 8. Now, do you recognize this area?

17 A. Yes, I do.

18 Q. Okay.

19 A. This is the Long Bay Golf Course.

20 Q. Okay. And on this map, can you recognize the road
21 that you live on?

22 A. Yes, I can, Foxtail Drive, and my house is right there
23 on the corner.

24 Q. And if you don't mind, can you circle your house?

25 A. I can.

ELIAS MICHAELS - DIRECT BY LIVESAY

1 Q. Thank you. And on this map, is this the pond that's
2 behind your house?

3 A. Yes.

4 Q. Now, you were saying earlier that this is kind of a
5 newly developed area and there is a field beside you, is that
6 right?

7 A. Yes.

8 Q. Now, over here in front of your house, is there a
9 field over here as well?

10 A. Yes, there is. There's two farm fields here and when
11 we moved in there, that was used for cotton.

12 Q. Okay. And there's actually some area, some fields or
13 open area that haven't been developed ---

14 A. Yes.

15 Q. --- as well beside your house, is that correct?

16 A. Yes.

17 Q. There's a few -- are these houses here? Do you
18 recognize these?

19 A. These are the townhouses that they started building,
20 and unfortunately with the economy, the builder was forced to
21 stop, and this is now still open grassland.

22 Q. Okay. So when you're driving home, is this the road
23 you take while you're still driving?

24 A. Yes.

25 Q. Okay. So you have open fields on the left and the

ELIAS MICHAELS - DIRECT BY LIVESAY

1 right up until you get to your house?

2 A. Yes, correct.

3 Q. Thank you. Just a few more questions.

4 THE COURT: Are you going to put that into evidence?

5 MS. LIVESAY: Yes. I thought it was already
6 introduced.

7 At this time, Your Honor, I'm going to move to introduce
8 State's evidence ---

9 THE COURT: That's fine.

10 MS. LIVESAY: Thank you.

11 (LARGE DIAGRAM ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 8.)

13 Q. Mr. Michaels, now we talked about there's a pond by
14 your house and some open fields. Now, do you ever see people
15 not from that neighborhood in that area?

16 A. Yes, I do. People come over the berm that's in the
17 back, and there is a fence back there with a gate. Up until
18 just recently, that gate was never really locked, and there's
19 really -- at the time, there was no fence that blocked people
20 from coming across the cotton fields into the area, and they
21 would go fishing or swimming into the pond.

22 Q. Okay. And have you ever had to run people off or ask
23 people to leave?

24 A. Yes, I have, because you know that they don't --
25 they're not in the neighborhood, and it's all private

ELIAS MICHAELS - DIRECT BY LIVESAY

1 property there, and they've walked through and they had some
2 incidents with some other houses.

3 Q. Now, have you ever actually seen -- are they young
4 people, older people?

5 A. Mostly young teenagers, late teenagers.

6 Q. Coming there to fish or swim in the pond?

7 A. Yes.

8 Q. Okay. Now, can you tell where they're coming from?

9 A. Well, they come from a neighborhood that's not
10 attached to ours. Behind us is a Pine Needles and Freemont,
11 a Pine Needles Road, I think, and Freemont is the area that
12 they are coming through.

13 Q. So have you actually seen them walking across those
14 fields to come into your neighborhood?

15 A. Yes, I have.

16 Q. And were these people that you recognized as
17 neighbors?

18 A. No.

19 Q. And they couldn't take a car -- they were just
20 walking? Is there a way to take a car across that field?

21 A. No. No.

22 Q. You've got to be on foot?

23 A. Yes. Yes.

24 Q. Now, the night of the burglary, did you see any
25 unusual vehicles on that little road?

ELIAS MICHAELS - DIRECT BY LIVESAY

1 A. Oh, no; no. No, there was no cars, I mean, especially
2 late at night. I mean, the people in the townhomes just park
3 their cars in the driveway, and the people that are the house
4 -- in our house, we put our cars away. We don't ever leave
5 them out, and the people that do have houses somewheres in
6 the area still use their garages, so there's no cars in the
7 street to give you a warning that there's somebody there that
8 doesn't belong there.

9 Q. Did you see or hear a vehicle once you got into your
10 house?

11 A. No, I did not.

12 Q. So you never heard a car around in the neighborhood or
13 even crank up?

14 A. No.

15 Q. Now, you talked to your neighbor, is that correct?

16 A. Yes.

17 Q. And he was right across from you looking into the
18 garage?

19 A. Yes.

20 Q. Did he ever mention a car?

21 MR. GALMORE: Objection.

22 A. No.

23 THE COURT: That would be hearsay.

24 MS. LIVESAY: Thank you, Your Honor.

25 Q. Did you see any unusual people when you pulled up to

ELIAS MICHAELS - DIRECT BY LIVESAY
CROSS BY GALMORE

1 your house that night?

2 A. No, I did not.

3 Q. Okay, and you could see the side of your house and the
4 front of your house, is that correct?

5 A. That's correct.

6 Q. The Defendant that's sitting at that table today, do
7 you recognize him or know him?

8 A. No, I don't know him.

9 Q. Has he ever been inside of your house?

10 A. No, he has not.

11 Q. Has he ever been invited to your house?

12 A. No, he has not.

13 Q. Would he have any reason to be in or around your
14 house?

15 A. No, he has not.

16 MS. LIVESAY: No further questions, Your Honor.

17 THE COURT: Mr. Galmore, you may examine.

18 CROSS-EXAMINATION BY MR. GALMORE:

19 Q. Did I understand from your testimony that you said
20 that the people were dressed in a hoodie, is that correct?

21 A. That's correct.

22 Q. With a partial mask?

23 A. Yes.

24 Q. Okay. And you were able to describe the chin and lips
25 area?

ELIAS MICHAELS - CROSS BY GALMORE

- 1 A. Yes.
- 2 Q. Did the police ever do a photo line-up with you?
- 3 A. No, they did not.
- 4 Q. Did they ever bring you any suspects and say is this
- 5 the guy?
- 6 A. No, they did not.
- 7 Q. Now, I think you testified that the person tapped you
- 8 on the shoulder and said get in the house?
- 9 A. What he did was he tapped me on the shoulder, first
- 10 told me to shush, because he didn't want me to yell, and then
- 11 he said just get in the house.
- 12 Q. Okay. Was there anything distinctive about the voice?
- 13 A. It was more of a whisper.
- 14 Q. Okay. I mean, was it like an unusually deep-based
- 15 voice or ---
- 16 A. No. It was just the ---
- 17 Q. --- a raspy, girly sound, anything?
- 18 A. It was just shhh, get in the house.
- 19 Q. Okay. So ---
- 20 A. And that's exactly how it was said.
- 21 Q. So would it be fair to say that you would not be able
- 22 to identify anyone based on the ---
- 23 A. The voice?
- 24 Q. --- voice?
- 25 A. No.

ELIAS MICHAELS - CROSS BY GALMORE

1 Q. Okay. Would it be fair to say you would not be able
2 to identify anyone based on the partial identification that
3 you gave to the officers?

4 A. The identification I gave to the officers was what he
5 was dressed, ---

6 Q. Right.

7 A. --- and how he was dressed, his height, his build, and
8 that he had the partial mask and he had -- and he put his
9 finger up to his lips to shush me, kind of like how he kind
10 of did it, and it was kind of small and poofy. That's about
11 all I could -- I could give them at the time.

12 Q. Well, I guess what I'm saying is while you sit here
13 today, you can't say, hey, that's the guy that did it?

14 A. Well, unfortunately after I've seen him, or
15 fortunately enough, with the configuration that I did see and
16 how I was concentrating on that individual pointing a gun at
17 me, and as close as we were, because he may have been as far
18 as this bench from me at the time and the full lights in the
19 garage, I could say that I could tell by his jaw angle, and
20 his chin, and his lips, that I could identify him.

21 Q. Okay. Well, you did not identify him on the date of
22 the attempted break-in?

23 A. Well, I wasn't presented with anything to identify
24 him. I gave them the best description at the time.

25 Q. Okay.

ELIAS MICHAELS - CROSS BY GALMORE

- 1 A. But I did go to a bond hearing, and when they
2 presented all the people that were going to be sitting to
3 hear their bond hearing, and I was there with my neighbor,
4 and I turned to my neighbor when they brought all those
5 people in, and I identified to my neighbor who he was.
- 6 Q. Did you go to the police officer and say, hey, that
7 guy is him?
- 8 A. At what time?
- 9 Q. At the bond hearing.
- 10 A. There was no police officer with us. We were just
11 there to hear the bond hearing.
- 12 Q. Did you take any steps to tell anyone in law
13 enforcement that you're now able to identify a suspect?
- 14 A. No, I did not.
- 15 Q. Did you ever make a written report saying I can
16 identify a suspect?
- 17 A. No, I did not.
- 18 Q. But now today you can identify a suspect?
- 19 A. Well, I did at the time at the bond hearing to my
20 neighbor.
- 21 Q. Okay. And you didn't tell a policeman? You didn't
22 call 911 to say I can identify someone?
- 23 A. There was no reason to.
- 24 Q. All right.
- 25 A. And he was not the only one that was in that bond

ELIAS MICHAELS - CROSS BY GALMORE

1 hearing.

2 Q. Okay. Now, you say that there is a pond behind your
3 house?

4 A. Yes.

5 Q. And people sometimes swim and fish in that pond?

6 A. Yes.

7 Q. Are there any flood lights on the back of the house?

8 A. At the time, no.

9 Q. Okay. Any flood lights on the ---

10 A. And since then, I have put flood lights in the back
11 and on the side of the house that they came around, and it's
12 the portion that has the field as you're driving up to the
13 house.

14 Q. Do any of your neighbors have flood lights?

15 A. No.

16 Q. Now, how many people was this?

17 A. Three.

18 Q. Did you make any identification of any of these other
19 people?

20 A. Other than their physical description and the fact
21 that they were wearing hoodies and had guns. They were
22 further back, as I said, at least eight to ten feet behind.

23 Q. Were you shown any pictures for any of these other
24 people?

25 A. No. I wasn't shown any pictures of anybody.

ELIAS MICHAELS - CROSS BY GALMORE
REDIRECT BY LIVESAY

1 Q. Okay.

2 MR. GALMORE: The Court's indulgence, Your Honor.

3 No further questions, Your Honor.

4 THE COURT: Is there any further questions from the
5 State, Ms. Livesay?

6 MS. LIVESAY: Just one question, Your Honor.

7 REDIRECT-EXAMINATION BY MS. LIVESAY:

8 Q. You told Mr. Galmore that you were at the bond hearing
9 and you recognized the person that was at your house, is that
10 right?

11 A. Yes.

12 Q. Okay. And the guy that you saw at the bond hearing,
13 is that the same guy sitting beside Mr. Galmore?

14 A. Yes, it is.

15 MS. LIVESAY: No further questions, Your Honor.

16 THE COURT: Any further questions, Mr. Galmore?

17 MR. GALMORE: No sir.

18 THE COURT: You may come down. Thank you.

19 Call your next witness.

20 MS. LIVESAY: Your Honor, the next witness the State
21 wishes to call is ---

22 THE COURT: Are the witnesses sequestered now?

23 MS. LIVESAY: All of them except my victims and my main
24 investigator. They're outside.

25 THE COURT: I just want to make sure that that's being

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 done. Call your witness.

2 MS. LIVESAY: They are, Your Honor. They're outside in
3 that right waiting room.

4 THE COURT: Proceed.

5 MS. LIVESAY: Thank you, Your Honor.

6 At this time the State calls Billie Michaels to the
7 stand.

8 BILLIE JO RAVITZ, being first duly sworn, testifies
9 as follows:

10 MS. MICHAELS: My name is Billie Jo Ravitz, and I am
11 Mr. Michaels' wife, just don't use his name.

12 DIRECT-EXAMINATION BY MS. LIVESAY:

13 Q. And where do you live, Ms. Michaels?

14 A. 926 Foxtail Drive in Longs.

15 Q. And you and your husband have always lived at that
16 residence since you've been down here?

17 A. Yes; yes, we have.

18 Q. And do you remember that night of November 12th of
19 last year?

20 A. Yes, I do.

21 Q. Okay. And do you remember about what time you got
22 home?

23 A. It was around nine, I would say, maybe a little after
24 nine.

25 Q. Now, do you remember what time you left in the

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 morning?

2 A. I leave for work about 7:00 A.M.

3 Q. All right. And what is your normal routine in the
4 mornings when you get up?

5 A. When I get up, I get myself ready, and I open the
6 blinds, and I open the shutters, and sometimes do a load of
7 laundry, and then I leave for work after I have my coffee,
8 and that's pretty much all routine.

9 Q. Okay. And before you leave the house, what is y'all's
10 normal routine?

11 A. I make sure that the blinds and shutters are open, and
12 he was there at the time, so my routine was, you know, I say
13 goodbye to him. He comes out with me, sees me off, and I
14 usually get home around five, five-thirty.

15 Q. And that morning when you got up and you -- did you
16 follow your normal routine, opening the shutters?

17 A. Yes; yes. I always look out, what's doing in the back
18 yard, what's in the pond, look for my birds.

19 Q. And did you notice any broken glass or cut screen that
20 morning when you got up?

21 A. Nothing; nothing.

22 Q. Now, when you got home, what time did you get home
23 from work that night?

24 A. It's usually between five and five-thirty that I get
25 home. I work in Myrtle Beach.

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 Q. And about what time did y'all leave the house that
2 night?

3 A. Sometime around six, maybe a little after six.

4 Q. Okay. And that night before y'all left, did you
5 follow the usual routine of closing down the shutters and
6 locking the doors?

7 A. Yes. Before we leave, I usually close the shutters
8 and put on lights. I have lights that are on timers as well,
9 and just make sure everything is locked, close the blinds so
10 no one can see in, and he usually goes out to get the car,
11 pull the car out of the garage, and I set the alarm, and
12 that's the routine.

13 Q. And that night before you left and you closed the
14 shutters, did you notice any of the windows or screens had
15 been torn or tampered with?

16 A. Nothing; nothing. Everything was normal.

17 Q. Now, the door to your screened-in porch, are there
18 shutters on those doors, or are they just windows?

19 A. The inside door to the kitchen has -- it doesn't have
20 shutters. It has blinds, and they are closed.

21 Q. And you say you got home what time, again, that night?

22 A. It was probably a little after nine.

23 Q. Okay. So was it dark when you got home?

24 A. Yes, it was dark.

25 Q. And what happened or what did you do once you got

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 home?

2 A. I got out of the car in the driveway. I go into the
3 house. I open the kitchen door. I turn off the alarm, and
4 whenever we come in, I just go right to the bathroom, so I
5 walk through the house and that's where I went.

6 Q. Okay. And when you were let off in the driveway, did
7 you see anybody in front or beside the house?

8 A. I did not see anybody. I didn't see anything when we
9 drove up the street. We see the side of the house and the
10 front of the house, and I didn't see anything unusual.

11 Q. Okay. Did you see any unusual vehicles along that
12 little road that y'all live on?

13 A. There were none. There were none. You would
14 certainly see them coming up that road. There were none.

15 Q. And that particular night, did you have an occasion to
16 call 911?

17 A. I did; I did. When I was off my bedroom, I was in the
18 bathroom, and I heard my husband's voice. I heard him yell,
19 and it was a very strange sounding yell, and I didn't hear --
20 I couldn't really hear what he said, so I ran out and he
21 repeated it, and he yelled to me, get my gun and call 911;
22 there are three black guys in the garage with guns. That's
23 exactly what he said to me.

24 Q. And did you call 911?

25 A. I did. First, I brought him his gun as I was calling

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 911.

2 Q. Okay. And I'm showing you what's been marked as
3 State's Exhibit Number 9, which is your 911 call. Have you
4 heard it?

5 A. Yes.

6 Q. Okay. And do you recognize the voices on that call?

7 A. Yes, I do.

8 Q. Whose voices are they?

9 A. It's mine, my husband's, and the person that had
10 answered the 911 call.

11 Q. Okay. And had that 911 call been altered or changed
12 in any way?

13 A. Not in any way.

14 MS. LIVESAY: Your Honor, at this time can I put in
15 State's Exhibit Number 9 into evidence and publish it to the
16 jury?

17 THE COURT: You may -- may do so and publish it.

18 MS. LIVESAY: Thank you, Your Honor.

19 THE COURT: You have reviewed and had an opportunity to
20 review this, Mr. Galmore?

21 MR. GALMORE: Yes sir.

22 THE COURT: Thank you so much.

23 MS. LIVESAY: If you can give me one second to get it
24 keyed up.

25 (911 CALL DVD ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT

BILLIE JO RAVITZ - DIRECT BY LIVESAY

1 **NUMBER 9.)**

2 **(STATE'S EXHIBIT NUMBER 9 IS PUBLISHED IN OPEN COURT IN**
3 **THE PRESENCE OF THE JURY.)**

4 Q. So Ms. Michaels, that night when you came up to the
5 house, do you or your husband ever park your car in the
6 driveway?

7 A. No.

8 Q. It's always in the garage?

9 A. Always in the garage.

10 Q. And when you left the house that night, were there any
11 lights on inside the house?

12 A. I have a timer in the ---

13 Q. A timer?

14 A. Yes. It's a timer light that comes on in the house.

15 Q. And all of the blinds were closed?

16 A. Yes.

17 Q. And there were no cars in the driveway?

18 A. No cars in the driveway.

19 Q. Okay. Now, Dayton Frinks, Jr. is sitting over there
20 at that table. Do you know him?

21 A. No, I do not.

22 Q. Okay. Have you ever had him in your house?

23 A. No.

24 Q. Have you ever had him around your house?

25 A. No.

BILLIE JO RAVITZ - DIRECT BY LIVESAY
CROSS BY GALMORE

1 Q. Okay. So there's no reason he should be in or around
2 your house?

3 A. There was absolutely no reason.

4 MS. LIVESAY: No further questions, Your Honor.

5 THE COURT: Mr. Galmore.

6 CROSS-EXAMINATION BY MR. GALMORE:

7 Q. Did you see any of these three suspects?

8 A. I did not.

9 Q. Okay. You weren't confronted by them at all?

10 A. I was not.

11 Q. Were you or your husband injured in any way?

12 A. Mentally.

13 Q. Okay. But, I mean, physically?

14 A. Not physically.

15 Q. All right. Was anything taken from your home?

16 A. No.

17 Q. So your role in this case was to call 911 and to get
18 your gun -- get your husband's gun?

19 A. Yes, that is correct.

20 Q. All right.

21 MR. GALMORE: Thank you very much.

22 No further questions.

23 THE COURT: You may come down, and we thank you.

24 Please call your next witness.

25 MS. LIVESAY: Kevin Strickland, Your Honor.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 **KEVIN STRICKLAND**, being first duly sworn, testifies
2 as follows:

3 **DIRECT-EXAMINATION BY MS. LIVESAY:**

4 Q. And where are you currently employed?

5 A. I'm currently employed with the Horry County Police
6 Department.

7 Q. And how long have you been employed there?

8 A. Just over three years.

9 Q. Okay. And what kind of training have you undergone
10 with the Horry County Police Department?

11 A. I initially received my Class I certification at the
12 South Carolina Criminal Justice Academy, which at the time
13 included nine weeks of instruction. Upon completing that, I
14 also received eight weeks of field training within the
15 department before being assigned to the uniform patrol
16 division.

17 Q. And what are your general responsibilities at the
18 police department?

19 A. Again, I'm with the uniform patrol division. My
20 general responsibility is calls for service, whether that be
21 in progress or something that has already occurred. I'm
22 referred to as a first responder for calls for police
23 assistance. I'm sent out to ---

24 Q. And are you always in uniform?

25 A. Yes.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 Q. Okay. And do you drive a marked car?

2 A. Yes Ma'am, I do.

3 Q. So just so I'm clear and the Court is clear, your
4 general responsibilities are to go to wherever you're
5 dispatched, ---

6 A. Yes, that's correct.

7 Q. --- no matter what kind of call it is?

8 A. Yes.

9 Q. So if somebody calls 911, you're the guy that gets
10 dispatched first on the scene?

11 A. Yes, that's correct.

12 Q. Now, when you get to the scene, what kind of evidence
13 are you normally trying to collect?

14 A. I'm try- -- I'm looking for any type of physical
15 evidence that may be at that scene. Obviously the type of
16 call that it is will determine what that is.

17 Q. Okay.

18 A. And I'm looking for anything that is left behind if
19 I've got a victim or a witness that can identify that it's
20 not supposed to be there, or if I'm the only person on the
21 scene, something that would seem to be out of place and it
22 may be pertinent to whatever I'm investigating.

23 Q. And were you working on November 12th of last year?

24 A. Yes Ma'am.

25 Q. And what were your general responsibilities that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 night?

2 A. Again, I was on routine patrol. I was working the
3 Longs section of Horry County that night.

4 Q. Okay. And did you have an occasion to respond to
5 Foxtail Drive in Longs, Horry County?

6 A. I did.

7 Q. Okay. And tell the jury about that.

8 A. Again, the night of November 12th, 2012, Horry County
9 Dispatch received a call for service regarding a burglary
10 that had just occurred, and it was in my assigned area and I
11 was dispatched to investigate that scene.

12 Q. And what did you do upon arrival at Foxtail Drive?

13 A. When I initially arrived on scene, I encountered Mr.
14 -- one of the victims, Mr. Elias Michaels. He was in the
15 driveway section of his home. I spoke with him briefly to
16 get an updated account of what had just occurred at his
17 residence, to include any information he could give me to
18 what I might be looking for.

19 Based on the information he gave, I instructed him to go
20 inside his home while myself and -- we had additional
21 officers in the area. We searched the perimeter area just
22 around the home, as well as the yard area behind his
23 residence, the neighbor's residence, and we also had units
24 patrolling the neighboring roads to assure that the people
25 who had just been at his home were no longer on scene so that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 the investigation could be completed safely.

2 Q. Okay. And after talking to Mr. Michaels, did you try
3 to collect any evidence from the scene?

4 A. I did.

5 Q. Okay. And tell the jury what you saw and what
6 evidence you collected.

7 A. When I was searching the perimeter of the home, in the
8 rear of his home, the back section of his home, there is a
9 sun porch. When I went around the home, that sun porch, the
10 outside of it has a black mesh screen. I did observe a large
11 section of that screen to have been cut.

12 Just to the side of that screen porch was a window.
13 That window also had a black mesh screen over it. The screen
14 on that window was also cut, and inside of that window was a
15 broken window pane. Again, this was during the nighttime.

16 And when I shined my flashlight on that window I could
17 see what appeared to be a handprint next to the broken glass,
18 so I took -- using my fingerprint kit, I fingerprinted that
19 window and removed two print cards that had what appeared to
20 be partial print information on it.

21 Q. Okay.

22 A. The sun porch area was also printed, but no prints
23 were lifted from that area at the time.

24 Q. Now, so it was so dark back in the back, you had to
25 have a flashlight to see back there, is that right?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. Yes.

2 Q. All right. I'm showing you what's been put into
3 evidence as State's evidence Number 1. Now, how do you
4 recognize that picture?

5 A. This is the photograph that I took with my department-
6 issued camera of the -- this is the window next to the sun
7 porch that I observed when I was searching the home, and this
8 is the cut screen that I was referring to, and this is the
9 broken glass that I was referring to, and just next to this
10 broken glass was where I observed the -- what appeared to be
11 a handprint.

12 This was the area that I processed and just next to this
13 broken glass inside this screen is where I removed the
14 evidence I submitted.

15 Q. Okay. Now, is this a picture of how it appeared that
16 night?

17 A. Yes.

18 Q. And you were out there. Could you have touched that
19 panel of glass without cutting the screen?

20 A. No, you could not.

21 Q. And that -- is the panel here that was broken, is that
22 what we're looking at?

23 A. Yes.

24 Q. And if you don't mind, show where you lifted the print
25 from.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. Again, just where this cut comes across here and this
2 section of broken glass, just off to this side of it right
3 here next to the break. Over here was the area where the
4 prints were lifted.

5 Q. Thank you, Officer Strickland. Now, if you don't mind
6 telling the jury what kind of training you've got in lifting
7 fingerprints.

8 A. My initial training occurred at the Criminal Justice
9 Academy, and then it was also something that was -- I had
10 some situations in my field training where the officer who
11 trained me, we went into some controlled scenarios where he
12 had -- he had set up a scene for me where he knew
13 fingerprints would be and I was sent to that area to practice
14 lifting those prints.

15 In addition to my original field training, each year
16 within the department we have our in-service training where
17 we show proficiency in certain areas so that we can keep our
18 accreditation up within the Criminal Justice Academy.

19 Q. Okay. Did you try to lift any prints from any other
20 area?

21 A. I did. Inside the -- again, the screen porch had a
22 large cut in it, and when I spoke with Mr. Michaels -- also
23 coming off of that porch was an open screen door, and when I
24 spoke with him, he stated that door was not supposed be open.
25 I was led to believe that someone had been inside of that

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 area, so that, you know, the door being pushed open, I
2 processed the inside of that door in hopes to gain additional
3 evidence, but none was able to be found at that time.

4 Q. Okay.

5 MS. LIVESAY: Can you mark this for me, Dixie. I will
6 open it and get the cards out.

7 (FINGERPRINT CARDS MARKED AS STATE'S EXHIBIT NUMBER 10
8 AND STATE'S EXHIBIT NUMBER 11 FOR IDENTIFICATION ONLY.)

9 Q. Officer Strickland, I'm showing you what's been marked
10 State's Exhibit 10 and 11. Do you recognize them?

11 A. Yes Ma'am, I do.

12 Q. And how do you recognize them?

13 A. These are the print cards I collected from the
14 burglary incident at 926 Foxtail Drive.

15 Q. And is that your writing on those cards?

16 A. Yes Ma'am, it is.

17 MS. LIVESAY: Your Honor, at this time the State wishes
18 to place the cards that are marked 10 and 11 into evidence.

19 THE COURT: I will permit it.

20 (FINGERPRINT CARDS ADMITTED INTO EVIDENCE AS STATE'S
21 EXHIBIT NUMBER 10 AND STATE'S EXHIBIT NUMBER 11.)

22 MS. LIVESAY: Can I have him step down, Your Honor?

23 THE COURT: You may.

24 MS. LIVESAY: Thank you.

25 Q. Would you step down, Officer Strickland.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 **THE COURT:** Mr. Galtore, you may join.

2 **MR. GALTORE:** Yes, Your Honor.

3 Q. First, I'm going to show the jury what's been marked
4 as State's 10. Am I holding this correctly or should it be
5 this way?

6 A. (Witness indicating.)

7 Q. This way, okay. I'm showing what's been marked as
8 State's evidence Number 10. Is that your writing?

9 A. Yes Ma'am.

10 Q. And is that your diagram?

11 A. Yes Ma'am.

12 Q. And what is that a diagram of?

13 A. That is a diagram of the area where that information
14 was taken from. This square here is a diagram that I drew to
15 represent the window that I observed to have the cut screen
16 and the broken glass. It was the window just to the side of
17 the screen porch.

18 The little star that's inside of the square is a
19 representation of where the actual information that's put on
20 the other side of the card is to show where it came from,
21 from that window, and again, this square is my drawing of the
22 window, to represent the window that the prints were lifted
23 from that night.

24 Q. Okay. And did you put the address on the back of the
25 card?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. I did. This other information up here includes the
2 address of 926 Foxtail Drive, Longs, South Carolina, and it
3 also references Case Number 12112427.

4 Q. Okay. And is that how you identify that card?

5 A. Yes Ma'am.

6 Q. Okay. And if you don't mind, I'm going to flip it
7 over..

8 A. Okay.

9 Q. Do you recognize what's on this side of the card?

10 A. Yes Ma'am, I do.

11 Q. If you don't mind, tell the jury what that is.

12 A. This is, again, a portion of the handprint that I
13 observed and tried to lift from that window. This is the
14 bottom portion of -- it appeared to possibly be a portion of
15 a palm, a palm print.

16 Q. Okay. And I'm going to show you what's been marked as
17 State's Exhibit 11. Do you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. This is the additional print card that I lifted.

21 Again, this diagram is to represent the window where the
22 processing was taking place. Again, this little asterisk
23 here on the window represents that area where the information
24 that's on the other side of this card was lifted from, and
25 this information up at the top here, that's my writing. That

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 includes the address of 926 Foxtail Drive in Longs, and the
2 Case Number 12112427, which was the burglary incident I was
3 investigating that night.

4 Q. Is that how you identify this card?

5 A. Yes.

6 Q. If you don't mind, tell the jury what's on the other
7 side of the card?

8 A. This is the top part of the print, the handprint that
9 I observed, is the top portion that appeared to be -- had the
10 fingerprint and had the most evidence on it. That was the
11 top portion that I processed.

12 Q. Thank you, Mr. Strickland. Have a seat.

13 Now, if you don't mind, tell the jury the process of
14 lifting a print.

15 A. Once you have an area that you're going to process for
16 prints, if you see something that could possibly be some form
17 of ridge detail that you want to lift, we have a kit that
18 includes a black powder substance.

19 There's a brush to use to apply that powder over the
20 print, and then we have a tape that applies over that, and
21 then the powder itself adheres to the oil and things left
22 behind on the skin and then you're able to lift those prints
23 using that tape, and then it's applied to something like the
24 white card that she showed to preserve it until it can be
25 identified.

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 Q. Okay. Now, can you alter that print on the other side
2 of the tape?

3 A. No, you cannot.

4 Q. Okay. So you -- you lift the print, and then the part
5 where the print is under the powder, you place that part on
6 the card?

7 A. Yes Ma'am. It's placed -- that part meets the paper
8 and is protected by that tape on the top side. The
9 information is contained between the card and then the bottom
10 side of the tape, and it cannot be altered from the top side
11 at that point.

12 Q. Okay. And where did you put that print? I mean --
13 I'm sorry. Did you place that print into evidence after you
14 removed it from the house?

15 A. I did. Once it was removed from the window, it was
16 placed into a department-issued evidence bag and it was
17 sealed, and it was placed in my patrol vehicle. And later in
18 that tour of duty, it was transferred to Horry County
19 Evidence.

20 Q. Was it ever out of your custody or control between the
21 time it left that house and the time it got into the Horry
22 County Evidence room?

23 A. No Ma'am, it wasn't.

24 Q. Did you at any time do anything to alter or tamper
25 that print while it was in your custody or control?

KEVIN STRICKLAND - DIRECT BY LIVESAY

1 A. No Ma'am.

2 Q. Now, that night you said there were several other
3 officers on the scene, is that correct?

4 A. Yes Ma'am.

5 Q. Okay. Was there ever an arrest made that night?

6 A. No Ma'am, not that night.

7 Q. Okay. Did you have a suspect at that point?

8 A. I did. I had at least one suspect with the evidence I
9 collected from the rear window. Someone had to cut that
10 black screen and use some type of force to break that window,
11 and if that print that was lifted off could be identified,
12 that person would be a suspect in this case.

13 Q. So the person with the print would have been the
14 suspect?

15 A. Yes Ma'am.

16 Q. Okay. And -- but you didn't have a name to match that
17 at that time?

18 A. No Ma'am. The identification process doesn't take
19 place in the field.

20 Q. Okay. And is that why you collect prints?

21 A. Yes Ma'am.

22 Q. So did you make an arrest that night?

23 A. No Ma'am.

24 **MS. LIVESAY:** No further questions, Your Honor.

25 **THE COURT:** Mr. Galmore.

KEVIN STRICKLAND - CROSS BY GALMORE

1 **CROSS-EXAMINATION BY MR. GALMORE:**

2 Q. Officer Strickland, you said you were the first
3 responder on the scene, is that correct?

4 A. Yes sir.

5 Q. And how long would you say was your response time?

6 A. It was only a matter of minutes.

7 Q. And when you got out there, I think you said the first
8 thing you did was talk to Mr. Michaels, is that correct?

9 A. That's correct.

10 Q. Okay. He gave you a description?

11 A. Yes sir.

12 Q. And what description did he give you?

13 A. At the time he stated there was three males, I
14 believe. He believed that they were black males wearing dark
15 hoodies. He could see -- I believe he said he could see a
16 portion of their face, enough to tell that he believed they
17 were younger males, and he stated no one was overly tall to
18 him. That's what I recall from it.

19 Q. Okay. Did he -- did you ask for a written or a
20 recorded statement from him?

21 A. I did not ask for a written statement. I did take
22 down notes of his verbal statement to me.

23 Q. Now, you said you're the person that found the
24 fingerprints and the cuts on the screen door, is that
25 correct?

KEVIN STRICKLAND - CROSS BY GALMORE

- 1 A. Yes sir, that's correct.
- 2 Q. And let me hand you what's been marked as State's
- 3 Exhibit 2 and ask you to take a look at it.
- 4 A. Uh huh (**indicating positive**).
- 5 Q. And the way I understand it, you've got two different
- 6 places that you were focusing on, is that correct?
- 7 A. Yes sir.
- 8 Q. And one would have been the window?
- 9 A. Yes sir.
- 10 Q. And the other would have been the screened porch?
- 11 A. Yes sir.
- 12 Q. Okay. Now, the window was where you got the
- 13 fingerprint from?
- 14 A. Yes sir, it is.
- 15 Q. Okay. Is there any way to tell how long the
- 16 fingerprint was there?
- 17 A. No sir, not to my knowledge.
- 18 Q. Okay. So you can't put an age on a fingerprint?
- 19 A. I can't, no, sir.
- 20 Q. Now, you said you attempted to lift some prints from
- 21 here, from the screened area?
- 22 A. Yes. This door exiting the screen porch was found in
- 23 an open position. When I spoke with Mr. Michaels, he stated
- 24 it was not supposed to be that way. Again, I'm thinking
- 25 hopefully there may have been something when that door was

KEVIN STRICKLAND - CROSS BY GALMORE

1 opened by whomever opened it or left it open, maybe something
2 was left behind on that door, but I didn't recover anything.

3 Q. But there were no fingerprints recovered from this
4 screen door?

5 A. No sir.

6 Q. Were there any fingerprints recovered from inside the
7 screened area at all?

8 A. No sir.

9 Q. There's some patio furniture in this picture. Were
10 there any fingerprints recovered from the patio furniture?

11 A. No sir.

12 Q. Did you attempt to lift any prints from the patio
13 furniture?

14 A. No sir, not that I recall.

15 Q. Do you know why you did not attempt to lift any prints
16 from that furniture?

17 A. No sir.

18 Q. Okay. It just wasn't an area that you were told to
19 focus on?

20 A. Correct. I was generally looking for -- I had a
21 couple of areas where based on information I had at that
22 point, it appeared obvious that it was in a place that it
23 wasn't left by the victim, so I did focus on those areas.
24 With the window, it was, like I say, with the glass itself
25 and the light from my flashlight, it appeared to be a fresh

KEVIN STRICKLAND - CROSS BY GALMORE

1 handprint, so obviously that's the first place I went to
2 process. At first, the sun porch area was -- did have a cut
3 screen, so I did go into that area and attempt to gather some
4 more information.

5 Q. If someone had said this furniture has been disturbed
6 or moved, would you have tested the furniture?

7 A. It's possible, yes.

8 Q. Okay. But you did not attempt to lift any prints off
9 of any of that furniture on the porched-in area?

10 A. No sir, not to my recollection.

11 Q. Okay. Now, I understand that you all did a search of
12 the area also?

13 A. Yes sir.

14 Q. Okay. Describe that search for us.

15 A. My search was of the immediate perimeter of the home,
16 and the neighbor's yard. I think there was a pond area
17 behind the home. I walked along it. I don't recall each
18 officer's specific -- but we had officers in the surrounding
19 area of Freemont Road, Elbow Road. We had -- I know I do
20 recall some officers that made some investigative traffic
21 stops.

22 Some officers were on foot, again, on -- on foot near
23 the area of Elbow Road. I'm not sure exactly where each one
24 was, but it was -- we were looking for anything that may have
25 been dropped, you know, a change of clothes, just anything

KEVIN STRICKLAND - CROSS BY GALMORE

1 that may have looked out of place.

2 Q. Did you find anything that looked out of place around
3 the home?

4 A. I did.

5 Q. Okay. I'm not talking about the screened window.

6 A. Oh, okay.

7 Q. During the search?

8 A. No sir. Other than the damage to the home, I didn't
9 find any other -- I didn't find any other -- any other
10 evidence.

11 Q. Okay. Do you know of any of the other officers that
12 participated in the search of the -- around the home found
13 anything that appeared out of the ordinary?

14 A. No sir, not to my knowledge.

15 Q. Was a gun ever recovered?

16 A. No sir, not to my knowledge.

17 Q. Did you find like a mask or a hoodie out there in the
18 area of the search?

19 A. No sir.

20 Q. And you said you did some traffic stops also?

21 A. I did not conduct them, but there were some being
22 conducted in the area by some additional officers.

23 Q. As a result of those traffic stops in the area, was
24 anyone arrested?

25 A. No sir.

KEVIN STRICKLAND - CROSS BY GALMORE
JURY OUT/ON RECORD

1 **MR. GALMORE:** Thank you. No further questions, Officer
2 Strickland.

3 **THE COURT:** Okay, you may come down.

4 Mr. Foreman, ladies and gentlemen, let's take a short
5 morning break here, and I'll call you back very shortly.

6 We're going to be in recess for fifteen minutes.

7 **MS. LIVESAY:** Thank you, Your Honor.

8 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE**
9 **PRESENCE OF THE JURY.)**

10 **THE COURT:** All right. Let the record reflect that all
11 persons, including the Defendant, are in Court.

12 I have been advised by the bailiff that Juror Ivey
13 reports to him that he is feeling sick, got a bad cough, and
14 that cough was noticeable to me during the trial this
15 morning, feels like he cannot continue and asks to be
16 excused.

17 I find good reason and cause to excuse this juror, and
18 we have two alternates, so I'm going to have one of them --
19 Mr. Galmore select one of them from a container. Any
20 objection to that from the State?

21 **MS. LIVESAY:** No sir.

22 **THE COURT:** Any objection, Mr. Galmore?

23 **MR. GALMORE:** No sir.

24 **THE COURT:** I've prepared two slips of paper here with
25 the alternates' names on them. Mr. Galmore, come forward and

JURY OUT/ON RECORD
JURY IN/JURY OUT/ON RECORD

1 select one of them for me, please. Thank you. Read it for
2 the record.

3 **THE LAW CLERK:** Cody Roach.

4 **THE COURT:** Cody Roach will be the twelfth juror,
5 Number 302. The juror who is sick is Number 184, James Ivey.
6 (JUROR JAMES IVEY, NUMBER 184, IS EXCUSED BY THE COURT, AND
7 JUROR CODY ROACH, NUMBER 302, IS SEATED AS THE TWELFTH
8 JUROR.)

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JURY.)

11 **THE COURT:** All right.

12 **MS. LIVESAY:** Thank you, Your Honor.

13 At this time, the State is going to call Donna Bell to
14 the stand.

15 **DONNA BELL,** being first duly sworn, testifies as
16 follows:

17 **MR. GALMORE:** Your Honor, I have a matter of law I'd
18 like to take up with the Court.

19 **THE COURT:** All right. I'll have to ask the jury to be
20 excused just for a moment.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 **MS. LIVESAY:** Your Honor, I think Mr. Galmore has an
24 issue.

25 **MR. GALMORE:** Yes sir. This witness is not on the

JURY OUT/ON RECORD

1 witness list. The Solicitor gave the Court, gave me, gave
2 everybody a copy of the witness list. The witness list was
3 read for the potential jurors to see if they identified or
4 knew any of these people, and this person is not on the list.

5 **THE COURT:** Who is this witness?

6 **MS. LIVESAY:** Donna Bell, Your Honor, She is the
7 evidence custodian. All she is going to say is I took it
8 into Horry County P.D.

9 **THE COURT:** You would have surmised that the evidence
10 -- you couldn't possibly have any objection to the evidence
11 custodian because he wasn't on the list.

12 **MR. GALMORE:** No sir, I do have an objection, but I
13 understand the Court's ruling.

14 **THE COURT:** I'm going to overrule it. I don't think
15 that's a sufficient objection.

16 **MR. GALMORE:** Yes sir.

17 **THE COURT:** Bring the jury in -- particularly since
18 it's simply ---

19 **MS. LIVESAY:** Thank you, Your Honor.

20 **THE COURT:** If this was a serious fact witness, you
21 would have an issue.

22 **MR. GALMORE:** Well, the issue is the fingerprint, which
23 is the evidence that she's testifying about.

24 **THE COURT:** No. She's not a fingerprint -- is she?
25 She's the evidence custodian?

JURY OUT/ON RECORD/JURY IN
DONNA BELL - DIRECT BY LIVESAY

1 **MS. LIVESAY:** Right, Your Honor. She just signs it in
2 to the evidence.

3 **THE COURT:** She's not going to be testifying about this
4 fingerprint?

5 **MS. LIVESAY:** All she's going to say is I took it into
6 evidence. I didn't tamper with it.

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** Right. If this was a fact witness, I would
9 deal a lot differently with it.

10 Bring them in.

11 You might just out of an abundance of precaution next
12 time put her on the list.

13 **MS. LIVESAY:** Yes sir.

14 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** The jury is present. Proceed.

17 **MS. LIVESAY:** Thank you, Your Honor.

18 **DIRECT-EXAMINATION BY MS. LIVESAY:**

19 Q. Tell the jury what your name is.

20 A. My name is Donna Bell, B-E-L-L.

21 Q. Okay. And where are you currently employed?

22 A. I work at Horry County Police Department in the
23 Evidence Department.

24 Q. And what are your responsibilities in that department?

25 A. I am -- log in -- I take evidence out of lockers and

DONNA BELL - DIRECT BY LIVESAY

1 log them in the system and then transfer them, put them up in
2 a secure place.

3 Q. And were you working for the Horry County Police
4 Department in the Evidence Department in November of 2012?

5 A. Yes Ma'am.

6 Q. And now I'm showing you what's put in as State's
7 evidence 10 and 11; it's two fingerprint cards.

8 A. Yes.

9 Q. Using the identification number on those, did you take
10 those into evidence?

11 A. Yes Ma'am.

12 Q. And what date did you take them in?

13 A. November 13th, 2012.

14 Q. Okay. And how are you able to identify those are the
15 cards you took in?

16 A. By the -- by our chain of custody, the case number,
17 and the items that he has on the chain of custody.

18 Q. And while they were in your custody, did you ever
19 tamper with them in any form or fashion?

20 A. No Ma'am.

21 Q. Okay. Were they ever tampered with while they were in
22 your custody?

23 A. No Ma'am.

24 Q. Okay. And who did you receive the cards from?

25 A. I received them from Officer Kevin Strickland.

DONNA BELL - CROSS BY GALMORE

1 **MS. LIVESAY:** No further questions, Your Honor.

2 **THE COURT:** Yes sir, Mr. Galmore.

3 **CROSS-EXAMINATION BY MR. GALMORE:**

4 Q. Ms. Bell, I understand it's your duty to safeguard any
5 items that are taken in as evidence?

6 A. Yes sir.

7 Q. In this case, other than the fingerprints, was there
8 any other property that was taken into evidence?

9 A. No sir, not -- not that day. To my knowledge, this
10 was it.

11 Q. Okay. And in your duties as the custodian of
12 evidence, did you receive a gun as part of this case?

13 A. No sir, just what's on this chain of custody is what's
14 here.

15 Q. Did you receive a Halloween mask as part of this case?

16 A. No sir.

17 Q. You don't have any other evidence except that
18 fingerprint -- those fingerprints, is that correct?

19 A. To my knowledge, this is it.

20 **MR. GALMORE:** All right, thank you.

21 No further questions.

22 **THE COURT:** All right. May this witness come down and
23 be excused?

24 **MS. LIVESAY:** Yes sir, Your Honor, please.

25 **THE COURT:** You may come down and are excused from your

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 subpoena. Thank you.

2 Your next witness.

3 **MS. LIVESAY:** Your Honor, our next witness is going to
4 be Seraphim Haftoglou from S.L.E.D. I'm going to let him
5 pronounce his name for the jury, Your Honor.

6 **SERAPHIM HAFTOGLOU**, being first duly sworn,
7 testifies as follows:

8 **DIRECT-EXAMINATION BY MS. LIVESAY:**

9 A. My name is Seraphim Esoch Haftoglou. My last name is
10 spelled H-A-F-T-O-G-L-O-U.

11 Q. And where are you currently employed?

12 A. South Carolina Law Enforcement Division, S.L.E.D.

13 Q. And what are your responsibilities at S.L.E.D.?

14 A. I am the AFIS fingerprint supervisor there. I am in
15 charge of anything that deals with our AFIS system, ten print
16 particularly.

17 Q. Okay. And how long have you been with S.L.E.D.?

18 A. This June will be six years.

19 Q. And if you don't mind, tell the jury exactly what AFIS
20 is.

21 A. AFIS is our automated fingerprint identification
22 system. It holds all our state criminal fingerprint records,
23 so anyone who gets fingerprinted, we enter that fingerprint
24 card into our system to hold it for the whole state to
25 comprise a criminal record.

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 Q. What does AFIS do?

2 A. AFIS, they compare the fingerprints to each other.
3 It's a mathematical system that compares prints by minutia
4 and other identifiers inside the fingerprints. They process
5 it. We run it through several systems. Also we send it to
6 the F.B.I. and get responses back from them.

7 Q. Okay. And will you briefly describe the process of
8 how fingerprints are taken and stored at S.L.E.D. for the
9 AFIS system?

10 A. Yes. The fingerprints are actually done at the
11 detention centers or jails. The booking officer does the
12 fingerprinting there. There's two ways they get them to us.
13 One is through a live scan machine where it's done
14 electronically. The booking officer fingerprints them there
15 and they just hit a submit button once everything is done.

16 It comes directly through our system. Sometimes we
17 verify the fingerprint. Sometimes it automatically shows a
18 hit on an individual and stores into it. Each fingerprint
19 card has a transaction number to identify it to that
20 particular card, to that particular person, on that date of
21 arrest or that day of submission.

22 And they also could do -- mail the fingerprint cards to
23 us where we will, in turn, have to scan that card in
24 manually, enter the demographics manually, and then scan that
25 card into our system and -- right into our AFIS system.

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 Q. And does S.L.E.D. maintain the fingerprint records for
2 every single person who is arrested in South Carolina?

3 A. Yes.

4 Q. Okay. And are the fingerprints taken at or near the
5 time of arrest?

6 A. Yes.

7 Q. And are these fingerprint cards -- are fingerprints
8 maintained by S.L.E.D. in the ordinary course of business?

9 A. Yes.

10 Q. Let me ask you this. When a print card arrives at
11 S.L.E.D., is it maintained in the condition that it ---

12 A. Yes. We don't alter fingerprint cards.

13 Q. And when it's maintained as a part of the records, is
14 it ever tampered with or altered?

15 A. No.

16 Q. Okay. And what type of identifying information is
17 stored in relation to the print card?

18 A. We store -- there's mandatory demographics, such as
19 the individual's full name, date of birth, also the arrest
20 charges, date of offense, warrant numbers are all part of the
21 stuff we -- mandatory stuff. We also get addresses and stuff
22 that are not mandatory, but ...

23 Q. Okay. And in your capacity at S.L.E.D., are you the
24 custodian of the fingerprint records?

25 A. Yes, I am.

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY

1 Q. Okay. And while they're in your custody and control,
2 are they ever tampered with, altered, or damaged in any form
3 or fashion?

4 A. No.

5 Q. Okay. Now, just so I understand briefly, when you've
6 got a fingerprint card, it is assigned a S.L.E.D.
7 identification number, is that correct?

8 A. Yes. Once the card goes through our system, it's
9 created a S.L.E.D. identification, which we call SID.

10 Q. Okay. And if a department, like Horry County Police
11 Department, they can run a print and out of AFIS, they will
12 get prints that match, is that correct, or a possible match?

13 A. Yeah. The latent examiner will run it and it will get
14 possible hits. The latent examiner confirms or denies.

15 Q. And when they're getting those fingerprints out of
16 AFIS, which is through S.L.E.D., ---

17 A. Uh huh (**indicating positive**).

18 Q. --- they're not looking at names? They're seeing
19 whatever that South Carolina identification number is?

20 A. Correct. They're looking at a South Carolina
21 identification number or possibly a transaction number which
22 is particular to a fingerprint card.

23 Q. Okay. And it's not until they find a match that they
24 make the request in order to get the names that match that
25 I.D. card?

SERAPHIM HAFTOGLOU - DIRECT BY LIVESAY :
CROSS BY GALMORE

1 A. Correct.

2 Q. So if my prints were in AFIS and Horry County
3 requested possible matches, mine comes in to Horry County, my
4 name would not be on that print?

5 A. Correct.

6 Q. Okay. When they made a match to that print from
7 S.L.E.D., it still would not have my name on it, is that
8 correct?

9 A. Correct.

10 Q. Okay. They would actually have to request the match,
11 that number to the name, from AFIS, from you at S.L.E.D.?

12 A. Yeah. They would either -- each latent station has a
13 what we call database maintenance. It is where they could
14 enter in that number and pull that card up itself once they
15 made a hit, and then they have the access from there to get
16 the information of the individual, or they could also run a
17 RAP sheet from that SID number.

18 Q. Okay. And is that to protect the individual's
19 fingerprints, their identity at S.L.E.D.?

20 A. Yes, so it compromises -- once they make an
21 identification, they're not leaning one way or the other.

22 MS. LIVESAY: No further questions, Your Honor.

23 THE COURT: Mr. Galmore.

24 CROSS-EXAMINATION BY MR. GALMORE:

25 Q. Agent Haftoglou, let me show you what has been marked

SERAPHIM HAFTOGLOU - CROSS BY GALMORE

1 as State's Exhibit 10 and State's Exhibit 11. These are the
2 fingerprints that were lifted from the house. You didn't
3 lift those prints, is that correct?

4 A. No sir.

5 Q. Okay. Now, were you the person that ran the prints
6 and found a match?

7 A. No sir.

8 Q. Okay. You're not the person that said these prints
9 are a match to Dayton Frinks?

10 A. I'm not that individual, no.

11 Q. Who would that person have been?

12 A. That would have been the latent examiner at Horry
13 County, ---

14 Q. Okay.

15 A. --- whoever entered in these latent prints.

16 Q. Do you know who that person is?

17 A. No.

18 Q. Do you know how they came to say this was a match to
19 Dayton Frinks?

20 A. No. I wasn't there physically, so I don't know.

21 Q. So you don't know if this is a match to Dayton Frinks?

22 A. No. I'm not here to testify it was a match against
23 Dayton Frinks.

24 MR. GALMORE: Okay, thank you.

25 No further questions.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 **THE COURT:** Any further questions, Solicitor?

2 **MS. LIVESAY:** No sir, Your Honor.

3 **THE COURT:** You may come down.

4 May this witness be excused?

5 **MS. LIVESAY:** Yes sir, please.

6 **THE COURT:** All right. Your next witness.

7 **JOHN ROBERT CAULDER, II,** being first duly sworn,
8 testifies as follows:

9 **DIRECT-EXAMINATION BY MS. LIVESAY:**

10 Q. And, Mr. Caulder, where are you currently employed?

11 A. At the Horry County Police Department.

12 Q. And what are your responsibilities?

13 A. I am the senior investigator with the Crime Scene
14 Unit, so we handle crime scenes.

15 Q. So your proper title is Investigator Caulder?

16 A. Yes Ma'am.

17 Q. Okay. And how long have you been with the Horry
18 County P.D.?

19 A. Fifteen years.

20 Q. Okay. And what kind of training have you undergone
21 while at the police department?

22 A. In my current duties as a crime scene investigator, I
23 have been through training sponsored by the South Carolina
24 Law Enforcement Division, or S.L.E.D. I went through their
25 three-week forensic science training course.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 I've also been through the latent examiner's course,
2 basic course, at S.L.E.D., have been certified through
3 S.L.E.D. with the Automated Fingerprint Identification
4 System. I have received in excess of a hundred and eighty
5 hours through the Federal Bureau of Investigation's
6 photograph and latent print examiner's course.

7 I also have received in excess of a hundred and eighty
8 hours of latent print and ten print training through National
9 Forensic Science Technology Center in Florida.

10 Q. Okay. And how long exactly have you been an
11 investigator with Crime Scene ---

12 A. Since 2004.

13 Q. Okay. And if you don't mind, tell the jury what kind
14 of specialized training you received regarding the
15 examination of fingerprints.

16 A. The specialized training would -- would come down to
17 my initial training, which was the basic fingerprint
18 recognition and latent comparison course, which is offered by
19 the State, or S.L.E.D., and that's a basic forty-hour class.

20 Also, after completion, successful completion, of that,
21 we have to go through the AFIS, which is the Automated
22 Fingerprint Identification System certification, which is
23 given to us by S.L.E.D.

24 Beyond that is the certification or training through the
25 Federal Bureau of Investigation, which was in excess of a

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 hundred and eighty hours. It involves the photography and
2 the recognition of a latent print or fingerprint pattern
3 types, and then the training in Florida through the National
4 Forensic Science Technology Center where in excess of a
5 hundred and eighty hours, which is a hands-on. We go through
6 a compilation of the recognition, typing of fingerprints, and
7 latent prints.

8 Q. And if you don't mind, tell the jury approximately how
9 many fingerprints and palm prints you examined.

10 A. In the past seven years, in excess of a hundred.

11 Q. And what type of technical equipment is available for
12 your use in your type of work?

13 A. The technical equipment would be the AFIS system,
14 which is the Automated Fingerprint Identification System, and
15 that is just an investigative tool that we use in latent
16 print work.

17 Q. Okay. And have you had an occasion to identify people
18 by comparing latent fingerprints or palm prints with their
19 own ink fingerprints and palm prints?

20 A. Yes Ma'am.

21 Q. And about how many times?

22 A. In excess of a hundred.

23 Q. Okay. And have you ever testified in Court as an
24 expert regarding fingerprint and palm print examination?

25 A. Yes Ma'am, I have.

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 **MS. LIVESAY:** Your Honor, at this time the State wishes
2 to ask Investigator Caulder to be recognized as an expert in
3 the examination of fingerprints and palm prints.

4 **THE COURT:** Do you care to examine on that issue only?

5 **MR. GALMORE:** No sir, Your Honor.

6 **THE COURT:** Mr. Foreman and ladies and gentlemen, under
7 our law an individual who by training, experience, and
8 education on a certain field may be qualified as an expert.
9 Based on the testimony heard before me and the fact that he's
10 testified in our Courts and mine on many occasions, I qualify
11 him as an expert in fingerprint identification.

12 Now, with regard to an expert's testimony, you may, of
13 course, consider his education and training, and you may
14 accept his testimony or reject it in whole or in part because
15 you are the finders of the facts, but I conclude this witness
16 is an expert in fingerprint identification.

17 You may proceed.

18 **MS. LIVESAY:** Thank you, Your Honor.

19 **Q.** Investigator Caulder, at this time tell the jury what
20 an inked print is.

21 **A.** An inked impression or a friction ridge exemplar is
22 basically where an examiner would take your hand and they'll
23 either apply printer's ink, or, of course, there's several
24 other vast majority of inks that could be applied to your --
25 to the skin, and then those are rolled out onto either a ten

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 print card, a palm print card.

2 What that does, that allows the latent examiner to be
3 able to look at every aspect of the friction ridge on the
4 volar pad, which is essentially from the wrist to the tip of
5 the finger. It shows all the friction ridge, which is the
6 actual fingerprint on the hand.

7 Q. Now, when you say inked print, if I'm arrested and I
8 go in and they take my fingerprints, is that an inked print
9 when they roll it in the ink and I put it down on the paper?

10 A. That is correct.

11 Q. If you don't mind, tell the jury what a latent print
12 is.

13 A. A latent print is any print that cannot be seen
14 without some type of enhancement. Everyday we touch things,
15 everyday. Generally you do not see your fingerprint left
16 behind, so a latent print would be that unseen print that
17 needs some type of technique to enhance it, black powders,
18 chemicals, to help enhance that print that cannot be seen.

19 Q. Okay. Now, if there is a print on a window and they
20 used this powder you were just talking about and they rolled
21 that print off, is that a latent print?

22 A. That is a latent print.

23 Q. Okay. If you don't mind, tell the jury what a patent
24 print is.

25 A. A patent print is any type of known print. That could

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1 be it from any type of substrate. Substrate is the actual
2 from which it was lifted that would consist of -- there's no
3 enhancement, which could be a fingerprint in blood, a
4 fingerprint in oil, something where there would be no
5 enhancement technique.

6 Q. Okay. And if you don't mind, tell the jury how it's
7 possible for someone to leave a fingerprint on a surface.

8 A. That is a very tricky question. We touch surfaces
9 every day. Depending on like now, I'm anxious and kind of
10 nervous up here testifying, so that could play into part as
11 far as leaving behind prints.

12 Prints are usually comprised of ninety-nine percent of
13 water. The rest are the different oils within our skin or
14 things we may come in contact with, so the more we perspire
15 or sweat allows us to leave behind.

16 Also, you have to take into consideration the type of
17 surface. Not all surfaces are conducive to giving -- a print
18 able to be applied. The smoother the surface, the greater
19 the chances, so a lot has to be taken into consideration.

20 Q. Okay. And what kind of surfaces are conducive for
21 finding a print on it?

22 A. The most of the times, the years that I have been
23 dealing with latent prints and fingerprints, is a smooth
24 surface or surfaces. Like I say, every type of surface can
25 have a fingerprint left behind, but the more conducive would

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1 be like a glass surface or a wood surface that is flat.

2 Q. If you don't mind, tell the jury how fingerprints are
3 compared.

4 A. Comparison of a fingerprint kind of starts out where
5 the -- if a latent print is received, and in this case a
6 latent print was received by me. It's a four-fold method or
7 a three-fold and a verification method. It's called ACE-V,
8 which is analysis, comparison, and evaluation, and then the
9 verification.

10 Once the print is received, a latent print is received,
11 you first have to determine if there enough ridge
12 characteristics or enough ridge flow to make a identification
13 or a comparison. In this case, there was.

14 Once you have the print, you determine there is ridge
15 flow, some ridge characteristics, possibly a pattern type
16 within that latent print. You would then determine if you
17 have a suspect, if you have their rolled or inked
18 impressions. You would take the two and lay them side by
19 side. You would look to see if the ridge flow is the same,
20 if the pattern type, if you have a pattern type, is the same,
21 and if there is no dissimilarities.

22 Dissimilarities means in latent print or latent
23 examiner's world, if there are two dissimilarities in a
24 fingerprint, it's not a match unless that dissimilarity can
25 be explained. You have a lot of distortion sometimes that

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1 will play a part when you touch things because of the
2 pressure applied, the surface. There again, all this comes
3 into play. Once that -- once they are compared and there's
4 no dissimilarities, it's usually either an exclusion or
5 identification.

6 Q. How many indicators do you need to say this is a
7 match, I mean similarities do you need to say this print and
8 this print for there to be a match?

9 A. There's no set number. There's no recognized number
10 of similarities. It could be -- it could be the ridge flow
11 type. It could be the pattern type. It could be the ridge
12 characteristics that's inside of the print itself that could
13 be -- that is the determining factor, but once any type of
14 dissimilarity is found, that usually excludes the known from
15 the unknown.

16 Q. Okay. And can any two people have the same
17 fingerprint?

18 A. In my years of experience and study on the subject,
19 there has never been two persons that have had the same exact
20 characteristics within their prints.

21 Q. Okay. Have you ever seen two different people have
22 the same fingerprints?

23 A. No Ma'am.

24 Q. Have you ever heard in any seminar or any education,
25 training you've been to that that's a possibility?

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 A. No Ma'am.

2 Q. Okay. I'm going to show you what's been put into
3 evidence as State's evidence Number 10 and State's evidence
4 Number 11, which were the two print cards from Kevin
5 Strickland. Where did you receive these cards from in order
6 to examine them?

7 A. The evidence custodians at the police department.

8 Q. Okay. And when you got these from the evidence
9 custodian, what did you do as far as your investigation as a
10 crime scene investigator?

11 A. The first thing is like I've explained. Once a print
12 card is turned in, once the actual evidence has been turned
13 in for me to look at, I have to verify. Sometimes officers
14 on the road or other officers or detectives within the
15 department turn in what they believe is fingerprints.

16 Well, as we all know, everybody just from television
17 assumes that a fingerprint is left behind everywhere, well,
18 which is not actually true, and even though there may be
19 impressions does not mean that it necessitates that there is
20 a fingerprint enough with ridge flow, ridge characteristics
21 for me to determine.

22 So once I view the print, you'll notice on the -- if you
23 could see it, there are little black marks, Sharpie marks,
24 over the top, that means that there is enough there for me to
25 be able to look at if I had something to compare to, to make

JOHN ROBERT CAULDER, II - DIRECT BY LIVESAY

1 either an exclusion or an identification.

2 So once that's determined, if I have no one to compare
3 it to, in some instances cases will be turned in where there
4 is a suspect with a known -- known impression or inked
5 impressions are turned in to me. If that doesn't exist,
6 which did not exist in this case, I'll go to our Automated
7 Fingerprint Identification System for help, which is AFIS.

8 Q. Okay. So just so I'm clear, first of all, you saw
9 that is a print that you could compare accurately to another
10 print?

11 A. That's correct.

12 Q. But prints that are turned in, there's not always
13 enough ridge detail and enough of the print to make a
14 comparison, is that correct?

15 A. That is correct.

16 Q. Okay. And you didn't have a known print to compare
17 this to?

18 A. No Ma'am, not at that time.

19 Q. Okay. So at that point you put it through AFIS?

20 A. Yes Ma'am.

21 Q. Tell the jury what that means.

22 A. AFIS is the Automated Fingerprint Identification
23 System. There is a two-fold system, meaning that there is a
24 State level, which is the actual AFIS, which searches all
25 fingerprints that are in S.L.E.D.'s database. S.L.E.D. is

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1 the State Law Enforcement Division.

2 There is also what they call the I-AFIS, which is the
3 Federal Bureau League of the fingerprint system. There is a
4 camera that is set up on this system. These print cards, if
5 there is enough there, I'll photograph one of the prints, put
6 it into the system.

7 When I say put it into the system, I go in and I
8 personally mark ridge characteristics and if I know the
9 pattern type into this system. All this information I add
10 into the system myself. Then I send it off for a search.
11 Well, it searches that S.L.E.D. database, searches anything
12 close to.

13 Now, it works off of an algorithm. I'm not a math
14 expert, so, I mean, it searches all those different spots.
15 If you and I see the fingerprint, it doesn't search it that
16 way. It just searches what I mark into the system, and it
17 uses variations of mathematical algorithms that I'm not too
18 familiar with, but it sends back certain amount of responses.

19 In this case, it sent back fifteen responses, means that
20 that system said that there are fifteen closely matches or
21 fingerprints that closely match what you have marked in the
22 system, the ridge characteristics.

23 In this case, or in every case, I have to go through all
24 responses and either include or exclude the prints.

25 Sometimes in some cases, it could send back fifteen or thirty

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1 responses and there not be any one that matches, and I have
2 to physically do that myself. The machine does not do that,
3 unlike the television shows show you. That way, the examiner
4 has to physically view both the latent and the known.

5 Q. So there are times you get responses from AFIS and
6 there's no match?

7 A. That is correct.

8 Q. Now, when you get the AFIS possibility prints, would
9 you say that was correct, to use possible prints that match
10 the one you put in there, that's what you're getting back
11 from AFIS?

12 A. It would -- is investigative probabilities, yes.

13 Q. Okay. And when you receive them, do they have a name
14 or an identification number?

15 A. They only have what they -- they are identifying
16 numbers. It doesn't have any names.

17 Q. Okay. So when you are looking through these prints
18 and you are looking for a match, you have no idea who these
19 people are that the prints belong to?

20 A. No Ma'am.

21 Q. You just have a South Carolina identification number?

22 A. That is correct.

23 Q. Okay. In this case, were you able to match the print
24 that you have on card State's evidence 10 and 11, were you
25 able to find a match in AFIS?

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1 A. On card number 10, which I have identified with .1, I
2 was able to identify this through the automated fingerprint
3 system to a -- to a suspect.

4 Q. And could you tell the Court and the jury what number
5 that print belonged to that it matched up to?

6 A. It matched up to the - actually the first respondent.
7 It's listed as respondents. Those South Carolina I.D.
8 numbers are respondent one through fifteen, one through
9 thirty. This happened to be the first one. It doesn't
10 exclude the rest of them because in this system because if a
11 person is arrested multiple times, even though they have the
12 same identification number, which is S.C.O, whatever, well,
13 it could list it as ninety-nine.

14 Sometimes it has it in the system listed under the S.C.
15 number as the year they were arrested, so even though this
16 was the first respondent, you still have to make sure that --
17 or ensure that his other prints aren't listed on there, too.

18 Q. Okay. And did you compare them to the other fourteen
19 prints that you received from AFIS?

20 A. Yes.

21 Q. And were any of those matches?

22 A. No Ma'am.

23 Q. Okay. And tell the Court and the jury what the South
24 Carolina number was that belonged to the print that came up
25 as a match?

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1 A. The South Carolina number that came back was South
2 Carolina 02011535.

3 Q. And what did you do once you got that number and that
4 match?

5 A. Well, there's several processes that happen then.
6 Once I have the number and I have physically identified the
7 unknown to the known, I go in and I run that number also
8 through the AFIS system. Sometimes you can put that number
9 into the system and it will give you back the suspect's
10 information, or the arrestee's information in this case, and
11 it brings back their name, date of birth, date of arrest,
12 current address.

13 Sometimes it may show a photograph. It will show -- it
14 will have their ten print card also, and ten prints are ten
15 fingers. It will have that in the system and sometimes may
16 have their palm prints in the system. In this -- on this
17 occasion, it did have -- the S.C. number came back to a name,
18 ten print card, but that's not -- not let me confuse it. It
19 doesn't always happen that way, but once I've identified the
20 print through the AFIS system, it has to be then verified.

21 I pull the ten print off of the -- what the AFIS system
22 gives me back. Then I physically, manually take the ten
23 print card, which is the rolled ten impressions that's in the
24 system, and compare the two, one to one instead of looking at
25 it on the screen and depending on just the machine. I had to

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1 do it one to one myself, and after I verify them, I have to
2 take it to another examiner in the office and have them look
3 at it to verify.

4 Q. And what was the name that that number matched?

5 A. That number came back to a Dayton Coronado or Carondo
6 Frinks.

7 Q. And did you know who Dayton Frinks was?

8 A. No Ma'am.

9 Q. Now, as part of your investigation, did you stop just
10 with that match?

11 A. As far as ---

12 Q. What you had from the window?

13 A. I stopped -- well, I take the other two -- the other
14 two prints, or actually three prints on the card itself, the
15 other two, which appear to be a simultaneous impression --
16 simultaneous impressions are just like impressions that are
17 made by side by side fingers, but there wasn't enough ridge
18 detail for me to be able to verify that these were fingers
19 three or four, but the palm print or partial palm was not
20 enough for me to identify at all.

21 I couldn't include or exclude anyone because there's
22 just not enough ridge characteristics for me to be able to
23 tell.

24 Q. Okay. So once you got that name through AFIS, Dayton
25 Frinks, were you able to get an inked print from Mr. Frinks?

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1 A. Yes Ma'am.

2 Q. Okay. And do you have those with you today?

3 A. Yes Ma'am.

4 MS. LIVESAY: Your Honor, at this time, I'm going to
5 have these prints marked and ask that they be moved into
6 evidence.

7 THE COURT: Do you propose to mark them as
8 identification at this time?

9 MS. LIVESAY: Yes sir, Your Honor.

10 (FINGERPRINT CARDS MARKED AS STATE'S EXHIBIT NUMBER 12
11 AND STATE'S EXHIBIT NUMBER 13 FOR IDENTIFICATION ONLY.)

12 Q. I'm showing you what's been marked as State's Exhibit
13 12 and 13. Do you recognize what I'm showing you?

14 A. Yes Ma'am.

15 Q. And who took that print?

16 A. I did.

17 Q. Okay. And who did you take it from?

18 A. Mr. Frinks.

19 MS. LIVESAY: Your Honor, at this time can I move this
20 into evidence, State's evidence?

21 THE COURT: You may do so.

22 MS. LIVESAY: Thank you, Your Honor.

23 (FINGERPRINT CARDS ADMITTED INTO EVIDENCE AS STATE'S
24 EXHIBIT NUMBER 12 AND STATE'S EXHIBIT NUMBER 13.)

25 Q. And Dayton Frinks, sitting at that table, is that who

1 you took them from?

2 A. Yes Ma'am.

3 Q. And did you compare those inked prints to the print
4 that you got from Kevin Strickland off that window?

5 A. Yes Ma'am.

6 Q. And after examining them, were you able to decipher if
7 it was a match?

8 A. It was the same -- the same finger, which was finger
9 number two, of Mr. Frinks.

10 Q. So it's your expert opinion after examination that the
11 inked print you took from Dayton Frinks matched the one that
12 was found off the window?

13 A. Yes Ma'am, that is correct.

14 Q. And you, yourself, took that inked print from that
15 Defendant?

16 A. Yes Ma'am.

17 Q. Okay. Now, did you make a comparison from that inked
18 print to the print that came out of AFIS?

19 A. Yes Ma'am. When I first got the rolled ten
20 impressions, as well as the palm prints, from Mr. Frinks on
21 the 9th of April, I went back and checked the ten prints that
22 came from the AFIS machine itself and verified that they were
23 the same ten prints that came from the AFIS machine. Then I
24 took the rolled impressions and compared to the latent
25 impression that I had and verified that it was also finger

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1 number two, which is the right index finger, to Mr. Frinks.

2 Q. Now, just so I'm clear, because this can be a little
3 confusing probably for me and the Court, that fingerprint you
4 got out of evidence off the window, you compared that first
5 to one you received out of AFIS, and it was your opinion that
6 was a match, is that correct?

7 A. That is correct.

8 Q. And that print that came out of AFIS ended up
9 belonging to Dayton Frinks, is that correct?

10 A. That is correct.

11 Q. Then you, as part of your investigation, obtained an
12 inked print from Dayton Frinks, is that correct?

13 A. That is correct.

14 Q. Okay. And that print matched both the one off the
15 window and the one you received out of AFIS?

16 A. That is correct.

17 Q. Now, Mr. Caulder, when you took that inked print from
18 Dayton Frinks, did it ever leave your custody or control
19 between when you left this courthouse and you got to Horry
20 County P.D. to make a comparison?

21 A. Well, no Ma'am, well, other than it was filed, so ...

22 Q. Okay. Was it ever tampered with in any form or
23 fashion?

24 A. No Ma'am.

25 Q. Now, do you know who Dayton Frinks is?

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CROSS BY GALMORE

1 A. No Ma'am.

2 Q. Have you ever met him before you took that
3 fingerprint?

4 A. No Ma'am.

5 MS. LIVESAY: No further questions, Your Honor.

6 THE COURT: All right.

7 Mr. Galmore.

8 CROSS-EXAMINATION BY MR. GALMORE:

9 Q. Investigator Caulder, let me hand you what's been
10 marked as State's Exhibit Number 10. Now, you didn't lift
11 that print, is that correct?

12 A. That is correct.

13 Q. Okay. Officer Strickland lifted that print?

14 A. Yes sir, that is correct.

15 Q. And you received it from Evidence?

16 A. Yes sir.

17 Q. Now, you're the person that made the comparison on
18 that print, is that correct?

19 A. On the -- this partial palm here?

20 Q. That partial palm print, yes.

21 A. Well, I tried to see if there was a comparison, but
22 yes sir, that would be me.

23 Q. Okay. Was there a comparison for that partial palm
24 print?

25 A. No sir. I was not able to identify.

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- 1 Q. Okay. Now, let me hand you State's Exhibit Number 11.
2 You didn't lift that print either, did you?
- 3 A. No sir.
- 4 Q. Okay. That was also lifted by Officer Strickland?
- 5 A. Yes sir.
- 6 Q. All right. Do you know where that print was lifted
7 from?
- 8 A. It states that it was off a rear broken window.
- 9 Q. Okay. Now, you had that print and you used it for
10 comparison also?
- 11 A. Yes sir.
- 12 Q. And that's the print that you said is a match to
13 Dayton Frinks?
- 14 A. Yes sir.
- 15 Q. Okay. So you're the person that says it's a match?
- 16 A. Yes sir.
- 17 Q. Okay. And you did this visually or you did this
18 computer-generated match?
- 19 A. Visually.
- 20 Q. Okay. Now, did you go to the home?
- 21 A. No sir.
- 22 Q. Did you personally lift any prints?
- 23 A. No sir.
- 24 Q. So what you have is one print that matched Mr. Frinks
25 and the other that was unable to be matched to anyone?

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1 A. Yes sir -- well, to say anyone, I haven't compared any
2 other than just Mr. Frinks. I haven't looked at any other
3 palm prints to my knowledge that correspond with that case,
4 so just to Mr. Frinks. I haven't been given the opportunity
5 if someone wanted me to compare it to anyone else, no sir.

6 Q. Okay. But the print on the window is the one that
7 matched Dayton Frinks?

8 A. Yes sir.

9 Q. Okay. Were you given any other items of evidence for
10 comparison?

11 A. No sir.

12 Q. Were you given any DNA or hair?

13 A. No sir.

14 Q. None of that was collected?

15 A. I'm not sure because the only thing that came to me is
16 just latent print cards, so I don't -- if there was anything
17 else, I wouldn't be familiar with.

18 Q. All right. So the only thing you had was the print
19 cards?

20 A. Yes sir.

21 Q. And the print from the window was the print that
22 matched Dayton Frinks?

23 A. Yes sir.

24 Q. All right.

25 MR. GALMORE: Thank you.

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1 No further questions.

2 **THE COURT:** You may come down.

3 May this officer be excused from his subpoena?

4 **MS. LIVESAY:** Your Honor, at this time the State calls
5 Detective Damon Vescovi to the stand.

6 **THE COURT:** May he now be excused from his subpoena?

7 **MS. LIVESAY:** Yes sir.

8 **THE COURT:** Call your next witness.

9 **PAUL DAMON VESCOVI**, being first duly sworn,
10 testifies as follows:

11 **DIRECT-EXAMINATION BY MS. LIVESAY:**

12 Q. Investigator Vescovi, where are you currently
13 employed?

14 A. Horry County Police Department.

15 Q. And how long have you been there?

16 A. March of 2002.

17 Q. And what kind of training have you undergone with the
18 police department?

19 A. This case in particular, I've been trained for
20 homicide investigations, forensic investigations, interview
21 techniques.

22 Q. Okay. And what are your current -- or what were your
23 responsibilities in November of 2012?

24 A. I was assigned to the Violent Crimes Section of the
25 Criminal Investigations Division, which handles violent

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1 crimes.

2 Q. And if you don't mind telling the jury a little bit
3 about how an investigator gets involved with a case, because
4 you don't respond normally immediately to the scene, do you?

5 A. No Ma'am.

6 Q. How do you get involved in a case?

7 A. One of two ways. Either the case was -- we were
8 called to a scene because of some exigent circumstance or it
9 would be later assigned by our superiors after a tearing,
10 which is a review of incident reports, which would be
11 documented, written, executed by patrol officers in this
12 case, by Officer Kevin Strickland.

13 Q. Okay. And have you ever been on the road as a uniform
14 officer?

15 A. Oh, yes Ma'am.

16 Q. And about how long were you on the road as a uniform
17 officer?

18 A. I'm going to estimate probably 2005, '06.

19 Q. Okay. Now, if you don't mind telling the jury what
20 the difference is between being a uniform officer and just
21 responding to the scene and being an investigator. What are
22 the differences in responsibility?

23 A. Well, patrolling officers, their ultimate
24 responsibility would be to respond to calls for service, for
25 example, a person in distress calling 911. Because of that

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1 responsibility, they're limited in time and most often
2 resources to extend the investigation to what, I guess, for
3 lack of better words, the next level. That is where an
4 investigator or detective would come into play who has the
5 time and capability and oftentimes training to further that
6 investigation.

7 Q. Okay. So the uniform officer normally does not do the
8 complete investigation?

9 A. No Ma'am.

10 Q. And that's why you get involved?

11 A. Yes Ma'am.

12 Q. And do you remember when this incident occurred?

13 A. Yes Ma'am.

14 Q. And when did the incident actually occur?

15 A. November of 2012.

16 Q. Okay. And how many days after the incident did you
17 become involved?

18 A. I don't recall without looking at the case file. It
19 wasn't long. It wasn't long thereafter. It ---

20 Q. Have you got your case file?

21 A. I do not.

22 Q. Can -- I'll give you a copy.

23 A. Yes Ma'am. It would be noted on the case activity
24 report.

25 Q. I'm just going to ---

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1 **MS. LIVESAY:** If you don't mind, Your Honor, I'm just
2 going to hand him up a copy of his report of investigation.

3 **THE COURT:** That's fine.

4 Q. Is this your report, Investigator Vescovi?

5 A. Yes Ma'am.

6 Q. And would that assist you in your testimony today?

7 A. Yes Ma'am, it would.

8 Q. And through that report, does it tell you when the
9 incident occurred?

10 A. Yes Ma'am, November the 12th, 2012.

11 Q. November 12th?

12 A. Yes Ma'am.

13 Q. Okay. And when did you get involved in the
14 investigation?

15 A. November the 26th, 2012.

16 Q. And if you don't mind, tell the jury how you became
17 involved in this investigation.

18 A. It was assigned to me. It became known to me that an
19 identification had been made on the fingerprint, revealing a
20 name, a suspect. It was through that identification that the
21 investigation really took off.

22 Q. And as part of your investigation did you contact the
23 Defendant?

24 A. Yes Ma'am. Well, we attempted to. We went to his
25 home. He was not there. The day, in fact, that we went to

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1 his house, we actually had arrest warrants, but an effort was
2 made to locate, to interview. We were informed that he was
3 returning home or to the area, the neighborhood, on a school
4 bus. He was being let out of school.

5 In fact, I believe Officer Strickland assisted in this,
6 and I don't recall which officer located Mr. Frinks at the
7 bus, but he was located a short time after getting off the
8 bus. He was detained.

9 He was transported by myself to the Horry County's North
10 Precinct Office, which is in Little River. It's the closest
11 subdivision to -- or sub-office to the Freemont Community.

12 Q. I'm sorry. Before you go any further, Investigator
13 Vescovi, did you learn as part of your investigation where he
14 lived?

15 A. I did.

16 Q. Okay. And what is the address?

17 A. I'm not sure if it's noted in this actual report. It
18 is not far from the crime scene. I don't have the particular
19 -- the physical address of Mr. Frinks in this report.

20 Q. Detective Vescovi, would a review of your statement
21 with the Defendant refresh your memory on where he lived?

22 A. Yes Ma'am. And your question is where does he live?

23 Q. I'm sorry?

24 A. You're asking where he lives?

25 Q. Yes.

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- 1 A. 737 Anna Drive.
- 2 Q. And you learned that through your investigation?
- 3 A. Yes Ma'am.
- 4 Q. And are you familiar with that area?
- 5 A. Certainly.
- 6 Q. I'm going to show you what's been put in as State's
7 evidence Number 8 and I'm going to ask you to mark on this
8 map -- you said Anna Drive is, where he lives?
- 9 A. Yes Ma'am.
- 10 Q. I'm going to ask you to step down and mark on this map
11 where Anna Drive is. One second and I'll get you a marker.
12 Just circle Anna Drive, if you don't mind, for the jury.
- 13 A. This portion of this ---
- 14 Q. Right here is Anna Drive?
- 15 A. Yes Ma'am.
- 16 Q. And you're familiar with this area?
- 17 A. Yes Ma'am.
- 18 Q. Do you mind pointing out where the victim's road was,
19 Foxtail Drive?
- 20 A. Right in this circle.
- 21 Q. Okay. Go ahead and have a seat, Investigator Vescovi.
22 And how long have you worked in that particular area?
- 23 A. Directly and indirectly my -- the length of my career.
- 24 Q. How long have you worked that area directly and
25 indirectly?

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1 A. Specifically, I was assigned that area when I was
2 hired, and probably at the very least three years I was
3 assigned to that area.

4 Q. And let me ask you this: Is it walking distance from
5 Anna Drive to Foxtail?

6 A. Yes Ma'am.

7 Q. Now, as part of your investigation, did you get a
8 statement from the Defendant?

9 A. Yes Ma'am.

10 Q. And was he in custody at that time?

11 A. Yes Ma'am.

12 Q. And did you read him his Miranda Rights?

13 A. Yes Ma'am, I did.

14 Q. Okay. I'm going to show you what we've already
15 marked ---

16 MS. LIVESAY: Have you got it up here, Dixie, the
17 Miranda we had from yesterday? Thank you.

18 Q. I'm going to show you what's already been marked as
19 State's Exhibit Number 1. Do you recognize it?

20 A. Yes Ma'am, I do.

21 Q. Is that your handwriting?

22 A. It is.

23 Q. Has it been altered in any way from the time you did
24 that Miranda form?

25 A. No Ma'am.

1 **MS. LIVESAY:** Your Honor, at this time the State wishes
2 to place State's Exhibit Number 1 into evidence.

3 **MR. GALMORE:** Your Honor, I would object on the basis of
4 Jackson V. Denno.

5 **THE COURT:** You may proceed.

6 **MS. LIVESAY:** Thank you, Your Honor.

7 Q. Is that the Miranda form you read to him that day?

8 A. Yes Ma'am.

9 Q. And if you don't mind, for the jury, please read to
10 the jury the rights that you read to the Defendant.

11 A. Just the rights?

12 Q. Uh huh (**indicating positive**).

13 A. You have the right to remain silent. Anything you say
14 can and will be used against you in a court of law. You have
15 the right to talk with a lawyer and have him present with you
16 while you are being questioned. If you cannot afford to hire
17 a lawyer, one will be appointed to represent you before any
18 questioning if you so desire. If you make a statement or
19 answer any questions, you have the right to stop at any time.

20 Q. And did he indicate that he understood those rights?

21 A. Yes Ma'am, verbally ---

22 Q. Verbally?

23 A. Verbally, and he initialed yes.

24 Q. Okay. And if you don't mind, read the question where
25 he initialed yes.

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- 1 A. Do you understand your rights as I have read them to
2 you.
- 3 Q. Okay. And he initialed yes?
- 4 A. Yes Ma'am.
- 5 Q. And did he wish to speak with you?
- 6 A. Yes Ma'am.
- 7 Q. Okay. And before you even started talking to him, did
8 you make sure he understood and was able to understand those
9 rights?
- 10 A. Yes Ma'am, I did.
- 11 Q. And was he?
- 12 A. Yes Ma'am, he was.
- 13 Q. Okay. Did he appear to be under the influence of any
14 drugs or alcohol?
- 15 A. No Ma'am.
- 16 Q. Did anything appear to be impairing his ability to
17 understand those rights and speak with you?
- 18 A. No Ma'am.
- 19 Q. Okay. In fact, did you ask him if he was under the
20 influence?
- 21 A. I did.
- 22 Q. And what did he tell you?
- 23 A. No, he was not.
- 24 Q. At any point during the statement, did he indicate
25 that he no longer wanted to speak with you?

1 A. I don't believe so.

2 Q. Did he ever ask for an attorney?

3 A. I don't believe so.

4 Q. Do you want a second to review the transcript?

5 A. Yeah, and when I -- let me qualify that. When I say

6 that I don't know how we concluded the interview, but during

7 the portion of our conversation, he did not ask for an

8 attorney. He did not ask to stop the interview. I just

9 simply don't remember how we concluded the interview. It

10 just appears that we just stopped the interview.

11 Q. But not at his request?

12 A. Right.

13 Q. And did he ever ask for an attorney?

14 A. No Ma'am.

15 Q. Okay. Was he ever coerced or threatened in any way

16 during that interview?

17 A. No Ma'am.

18 Q. Okay. And was he responsive to the questions you were

19 asking?

20 A. Yes Ma'am.

21 Q. Okay. And did you record that interview?

22 A. Yes Ma'am, I did.

23 Q. Okay. And is that usual procedure?

24 A. Yes Ma'am.

25 Q. Okay.

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1 **THE COURT:** Mr. Galmore, you've been provided with a
2 copy of that alleged interview?

3 **MR. GALMORE:** Yes sir.

4 **MS. LIVESAY:** Thank you, Your Honor.

5 Q. I'm showing you a copy of your interview now. Do you
6 recognize it?

7 A. Yes Ma'am.

8 Q. And has that interview been altered or tampered with
9 in any form or fashion?

10 A. Not to my knowledge. It's a C.D.

11 **MS. LIVESAY:** Your Honor, at this time can I play -- I
12 think I need to have it marked first. Do you want her to
13 mark it again?

14 **THE REPORTER:** It is State's 9.

15 **MS. LIVESAY:** Move the interview into evidence, Your
16 Honor.

17 **THE COURT:** It is admitted.

18 (DVD OF STATEMENT OF DEFENDANT ADMITTED INTO EVIDENCE AS
19 STATE'S EXHIBIT NUMBER 9.)

20 **MS. LIVESAY:** And can I publish the pertinent part to
21 the jury?

22 **THE COURT:** You may.

23 **MS. LIVESAY:** Thank you, Your Honor.

24 Q. Investigator, I will ask you a couple of questions
25 while I play the tape. At the time that you interviewed

1 Dayton Frinks, did you have knowledge regarding the
2 fingerprint?

3 A. I'm sorry?

4 Q. During the time that you took a statement from the
5 Defendant, did you have knowledge regarding the match of the
6 fingerprint?

7 A. Yes Ma'am.

8 Q. And did you ask him about that?

9 A. I did.

10 Q. And what did he tell you?

11 A. I asked him basically how his fingerprint would have
12 been left at the victim's home. He did not have an
13 explanation for it. I inquired -- asked if he had been to
14 the actual property for whatever reasons, and I believe I
15 gave several hypotheticals or scenarios. Every -- every
16 reply was he could not explain it.

17 He said he had not -- he had not been to the victim's
18 home or the area since age twelve. He said he used to go to
19 a pond or something in the back or play in the area. He said
20 he was age twelve when he did that, so at the time he was age
21 eighteen, I believe, and he said there was no explanation.

22 Q. But he never gave you a reason why or if he had ever
23 been to the victim's home?

24 A. No Ma'am.

25 Q. Okay. And did he tell you he had never been to the

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 victim's home?

2 A. He advised me that he had not been there and that the
3 last time he would have been in the area was around age
4 twelve or thirteen. I don't ---

5 Q. And that was to swim in the pond in that vicinity, ---

6 A. Yes Ma'am.

7 Q. --- in that development?

8 A. Yes Ma'am.

9 (STATE'S EXHIBIT NUMBER 9 IS PUBLISHED IN OPEN COURT
10 WITHIN THE PRESENCE OF THE JURY.)

11 Q. Now, Damon, is that your voice talking to Dayton
12 Frinks on that interview?

13 A. Yes Ma'am.

14 Q. Okay. And is that before you had served him with the
15 warrant?

16 A. Yes Ma'am.

17 Q. So he was definitely in custody at that time?

18 A. Yes Ma'am.

19 Q. And he told you at that time he had been in that
20 neighborhood, is that correct?

21 A. He said he had been in that neighborhood at an earlier
22 age.

23 Q. Okay. About three years ago?

24 A. He said twelve, thirteen, fourteen, or fifteen, and I
25 took the least, which would have been three.

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 Q. And he told you he used to swim in a pond in that
2 subdivision, which happened to be right behind our victim's
3 house, is that right?

4 A. Yes Ma'am.

5 Q. Okay. And when you went to locate him, where did you
6 go first? When you wanted to find Dayton Frinks, where did
7 you go first?

8 A. His home.

9 Q. Okay. And that was on Anna Drive?

10 A. Yes Ma'am.

11 Q. Okay. And did you find him at that residence?

12 A. No Ma'am. There were two individuals there that --
13 that confirmed that was his address, that he was not home,
14 and in the process of talking with him, a car left around
15 where the residence was and I assumed it may be him trying to
16 flee the scene, and that car was pursued. It was found
17 further down the road.

18 It was his mother, and that's where the conversation
19 took place with the mother, and he -- and she advised that he
20 was at -- returning home from school shortly on the bus.
21 That's how Officer Strickland knew to be in the area where
22 the bus stopped.

23 Q. Were you present when that bus stopped and let him
24 off?

25 A. I was just around the corner. We weren't sure exactly

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 where the bus would be stopping, and it's in a curve, so
2 Officer Strickland went around to the church area and I sat
3 -- or I positioned myself on the other side of the curve.

4 Q. And was where he was dropped off, was that walking
5 distance to Anna Drive?

6 A. Yes Ma'am. This is a very small community.

7 Q. Now, on the interview, you said -- you were asking him
8 about Pine Needle Drive, is that correct?

9 A. Yes Ma'am.

10 Q. Okay. And you said, well, since you live in Freemont,
11 okay? Can you point out, is Freemont a community?

12 A. Yes Ma'am.

13 Q. And could you pick out the area on this map what's
14 considered Freemont Community?

15 A. Yes Ma'am.

16 MS. LIVESAY: Your Honor, at this time, I'm going to
17 ask Investigator Vescovi to step down and use what's already
18 been put in as State's evidence Number 8.

19 Q. Now, is this Freemont Road here?

20 A. Yes Ma'am.

21 Q. Okay. And show the jury, if you don't mind, what's
22 considered Freemont area.

23 A. This ---

24 Q. Excuse me one second and let me grab a pen.

25 A. If you can see this, this is the four-lane highway

1 identified as Highway 9, which leads from the living room
2 area to Loris or Green Sea. The victims' subdivision is Long
3 Bay Golf Course, and you can obviously see the golf -- the
4 greens, the fairways in this area, which would be east, east
5 of his subdivision from this point down to 905, to this area
6 here. This is all Freemont, this whole area.

7 Q. Okay. And this is Freemont Road here that goes
8 through it?

9 A. Your two -- your two mostly traveled areas accessing
10 Freemont is Freemont Road, obviously, from Highway 905 and
11 Pine Needle Drive, which is off of Highway 9. You do have
12 Long Acres Drive, but it is a dirt road. It's a little
13 troublesome to get down if you don't want to beat your car
14 up, and then Kessler Heights Road. It's a short road that
15 leads back to Freemont, and that's also off of Highway 905,
16 so it's very limited access into the community itself.

17 Q. Okay. Now, when he said that he was swimming in that
18 pond, which is marked right here on the map, he was how old?
19 Do you remember how old he told you?

20 A. Twelve, thirteen, fourteen, or fifteen.

21 Q. Okay. And how long had he lived on Anna Drive? Do
22 you remember what he told you?

23 A. I think his response was seven years.

24 Q. Okay. So he would have lived on Anna Drive while he
25 was twelve, thirteen, fourteen?

PAUL DAMON VESCOVI - DIRECT BY LIVESAY

1 A. Yes Ma'am.

2 Q. Okay. And at that age, he -- as a law enforcement
3 officer, could he drive a vehicle?

4 A. Not legally, but ---

5 Q. So if he wanted to get legally from Anna Drive to this
6 pond, he would have had to walk?

7 A. Yes Ma'am.

8 Q. Okay. And you're familiar with the area, is that
9 correct?

10 A. Absolutely.

11 Q. Okay. And is that walking distance from Anna Drive to
12 this residence and this pond?

13 A. Yes Ma'am.

14 Q. Thank you, Investigator Vescovi.

15 Now, we heard testimony earlier regarding people coming
16 to swim in that pond, and then the Defendant gave a statement
17 saying he used to swim in that pond. You've worked the area.
18 Are there trails or leadways from that community into that
19 golf community, Long Bay?

20 A. Yes Ma'am.

21 Q. Okay.

22 MS. LIVESAY: Your Honor, I don't have any further
23 questions.

24 THE COURT: All right. It being one o'clock, we'll
25 have the cross-examination when we return from lunch. Is

JURY OUT/ON RECORD

1 that all right, Mr. Galmore?

2 MR. GALMORE: Yes sir.

3 THE COURT: All right.

4 Mr. Foreman, ladies and gentlemen, let's break for
5 lunch. Do not discuss this case with anyone. Let no one
6 discuss it with you. Please do not even discuss it among
7 yourselves until I have given you the case for your
8 deliberation.

9 You are now excused. Be back in the jury room at two-
10 thirty. Thank you.

11 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
12 JURY.)

13 THE COURT: Investigator, when we return from lunch,
14 you will still be under the witness stand, under oath, ---

15 INVESTIGATOR VESCOVI: Yes sir.

16 THE COURT: --- subject to cross-examination.

17 INVESTIGATOR VESCOVI: Yes sir.

18 THE COURT: During the lunch hour, it is improper for
19 you to discuss any aspect of your testimony with anybody,
20 including your lawyers. You understand?

21 INVESTIGATOR VESCOVI: I understand, Your Honor.

22 THE COURT: All right. Thank you. You are excused, to
23 be back from lunch at two-thirty.

24 Ms. Livesay, for scheduling purposes, is there any other
25 witnesses?

JURY OUT/ON RECORD

1 MS. LIVESAY: I'm sorry, Your Honor?

2 THE COURT: Any other witnesses, for scheduling
3 purposes?

4 MS. LIVESAY: Possibly one, Your Honor. I'm going to
5 briefly talk to him when we get a break and see whether I'm
6 going to call him or not.

7 THE COURT: Okay.

8 Mr. Galmore, for scheduling purposes, can you give me
9 any idea?

10 MR. GALMORE: Well, I'm going to discuss it with my
11 client over the lunch break and see if he wants to testify.

12 THE COURT: That would be the only witness?

13 MR. GALMORE: Yes sir.

14 THE COURT: All right. So let's plan on arguing, and
15 charging, and concluding this case today.

16 MR. GALMORE: Yes sir.

17 THE COURT: All right. Thank you.

18 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK AND
19 OUTSIDE THE PRESENCE OF THE JURY.)

20 THE COURT: All right. Bring the Defendant back.
21 Are you ready, Ms. Livesay?

22 MS. LIVESAY: Yes, I'm ready, Your Honor.

23 THE COURT: Mr. Galmore?

24 MR. GALMORE: Yes sir.

25 THE COURT: Bring the jury in.

JURY IN
PAUL DAMON VESCOVI - CROSS BY GALMORE

1 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** The jury is present. Mr. Foreman and
4 ladies and gentlemen, at our recess just prior to the lunch
5 break, this witness was on the stand for examination purposes
6 by the State. The State has concluded its examination, and
7 we now go to the cross-examination for the Defendant by Mr.
8 Galmore.

9 Mr. Witness, now I remind you, sir, that you're still
10 under oath.

11 **INVESTIGATOR VESCOVI:** Yes sir.

12 **THE COURT:** Mr. Galmore.

13 **CROSS-EXAMINATION BY MR. GALMORE:**

14 Q. You're the lead investigator on the case, is that
15 correct?

16 A. Yes sir.

17 Q. And you would be the person responsible for gathering
18 up all of the evidence in the case?

19 A. Yes sir.

20 Q. If there are any witness statements, you would be the
21 person that would keep them in your file?

22 A. Okay.

23 Q. Do you know if any witness statements were taken in
24 this case?

25 A. No sir.

PAUL DAMON VESCOVI - CROSS BY GALMORE

- 1 Q. There was testimony or evidence in that 911 tape about
2 a neighbor. Did you take a statement from that neighbor?
- 3 A. No sir.
- 4 Q. You would be the person responsible for the collection
5 of any physical evidence, is that correct?
- 6 A. No sir.
- 7 Q. No?
- 8 A. That was done by the responding officer.
- 9 Q. Okay. But that stuff would end up in your custody at
10 some point?
- 11 A. No. It would be housed in the Evidence Section of
12 Horry County. I mean, I would certainly reference it in the
13 case, but it would never be in my possession.
- 14 Q. All right. Well, was there any physical evidence
15 collected in this case?
- 16 A. Yes sir, the fingerprint.
- 17 Q. Was a weapon recovered?
- 18 A. No sir.
- 19 Q. Was a hoodie recovered?
- 20 A. No sir.
- 21 Q. Was a mask recovered?
- 22 A. No sir.
- 23 Q. If so, you would have it in your file?
- 24 A. Yes sir.
- 25 Q. You would have it referenced in your case?

PAUL DAMON VESCOVI - CROSS BY GALMORE

- 1 A. Yes sir.
- 2 Q. And it would be in storage at the Horry County
3 Evidence locker?
- 4 A. Yes sir.
- 5 Q. You say that you picked up Mr. Frinks as he was
6 getting off the school bus?
- 7 A. Uh huh **(indicating positive)**.
- 8 Q. Did you search him at that time?
- 9 A. He was searched incident to arrest, yeah.
- 10 Q. Did he have a gun on him?
- 11 A. No sir.
- 12 Q. Did he have a mask?
- 13 A. No sir.
- 14 Q. Okay. You said that you went to Mr. Frinks' home
15 looking for him?
- 16 A. Yes sir.
- 17 Q. Did you have a chance to search his room?
- 18 A. We weren't permitted.
- 19 Q. Did you go get a search warrant?
- 20 A. No sir.
- 21 Q. If you'd have had a search warrant, could you have
22 searched his room?
- 23 A. Absolutely.
- 24 Q. You had information that you believed that Mr. Frinks
25 was the person responsible for this burglary, correct?

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. Yes sir.

2 Q. But you did not seek to obtain a search warrant for
3 his home?

4 A. No sir, not at that time.

5 Q. What about school, did you search his locker at
6 school?

7 A. No sir.

8 Q. I mean, we're looking for physical evidence, a gun?

9 A. Yes sir.

10 Q. Or a mask.

11 (SOUTH CAROLINA DRIVERS LICENSE OF DEFENDANT MARKED AS
12 DEFENDANT'S EXHIBIT NUMBER 1 FOR IDENTIFICATION ONLY.)

13 Q. Let me hand you what's been marked for identification
14 purposes as Defendant's Exhibit 1 and ask you if you
15 recognize it?

16 A. I do.

17 Q. And what is this?

18 A. That is a copy of his driver's license, South Carolina
19 driver's license.

20 Q. Is that something that you collected as part of your
21 investigation into this case?

22 A. Yes sir.

23 Q. Does this document appear to be altered or tampered
24 with in any way since you collected it?

25 A. No; no sir.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 Q. Okay. And you were the person that included that in
2 your case file?

3 A. Yes sir. I believe there's a copy of it in the case
4 file.

5 Q. Yes sir.

6 MR. GALMORE: Your Honor, at this time I would move to
7 have Defense Exhibit 1 for identification purposes entered
8 into evidence as Defense Exhibit 1.

9 THE COURT: You may do so.

10 (SOUTH CAROLINA DRIVER'S LICENSE OF DEFENDANT ADMITTED
11 INTO EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 1.)

12 MR. GALMORE: Permission to publish, Your Honor.

13 THE COURT: You may.

14 Q. Did you conduct a line-up in this case?

15 A. No sir.

16 Q. After you had Mr. Frinks in custody, did you perhaps
17 do a show-up identification?

18 A. No sir.

19 Q. Did you at any time ask Mr. Michaels if he could
20 identify Mr. Frinks?

21 A. At one time, I did, but he was masked, other than the
22 physical description that he had given. I did not feel that
23 it would be within reason to do so.

24 Q. Okay. Did Mr. Michaels call you at any time and say,
25 oh, I remember him. I recognize him.

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. No sir.

2 Q. When you are investigating cases, you ask for
3 cooperation from witnesses, is that correct? That would be
4 fair to say?

5 A. Yes sir.

6 Q. And do you ask witnesses, well, if you think of
7 anything, let me know?

8 A. Yes sir.

9 Q. Okay. Let me ask you about these fingerprints. I
10 understand that you were not the person that collected these
11 prints, is that correct?

12 A. That's correct.

13 Q. Okay. Do you know where the fingerprints were
14 collected?

15 A. Yes sir.

16 Q. Let me show you what's been marked as State's Exhibit
17 Number 2 and ask you if you could identify the locations
18 where the fingerprints were collected.

19 A. I believe it is this window here. I'm not sure.

20 Q. Were attempts made to lift prints off of that screen
21 door?

22 A. There was attempts to obtain latents from the door. I
23 believe it was the door entering the home.

24 Q. Right. Now, the prints that were lifted from the
25 window, that was the print that matched Mr. Frinks, correct?

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 A. Yes sir.

2 Q. And there was no match for the print that was lifted
3 from the door?

4 A. Not to my knowledge, no, sir, just the single
5 fingerprint.

6 Q. Do you know if there were attempts made to lift prints
7 from anywhere else?

8 A. I don't believe so.

9 Q. Okay. Let me hand you what's been marked for
10 identification purposes as State's Number 6. This is the
11 picture of the garage and a picture of the kitchen door. Do
12 you know if any attempts were made to lift prints off of that
13 kitchen door?

14 A. I do -- I do not know.

15 Q. Okay.

16 A. I don't believe so.

17 Q. All right. Now, we heard testimony that furniture on
18 the patio had been moved around. In your experience as a
19 police officer if someone says -- if a witness says my
20 furniture has been moved around, would it be incumbent upon
21 you to attempt to lift prints off of it?

22 A. Not necessarily, no.

23 Q. If it had been moved around, it had been touched.
24 Would that be a fair statement?

25 A. It would be dictated by the situation or scenario that

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 was provided through the victims' statements, but to give you
2 a yes or no answer would be, to me, inappropriate. It would
3 be situation-based.

4 Q. Okay. So if a person says someone moved around my
5 patio furniture, it's okay to not dust it for prints?

6 A. This particular -- if we're referencing this
7 particular scenario, I would not think -- I think the best
8 place is where Officer Kevin Strickland concentrated due to
9 the manipulation of the window, due to the manipulation of
10 the back door.

11 I don't think whoever done this grabbed those patio
12 furniture and handled them in such a way that they would
13 leave very good fingerprints. I think they were trying to
14 get inside of the house. They did not manipulate the
15 furniture to the point in which I would red flag it and
16 examine it closer. I would go straight to the source, the
17 door and the window.

18 Q. Well, the patio furniture is in the screened-in
19 portion of the patio, is that correct?

20 A. Yes sir.

21 Q. Okay. So that would have been some type of entry,
22 onto the patio?

23 A. I'm sorry. I didn't follow that.

24 Q. Well, the fingerprint is on the outside of a window?

25 A. Uh huh (indicating positive).

PAUL DAMON VESCOVI - CROSS BY GALMORE

1 Q. The fingerprint on the screen door would indicate an
2 attempt to entry into the residence. The patio furniture
3 would be inside the screened-in portion, so that would be
4 proof of entry?

5 A. Yeah.

6 Q. But the patio furniture was not tested for prints?

7 A. That's right.

8 Q. Okay. The home didn't have any video surveillance,
9 did it?

10 A. Not to my knowledge.

11 Q. Okay. Now, you indicated that you went to pick up Mr.
12 Frinks from the school bus. He was in Longs, is that
13 correct?

14 A. Well, he was in the community.

15 Q. I mean, he wasn't like in Texas somewhere, was he?

16 A. Oh, no. No sir. No sir.

17 Q. And he sat down with you and gave you a statement?

18 A. Yes sir.

19 Q. And we played it earlier?

20 A. Yes sir.

21 Q. Did he confess?

22 A. No sir.

23 Q. He didn't say, okay, you got me. I did it?

24 A. No sir.

25 Q. He denied any knowledge of a burglary?

PAUL DAMON VESCOVI - CROSS BY GALMORE
REDIRECT BY LIVESAY

1 A. Yes sir.

2 Q. Now, the information that was given was that there
3 were three people involved in this burglary?

4 A. Yes sir.

5 Q. Do you have any leads on these other people?

6 A. Yes sir.

7 Q. Has anyone else been arrested?

8 A. No sir.

9 MR. GALMORE: I don't have any further questions.

10 THE COURT: May this witness come down?

11 MS. LIVESAY: Just a couple of questions real quick,
12 Your Honor. I'll be brief.

13 REDIRECT-EXAMINATION BY MS. LIVESAY:

14 Q. I'm going to show you the incident report. Whose
15 picture is that on the incident report?

16 A. Mr. Frinks.

17 Q. Okay. And is that how he appeared the day you
18 interviewed him in November of 2012?

19 A. Yes Ma'am.

20 Q. Now, that picture that Mr. Galmore had was from a
21 driver's license, is that correct?

22 A. Yes Ma'am.

23 Q. Do you know when that picture was taken?

24 A. I do not.

25 Q. Does this document tell you when that picture ---

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY

1 **MS. LIVESAY:** Defendant's evidence Number 1, what I'm
2 showing the witness.

3 **Q.** Does that tell you what day that picture was taken on?

4 **A.** No Ma'am -- oh, I mean, it says when it was issued.
5 It should. 2/23/2002 is when it was issued, but sometimes
6 they do not take another picture, so I don't know if that
7 picture was taken ---

8 **Q.** Okay. Is that how he appeared when you interviewed
9 him?

10 **MR. GALMORE:** Objection, Your Honor.

11 **THE COURT:** What's the objection?

12 **MR. GALMORE:** I think he would be eight years old in
13 2002.

14 **A.** 12.

15 **MS. LIVESAY:** I thought he said 2012.

16 **A.** 2012. I'm sorry. I might have ---

17 **MR. GALMORE:** It's straightened out.

18 **THE COURT:** All right.

19 Go ahead.

20 **Q.** 2012, is that what you had said originally?

21 **A.** The license said -- by this report, it says the
22 license was issued 2/23/2012.

23 **Q.** But you don't know when that picture was taken?

24 **A.** No Ma'am, because sometimes they don't renew the
25 photo. They just go with the photo that exists in the

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY

1 database.

2 Q. Okay.

3 A. I don't know if that's the case with this one or not,
4 but I would not be able to swear to it by that record.

5 Q. And when would this picture have been taken?

6 A. That is his -- when he was incarcerated at -- booked
7 in at J. Reuben Long.

8 Q. Okay. The date of when you arrested him?

9 A. Yes Ma'am.

10 Q. Now, is this the way he appeared the day that you
11 arrested him?

12 THE COURT: By this, you need to refer to the jury what
13 this is.

14 MS. LIVESAY: I'm sorry, Your Honor.

15 Q. Defendant's Exhibit Number 1, that picture. Is that
16 how he appeared on the day that you interviewed him?

17 A. No Ma'am.

18 Q. Okay.

19 A. I mean, you can tell it's him, but ...

20 Q. Okay. Now, he's sitting in the courtroom today. Do
21 you recognize him today?

22 A. Yes Ma'am.

23 Q. Now, is that how he appeared when you interviewed him?

24 A. Yes Ma'am.

25 Q. And you interviewed him on December -- I'm sorry,

PAUL DAMON VESCOVI - REDIRECT BY LIVESAY
THE STATE RESTS/JURY OUT/ON RECORD

1 November 27th, fifteen days after the incident?

2 A. Yes Ma'am.

3 Q. Okay. And the way he appears today is the way he
4 appeared when you interviewed him?

5 A. Yes Ma'am.

6 MS. LIVESAY: No further questions, Your Honor.

7 THE COURT: All right.

8 You may come down.

9 Any further witnesses?

10 MS. LIVESAY: No sir, Your Honor. At this time, the
11 State rests.

12 THE COURT: Mr. Foreman, ladies and gentlemen, I'll let
13 you go to the jury room just a minute. I'll be calling you
14 back very shortly. Thank you.

15 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
16 JURY.)

17 THE COURT: The State has rested. Any motions on
18 behalf of the Defense at this time?

19 MR. GALMORE: Yes sir, Your Honor. I would make a
20 motion for a directed verdict. Looking at the evidence in
21 the light most favorable to the State, I believe the evidence
22 shows only a fingerprint and that evidence is -- I will cite
23 for the Court, if I could approach, I have a case of the
24 State versus Mitchell.

25 THE COURT: Is that the Newberry case?

JURY OUT/ON RECORD

1 I understand the case, but you've got more evidence than
2 that. In that case, there were fingerprints on the outside
3 of the building and it was reversed on the basis of no
4 grounds for entry.

5 In this case, the fingerprints were on the inside of the
6 window after somebody had destroyed the screen. In addition
7 to that, there's testimony that the occurrence occurred in
8 the garage. That's their entry, and the garage is part of
9 the household, and if you're in the garage, you're in the
10 house.

11 In addition to that, there's testimony that the culprits
12 were inside the screen porch, which again, is a part of the
13 house, so obviously there is plenty of testimony to show that
14 someone entered that premises.

15 Now, what other motion do you have?

16 **MR. GALMORE:** Well, Your Honor, with respect to the
17 fingerprint on the window, it is on the exterior of the home.
18 It is not on the inside of the window as if somebody was in
19 the house.

20 **THE COURT:** Well, this case has one -- one other thing.
21 There's plenty of testimony that you can't -- you've got to
22 agree that there's testimony that there was an entry inasmuch
23 as all the testimony is that this event occurred within the
24 garage, which is attached to the house.

25 **MR. GALMORE:** Yes sir, but that's the question, the

JURY OUT/ON RECORD

1 entry by whom.

2 **THE COURT:** Well, we'll talk about that. There's
3 testimony that this Defendant's fingerprint was seen at the
4 time of the crime. Additionally, the victim has now
5 identified this Defendant. Now, whether the jury wants to
6 believe that or not, that's for them to decide, ---

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** --- but there's testimony under oath that
9 when he appeared at the bond hearing, I was able to identify
10 him. Now, you may or may not disagree with that, or I may
11 not, and the jury may not, but that's the testimony in the
12 record.

13 **MR. GALMORE:** Yes sir.

14 **THE COURT:** So I would have to respectfully deny your
15 motion. First, there's plenty of testimony that there was an
16 entry, without regards to where the fingerprint was, because
17 it happened in the garage. You will agree with me that the
18 garage is a part of the domicile.

19 **MR. GALMORE:** Yes sir.

20 **THE COURT:** And you will agree with me that that screen
21 porch is a part of the domicile.

22 **MR. GALMORE:** Yes sir.

23 **THE COURT:** I mean, you have to agree with that, but
24 there is a question as to whether he committed it or not, and
25 I understand that, but the fingerprints, coupled with the

JURY OUT/ON RECORD

1 assertion by the victim is sufficient to take it to the jury.

2 **MR. GALMORE:** Yes sir, I understand.

3 **THE COURT:** I understand. Okay. Now, we're at that
4 part of the case where the victim (sic) has a right to
5 testify or not testify. Have you discussed that with him?

6 **MR. GALMORE:** Yes, I have, Your Honor.

7 **THE COURT:** Can you tell me what his decision is?

8 **MR. GALMORE:** He has decided to not testify.

9 **THE COURT:** All right. Let me talk to him.
10 Young man, you are now eighteen years of age?

11 **MR. FRINKS:** Yes sir.

12 **THE COURT:** You're going to have to talk a little
13 louder so my Court Reporter can hear you.

14 **MR. FRINKS:** Yes sir.

15 **THE COURT:** And you fully understand what I'm saying?

16 **MR. FRINKS:** Yes sir.

17 **THE COURT:** You're in the twelfth grade?

18 **MR. FRINKS:** Yes sir.

19 **THE COURT:** Now, listen to me very careful because this
20 is a critical part of this trial. First, you have the
21 absolute right to testify under oath and to be examined by
22 Mr. Galmore and to be cross-examined by the Defendant (sic).
23 Equally important, you have the absolute right not to
24 testify. You are presumed innocent, which I will explain in
25 detail to the jury, and you don't have to prove a thing.

JURY OUT/ON RECORD

1 If you elect not to testify, I would specifically charge
2 the jury that the fact that you did not testify raises
3 absolutely no inference against you. I would further charge
4 the jury that the fact, if it occurred that you did not
5 testify, must not even enter into their deliberations in the
6 jury room because you and I both have a constitutional right
7 not to testify. You understand that?

8 **MR. FRINKS:** Yes sir.

9 **THE COURT:** Now, you, of course, on this critical issue
10 have every right to talk to your attorney, and he says he's
11 discussed it with you, but the final decision to testify or
12 not to testify rests with you. Do you understand that?

13 **MR. FRINKS:** Yes sir.

14 **THE COURT:** Do you have any questions about what I say?
15 You will not offend me if you have any questions about this
16 issue because it's so important.

17 **MR. FRINKS:** No sir.

18 **THE COURT:** All right. With regard to this issue, what
19 is your decision?

20 **MR. FRINKS:** I choose not to testify.

21 **THE COURT:** The Court will certainly accept that
22 position, and I will charge accordingly.

23 Now, Mr. Galmore, is there any other witnesses for the
24 Defense?

25 **MR. GALMORE:** No sir.

JURY OUT/ON RECORD

1 **THE COURT:** All right. Then at this time I will let
2 the record reflect that you have renewed your motions
3 previously made at the end of the State's case, and if you
4 have any other motions in regard to the trial, I'll be glad
5 to hear them.

6 **MR. GALMORE:** That will be all, sir.

7 **THE COURT:** All right, sir, and for the reasons there
8 stated and now affirmed, I respectfully deny your motions.
9 There is a plethora of evidence that there was an entry made
10 by someone certainly in the garage, surely in the screen
11 porch, and then there is testimony that his fingerprints were
12 found on the windshield (sic) and there's testimony that he
13 has been identified, all of which is for the jury to
14 determine. You understand?

15 **MR. GALMORE:** Yes sir.

16 **THE COURT:** All right.

17 Would you like to take about a five minute break before
18 we start again?

19 **MS. LIVESAY:** Yes sir, Your Honor.

20 Again, I'm assuming we'll do the jury charge and then
21 closing?

22 **THE COURT:** Yes.

23 Mr. Galmore, as you know, it's my policy, and the jurors
24 like it, to go ahead and charge the jury prior to summation.
25 Do you have any objection to that?

JURY OUT/ON RECORD

1 **MR. GALMORE:** No sir.

2 **THE COURT:** In addition to that, for the last several
3 months, I've been permitting my Law Clerk to assist me in
4 reading the charge, with the understanding I fully tell the
5 jury it's my charge, my preparation, accept it as my words.
6 Is that okay with you?

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** All right. What else, Ms. Livesay?

9 **MS. LIVESAY:** So when they get back in, we'll just
10 charge the jury, and then Mr. Galmore will close, and I'll
11 close right after him.

12 **THE COURT:** No Ma'am. He's entitled to close last. No
13 testimony.

14 **MS. LIVESAY:** I think he entered evidence, Your Honor.
15 Mr. Galmore entered evidence, so that would give me last
16 closing.

17 **THE COURT:** I never heard him say that he -- I listened
18 very carefully. I never heard him introduce that picture
19 into evidence.

20 **MS. LIVESAY:** Well, he published it to the jury.

21 **THE COURT:** I know it, but you didn't object to it, and
22 he didn't introduce it, and I listened very carefully.

23 No sir, I'm going to give him the last argument in this
24 case.

25 **MS. LIVESAY:** Yes sir, Your Honor.

JURY OUT/ON RECORD

1 **THE COURT:** He never -- what did you want to say, Mr.
2 Galmore?

3 **MS. LIVESAY:** Did you enter it into evidence?

4 **MR. GALMORE:** I think maybe I did.

5 **MS. LIVESAY:** He did, Your Honor.

6 I mean, did you?

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** Well, if you introduced it, I did not --
9 you understand having done that, you lost your right to last
10 summation in the trial, do you understand that?

11 **MR. GALMORE:** Yes sir.

12 **THE COURT:** All right. Then I'm corrected, and I
13 apologize, but my notes didn't reflect that it was introduced
14 into evidence.

15 All right. I'm going to have my associate here read the
16 charge prepared by me, after explanation to the jury, and, of
17 course, I will be back personally with some concluding
18 remarks of charging them that there's two separate
19 indictments and the verdict can be the same as to both
20 indictments, it can be different as to both indictments.

21 Is there any other specific request to charge? What
22 says Ms. Livesay?

23 **MS. LIVESAY:** Nothing from the State, Your Honor.

24 **THE COURT:** What says the Defense?

25 **MR. GALMORE:** No sir, no additions.

JURY OUT/ON RECORD/JURY IN
COURT TO JURY

1 **THE COURT:** Obviously I'm going to have a charge about
2 the fact that he did not testify.

3 Bring the jury in.

4 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
5 **JURY.)**

6 **THE COURT:** Mr. Foreman, ladies and gentlemen, the
7 State of South Carolina announced through the Solicitor that
8 it had concluded its testimony. The Defendant, standing upon
9 his constitutional rights and the fact that he is presumed
10 innocent, has decided not to testify, which is his absolute
11 right.

12 He is presumed innocent and he doesn't have to prove a
13 thing. The State must prove him guilty beyond a reasonable
14 doubt. In addition to deciding he's not going to testify, he
15 is not (sic) placing any evidence in the record. He stands
16 on his presumption of innocence and places the burden of
17 proof on the State of South Carolina as is appropriate.

18 Now, with Counsels' permission, I am going to ask my
19 associate and Law Clerk, Mr. Jones, to read the charge,
20 meaning the law, in this case. This charge was prepared by
21 me, word for word, and is my charge to you as to the law.
22 I'm asking him to read it on my behalf, but you please accept
23 it as being my charge to you.

24 Now, this charge will encompass basic propositions of
25 law that we have in every case and some specific propositions

COURT TO JURY

1 of law with regard to the charge of burglary in the first
2 degree and with regards to the charge of kidnapping.

3 You, of course, understand that with reference to all of
4 the testimony you and you alone are finders of the facts in
5 this case.

6 Now, in considering the facts and observing the
7 documents that have been introduced, you will note now that
8 there are two separate charges, and these are the verdict
9 forms that you would use.

10 In considering these charges, Mr. Foreman, consider them
11 separately. Consider burglary in the first degree as to the
12 evidence on that evidence, and then consider the verdict on
13 kidnapping as to that issue. You can consider either one of
14 them. It makes no difference which one you consider first.

15 Now, your verdict well may be the same as to both
16 indictments. It may be one thing as to one and something
17 else to the other. I just tell you you've got to consider
18 them separately.

19 Now, it is important that you understand, and I'm sure
20 that you do, that there's nobody in this wide world that can
21 tell you twelve what the facts are. You will consider the
22 facts as you find them to be and apply those facts to the law
23 as I'm getting ready to give you such that you can reach a
24 true and lawful verdict, remembering that whatever your
25 verdict is, and it's either not guilty or guilty as to both

COURT TO JURY

1 indictments, it must be the unanimous verdict of all twelve,
2 cannot be a verdict of the majority and obviously would not
3 be one of the minority.

4 Now, Mr. Foreman, I'm going to send in these two slips
5 of paper which I've shared with Counsel so that you can
6 signify what your verdict is, and then when you do that,
7 these indictments, which is not evidence, will be with you in
8 the jury room.

9 Once you reach the verdict, please turn over, on the
10 word verdict, write your verdict, and sign your name, making
11 sure that whatever the verdict is it's the unanimous verdict
12 of all twelve.

13 Now, under our rules, the State, who has the burden of
14 proof, is entitled to an opening statement if they care to,
15 and the Defense follows with his position, and then the State
16 is entitled to close.

17 Ms. Livesay, do you want one or two arguments?

18 **MS. LIVESAY:** I'm sorry, Your Honor?

19 **THE COURT:** Do you want to open and close or just
20 close?

21 **MS. LIVESAY:** Just close, Your Honor.

22 **THE COURT:** All right.

23 Is that agreeable to you, Mr. Galmore?

24 **MR. GALMORE:** Yes sir.

25 **THE COURT:** Then you may proceed.

CHARGE OF THE COURT

1 **MR. JONES, LAW CLERK:** The indictment charges the
2 Defendant with kidnapping and burglary first degree. I
3 remind you that the fact that the Defendant was arrested,
4 charged, and indicted in this case is not evidence and cannot
5 be considered by you as evidence of guilt in this case, nor
6 does it create any presumption or inference of guilt.

7 This document is simply the formal written instrument
8 which contains the charge made against the Defendant. It is
9 the formal document by which this case is brought into Court.

10 The Defendant has pled not guilty to these indictments,
11 and that plea puts the burden on the State to prove the
12 Defendant guilty. A person charged with committing a
13 criminal offense in South Carolina is never required to prove
14 himself innocent.

15 I charge you that it is an important rule of the law
16 that the defendant in a criminal trial, no matter what the
17 seriousness of the charge may be, will always be presumed to
18 be innocent of the crime for which the indictment was issued
19 unless guilt has been proven by evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when you
22 begin your deliberations, but it accompanies the Defendant
23 throughout the trial until you reach a verdict of guilt based
24 on evidence satisfying you of that guilt beyond a reasonable
25 doubt.

CHARGE OF THE COURT

1 The presumption of innocence is like a robe of
2 righteousness placed about the shoulders of the Defendant,
3 which remains with the Defendant until it has been stripped
4 from his shoulders by evidence satisfying you of the
5 Defendant's guilt beyond a reasonable doubt.

6 The presumption of innocence is not mere legal theory.
7 It is not just a legal phrase. It is a substantial right to
8 which every defendant is entitled unless you, the jury, are
9 satisfied from the evidence of the Defendant's guilt beyond a
10 reasonable doubt.

11 The State has the burden of proving the Defendant guilty
12 beyond a reasonable doubt. Some of you may have served as
13 jurors in a civil case where you were told that it is only
14 necessary to prove that a fact is more likely true than not
15 true, such as by the greater weight or preponderance of the
16 evidence.

17 In criminal cases, the State's proof must be more
18 powerful than that. It must be beyond a reasonable doubt.
19 Proof beyond a reasonable doubt is proof that leaves you
20 firmly convinced of the Defendant's guilt. There are very
21 few things in this world that we know with absolute certainty
22 and in criminal cases, the law does not require proof that
23 overcomes every possible doubt.

24 If, based on your consideration of the evidence, you are
25 firmly convinced that the Defendant is guilty of the crime

CHARGE OF THE COURT

1 charged, you must find the Defendant guilty. If, on the
2 other hand, you think that there is a real possibility that
3 the Defendant is not guilty, you must give the Defendant the
4 benefit of the doubt and find him not guilty.

5 I remind you that during this trial you and I have
6 certain duties to perform. As the Trial Judge, it is my
7 responsibility to preside over the trial of this case, and I
8 also have the duty to rule on the admissibility of the
9 evidence offered during this trial. You are to consider only
10 the competent evidence before you.

11 If there was any testimony ordered stricken from the
12 record in this case during this trial, you must disregard
13 that testimony. You are to consider only the testimony which
14 has been presented from this witness stand, any exhibits
15 which have been made part of the record in this case, and any
16 stipulations of Counsel.

17 I have the additional duty to charge you the law
18 applicable to this case. As the Presiding Judge, I am the
19 sole judge of the law in this case, and it is your duty as
20 jurors to accept and apply the law as I now state it to you.

21 If you already have any idea as to what the law is or
22 what the law ought to be and it does not agree with what I
23 now tell you the law is, you must abandon this idea because
24 you are sworn to accept the law and apply the law exactly as
25 I state it to you.

CHARGE OF THE COURT

1 In every case tried in this Court before a jury, the
2 jury becomes the sole and exclusive judge of the facts in a
3 case. A trial judge cannot intimate, state, comment on, or
4 make any statement to a trial jury about the facts in a case.

5 Since you, the jury, are the sole judge of the facts in
6 this case, you are not to infer from what I have said during
7 the progress of this trial in ruling upon the admissibility
8 of evidence or otherwise or anything that I say now during
9 the course of this instruction to you that I have had any
10 opinion about the facts in this case.

11 The law does not allow me to have an opinion about the
12 facts in this case. This is a matter solely for you, the
13 jury, to determine. As jurors, it is your duty to determine
14 the effect, value, weight, and truth of the evidence
15 presented during this trial.

16 There are two types of evidence which are generally
17 presented during a trial, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a person who
19 claims to have actual knowledge of a fact, such as an eye
20 witness. It is evidence which immediately establishes the
21 main fact to be proved.

22 Circumstantial evidence is proof of a chain of facts and
23 circumstances indicating the existence of a fact. It is
24 evidence which immediately establishes collateral facts from
25 which the main fact may be inferred. Circumstantial evidence

CHARGE OF THE COURT

1 is based on inference and not on personal knowledge or
2 observation.

3 The law makes absolutely no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of certainty
6 required of circumstantial evidence than of direct evidence.
7 You should weigh all of the evidence in the case. After
8 weighing all the evidence, if you are not convinced of the
9 guilt of the Defendant beyond a reasonable doubt, you must
10 find the Defendant not guilty.

11 Necessarily, you must determine the credibility of
12 witnesses who have testified in this case. Credibility
13 simply means believability. It becomes your duty as jurors
14 to analyze and to evaluate the evidence and determine which
15 evidence convinces you of its truth.

16 In determining the believability of witnesses who have
17 testified in this case, you may believe one witness over
18 several witnesses or several witnesses over one witness. You
19 may believe a part of the testimony of a witness and reject
20 the remaining part of the testimony of that same witness.
21 You may believe the testimony of a witness in its entirety or
22 reject the testimony of a witness in its entirety.

23 You may consider whether the witness has exhibited to
24 you any interest, bias, prejudice or other motive in this
25 case. You may also consider the appearance and manner of a

CHARGE OF THE COURT

1 witness while on the stand.

2 The rules of evidence ordinarily do not permit witnesses
3 to testify to opinions or conclusions. An exception to this
4 rule exists for witnesses we call expert witnesses, a witness
5 who by education and experience has become an expert in some
6 art, science, profession or calling, may state an opinion as
7 to relevant and material matter in which the witness claims
8 to be an expert and may also state the reasons for the
9 opinion.

10 You should consider any expert opinion received in
11 evidence in this case and like any other evidence give it the
12 weight you think it deserves. If you decide that the opinion
13 of an expert witness is not based on sufficient education and
14 experience or if you conclude that the reasons given in
15 support of the opinion are not sound or that the opinion is
16 outweighed by other evidence, you may disregard the opinion
17 entirely.

18 An expert witness's testimony is to be given no greater
19 weight than of other witnesses simply because that witness is
20 an expert. Further, you are not required to accept an
21 expert's opinion even though it is not contradicted.

22 I instruct you and emphasize that the fact that the
23 Defendant did not testify is not a factor to be considered by
24 you in any way in your deliberation and in your consideration
25 on the question of guilt or the innocence of the Defendant.

CHARGE OF THE COURT

1 It must not be considered by you in any manner whatsoever.

2 A defendant has the constitutional right to remain
3 silent and the assertion of this right must not be considered
4 by you in your deliberations. I repeat, under your oath you
5 are to draw no conclusion whatsoever from the fact that the
6 Defendant in this case did not testify.

7 The fact that this Defendant did not testify should not
8 even be discussed in the jury room. The burden of proof, as
9 I have stated to you, is on the State. The Defendant is not
10 required to prove his innocence. The burden of proof remains
11 on the State to prove guilt beyond a reasonable doubt.

12 A statement alleged to have been made by the Defendant
13 has been admitted into evidence in this case. While the
14 Court has determined that the statement is admissible, I
15 instruct you that you make the ultimate decision of whether
16 or not the Defendant made the statement.

17 If the Defendant did make the statement, you must
18 determine whether the statement was made by the Defendant
19 voluntarily and of his own free will. This means that the
20 statement was not caused by pressure, force, fear, threats,
21 coercion, or intimidation, or by hope or promise of leniency
22 or reward of any kind.

23 In determining whether the statement was voluntary, you
24 should consider both the characteristics of the Defendant and
25 the details of the questioning. Some of the factors that you

CHARGE OF THE COURT

1 must consider are the age of the Defendant, the Defendant's
2 education or lack of education, the Defendant's mental
3 ability or capacity, the Defendant's I.Q. or intelligence,
4 the Defendant's background and environment, the place and
5 length of detention, the nature of the questioning, the
6 advice or lack thereof to the Defendant of his constitutional
7 rights, including, but not limited to, the right to remain
8 silent, that any statement could be used against him in a
9 court of law, the right to have a lawyer present, that if he
10 could not afford a lawyer, a lawyer would be appointed to
11 represent him without any costs, and that he could stop
12 making a statement at any time.

13 You must carefully consider all of the surrounding
14 circumstances before you give any weight to an alleged
15 statement. The State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was voluntary.
17 If you determine it was, you may give the statement any
18 further consideration that you deem proper.

19 You must decide what weight, if any, should be given to
20 the alleged statement. If you determine the alleged
21 statement was not the free and voluntary statement of the
22 Defendant, you should not consider the statement at all.

23 The Defendant is charged with kidnapping. The State
24 must prove beyond a reasonable doubt that the Defendant
25 knowingly and unlawfully seized, confined, inveigled,

CHARGE OF THE COURT

1 decoyed, kidnapped, abducted, or carried away another person
2 without authority of law.

3 To do a thing unlawfully is to do it wilfully against
4 the law. Knowingly means with knowledge, consciously, not
5 accidentally. Seize means to take hold of suddenly or
6 forcibly. Confine means to limit, restrict, or enclose
7 within bounds, imprison, or shut or keep in. Inveigle means
8 to lure, entice, or lead astray by false representations,
9 promises, or other deceitful means.

10 Decoy means to lure by or as if by decoy. A decoy is
11 something to entice a person into a trap. Kidnap is to
12 remove a person against his will by unlawful force or by
13 fraud. Abduct means to carry off secretly or by force for an
14 illegal purpose. Carry away means to remove.

15 The State does not have to prove that the Defendant did
16 all of these things. Instead, if you find beyond a
17 reasonable doubt that the Defendant did any of these things,
18 you may find the Defendant guilty of kidnapping. Something
19 done without the authority of law is something which the law
20 does not sanction, permit, allow, condone, or provide
21 justification for.

22 The kidnapping does not have to be for any personal or
23 monetary gain, for any illegal purpose, but may be for any
24 reason whatsoever.

25 The Defendant is charged with first degree burglary.

CHARGE OF THE COURT

1 The State must prove beyond a reasonable doubt that the
2 Defendant entered a dwelling without consent. A dwelling is
3 any building or portion of a building in which a person
4 ordinarily sleeps. A porch or garage are to be considered a
5 portion of a dwelling.

6 A building constructed as a dwelling that has never been
7 occupied cannot be considered a dwelling for purposes of
8 burglary, but a building is a dwelling even if the residents
9 are temporarily absent from the building.

10 In order to prove that the Defendant entered the
11 dwelling, the State does not have to show that the
12 Defendant's entire body entered the dwelling. The smallest
13 entry is sufficient. It may be any part of the body, such as
14 a hand or foot, or even an instrument, such as a hook or
15 other instrument. In addition, the State does not have to
16 prove that force was used to gain entry.

17 If a person enters a building by using deception,
18 artifice, trick, or a misrepresentation to get consent to
19 enter, this is an entry without consent. Next, the State
20 must prove beyond a reasonable doubt that the Defendant
21 intended to commit a crime, either a felony or misdemeanor,
22 at the time of the entry.

23 The mere entry into a dwelling without consent is not
24 burglary. If the intent to commit a crime is formed after
25 the entry, it is not a burglary. On the other hand, if the

CHARGE OF THE COURT

1 Defendant intended to commit a crime at the time of the
2 entry, it is a burglary, even if the intent was abandoned
3 after the entry. It does not matter that the intended crime
4 was not completed.

5 Intent may be shown by acts and conduct of the Defendant
6 and other circumstances from which you may naturally and
7 reasonably infer intent.

8 Finally, the State must prove beyond a reasonable doubt
9 that when entering the dwelling, or when fleeing, the
10 Defendant or an accomplice was armed with a deadly weapon or
11 explosive. A deadly weapon is any article, instrument, or
12 substance which is likely to cause death or great bodily
13 harm. Whether an instrument has been used as a deadly weapon
14 depends on the facts and circumstances of each case. A gun
15 is a deadly weapon.

16 When entering while -- or when entering, while in the
17 dwelling, or when fleeing, the Defendant or an accomplice
18 caused physical injury to anyone not participating in the
19 crime, or when entering, while in the dwelling, or when
20 fleeing, the Defendant or an accomplice used or threatened to
21 use a dangerous object, or when entering, while in the
22 dwelling, or when fleeing, the Defendant or an accomplice
23 displayed what was or appeared to be a knife, pistol,
24 revolver, rifle, shotgun, machine gun, or other firearm, or
25 the Defendant entered or remained in the dwelling in the

CHARGE OF THE COURT
COURT TO JURY/JURY OUT

1 nighttime.

2 Nighttime is the period between sunset and sunrise
3 during which there is not enough daylight to recognize a
4 person's face except by artificial light or moonlight.

5 **THE COURT:** Mr. Foreman, ladies and gentlemen, please
6 accept the foregoing as my charge to you on the law,
7 remembering that as finders of the facts, you take the facts
8 as you find them and apply that to the law of this case.
9 After summation, I'll be back personally with you with some
10 concluding remarks.

11 I need to ask that you step out just for a moment. I'll
12 be calling you right back. Please step out. Our rules
13 require that I deal with Counsel for a moment.

14 I'll be calling you right back.

15 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
16 **JURY.)**

17 **THE COURT:** Ms. Livesay, any exceptions or additions?

18 **MS. LIVESAY:** No, sir, Your Honor.

19 **THE COURT:** Mr. Galmore?

20 **MR. GALMORE:** No, sir.

21 **THE COURT:** I know y'all are glad to hear him talk,
22 rather than me, for a while.

23 Bring my jury back.

24 Thank you, gentlemen.

25 Mr. Galmore, you be ready to proceed, please.

JURY IN
SUMMATION FOR THE DEFENDANT (GALMORE)

1 **MR. GALMORE:** Yes, sir.

2 **(THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE JURY.)**

3 **THE COURT:** Mr. Galmore, you may have your final
4 summation, please.

5 **MR. GALMORE:** I want to thank you for your jury service
6 today. I know it seems complicated, and you're nervous, and
7 some of you have never been on a jury before, but I assure
8 you that what you're doing here today is nothing unusual.
9 There are juries throughout the forty-six counties in this
10 State. There are juries all over the United States of
11 America that are doing the same thing that you are being
12 asked to do today.

13 Now, what I asked you to do was to listen to the
14 evidence, decide for yourself whether or not the State has
15 met its burden of proof. Now, that's a complicated time, and
16 we've talked about it, and the Judge's Clerk described it to
17 you in many different ways, but the burden of proof here
18 today is what's called beyond a reasonable doubt.

19 Now, in the instructions given to you just now, the
20 Judge's Clerk talked about greater weight or preponderance of
21 the evidence, more likely than not that this event occurred,
22 and he said that is not the standard of proof.

23 Now, to talk about this case, is it more likely than not
24 that Mr. Frinks is the person that they're looking for?
25 Well, they've got his fingerprint right there now, but that

SUMMATION FOR THE DEFENDANT (GALMORE)

1 is not the standard of proof. The standard of proof is
2 beyond a reasonable doubt.

3 I talked to you about this football field and I said
4 that if you've got one foot over the fifty yard line, that
5 would be greater weight or preponderance of the evidence, but
6 that's not what we're here to do today. The evidence has to
7 be up here. You have to be firmly convinced, as the Clerk
8 said, you have to be firmly convinced of the guilt of the
9 accused.

10 Why am I saying this? The fingerprint on the window was
11 on the outside. That is not proof of entry into the
12 dwelling. The fingerprint on the screen door is not matched
13 to anyone. That would be proof of entry into a dwelling.

14 I specifically asked Detective Vescovi did you get any
15 prints off of the kitchen door in the garage. That would be
16 proof that someone was in the garage, find out whose print it
17 is, and lock that person up for burglary, but what we have is
18 a print on the outside at some point in time.

19 That's a very important distinction because I asked
20 Officer Strickland can you put an age on a fingerprint, and
21 he said no, and I didn't hear a single State's witness say
22 anything to the contrary.

23 They brought in Investigator Caulder, who matched the
24 print. He didn't say that this print was brand new, or six
25 hours old, or was twenty minutes old. He didn't address the

SUMMATION FOR THE DEFENDANT (GALMORE)

1 age of the fingerprint at all.

2 They brought in an agent from S.L.E.D. in Columbia. He
3 did not address the age of this fingerprint. Why is this an
4 issue? Because that fingerprint could have been placed at
5 any time.

6 All that fingerprint shows us is that Mr. Frinks was on
7 the premises at some point in time. Does the fingerprint
8 show us that he's one of these three guys that runs in and
9 tries to rob these people? No, it does not.

10 So here's what happened. Mr. Michaels gets on the
11 stand, and all due respect, he's a victim of a crime. Now,
12 the instructions were when you evaluate a witness's
13 credibility, that's a nice way of saying believability, you
14 look at whether or not this person has any bias, motive,
15 something to gain by testifying the way they did.

16 The testimony was, yeah, I recognize his chin. We had a
17 partial chin identification. The problem with that is it
18 never came up before this morning. I recognized him at the
19 bond hearing by his chin. Well, did you tell anybody that
20 you recognized him? Did you call a detective, lean over to
21 the Magistrate, ask the Solicitor, anybody? No. But I
22 believe it happened, got a victim of a crime, somebody has
23 got to go to jail. My household has been broken into. He's
24 going to stretch it just a little bit. The reason why I say
25 that's stretching the truth is because it didn't exist before

SUMMATION FOR THE DEFENDANT (GALMORE)

1 this morning.

2 Here's my whole case file, right here. I got all those
3 pictures that you're going to have. I've got all the
4 statements. I've got here all the evidence. I've got
5 fingerprints, but I don't have anything that says Mr.
6 Michaels recognized this man. He's stretching the truth.
7 It's unfortunate, but it's what happened.

8 I'll tell you how I know he's stretching the truth. He
9 says that the furniture on the patio has been jostled around
10 as if somebody tried to use it to break into the house.
11 Officer Strickland didn't even attempt to lift any prints off
12 of any of that furniture.

13 Now, if somebody did grab it, moved it, tried to use it,
14 it would have fingerprints, or at least they would try to see
15 if it had any, and an officer who has no friends to reward,
16 no enemies to punish, would do what he did in all the other
17 likely places, dust for prints, find one if he can, match it
18 to somebody.

19 I don't think any furniture was moved. I think that's
20 just another example of stretching it just a little bit. We
21 need a conviction. Somebody has got to go to jail for this,
22 but you can't do that without evidence. You have to have
23 some evidence that Mr. Frinks entered the dwelling. That's
24 why I asked about the furniture. The furniture is on the
25 inside. If they get a print off of that furniture, he's in

SUMMATION FOR THE DEFENDANT (GALMORE)

1 there. If you get a print off of the inside of that door,
2 he's in there. If you get a print anywhere in that garage,
3 he's in there, but they don't have it.

4 All we have is that at some point in time Mr. Frinks was
5 present on the property. You've heard testimony many people
6 fishing and swimming back there in that pond, got to run
7 people off sometimes. I guess that's what happens when you
8 have a pond in your back yard.

9 It is unfortunate that these people were traumatized,
10 but before anybody goes to jail, you have to do your job.
11 You have to say State, you did not meet your burden of proof.
12 We are not firmly convinced that he entered the dwelling. We
13 are not firmly convinced because there is no proof that he
14 entered the dwelling. The only proof is a statement that we
15 never heard of until this morning.

16 Now, like these officers, you have no friends to reward.
17 You have no enemies to punish. Your job is to tell the State
18 either you met your burden of proof or you didn't. I told
19 you at the beginning nobody was trying to hide the ball from
20 you. There's no secret or anything. We've got a fingerprint
21 on a window. That doesn't mean he's one of these guys that
22 went and tried to rob these people.

23 We ask you to do your job. I understand the Michaels
24 family will be disappointed, but the evidence that they're
25 giving you today is not sufficient for a conviction in this

SUMMATION FOR THE DEFENDANT (GALMORE)
SUMMATION FOR THE STATE (LIVESAY)

1 case. Thank you for your time and attention, and again we
2 ask you to find Mr. Frinks not guilty of these charges.

3 **THE COURT:** Thank you, Mr. Galmore.

4 Ms. Livesay.

5 **MS. LIVESAY:** Thank you, Your Honor.

6 Ladies and gentlemen of the jury, I'm going to ask you
7 to look at the evidence because I don't think there's any
8 dispute that we have a burglary and a kidnapping. When they
9 came in that garage and he had that handgun and he was
10 pointing it at Mr. Michaels, that's burglary. When you break
11 into the garage, that's a part of the dwelling. That's
12 burglary. When you come into a screened-in porch, that's a
13 part of the dwelling. That's a burglary.

14 As soon as he walked in that garage, that was burglary
15 first at night. As soon as he took that gun out and held Mr.
16 Michaels at gunpoint, that was kidnapping. Now, what we do
17 know is the night that Kevin Strickland, Officer Strickland,
18 came to the scene, he talked to Mr. Michaels. What we also
19 know is on the 911 tape, she called and gave a description of
20 the people that were in the garage from Mr. Michaels.

21 He took a description that night, and what did he say?
22 A guy a little taller than me, around a hundred and eighty
23 pounds, with a hoodie sweatshirt on and a mask. I could see
24 from here down, and his hands, and I could see that he was
25 black, so we got a suspect right then. We know that somebody

SUMMATION FOR THE STATE (LIVESAY)

1 held him at gunpoint. Somebody kidnapped him. Who have we
2 got? We got a description of a black male, and a hoodie, and
3 a Halloween mask, so we already got a suspect.

4 What else did they tell you? When I came home, I didn't
5 see any unusual cars in the neighborhood, no unusual cars.
6 Did you hear a car drive off? No. So right there, we know
7 we've got a suspect on foot because there's no get-away car.
8 There's no car that drives by. We've got a lot of those
9 cases.

10 There's no car that drives by and picks these boys up
11 and removes them from the scene. Nobody sees a car,
12 including the neighbor across the street who comes to see if
13 they're still in the garage. He never sees a car pull off,
14 so we know we've got a black male in a hoodie sweatshirt,
15 Halloween mask, on foot. It's got to be close proximity
16 because there's no car involved.

17 Then we have Mr. Strickland who comes and lifts the
18 fingerprint. Now, what's interesting about what Mr. Galmore
19 says is that we know that he was on the premises, and that is
20 really strange because Dayton Frinks in his statement said he
21 had never been over there. I don't ever go down Pine Needle
22 that way. That's what he said. He denied ever even being on
23 the premises, but we know that's a lie. We know that is not
24 the truth.

25 In that statement, he says I don't go down that way. I

SUMMATION FOR THE STATE (LIVESAY)

1 don't know anything about that house, so we know that's a
2 lie. His fingerprint is right on the window. His attorney
3 told you he was on the premise. Now, he said I don't know
4 when that fingerprint was lifted, I don't know when that
5 fingerprint was lifted.

6 Well, here's what we do know. These victims left the
7 house at six o'clock. Nothing was moved. All the doors were
8 locked, and the screen was intact. When they got home, the
9 screen was cut, and guess whose fingerprint was in there,
10 Dayton Frinks. His fingerprint could not have gotten on that
11 window unless he cut that screen and put his hand on the
12 window. That is the only way that fingerprint got on the
13 window.

14 That's why this picture is so important. There's a
15 screen over the window. His fingerprint could not have
16 gotten on that window unless he cut that screen and put his
17 hand on that window. That's the only way it could have
18 happened. And who did it belong to? Well, we know who it
19 belonged to.

20 We had an expert, Robbie Caulder, come in here and say
21 it matched up from AFIS to Dayton Frinks. Then I went one
22 step further and got an inked handprint from the Defendant
23 and compared it again to confirm, yes, this is Dayton
24 Frinks's fingerprint.

25 Now, we know that he was at that premise, and we know

SUMMATION FOR THE STATE (LIVESAY)

1 that he was there that night because there was no screen cut
2 before that night. Now, Mr. Galtore tells you we know he was
3 on the premise. We do know he was on the premise. We do
4 know because of that fingerprint, and the next thing we know
5 is that he had no business being at that property that night.
6 Not only did he have no business being there that night, he
7 had no business being there period ever.

8 I asked both the victims, look over there. Do you know
9 Dayton Frinks? No. Have you ever had him in your home? No.
10 Has he ever been invited over? No. He shouldn't have been
11 over there. He shouldn't have even been on the premise, so
12 we already know he's over there and he shouldn't be over
13 there, and we already know he's over there at night, and his
14 fingerprint is on a cut screen near where the glass is
15 broken, so we already know he's over there and he's up to no
16 good.

17 Now, he was familiar with that neighborhood before. He
18 said that in his own statement, yes, I've been over there
19 before. I've been over there swimming in that pond, which
20 ironically is right behind the victims' house, so he was
21 familiar with that area. He knew there were no houses behind
22 that house.

23 He knew there was an empty field next door to them and
24 he didn't see a car in the driveway, and we know that because
25 the victims told you that. There was no car in the driveway.

SUMMATION FOR THE STATE (LIVESAY)

1 The lights were off. The shutters were down. They weren't
2 home, so he thought he was going to break in. He was
3 familiar with that area. He knew there were not a lot of
4 people around there. He knew the path from his house on Anna
5 Drive, which is right here, to Foxtail, right here, walking
6 distance.

7 He had walked there before to swim in that pond or go
8 fishing in that pond, so he knew how to get from his house on
9 Anna Drive to these folks' neighborhood. He had been over
10 there before. He was already familiar with the area. He
11 showed up that night.

12 Now, we wouldn't be here if all he did was put his hand
13 on that glass and when he heard that garage door open if he
14 had ran off. That was an option for him. When these victims
15 rolled up, they didn't see a soul in front of that house or
16 beside that house, and they told you, and we showed you
17 pictures, when you drive down that road it's an empty -- for
18 a long time, it's an empty field, wide open. They didn't see
19 a soul.

20 She gets out in the driveway, so she's got a clear shot
21 of this side of the house, this side of the house, and in
22 front of the house, never saw anybody, walked right in the
23 house.

24 He drives up in the driveway. Both of them have come
25 down this way, never saw a soul. They didn't see anybody

SUMMATION FOR THE STATE (LIVESAY)

1 because Dayton Frinks and his buddies were in the back of the
2 house. That's why they couldn't see them. They were in the
3 back of the house trying to get in, cutting that screen, and
4 cutting the back porch screen, and they heard that garage
5 door open, and when they did, they ran around and waited for
6 him to park the car, and when he got out of the car, they
7 came up behind him.

8 That's how they came up behind him so quick. As soon as
9 he got out of that car door, they were on him like that. He
10 didn't have time to move, tapped him right on the shoulder.
11 That's how they got there so quick. That's how they ran up
12 behind him so quick, because they ran from the back of that
13 house. They heard that garage door open. By this time,
14 she's already in the house, and they're watching Mr.
15 Michaels.

16 Now, at that point they had the option. Dayton Frinks
17 could have ran off. If he ran off, these people would have
18 never seen him, would have never seen him, and, in fact, they
19 didn't even know that screen was cut until the police showed
20 up and started looking around. They would have never even
21 caught that until the next day.

22 When they walked in that house, they would have probably
23 have never noticed that until the next day. When that garage
24 door opened and they moved around that house, Dayton Frinks
25 could have taken off. He could have ran back home to Anna

SUMMATION FOR THE STATE (LIVESAY)

1 Drive, but he didn't. He made the decision not to.

2 He sought this victim out when he got out of his car.
3 He was waiting for him and ran up behind him with a weapon,
4 told him to get in the house. He had the decision to leave
5 that house even after he tried to break in. He was back
6 there trying to break in. It was dark. Mr. Michaels told
7 you it was dark out there. They went in that house.

8 That boy could have taken off and nobody would have ever
9 seen him, never seen him, but instead, he made the decision
10 to stay out by that car and jump in behind this victim. He
11 didn't have to do that. These victims didn't roll up and
12 catch them in the back of the house. It wasn't like they
13 rolled up on him and saw him, and he was kind of, oh, no,
14 I've got to do something. That is not the situation.

15 They didn't roll up and catch him in the house and he's
16 kind of caught off-guard, had to do something to get away.
17 They didn't roll up and catch him outside of the house. They
18 never saw him. He could have taken off and not a soul would
19 have saw him.

20 He turned that corner with that weapon and held it on
21 Mr. Michaels. That's what he decided to do. That was
22 kidnapping. And then Mr. Michaels pushed that gun up and
23 shut that door, and his wife called 911. Then -- then they
24 ran off. That's when Dayton Frinks decided to run off, after
25 his victim got away, after he had held this man at gunpoint.

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1 When he knocked that gun out and shut that door and
2 locked it, that's when he decided to run away. And even
3 then, Mr. Michaels said when I turned in, I saw his hand
4 right there like he was trying to push the door.

5 A second changed this case. He could have easily caught
6 that door before this victim was able to shut it and lock it.
7 Then we wouldn't be here for a burglary. We would be here
8 for a different kind of case.

9 Dayton Frinks made the decision to be there. He made
10 that decision on his own. He made it the night of November
11 the 12th. He made it when he walked on those peoples'
12 premises that night. That's when he made it. He made the
13 choice to be there when he walked over to those peoples'
14 house, which he had no business doing and a place he had no
15 business being, over there trying to break into that back
16 window, trying to break into that screened-in porch. That
17 was the first decision he made that helped him get there.

18 Then that wasn't enough. He had a chance to run. Then
19 he made another decision. On the way over, he had time to
20 change his mind from Anna Drive to Foxtail, that walk when he
21 was going from his house to Foxtail Drive. He could have
22 turned around at any minute and he chose not to.

23 Then he chose to go into the back of that house and
24 start trying to get into that house, cutting that screen open
25 and getting into that window. That was the second decision

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1 he made. Then even then after he did that, he had a third
2 decision.

3 Still at this point, he could have turned around, and he
4 decided not to. When he was in the back of that house and he
5 heard that garage door open, instead of thinking this is my
6 opportunity to get away, this is my opportunity to run, I've
7 already walked over here, I ain't got no business being over
8 here, I've already cut these peoples' screen, I've already
9 tried to break into the house, this is my chance to run.

10 Then he made a third decision to come around that corner
11 with that weapon and hold this man at gunpoint. He made
12 decisions all during that night that brought us here. He had
13 ample time and ample opportunity to turn around that night
14 and go back to Anna Drive, and he never did.

15 Now, Mr. Galmore says, well, why -- why don't we have a
16 fingerprint in the garage? Well, I didn't hear anybody
17 testify that he touched anything in the garage. Even holding
18 this man at gunpoint, he wasn't touching anything in the
19 garage.

20 Then he tried to get into the doorway. I don't know
21 that he actually touched the door or not. I know that
22 Detective Strickland never -- never went to handprint that
23 door, so there's no evidence that he ever touched anything in
24 that garage.

25 Now, the Defendant's statement, I think, is critical in

SUMMATION FOR THE STATE (LIVESAY)

1 this case because he admits in the beginning of the
2 statement, yeah, I know where Pine Needle -- when you look at
3 that map, Pine Needle leads you right by that neighborhood.
4 Yeah, I know where Pine Needle is. Do you know where that
5 neighborhood is? Yes, I know where that neighborhood is. He
6 admits yes, I used to go swimming in that pond.

7 Where it all started turning was when Detective Vescovi
8 says, well, you know, we found a fingerprint on the back of
9 that window. That fingerprint matched up to you. We put it
10 in AFIS, the thing at S.L.E.D., and it matched up to you. Do
11 you know anything about that? No. I don't ever go down Pine
12 Needle. I don't ever go down Pine Needle. I don't know how
13 my fingerprint got there. I've never been over there.

14 You know, it can't be both, folks. It can't be he's
15 telling you in his statement that night I don't know anything
16 about that. I don't go down Pine Needle anymore. I've never
17 been to that house. I don't know how my fingerprint got
18 there. He's telling you that, and his attorney is up here
19 telling you he was on the premises. Yeah, he was on the
20 premises, but that doesn't mean he did it.

21 He didn't tell you that he was at that house in that
22 statement when he was talking to Damon Vescovi, because he
23 knew what he had done. When he found out that his
24 fingerprint was on that window, that was it, and he went
25 completely to I don't know anything about Pine Needle. I

SUMMATION FOR THE STATE (LIVESAY)
COURT TO JURY

1 have no idea how my fingerprint got there. Now, that is
2 obviously not the truth.

3 I'm going to tell you we've got enough evidence here to
4 convict Dayton Frinks. We've got a description. We've got
5 him being on the premises. We've got a fingerprint at the
6 window, and we've got him in close proximity to where that
7 victim lives. That fingerprint is circumstantial evidence
8 that he was out there that night trying to break into that
9 house, up to no good, and he had no business being at that
10 house at night. These people have no idea who he is.

11 I'm going to ask you to find him guilty of burglary
12 first and kidnapping, because that night he left his house,
13 knew that area, went over there, tried to break into these
14 peoples' house. They don't even know him. He's got no
15 business being over there.

16 That even then, that wasn't enough. He turned that
17 corner and pulled that gun on Mr. Michaels. He had plenty of
18 time to make a different decision and he didn't, and because
19 of the decisions he made, I'm going to ask you to find him
20 guilty of burglary first and kidnapping. Thank you for your
21 time.

22 **THE COURT:** Thank you, Ms. Livesay, and again, thank
23 you, Mr. Galmore.

24 Mr. Foreman, ladies and gentlemen, you've heard all of
25 the testimony in the case. I have given you the instructions

COURT TO JURY
JURY OUT/ON RECORD

1 in the law, and it is now your duty to go back and deliberate
2 as finders of the facts and thereafter reach a unanimous
3 verdict.

4 Please remember that there are two separate charges, and
5 you are to consider the evidence separately as to each
6 charge, remembering that the verdict can be same as to both
7 charges or different, depending on your finding of the
8 facts.

9 I'll let you go to the jury room. Do not begin your
10 deliberation until I send these verdict forms in, and they're
11 coming in, in just a moment. Thank you.

12 Remove the alternate and put him in another place in
13 case I need him.

14 All right. Come forward and agree on what's going in
15 the jury room.

16 (AT 4:15 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE
17 PRESENCE OF THE JURY.)

18 THE COURT: Be sure and tell them if they have any
19 questions, tell them to write them down and let me know.

20 (THE EXHIBITS ARE REVIEWED BY COUNSEL FOR STATE AND
21 DEFENSE.)

22 (MIRANDA FORM RE-MARKED AS STATE'S EXHIBIT 1-A.)

23 (EXHIBITS AND VERDICT FORMS ARE SUBMITTED TO THE JURY.)

24 THE COURT: We will be in recess, subject to the call
25 of the jury.

JURY OUT/ON RECORD

1 MS. LIVESAY: Thank you, Your Honor.

2 (JURY DELIBERATING)

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY.)

5 THE COURT: There are several things we need to put on
6 the record. I received a communication an hour or two ago
7 from the jury, which I shared with the State and the Defense.
8 Read that.

9 MR. JONES, LAW CLERK: Do you have to enter the
10 dwelling or to constitute burglary, or does physical damage
11 to the screen constitute this crime? Foreperson.

12 THE COURT: To answer that question, with consent of
13 State and the Defendant, we sent that portion of the charge
14 to the jury dealing with the issue of burglary.

15 As I understand, the State was satisfied with that
16 response, and the Defendant, is that true?

17 MR. GALMORE: Yes, sir.

18 THE COURT: Is that true?

19 MS. LIVESAY: Yes, sir.

20 THE COURT: A few moments ago, the Foreman reported to
21 the bailiff that one of the jurors -- what was his name --
22 Prevatte, was it?

23 MR. GALMORE: Yes, sir, Prevatte -- something, yes sir.

24 THE COURT: Had told the Foreman that she couldn't be
25 fair in this case based on some incident in the past that

JURY OUT/ON RECORD

1 occurred with her nephew and that she just couldn't be fair
2 because of that.

3 I called the Foreman and that juror back to my chambers
4 in the presence of my Law Clerk, me, the Solicitor, George
5 DeBusk of the Solicitor's Office, and Mr. Galmore,
6 representing the Defendant.

7 From that conversation, the Defendant -- the juror told
8 us that she had some concern because of the way her nephew
9 had been treated. I explained to the juror that under her
10 oath that she must follow the law and the evidence in this
11 case, and whatever occurred with her nephew could
12 absolutely have no bearing whatsoever on her verdict in this
13 case, and as to what the verdict was, I have no way of
14 knowing.

15 After discussing it with her further, she advised me
16 that she would be fair, that she would dismiss that concern
17 involving the nephew and would wish to continue
18 deliberations.

19 Do you want to add to that, Ms. Livesay?

20 **MS. LIVESAY:** Yes, sir, Your Honor. That was my
21 understanding.

22 **THE COURT:** Okay. And based on that, I let her go
23 back. Mr. -- is that a fair statement, Mr. Galmore?

24 **MR. GALMORE:** Yes, sir, it is.

25 **THE COURT:** Either one of you want to amplify it in any

JURY OUT/ON RECORD/JURY IN

1 way? I don't know how, but she specifically said I want to
2 go back. I can be fair. I can dismiss my thoughts about my
3 nephew, clearly, and the Foreman was in there with us. He
4 appeared to be satisfied with her response.

5 I just want it on the record, okay, so we'll await the
6 verdict of the jury. Thank you.

7 (NOTE FROM JURY, ANSWER FROM THE COURT, AND ANSWER FROM
8 JURY MARKED AS COURT'S EXHIBIT NUMBER 1.)

9 THE BAILIFF: Your Honor, they have reached a verdict.

10 THE COURT: They have a verdict?

11 THE BAILIFF: Yes, sir. Judge, do you want to go ahead
12 and bring them in?

13 THE COURT: I do.

14 I assume the State is ready to accept the verdict?

15 MS. LIVESAY: Yes, sir.

16 THE COURT: And the Defense is here and in Court, and
17 is ready?

18 MR. GALMORE: Yes, sir.

19 THE COURT: All right.

20 Bring the jury in.

21 (AT 6:30 P.M., THE FOLLOWING TAKES PLACE IN THE PRESENCE
22 OF THE JURY.)

23 THE COURT: Have we brought the alternate back in?

24 THE BAILIFF: Yes, sir.

25 THE COURT: Mr. Foreman, have you and your

VERDICT

1 distinguished jury reached a unanimous verdict as to these
2 two indictments?

3 **THE FOREMAN:** Yes, we have, Your Honor.

4 **THE COURT:** All right. And if these be the unanimous
5 verdicts of all twelve, signify please by raising your right
6 hand everybody.

7 Everybody has raised their right hand signifying, Ms.
8 Livesay and Mr. Galmore, that the verdict is unanimous.

9 Heather, please accept the verdict.

10 The indictments are regular in every respect. The
11 verdict is listed on the back of the indictments, and the
12 Foreman has so certified.

13 Please publish the verdicts.

14 **THE DEPUTY CLERK:** State of South Carolina, County of
15 Horry, versus Dayton Carondo Frinks, Jr., as to Indictment
16 Number 2013-GS-26-189, we, the jury, unanimously find the
17 Defendant, Dayton Carondo Frinks, Jr., not guilty of
18 kidnapping.

19 As to Indictment Number 2013-GS-26-190, we, the jury,
20 unanimously find the Defendant, Dayton Carondo Frinks, Jr.,
21 guilty of burglary first degree. Dated May 16, 2013, signed
22 by the Foreperson, James Pate, Jr.

23 Ladies and gentlemen of the jury, if this is your
24 verdict, so signify by raising your right hand.

25 **(ALL JURORS RAISE THEIR RIGHT HAND.)**

POLLING OF THE JURY

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1 **THE DEPUTY CLERK:** Thank you.

2 **THE COURT:** Anything further from the jury? The jury
3 has signified in open court by raising your right hand.

4 **MR. GALMORE:** Your Honor, we request the jury be
5 polled.

6 **THE COURT:** You are entitled to that.

7 Proceed to do so.

8 **THE DEPUTY CLERK:** When I call your juror number, if you
9 will please stand.

10 Juror Number 288, is this your verdict?

11 **JUROR NUMBER 288:** Yes.

12 **THE DEPUTY CLERK:** Is this still your verdict?

13 **JUROR NUMBER 288:** Yes.

14 **THE DEPUTY CLERK:** Thank you.

15 172. Is this your verdict?

16 **JUROR NUMBER 172:** Yes Ma'am.

17 **THE DEPUTY CLERK:** Is this still your verdict?

18 **JUROR NUMBER 172:** Yes Ma'am.

19 **THE DEPUTY CLERK:** Thank you.

20 276. Is this your verdict?

21 **JUROR NUMBER 276:** Yes Ma'am.

22 **THE DEPUTY CLERK:** Is this still your verdict?

23 **JUROR NUMBER 276:** Yes Ma'am.

24 **THE DEPUTY CLERK:** Thank you.

25 132. Is this your verdict?

POLLING OF THE JURY

1 JUROR NUMBER 132: Yes.
2 THE DEPUTY CLERK: Is this still your verdict?
3 JUROR NUMBER 132: Yes.
4 THE DEPUTY CLERK: Thank you.
5 3. Is this your verdict?
6 JUROR NUMBER 3: Yes Ma'am.
7 THE DEPUTY CLERK: Is this still your verdict?
8 JUROR NUMBER 3: Yes Ma'am.
9 THE DEPUTY CLERK: Thank you.
10 228. Is this your verdict?
11 JUROR NUMBER 228: Yes Ma'am.
12 THE DEPUTY CLERK: Is this still your verdict?
13 JUROR NUMBER 228: Yes Ma'am.
14 THE DEPUTY CLERK: Thank you.
15 223. Is this your verdict?
16 JUROR NUMBER 223: Yes.
17 THE DEPUTY CLERK: Is this still your verdict?
18 JUROR NUMBER 223: Yes.
19 THE DEPUTY CLERK: Thank you.
20 279. Is this your verdict?
21 JUROR NUMBER 279: Yes Ma'am.
22 THE DEPUTY CLERK: Is this still your verdict?
23 JUROR NUMBER 279: Yes Ma'am.
24 THE DEPUTY CLERK: Thank you.
25 187. Is this your verdict?

POLLING OF THE JURY
COURT TO JURY

1 JUROR NUMBER 187: Yes Ma'am.
2 THE DEPUTY CLERK: Is this still your verdict?
3 JUROR NUMBER 187: Yes Ma'am.
4 THE DEPUTY CLERK: Thank you.
5 367. Is this your verdict?
6 JUROR NUMBER 367: Yes Ma'am.
7 THE DEPUTY CLERK: Is this still your verdict?
8 JUROR NUMBER 367: Yes Ma'am.
9 THE DEPUTY CLERK: Thank you.
10 227. Is this your verdict?
11 JUROR NUMBER 227: Yes.
12 THE DEPUTY CLERK: Is this still your verdict?
13 JUROR NUMBER 227: Yes.
14 THE DEPUTY CLERK: Thank you.
15 304. Is this your verdict?
16 JUROR NUMBER 304: Yes Ma'am.
17 THE DEPUTY CLERK: Is this still your verdict?
18 JUROR NUMBER 304: Yes Ma'am.
19 THE DEPUTY CLERK: Thank you.
20 THE COURT: Anything further from the jury?
21 MR. GALMORE: No, sir, Your Honor.
22 MS. LIVESAY: No, sir, Your Honor.
23 THE COURT: I'll hear any motions later.
24 For the jury, ladies and gentlemen, I recognize that
25 this was a difficult verdict for you, all of you, based on

COURT TO JURY

1 all of the evidence and so forth, and none of you asked to
2 come into Court this week, and certainly none of you asked to
3 be on this jury.

4 Based on the law and evidence in this case, there is
5 certainly, in my opinion, sufficient evidence for a jury, as
6 finders of the facts, to reach the verdict that they did. Of
7 course, during the trial of the case, I had no opinion and
8 still didn't, but I've examined the law and the evidence in
9 the case, and based on your view of the evidence, it was
10 certainly sufficient for the verdict that you had.

11 Give me the record of this young man. The jury is
12 entitled to know that now.

13 Ms. Livesay?

14 **MS. LIVESAY:** I'm sorry, Your Honor?

15 **THE COURT:** The record. I want the record of this
16 young man. The jury is entitled to know what we're dealing
17 with here.

18 **MS. LIVESAY:** Yes sir, Your Honor.

19 Can we approach, Your Honor, real quick ---

20 **THE COURT:** Yes.

21 **MS. LIVESAY:** --- before we proceed any further?

22 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

23 **MS. LIVESAY:** Your Honor, the Defendant doesn't have a
24 per se prior record. He does have a pending charge for
25 burglary, as well as receiving stolen goods.

COURT TO JURY

1 **THE COURT:** And they are pending at this time.

2 I was aware of that prior record, but I did not let it
3 come into evidence simply because whatever your verdict was,
4 I want it based on the law and evidence in this courtroom,
5 and obviously it was. It would be my fear that the
6 introduction that there were two cases now pending for
7 burglary would prejudice the jury against him, and I didn't
8 want that. I wanted him to have a fair trial, and he got
9 one, and you reached your verdict.

10 Now, let me say this to you. The people of Horry County
11 are in your gratitude and you have our deep appreciation.
12 There is so much violence going on in this State,
13 particularly this County, and so much of it is by young
14 people running around with guns, I'm so delighted that this
15 young man is not standing here before me for murder because
16 it could have happened.

17 Just this week, I've dealt with young people going to
18 jail for a long period of time because they had a gun. If
19 they hadn't have had a gun, it wouldn't have happened, and
20 this victim is indeed fortunate because they would have in
21 most circumstances have fired that weapon, and he would have
22 been facing life imprisonment.

23 I want to thank all of you for your services. You have
24 my gratitude and that of the people of Horry County who are
25 tired of the lawlessness that's occurring every day, and your

COURT TO JURY
JURY OUT/ON RECORD

1 Sheriff's Department and County officials are moving to do
2 something about it as best they can.

3 This verdict will go to the detention center and
4 throughout the criminal community and will perhaps send a
5 message, if you commit the crime, you do the time.

6 You are now excused for the night and for the week with
7 my gratitude. Thank you.

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
9 JURY.)

10 THE COURT: For the record, it's generally my policy to
11 let the jury hear what they didn't hear on the -- in the
12 record because they will read about it in the paper in the
13 morning and want to know why they weren't presented with it
14 during the trial, and I've found it's very helpful to
15 jurors who now understand there's a reason for prior
16 records and prior pending records not to be in the trial of
17 the case.

18 All right. Ms. Livesay, anything further?

19 MS. LIVESAY: Your Honor, I'm going to ask real quickly
20 if the victims wish to be heard.

21 THE COURT: Yes. They're entitled to it.

22 MS. LIVESAY: No, Your Honor, they don't have anything.

23 THE COURT: All right. Do you have anything further?

24 MS. LIVESAY: I'm sorry, Your Honor?

25 THE COURT: Do you have anything further?

COURT TO JURY
JURY OUT/ON RECORD

1 **MS. LIVESAY:** No, sir, Your Honor.

2 **THE COURT:** Mr. Galmore, bring the Defendant around,
3 please.

4 **MR. GALMORE:** Your Honor, just for the record, I would
5 make a motion for a new trial and a motion for an order in
6 arrest of judgment. It's based on the sufficiency of the
7 evidence and the sufficiency of the indictment.

8 **THE COURT:** That will be respectfully overruled. The
9 case was tried very well by you, but the evidence in this
10 case, clearly there was a burglary in that there was an entry
11 into the garage, and there's testimony that the screen door
12 was open and that someone had moved furniture around in the
13 screen door, which is a part of the dwelling.

14 Those two issues standing alone was sufficient to cause
15 an entry sufficient to be a crime without consent. In
16 addition to that, there was uncontroverted his fingerprint on
17 that window, and there was plenty of -- and then more than
18 that, there was the testimony of the victim who said he was
19 the one, and I quite frankly was impressed with the victim's
20 testimony.

21 That gun was on his face. I would have been more
22 nervous than he was, but he described everything that the man
23 told him to do. When he told him to turn around, he did it.
24 He gave a good description of this Defendant, identified him
25 at the bond hearing.

SENTENCING

1 All of these things coupled together, in my view, were
2 sufficient for the jury to reach the verdict they did as
3 finders of the facts. It's their decision, not mine, but the
4 evidence was there.

5 Ms. Livesay, do you want to elaborate on what I've said?

6 **MS. LIVESAY:** I do not, Your Honor.

7 **THE COURT:** All right.

8 Have the Defendant come forward. Is his family here?

9 **MR. GALMORE:** They were here. They had to leave, Your
10 Honor.

11 **THE COURT:** Young man, the statutory laws of South
12 Carolina provide that one who is convicted of burglary in the
13 first degree must go to jail for fifteen years, could go to
14 jail for life.

15 **DAYTON FRINKS, JR.:** Yes sir.

16 **THE COURT:** That's how serious it is when you invade
17 somebody's house with intent to commit a crime without
18 consent, particularly with a deadly weapon. I'm so glad that
19 you didn't fire that thing because you'd have been convicted
20 of murder.

21 I take no pleasure in sentencing a young eighteen year
22 old, but I have no recourse based on my oath of office. The
23 minimum sentence provided for burglary in the first degree is
24 fifteen years, and given your youth, no significant prior
25 record, a fifteen year minimum will be the judgment of the

SENTENCING

1 Court. Thank you.

2 DAYTON FRINKS, JR.: Yes sir.

3 MR. GALMORE: Thank you, Your Honor.

4 (Conclusion of Transcript of Record.)

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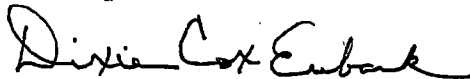
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 16th day of May, 2013.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

July 12, 2013



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)Denton Coranda Franks #355560)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015 CP26 4770

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 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 Lee C. I. / Bishopville, South Carolina
2. Name and location of Court which imposed sentence Horry County Court of General Session
Conway, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-65-26-00190 / Burglary 1st Degree
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 16, 2013 / 15 years
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 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. March 18, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015-UP-157
- ii. _____
- 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) Ineffective Assistance of Trial Counsel
 (b) 14th Amendment United States Constitution Violation
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- Trial Counsel's performance was deficient when he failed to
 (a) request a hung charge (lesser included offense) when the only
 (b) evidence before the Court was Applicant's fingerprint on the exterior
of the home's window, and a broken window pane was the only
 (c) evidence of a crime. Later also

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) The Effective Assistance of Counsel claims can be raised
- (b) for the first time on PCR
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NA
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. James Calmore / 203 Laurel Street, P.O. Box 11629, Columbia, S.C. 29526
- ii. Susan B. Harbrett / Post Office Box 11629, Columbia, S.C. 29526
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. James Calmore / Trial and Sentencing
- ii. Susan B. Harbrett / Direct Appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Conviction, Remand for New Trial

20. Are you now under sentence from any other court that you have not challenged?

No.

2015 CP26 4770

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Dayton Frazier

SWORN to and subscribed before me this 19
day of June, 2015.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2018

2015 JUN 22 PM 4:42
MELANIE HIGGINS-WARD
CLERK OF COURT

2015 CP264770

**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.

Dayto Trunk

Applicant

SWORN or affirmed to and subscribed before me this

19 day of June, 2015.

Debra Smith

Notary Public

My Commission Expires:

11-4-2015

2015 JUN 22 PM 4:42
CLERK OF COURT
MELANIE HUGGINS-WARD

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

Dayton C. Frinks, Jr.,)
S.C.D.C. No. 355560,)

Case No.: 2015-CP-26-4770

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

In response to the Applicant's post-conviction relief application filed June 22, 2015, the Respondent would respectfully show this Court:

I.

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the January 2013 term for kidnapping (2013-GS-26-0189) and first-degree burglary (2013-GS-26-0190). James C. Galmore, III, Esquire represented Applicant.

On May 15, 2013, the case proceeded to a jury trial in front of the Honorable Edward B. Cottingham. On May 16, 2013, the jury found Applicant not guilty of kidnapping, but guilty of first-degree burglary. Judge Cottingham sentenced Applicant to fifteen (15) years imprisonment for the first-degree burglary charge.

The Applicant filed a timely notice of appeal, Appellate Case Number 2013-001127. Applicant was represented by Susan B. Hackett, Esquire; however, Applicant filed a *pro se* brief and Counsel's motion to be relieved was granted by the South Carolina Court of Appeals.

Subsequently, Appellant's appeal was dismissed on March 18, 2015, in 2015-UP-157.

II.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel's performance was deficient when he failed to request a jury charge (lesser included offense), when the only evidence before the court was Applicant's fingerprint on the exterior of the home's window, and a broken window pane was the only evidence of a crime."
2. Violation of Sixth Amendment Rights

Respondent denies Applicant is entitled to relief on these claim, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCPP.

Attached to this return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

For purposes of this Return, Respondent interprets Applicant's raised allegations to be allegations of ineffective assistance of counsel. Respondent submits these allegations are without merit. 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 on as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the 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. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305

S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, Respondent requests that counsel be appointed and an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

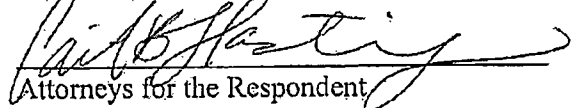
J. ROBERT BOLCHOZ, JR.
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN BAZAN HASTINGS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

_____, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2015-CP-26-4770
DAYTON C. FRINKS, JR., 355560,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. James K. Falk, Esquire
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 6th day of December, 2016.



Mallory Morris, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2015-CP-26-04770

3

4

5 Dayton C. Frinks, Jr.)

6 vs.)

7 State of South Carolina) Transcript of Record

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12 May 23rd, 2017
13 Conway, South Carolina

14

15 BEFORE:

16 Honorable Roger E. Henderson, Judge.

17

18 APPEARANCES:

19

20 James K. Falk, Esq.
21 Attorney for the Applicant

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23 Valerie G. Giovanoli, Esq.
24 Attorney for the State

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Teresa J. F. Bautz, RPR
Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

James C. Galmore

Mr. Falk	9	--	17	--
----------	---	----	----	----

Ms. Giovanoli	--	14	--	--
---------------	----	----	----	----

Dayton C. Frinks, Jr.

Mr. Falk	21	--	26	--
----------	----	----	----	----

Ms. Giovanoli	--	24	--	--
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E X H I B I T S

NO.	DESCRIPTION	ID	EV
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No exhibits submitted.

Exhibits retained by Clerk of Court.

1 (The hearing commenced at approximately 12:36
2 p.m.)

3 THE COURT: Before we proceed with Frinks, I don't
4 know how long it's going to take to hear it. Y'all
5 want to break for lunch, finish it before lunch?

6 MS. GIOVANOLI: Your Honor, there's only one
7 witness on the State, and there's only one claim in the
8 application. So I anticipate it not be a very long
9 one. I think Mr. Falk would know better, his client.

10 THE COURT: Makes no difference to me.

11 MR. FALK: Well, Your Honor, in that my docket is
12 sort of flip flopped back and forth, I'm not sure what
13 the State's position is going to be. I'm not sure if
14 the facts that he's alleged in his application are
15 close enough to what I think the issue was on his PCR.

16 I'm not sure if I should -- it's a situation, I
17 didn't know if I needed to file an amended PCR. I
18 think it sort of fits under what he's alleged. But if
19 the State is going argue that I'm arguing outside of
20 the pleadings, then I may be asking if the Court could
21 consider a continuance in this case or if they knew
22 what I was going to say.

23 The point is, this case we had an in-court
24 identification of the Defendant by a victim. And
25 normally that would have -- there would have been a

1 Biggers hearing to look at the reliability of the prior
2 identification. However, there was no Biggers hearing
3 because at that point in time the State's witness, I
4 don't think, had ever told anybody that he could
5 identify my client. It only came out through
6 cross-examination, only actually through Mr. Galmore's
7 cross-examination that he stood up and said, there he
8 is. That's my ineffective assistance of counsel claim.
9 And I think that sort of fits under what he has
10 alleged. But the State believes it doesn't.

11 MS. GIOVANOLI: His ineffective assistance of
12 counsel claim on page three of the application 11-A, it
13 says to state concisely and in the same order the facts
14 which support each of the grounds set forth in ten.
15 Ten is where he alleged ineffective assistance of
16 counsel.

17 And my interpretation of that concise statement is
18 that trial counsel was ineffective for failing to
19 request the lesser included offense of burglary second.
20 He does put King charge. But King charge, as Your
21 Honor is probably aware, is the charge telling the jury
22 that if they have reasonable doubt between the greater
23 and lesser included offense, they would need to find in
24 favor of the lesser included offense.

25 That didn't apply to this case because the jury

1 was only instructed on burglary first and nothing more.
2 So I believe that trial counsel failed to request a
3 lesser included offense be charged to the jury in this
4 case. I don't think that that is anything similar to
5 the allegation being made just now, today, for the
6 first time with regard to the Biggers hearing, a
7 failure to request a Biggers hearing.

8 And it's my understanding based on the record that
9 there was no Biggers hearing, like Mr. Falk said,
10 because there had never been an out-of-court
11 identification made. It was in court when the victim
12 actually identified the Defendant, and trial counsel
13 handled that situation accordingly. He definitely
14 cross-examined the victim on that issue and also made
15 that argument in closing. So...

16 MR. FALK: The issue was whether or not he was
17 there. He makes a statement in his pleading that the
18 only evidence that there was to prove that he was at
19 the scene was a fingerprint that was on the outside of
20 the house. And, again, this is in --

21 MS. GIOVANOLI: Well, the victim's testimony
22 during trial was that the Applicant entered his garage
23 and pointed a gun at him indicating to him to get into
24 the house. And he also had two codefendants behind him
25 at the time that he approached the victim. And there

1 was an issue with a fingerprint being on the outside of
2 a screen that had been slit and a window that had been
3 cracked.

4 But that issue, the burglary first was because of
5 the entry into the garage which is part of the
6 dwelling. And the victim did testify to that and also
7 identified the Defendant in court. And counsel is
8 right that he did not make an identification prior to
9 that because he had never been provided with a photo
10 lineup. It was the fingerprint that actually made the
11 Applicant in this case a suspect in the case.

12 So I guess the main point here is that the
13 allegation in the application in the pleading is that
14 trial counsel failed to request the lesser included
15 offense in this case. And that is what the State is
16 ready to proceed on.

17 MR. FALK: I guess we would ask that you would
18 allow us to --

19 THE COURT: Are you asking me to allow you to
20 address the Biggers issue?

21 MR. FALK: But it's not really a Biggers issue.
22 There's no Biggers case law when it comes from your --

23 THE COURT: Yeah.

24 MR. FALK: And so I don't know what the case law
25 is. And that's why I just thought if we could make a

1 record of it, I don't...

2 THE COURT: Mr. Falk, I'm going to allow you to do
3 that.

4 MR. FALK: Thank you, Your Honor.

5 THE COURT: You can proceed with this.

6 MS. GIOVANOLI: Okay. Thank you, Your Honor.

7 THE COURT: All right. At this time in this
8 matter.

9 MR. FALK: Thank you, Your Honor.

10 MS. GIOVANOLI: May I call the case for the
11 record?

12 THE COURT: Yes, ma'am, please do.

13 MR. GIOVANOLI: Okay.

14 THE COURT: Have a seat, sir. Have a seat.

15 MS. GIOVANOLI: So this is Dayton C. Frinks, Jr.,
16 versus the State of South Carolina, Case No.
17 2015-CP-26-4770. We're before the Court on an
18 application for post conviction relief filed June 22nd,
19 2015. The Applicant is presently incarcerated in the
20 South Carolina Department of Corrections. The Horry
21 County Grand Jury indicted Applicant at the
22 January 2013 term for kidnapping, 2013-GS-26-0189, and
23 first-degree burglary 2013-GS-26-0190.

24 James C. Galmore, III, Esquire, represented the
25 Applicant, and on May 15th, 2013, the case proceeded to

1 a jury trial in front of the Honorable Edward B.
2 Cottingham -- Cottingham, excuse me. On May 16th,
3 2013, the jury found Applicant not guilty of kidnapping
4 but guilty of first-degree burglary. Judge Cottingham
5 sentenced the Applicant to 15 years imprisonment for
6 the first-degree burglary charge.

7 Applicant filed a timely notice of appeal, and
8 Mrs. Susan B. Hackett, Esquire, filed a brief pursuant
9 to Anders v. California. Applicant also filed a pro se
10 brief, and counsel's motion to be relieved was granted
11 by the South Carolina Court of Appeals. And the Court
12 of Appeals also dismissed Appellant's appeal on
13 March 18th, 2015.

14 The State is present and ready to proceed. The
15 Applicant is also present and represented by Mr. James
16 Falk. And I will hand it over to counsel.

17 THE COURT: Mr. Falk.

18 MR. FALK: We call Mr. Galmore to the stand.

19 THE COURT: Okay. Mr. Galmore.

20 JAMES C. GALMORE, after being duly sworn,
21 testified as follows:

22 THE CLERK: Thank you, you may be seated. State
23 your name for the Court, please.

24 THE WITNESS: James Galmore, G-A-L-M-O-R-E.

25 DIRECT EXAMINATION

1 BY MR. FALK:

2 Q Hello, Mr. Galmore, I believe we've met before.

3 Where do you practice?

4 A I practice at the Horry County Public Defender's

5 office.

6 Q And were you with the public defender's office

7 when you were representing Dayton Frinks?

8 A Yes, sir.

9 Q What is your recollection of the evidence that was

10 against Mr. Frinks going into the trial?

11 A Well, they did not have much going into the trial.

12 They had a fingerprint on the outside of a window pane.

13 And based on that they were able to make an

14 identification of Mr. Frinks, but that was the only

15 evidence.

16 Q So is it your understanding that in order to put

17 the fingerprint on the window pane you had to cut the

18 screen on that window?

19 A I don't know if that was required or not.

20 Q I mean, physically, you couldn't have put your

21 hand on the window without going through the screen?

22 A No, I don't know if the screen was outside of the

23 window where --

24 Q Oh, okay.

25 A -- you would have to remove the screen in order to

JAMES C. GALMORE-DIRECT BY MR. FALK

10

1 such the actual window, I don't know that.

2 Q Well, because there was testimony about that the
3 screen was ripped or the screen had been cut?

4 A Yes, there was some testimony about that.

5 Q Okay. Because it certainly can't get burglary by
6 having your finger on the outside of a house?

7 A Correct.

8 Q That's no proof of entry.

9 A Even cutting the screen may not be proof of entry.

10 Q Granted, okay. And so then it's fair to say that,
11 as I understand the facts in this case, the victims
12 came home, and there were three gentlemen still there,
13 three -- my client, possibly my client, and two other
14 people were still there. And they confronted the
15 victims in the garage; is that correct?

16 A Yes, that's correct.

17 Q And that's what really brings the facts to the
18 kidnapping; is that correct?

19 A Yes, sir. I think there was an attempt to try to
20 get into the house or get the -- I think the lady was
21 already in the house and the gentlemen were still in
22 the parking lot, the parking garage. And I think there
23 was an attempt to try to get him into the house. So
24 that would have been the basis of the kidnapping.

25 Q Okay. And did you have a chance to look back over

1 the direct examination in this case of the victim,
2 Mr. Elias Michaels?

3 A I have not. But I do have a transcript, yes, sir.

4 Q Okay. If you look at page 23, it's 63 of the
5 record on appeal which, I guess, is 23 of the actual
6 transcript, or vice versa. Look at 63 on the record on
7 appeal.

8 A Yes, sir, I'm at page 63 of the record on appeal.

9 Q Okay. And so those lines, one through ten, they
10 sort of show the identification that the victim gave of
11 one of the gentlemen in that garage at the time; is
12 that correct?

13 A Yes, that's correct.

14 Q Okay. And he basically identified an angularity
15 of his chin and maybe lips?

16 A I was very concerned about the voracity of that
17 identification.

18 Q Sure. And when you go to -- excuse me -- page 78
19 of the direct examination, and if you look at lines 6
20 through 13 or 6 through 15.

21 A Yes, sir.

22 Q It doesn't look as though the victim at that time
23 had identified Mr. Frinks?

24 A That's correct.

25 Q Okay. So Mr. Frinks left the stand -- excuse me,

JAMES C. GALMORE-DIRECT BY MR. FALK

12

1 the victim, Mr. Michaels, left the stand without
2 actually doing the in-court identification; is that
3 correct, he never pointed to him?

4 A I think that's the direct examination.

5 Q Right, during the direct examination there was no
6 singling out?

7 A That's correct.

8 Q Okay. And then you began a cross-examination of
9 him certainly, I think, looking to sort of -- you said
10 you had concerns about the voracity of that
11 identification with the angularity of the chin and the
12 lips; that is correct?

13 A Yes, sir, I --

14 Q Okay. And so you began a cross-examination of
15 him; is that correct?

16 A Yes, sir.

17 Q If you could look at page 80, lines 12 through 13.

18 A Yes, sir.

19 Q Is it fair to say that's, you know, kind of the
20 one question -- that's sort of one of the things you
21 could do wrong in a cross-examination is ask one too
22 many questions?

23 A It has been described as one too many questions,
24 yes.

25 Q Thank you. Because after you asked him that last

1 question, then all of a sudden to everybody's surprise,
2 he said, well, I knew the guy, I saw him before. He's
3 that guy right there. Is that correct?

4 A That's correct.

5 Q And then on redirect, the State closes a door
6 where he says on redirect that allowed the State to
7 come back in and sort of put the nail on it. He
8 identified him again and pointed to him; is that
9 correct?

10 A Yes.

11 Q And that redirect is on page 83, lines 8 to 14.

12 A Yes, sir, that's correct.

13 Q Okay. And was there any other witness that the
14 State had called that could have -- did the State call
15 any other witness to identify, other than the
16 fingerprint, to identify who those three individuals
17 were in the garage?

18 A No, they did not. They did not call the wife.
19 They did not have any other eye witnesses.

20 Q So is it fair to say that had you not asked the
21 one too many questions, you would have gone into a
22 directed verdict motion with nobody having identified
23 my client, your client, other than the fingerprint?

24 A Yes, sir. I had case law in anticipation of a
25 directed verdict motion based on the fingerprint being

JAMES C. GALMORE-CROSS BY MS. GIOVANOLI

14

1 the only evidence on the outside of a window.

2 Q And the State -- and the judge in denying your
3 directed verdict, he pointed to the fact that there was
4 this identification and there was an entry into the
5 garage and that he identified Mr. Frinks; is that
6 correct?

7 A Yes, sir.

8 MR. FALK: Your Honor, that is basically what our
9 case is here. It's one of these things that, you know,
10 I think that -- excuse me, I'll allow them. Please
11 answer any questions the State has.

12 THE COURT: All right, sir.

13 CROSS-EXAMINATION

14 BY MS. GIOVANOLI:

15 Q How long have you been practicing criminal law?

16 A Since 1995.

17 Q Okay. And so at the time of this case in 2013,
18 you had been practicing law for, what is that?

19 A 18 years.

20 Q Yeah, 18 years that's right. Okay. And so there
21 had never been any prior identification made by the
22 victim prior to the day of trial; is that correct?

23 A That's correct.

24 Q Okay. And during direct examination the victim
25 gave a very detailed description of the Defendant but

1 didn't actually make an in-court identification;
2 correct?

3 A Right.

4 Q So in your cross-examination, you would have no
5 reason to believe that the victim was going to identify
6 the Defendant; is that correct?

7 A It was a surprise to all of us.

8 Q Okay. But you had reviewed all of the discovery
9 in this case; correct?

10 A Yes, ma'am.

11 Q And so you had no way of knowing that the victim
12 was going to surprisingly identify the Defendant on the
13 stand?

14 A No, ma'am.

15 Q In fact, you thought that he would not be able to
16 identify the Defendant; is that correct?

17 A That's correct.

18 Q Okay.

19 A Because he had not previously made an
20 identification.

21 Q Right. So what was your purpose in asking that
22 question?

23 A I thought I was sealing the deal when he would --
24 if he were to respond that he did not have an
25 identification, I thought we were home free on a

JAMES C. GALMORE-CROSS BY MS. GIOVANOLI

16

1 directed verdict motion.

2 Q Okay. Was that a strategic decision on your part?

3 A Yes, ma'am.

4 Q And that was based on all of the information that
5 you had available to you at the time?

6 A Yes, ma'am.

7 Q And also during your cross-examination -- give me
8 one moment while I find the page numbers. I wasn't
9 ready for this part of the testimony.

10 THE COURT: That's fine.

11 Q During your cross-examination of him, did you
12 attempt to impeach him based on his -- the victim,
13 during the cross-examination of the victim did you
14 attempt to impeach him based on never giving an ID
15 prior to the trial date?

16 A Yes, ma'am. Again, it was a surprise, and it
17 wasn't in the discovery. I tried to clean it up as
18 best we could under the circumstances.

19 Q Okay. And did you make any arguments as to the
20 identification during your closing?

21 A Yes, ma'am.

22 Q Sometimes this happens, people take the stand and
23 they testify to different things than what you expect;
24 is that correct?

25 A Yes, ma'am.

1 Q And you handle it however you can at the moment;
2 correct?

3 A That's correct.

4 Q Okay.

5 MR. GIOVANOLI: Are you only proceeding on this
6 one allegation and not the allegation in the
7 application?

8 MR. FALK: I guess we should address that as well.

9 Q I'm going to go ahead and ask you a few questions.

10 MS. GIOVANOLI: No further questions.

11 MR. FALK: Your Honor, if I could not redirect,
12 but if I could also raise, discuss the other issue that
13 my client raised in the application. And that was not
14 seeking a plea of a lesser included offense.

15 THE COURT: We'll go and address it, that's fine.

16 MS. GIOVANOLI: I'm going to object because it's
17 beyond the scope of cross-examination. I didn't ask
18 him anything about the allegation, nor did Mr. Falk ask
19 him on direct.

20 THE COURT: I realize he didn't ask him on direct,
21 but it's part of his application. Let's go ahead and
22 do this so there won't be any here after. So you may,
23 Mr. Falk.

24 REDIRECT EXAMINATION

25 BY MR. FALK:

JAMES C. GALMORE-REDIRECT BY MR. FALK

18

1 Q Was there any discussion about a plea deal in this
2 case?

3 A Yes, there were several discussions about a plea
4 offer for Mr. Frinks.

5 Q Was there a charging conference in this case?

6 A Yes, sir. We spoke with Judge Cottingham, yes,
7 sir.

8 Q Was there discussion about possibly a lesser
9 included here?

10 A No. As far as the -- wait a minute, as far as the
11 plea offer --

12 Q I'm sorry, I shouldn't have asked plea offer.
13 That was -- that is an irrelevant question.

14 A Okay.

15 Q Let me just talk about, was there a charging
16 conference?

17 A Yes. We have a conference prior to arguing a
18 closing, and we went over the charges with the Court.

19 Q Did you request a lesser included offense in this
20 case?

21 A No, sir, I did not.

22 Q And was there a strategy behind that?

23 A Well, at that point it was either first-degree
24 burglary, or the jury wasn't going to believe the
25 in-court identification that had never been previously

1 made. So that was the strategy, either the jury was
2 going to believe the identification or not.

3 Q But if the jury didn't believe the identification
4 but just believed the fingerprint, then you would have
5 been entitled to probably trespassing or burglary
6 third; would you not?

7 A Yes, I would have been entitled to one of those,
8 yes, sir.

9 Q Okay.

10 MR. FALK: No further questions.

11 RECROSS-EXAMINATION

12 BY MS. GIOVANOLI:

13 Q Based on the fingerprint, you made the argument
14 that he wouldn't be guilty of anything, a fingerprint
15 on the outside of a house isn't burglary second or
16 third?

17 A That's correct.

18 Q Okay. Now, is it fair to say that you and the
19 Applicant in this case were hanging your hat on that
20 identification, that that was the, I guess, the missing
21 piece of the State's case?

22 A The lack of identification was crucial to our
23 defense.

24 Q And you -- based on the facts that were presented
25 to the jury that the Applicant had entered the victim's

JAMES C. GALMORE-RECROSS BY MS. GIOVANOLI

20

1 garage, pointed a gun at him and told him to get
2 inside, would that warrant a charge for burglary
3 second? This occurred at nighttime.

4 A No. Use of a weapon, burglary of a dwelling at
5 nighttime would be a burglary first.

6 Q Right. So would there be any reason to request
7 the lesser included offense be charged to the jury?

8 A Well, it's a dwelling at nighttime. I don't think
9 it would qualify for anything else.

10 Q Okay.

11 MS. GIOVANOLI: No further questions.

12 THE COURT: Mr. Falk, anything else?

13 MR. FALK: No. My client would like to take the
14 stand. I have nothing more for Mr. Galmore.

15 THE COURT: You can step down, Mr. Galmore. Thank
16 you, sir.

17 (Witness excused.)

18 MS. GIOVANOLI: May this witness be excused?

19 MR. FALK: Yes.

20 THE COURT: Certainly. Mr. Galmore, you may be
21 excused, sir.

22 MR. GALMORE: Thank you, sir.

23 MR. FALK: We would call Dayton Frinks.

24 THE COURT: Mr. Frinks, come around, please, sir.

25 DAYTON C. FRINKS, after being duly sworn,

1 testified as follows:

2 THE CLERK: Thank you, you may be seated. Please
3 state your name for the Court, please.

4 THE APPLICANT: Dayton Frinks.

5 DIRECT EXAMINATION

6 BY MR. FALK:

7 Q Mr. Frinks, what discussions -- did you discuss or
8 did your lawyer discuss his strategy with you before
9 this case?

10 A He did not. They came to me with more than one
11 plea, the first plea being 15 years with no nonviolent
12 or violent sentence. And right before trial they came
13 at me and told me they was going to take the 15 years
14 off of the table and that 30 years was going to come.

15 But then when we were proceeding to trial, they
16 said if I was to back out of trial, the only thing I
17 could take was 15. After trial they send me a letter
18 and told me that the judge has asked the solicitor to
19 cut my time. And the solicitor has agreed only if I
20 would tell on the other two assailants that committed
21 the crime with me which I did not know because I had
22 nothing to do with the crime.

23 Q Was there any conversation with you as far as what
24 his plans were for cross-examining the victim in this
25 case?

DAYTON C. FRINKS, JR.-DIRECT BY MR. FALK

22

- 1 A No. I spoke to him multiple times about the
2 victim, afterwards about the victim saying that he
3 could identify me about my lips and my chin. Everyone,
4 even the judge, thought it was a preposterous testimony
5 because he spoke to the judge afterwards. They thought
6 it was a preposterous testimony of lips and chin. You
7 can give a description of lips and chin, but you
8 couldn't give a description of the mask or the hoodie
9 that the person had on that had you at gunpoint.
- 10 Q The victim said that he saw you at the preliminary
11 hearing; is that correct?
- 12 A That is correct.
- 13 Q Did you see him at the preliminary hearing?
- 14 A That is correct.
- 15 Q Were there other people there at the preliminary
16 hearing?
- 17 A That is correct.
- 18 Q Were there other defendants there at the time?
- 19 A Other defendants pertaining to the case?
- 20 Q Other people in jumpsuits.
- 21 A Oh, yes, that is correct.
- 22 Q Did he testify at the preliminary hearing?
- 23 A No, he did not.
- 24 Q So what did he tell you as far as the prospects of
25 being acquitted in this case?

1 A I don't understand.

2 Q Did he tell you that he thought the State had a
3 weak case against you?

4 A Yes, he did.

5 Q That the only evidence that they had was the
6 fingerprint on the outside?

7 A Yes, he did. And I would like the Court to know
8 that true indeed, Mr. Michaels did not know me. But
9 they showed the map during trial of how far our houses
10 were from each other. They stay in a neighborhood
11 right outside of the neighborhood that I am from. And
12 there's nothing but a path to walk to his house.

13 And they know as well as I know that we swim in a
14 pond directly behind their house. I'm really not
15 prepared at this moment because SCDC has lost my legal
16 mail. I have documentations of where I wrote the Clerk
17 of Court. It's not what I wrote the clerk, it's where
18 she told me to get an indigent paper showing that I was
19 not able to pay for my legal mail, but I would be able
20 to get a copy.

21 And I sent it to her, and I have not received any
22 legal mail. So I would like the Court to know that I'm
23 really not prepared to even state the facts of my case
24 because I have not seen any of my paperwork in like a
25 year and a half.

DAYTON C. FRINKS, JR.-CROSS BY MS. GIOVANOLI

24

1 Q Do you have anything else?

2 A Just that I was -- they was offering me a plea of
3 YOA. But the only reason that I was being offered a
4 plea of YOA is to tell on two other people that I did
5 not know who they were.

6 MR. FALK: No further questions.

7 THE COURT: Ms. Giovanoli.

8 CROSS-EXAMINATION

9 BY MR. GIOVANOLI:

10 Q Your testimony was that you were offered to plead
11 guilty to a YOA sentence?

12 A Yes, ma'am.

13 Q And you also -- they also offered you a 15-year
14 sentence?

15 A Yes, ma'am.

16 Q Did that come after the YOA?

17 A No. The 15-year was first.

18 Q Okay. And then what was second, a 30-year?

19 A It wasn't a plea. He said that they were taking
20 the 15 off the table, and if I was to back out -- no,
21 he said they were taking the 15 off the table, and they
22 were going to come at me with 30 next.

23 Q Okay. And then after the 30, then the YOA offer
24 was made?

25 A The YOA was only made if I was willing to tell on

1 the other two participants of the crime.

2 Q Okay. And did you accept any of those offers?

3 A No, I did not.

4 Q Okay. Are you aware that you were sentenced to
5 the minimum sentence allowed by law for being convicted
6 of burglary first?

7 A I do.

8 Q Do you recall during your trial that the victim
9 testified that he recognized you at the preliminary
10 hearing?

11 A He said that he identified me to a neighbor. I
12 mean, it was me and more, as they know, being given a
13 bond hearing. To my knowledge, he did not identify me.

14 Q He did not identify you to anyone other than his
15 neighbor?

16 A How would I know that he identified me to his
17 neighbor?

18 Q Right. And your trial attorney didn't know that
19 either; correct?

20 A Correct.

21 Q Okay.

22 MS. GIOVANOLI: Nothing further.

23 THE COURT: Mr. Falk?

24 MR. FALK: Redirect.

25 REDIRECT EXAMINATION

DAYTON C. FRINKS, JR.-REDIRECT BY MR. FALK

26

1 BY MR. FALK:

2 Q You didn't testify in this case; did you?

3 A I did not.

4 Q So it's fair to say the only way you could have
5 said something about him in the bond hearing would have
6 been if you could have taken the stand; correct?

7 A Correct.

8 MR. FALK: No further questions.

9 THE COURT: Anything else?

10 MS. GIOVANOLI: Nothing further from the State.

11 THE COURT: All right. You can step down, sir.

12 Thank you.

13 (Witness excused.)

14 THE COURT: Anything else, Mr. Falk?

15 MR. FALK: Could I just address the Court.

16 THE COURT: Certainly.

17 MS. GIOVANOLI: And the State has no witnesses.

18 THE COURT: All right, thank you. Mr. Falk.

19 MR. FALK: Your Honor, this case, you know, if you
20 were teaching a law school class on doing a
21 cross-examination, this is the one that you use for the
22 example of asking one too many questions on cross. I
23 think it's pretty clear from the facts in this case
24 that the identification of my client, that there's a
25 realistic chance that the Court would have granted the

1 directed verdict motion in this case based on the only
2 identification evidence was this thumb print on the
3 outside of the house.

4 And the -- so trial counsel made a mistake that if
5 we're looking at the Strickland point, this is one
6 where the mistake may be not as strong but certainly
7 the prejudice is overwhelming. Because once the
8 mistake is made in this case, my client pretty much
9 gets convicted because then you have the
10 identification, you have the drama of this.

11 Had there been -- had this gone a different way
12 and there could have been a Biggers hearing, then my
13 client could have even taken the stand, you know, in
14 camera outside the presence of the jury and disputed
15 the -- you know, there could have been further
16 discussion about the bond hearing, who else was there.
17 And the Court could have certainly looked into the
18 credibility of his -- or the reliability of the
19 identification.

20 Going into the trial the guy said is that he had
21 an angular chin and he had full lips, and all the rest
22 of his identification was very weak. I think it's
23 probably a mistake that a lot of lawyers make, but it
24 is so prejudicial in this case that we wish that the
25 Court could grant relief in this case.

1 THE COURT: Thank you, Mr. Falk. Ms. Giovanoli?

2 MS. GIOVANOLI: Yes, Your Honor. The State would
3 argue that the Applicant's failed to meet its burden of
4 proof on the first prong of Strickland, and that's the
5 deficiency prong. Counsel's performance must be
6 measured at the time of the trial and that based on the
7 situation that existed at the time, the circumstances
8 and the information available to trial counsel, not
9 with the benefit of hindsight.

10 In this case, it's quite evident in discovery
11 there had been no identification made by the victim
12 prior to the trial. So there was no need for a Biggers
13 hearing. The trial counsel had every understanding
14 that the victim was not going to be able to identify
15 the Defendant in this case. And as counsel testified
16 today, he was shocked at the victim's testimony.

17 So he could not have known that the victim was
18 going to answer -- be able to identify the Defendant.
19 So we would submit that counsel was not deficient.
20 Given the circumstances and the information available
21 to him, he made a strategic decision to ask that
22 question. And he was shocked and surprised at the
23 victim's response. So we don't even get to the
24 prejudice prong if the Applicant cannot meet its burden
25 in proving the deficiency prong, per Strickland.

1 And with regard to the failure to request the
2 lesser included offense, counsel didn't really argue
3 this issue but the facts as presented to the jury only
4 supported a conviction of a burglary first, not
5 burglary second or the third. There would have been no
6 reason to request those charges, and it was also
7 another strategic decision on the part of trial counsel
8 not to request the lesser included offenses.

9 With regard to trespass, pursuant to State v.
10 Cross, trespass is not even a lesser included offense
11 of any burglary. So that would conclude my argument.
12 Thank you, Your Honor.

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

14 I agree with both Mr. Falk and Ms. Giovanoli with
15 Greek -- the decisions made by Mr. Galmore were
16 strategic and part of his trial strategy. What he did
17 was certainly asking one question too many. But does
18 that rise to the level of performance that was
19 deficient? And I don't think it does.

20 I think it's a matter of very simple asking, you
21 know, too many questions or asking one too many
22 questions that resulted in bringing forth an
23 identification, was this prejudicial to the extent it
24 deprived him of a fair trial? I don't think so. He
25 still received a fair trial.

1 Again, with regards to the matter of the lesser
2 included offense not being requested as a charge,
3 again, I think that's a matter of strategy. I don't
4 know that he would have been entitled to it, based on
5 his testimony and based on my review of the transcript
6 and the nature of the testimony.

7 All that being said, I am going to respectfully
8 deny Mr. Frinks' request for post conviction relief in
9 this matter and would ask that the Attorney General
10 prepare me an order.

11 MS. GIOVANOLI: Thank you, Your Honor. Is 30 days
12 okay?

13 THE COURT: That's fine, plenty of time.

14 MR. GIOVANOLI: Thank you.

15 THE COURT: All right. My decision. Thank you.

16 (The hearing concluded at approximately 1:13 p.m.)

17 (End of Transcript of Record)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

I, TERESA J.F. BAUTZ, Official Court
Reporter for the Fifteenth 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 evidence
introduced in the trial of the captioned case, relative
to appeal, in the Court of Common Pleas for Horry
County, South Carolina, on the 28th day of November,
2017.

I FURTHER CERTIFY that I am neither of
kin, counsel nor interest to any party hereto.

S/Teresa J. F. Bautz

TERESA J.F. BAUTZ, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Dayton C. Frinks, Jr., #355560,)
Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No. 2015-CP-26-4770

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
PROSECUTOR
2017 AUG 10 PM 1:41
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 22, 2015. Respondent made its Return on or about December 6, 2016. An evidentiary hearing was convened into the matter on May 23, 2017 at the Horry County Courthouse. Applicant was present and represented by James K. Falk, Esquire. Valerie Garcia Giovanoli, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, James C. Galmore, III, Esquire, (Counsel) also testified. This Court had before it a copy of the Horry County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the trial transcript, Applicant's appellate records, and the records of this PCR action.

PROCEDURAL HISTORY

Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Horry County Grand Jury indicted the Applicant at the January 2013 term for kidnapping (2013-GS-26-0189) and first-degree burglary (2013-GS-26-0190). James C. Galmore, III, Esquire represented Applicant.

On May 15, 2013, the case proceeded to a jury trial before the Honorable Edward B. Cottingham. On May 16, 2013, the jury found Applicant not guilty of kidnapping, but guilty of first-degree burglary. Judge Cottingham sentenced Applicant to fifteen (15) years' imprisonment for first-degree burglary.

Applicant filed a timely notice of appeal, Appellate Case Number 2013-001127. Susan B. Hackett, Esquire, perfected the appeal in the form of an Anders¹ brief. Applicant filed a *pro se* brief. Subsequently, the Court of Appeals dismissed his appeal on March 18, 2015 (2015-UP-157). The remittitur was issued April 3, 2015.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel's performance was deficient when he failed to request a King charge (lesser included offense), when the only evidence before the court was Applicant's fingerprint on the exterior of the home's window, and a broken window pane was the only evidence of a crime."²
2. Violation of Sixth Amendment Rights

At the PCR hearing, Applicant proceeded on his claim of ineffective assistance of counsel that was alleged in his application. Applicant added two additional claims at the start of the hearing that:

1. Counsel failed to conduct a Biggers³ hearing; and
2. Counsel asked an improper question during cross-examination of the victim that yielded a first-time, in-court identification of Applicant.

¹ Anders v. California, 386 U.S. 738 (1967).

² Because a King charge, a jury instruction that if there is reasonable doubt between the lesser and greater offenses, jury must resolve that doubt in defendant's favor, was inapplicable in Applicant's trial where the jury was only charged with first-degree burglary, this claim is interpreted as counsel failing to request a charge of a lesser included offense. State v. King, 158 S.C. 251, 155 S.E. 409 (1930).

³ Neil v. Biggers, 409 U.S. 188 (1972).

Respondent objected to the untimely amendment to Applicant's allegations, pursuant to Rule 15, SCRCF, but this Court allowed Applicant to proceed on the additional claims.

SUMMARY OF TESTIMONY

I. Counsel testified to the following:

Counsel has practiced criminal law for eighteen years. Counsel was appointed to Applicant's case through the Public Defender's Office. Counsel requested discovery and reviewed all of it with Applicant. Based on the discovery, Counsel believed the state did not have much evidence against Applicant. He recalled the evidence being a fingerprint on the outside of a window pane that matched Applicant. There was no other identification evidence prior to trial and the fingerprint on the outside of the window was not sufficient to convict Applicant. There was a screen over the window that had been slit and the window had been broken. However, Counsel did not necessarily believe the screen was on the outside of the house and cutting the screen would not necessarily be sufficient to show entry. The victim had only given a physical description, including the angularity of his chin, lips, his skin color, and stature – not necessarily sufficient enough to identify the Applicant specifically. Counsel agreed that the victim did not specifically identify Applicant during direct examination and that after he asked "one too many questions" on cross examination, the victim identified Applicant as the burglar. After that identification, the state confirmed the identification during its re-direct examination by eliciting testimony that the victim had actually identified him to his neighbor at the preliminary hearing while in a room of other defendants. Had the victim not identified Applicant, much to everyone's surprise, Counsel was prepared to make a directed verdict motion and had the case law to help back up his argument that the fingerprint on the outside of the window was insufficient to prove Applicant entered the home.

On cross examination, when asked why he asked "one too many questions," Counsel testified he was strategically attempting to "seal the deal" in showing the jury and the judge that there was no identification of Applicant. This strategy was based on the evidence available to Counsel at that time. After the regrettable question and surprise answer from the victim, Counsel proceeded to impeach the victim based on the fact he had never before made an identification of Applicant prior to that day. He also thoroughly argued the credibility of the surprise identification in his closing argument.

Counsel also testified there were discussions of a plea deal, but no discussion regarding a possibility of a lesser-included offense. Counsel testified his strategy in not requesting a lesser included charge was that the jury would either believe the identification and find him guilty, or not believe the identification and find him not guilty -- and that the evidence of a firearm being used and the burglary occurring in the nighttime exceed the scope of burglary second or third degree.

II. Applicant testified to the following:

Applicant testified he first received a plea offer of fifteen years. The state then withdrew that offer and extended a thirty year offer. After the thirty year offer, they again offered him fifteen years. Applicant believed the testimony from the victim describing his assailant's lips and chin was preposterous because the victim could not describe the half-mask that was worn. Applicant recalled that Counsel told him the state had a weak case against him. Applicant also testified the state offered him a plea deal under the YOA, but only if he would tell them who were the two other men involved in the burglary. Applicant claimed he could not tell them because he did not know. Applicant rejected all offers made by the State. Applicant acknowledged he was sentence to the minimum sentence allowable by law for the crime for which he was convicted.



FINDINGS OF FACT AND CONCLUSION OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to request lesser included offense

This Court finds Applicant has failed to meet his burden to prove Counsel was ineffective for failing to request a charge for a lesser included offense. The evidence presented at trial would not support a conviction of a lesser included offense over the greater. The defense was based on lack of identification. Counsel testified the jury would either find Applicant was not sufficiently identified as the perpetrator and acquit him or find there was a sufficient identification and convict him. There was no reason to request a charge for a lesser included offense where the evidence only supported first degree burglary. This Court finds Counsel was not deficient in not requesting a charge of a lesser included offense. This Court also finds there was no prejudice suffered by Applicant as a result of not requesting a lesser included offense. Having failed to meet his burden to prove Counsel was ineffective for failing to request a lesser included offense, this allegation is denied and dismissed with prejudice.

Failure to request a pre-trial Biggers hearing

This Court finds Applicant has failed to meet his burden to prove Counsel was ineffective for failing to request a pre-trial Biggers hearing. It is clear there was never an identification made of Applicant by the victim prior to trial. Based on the knowledge and information available to Counsel at the time of trial, there was no reasonable basis to conduct a Biggers hearing. In fact, lack of identification was Counsel's primary defense to the charges against Applicant. Counsel reviewed all



of the discovery in this case, including the victim's prior physical description of Applicant. However, nothing in the discovery indicated the victim had ever or would be able to identify Applicant as the perpetrator. This Court finds there was no basis to request a Biggers hearing prior to trial and therefore Counsel was not deficient. Applicant has failed to meet his burden to prove Counsel was deficient for failing to request a Biggers hearing, therefore this allegation is denied and dismissed with prejudice.

Asking improper question on cross examination of the victim

This Court finds Applicant has failed to meet his burden to prove Counsel was ineffective for improperly cross examining the victim. Although Counsel admits he asked "one too many questions" of the victim during cross examination, his questioning was the product of a well-reasoned trial strategy. Counsel was pursuing the defense of insufficient identification at trial. This defense was based on a thorough investigation of the case and review of the discovery. Counsel reasonably believed he could secure a directed verdict in favor of Applicant based on the fact the victim had never before identified Applicant prior to trial or during direct examination by the state. During the direct examination of the victim by the state, the victim only gave a physical description of the perpetrator that did not specifically or sufficiently identify Applicant. During cross-examination by Counsel, Counsel attempted to "seal the deal" when he asked, "you can't say, hey, that's the guy that did it?" Trial Tr. p. 40, l. 13. This was a strategic decision by Counsel that, much to everyone's surprise, resulted in a first-time identification of Applicant. After the surprise testimony, Counsel proceeded to thoroughly impeach the victim based on his never before identifying Applicant to any law enforcement or state official. Counsel also thoroughly addressed the credibility of the first-time identification during his closing argument.



This Court notes the reasonableness of Counsel's conduct must be measured *at the time* of the challenged conduct. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. "After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind." Harrington v. Richter, 131 S. Ct. 770, 790, 178 L. Ed. 2d 624 (2011) (citing Strickland, 466 U.S. 688). This Court refuses to allow the distorting effects of hindsight to blur the objective standard to which Counsel's performance must be held. Counsel's decision to ask the victim whether or not he could identify Applicant was a reasonable one based on the information available at the time of trial. No one, including Counsel, could have foreseen the surprising, first-time, in-court identification by the victim. This Court finds Counsel was not deficient for eliciting an identification of Applicant during his cross examination of the victim. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

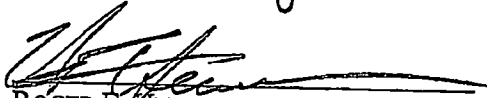


This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
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 7th day of August, 2017.


 ROGER E. HENDERSON
 Presiding Judge
 Fifteenth Judicial Circuit

Dillon, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Dayton Coronda Frinks,
Plaintiff(s),

-vs-

South Carolina State of,
Defendant(s).

IN THE COURT OF COMMON PLEAS
15TH JUDICIAL CIRCUIT
CASE NO.: 2015CP2604770
APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- | | | |
|--|--|--|
| ☒ Post-Conviction Relief (PCR)/habeas case | ☐ Adoption | ☐ Juvenile |
| ☐ SVP case | ☐ Custody and/or Visitation | ☐ Abuse and Neglect |
| ☐ Minor Name Change | ☐ Other: Post Convict Rel 500 | |

It appears Dayton Coronda Frinks, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other: .

Therefore, it is ordered that JAMES K FALK hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
January 15, 2016

Melanie Huggins-Ward
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

JAMES K FALK	
P.O. BOX 1058	
CHARLESTON, SC 29402	

Defendant Attorney:

Alan McCrory Wilson	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

WITNESSES

Kevin W Strickland Horry County Police
Department

ARREST WARRANT NUMBER

M843694

CDR: 0079 16-11-0311

DOA: 11/28/2012

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

JAN 31 2013

VERDICT

Guilty

Foreperson of Petit Jury

Date:

5/16/2013

DOCKET NO. 2013-GS-26- 00190

The State of South Carolina

County of Horry

Nancy Livesay

12H05401

COURT OF GENERAL SESSIONS

JANUARY, 2013 TERM

THE STATE

VS.

Dayton Carando Frinks Jr
B/M

ATTORNEY: Galmore, James Cullen

**Indictment for
BURGLARY, FIRST DEGREE**

Jimmy A. Richardson, II, Solicitor

Continued

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

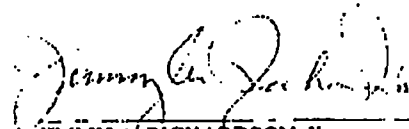
At a Court of General Sessions, convened on January 31, 2013, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Dayton Carando Frinks Jr did in Horry County, while acting in concert with others, on or about November 12, 2012 enter the dwelling of Elias Michaels without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, the entering or remaining occurred in the nighttime, was armed with a deadly weapon, he or another participant in the crime, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR