

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

CHRISTOPHER PAUL MAHAFFEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002057

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 27-28, 2012	1
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 15, 2015	202
RETURN.....	215
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 23, 2017	221
APPLICANT’S EXHIBIT NO. 1 (911 CALL TRANSCRIBED)	335
APPLICANT’S EXHIBIT NO. 2 (ARREST WARRANT AND DEPUTY REPORT)	345
APPLICANT’S EXHIBIT NO. 3 (MOTOR VEHICLE TOW AND INVENTORY REPORT).....	362
ORDER OF DISMISSAL FILED MAY 26, 2017	363
APPLICANT’S RULE 59(E) MOTION TO ALTER OR AMEND FILED AUGUST 17, 2017	382
RETURN TO RULE 59(E) MOTION TO ALTER OR AMEND FILED AUGUST 28, 2017	388
ORDER DENYING MOTION TO ALTER OR AMEND FILED SEPTEMBER 13, 2017	394
PROOF OF DELIVERY DATED OCTOBER 4, 2017	398
INDICTMENTS AND SENTENCING SHEETS	399

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } IN THE COURT OF GENERAL SESSIONS

3 The State, }
4 -vs- } TRANSCRIPT OF RECORD
5 Christopher Paul Mahaffey, } 2012-GS-42-730;731;2836;2837
6 Defendant. } August 27 - 28, 2012
7 Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13
14

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

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17 Attorney for the State

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19 CLAY ALLEN, ESQUIRE
20 Attorneys for the Defendant
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22 Linda D. Moffitt
23 Circuit Court Reporter
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1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	ANDREW SUSTARE (SW)	
4	Direct examination by Ms. Jordan	61
5	Cross-examination by Ms. Hall	82
6	Redirect examination by Ms. Jordan	85
7	RICHIE BLACKWELL (SW)	
8	Direct examination by Ms. Jordan	88
9	Cross-examination by Ms. Hall	92
10	Redirect examination by Ms. Jordan	94
11	Recross-examination by Ms. Hall	94
12	BRUCE BISHOP (SW)	
13	Direct examination by Ms. Jordan	95
14	Cross-examination by Ms. Hall	98
15	BRANDON HOWARD (SW)	
16	Direct examination by Ms. Jordan	100
17	Cross-examination by Ms. Hall	108
18	Redirect examination by Ms. Jordan	109
19	KEITH GIBBS (SW)	
20	Direct examination by Ms. Jordan	112
21	Cross-examination by Ms. Hall	117
22	JAMES RHODES (SW)	
23	Direct examination by Ms. Jordan	118
24	Cross-examination by Ms. Hall	122
25	Redirect examination by Ms. Jordan	123

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	ROBERT ROSENBERG (SW)	
4	Direct examination by Ms. Jordan	124
5	MARY ELIZABETH STUART (SW)	
6	Direct examination by Ms. Jordan	126
7	RENEE ROGERS (DW)	
8	Direct examination by Ms. Hall	134
9	JOHN MAHAFFEY (DW)	
10	Direct examination by Ms. Hall	138
11	Cross-examination by Ms. Jordan	141
12		
13	Jury qualification	15
14	Jury sworn	49
15	Opening statements	56
16	Closing arguments	150
17	Jury charge	166
18	Verdict	193
19	Sentence	196
20	Certificate	202
21		
22		
23		
24		
25		

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-1	Google map photo	7 62
4	S-2	Photograph	7 65
5	S-3	Photograph	7 65
6	S-4	Photograph	7 73
7	S-5	Photograph	7 69
8	S-6	Photograph	7 69
9	S-7	Photograph	7 77
10	S-8	Photograph	7 77
11	S-9	Photograph	7 77
12	S-10	Photograph	7 78
13	S-11	Photograph	7 75
14	S-12	Photograph	7 79
15	S-13	Photograph	7 80
16	S-14	Photograph	7 80
17	S-15	9-1-1 CD	7 72
18	S-16	Crack cocaine and oxycodone	7 130
19	S-17	Box of knives	7 107
20	S-18	Photograph	7 82
21	S-19	Photograph	7 102
22	S-20	Photograph	7 106
23	S-21	Photograph	7 106
24	S-22	Photograph	7 106
25	S-23	Photograph	7 104

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	D-1	Copy of paycheck stub	111 136
4	D-2	Copy of bank statement	111 137
5			
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1 (Proceedings August 27, 2012)

2 (Google map photo marked State's Exhibit No. 1 for
3 Identification; photographs marked State's Exhibits Nos. 2
4 through 8 for Identification; bank bag marked State's
5 Exhibit No. 9 for Identification; photographs marked State's
6 Exhibits Nos. 10 through 14 for Identification; 9-1-1 CD
7 marked State's Exhibit No. 15 for Identification; crack
8 cocaine and oxycodone marked State's Exhibit No. 16 for
9 Identification; box of knives marked State's Exhibit No. 17
10 for Identification; photographs marked State's Exhibits Nos.
11 18 through 23 for Identification.)

12 THE COURT: Mr. Mahaffey is present with Ms. Hall and
13 Mr. Allen.

14 Ms. Hall, you said you've got a matter you want to
15 address. Regarding what?

16 MS. HALL: Yes, sir. It's a discovery issue.

17 I was provided a disc of approximately 171 phone calls
18 from the jail. I was out of the office and was not able to
19 listen to these until the weekend.

20 We had discussed off the record with Your Honor and
21 the solicitor that she would agree not to use these calls
22 in her case in chief but only for purposes of impeachment
23 or rebuttal, I believe.

24 THE COURT: Okay. And she has also informed you as to
25 which call or calls that she would be using?

1 MS. HALL: Yes, sir. I believe there are three.

2 THE COURT: And you've listened to those calls?

3 MS. HALL: I have listened to them. Two of the three
4 though, Your Honor, I have trouble hearing all of the
5 conversation, particularly the caller from the jail.

6 THE COURT: But Ms. Jordan has told you what she
7 believes in her view the call, the caller or the people
8 engaged in conversation are saying?

9 MS. HALL: She has told me what she believes they're
10 saying, yes, sir.

11 THE COURT: Right. And you've discussed all of that
12 with Mr. Mahaffey?

13 MS. HALL: We have talked about it.

14 THE COURT: Okay. What other matters do we need to
15 address?

16 MS. HALL: Just so we're clear, Your Honor, the
17 court's ruling is these calls will not be used --

18 THE COURT: I'm not ruling on anything. I thought
19 y'all were announcing an agreement that --

20 MS. HALL: Okay. I want to be sure that is everyone's
21 opinion.

22 THE COURT: Okay. You've reviewed the calls.
23 Ms. Jordan has told you that there are three calls that she
24 proposes to use. She does not intend to introduce those
25 during -- in her case in chief but would use those calls

1 for the purpose of cross-examination in the event the
2 defendant or perhaps some other witness with knowledge
3 would testify or in rebuttal to something that some defense
4 witness might testify to. Is that -- did I say that
5 correctly?

6 MS. JORDAN: Yes, sir.

7 THE COURT: All right. Anything else?

8 MS. JORDAN: Your Honor, I don't know if the defendant
9 needs to be arraigned on the two direct indictments for the
10 drugs or if he'll waive that arraignment on the record.

11 THE COURT: All right. Direct indictments are
12 possession of cocaine and possession of oxycodone?

13 MS. JORDAN: Yes. It's my understanding it's a
14 possession of cocaine base.

15 THE COURT: Right. Excuse me. Possession of cocaine
16 base and possession of oxycodone.

17 Ms. Hall, you've got copies of those indictments?

18 MR. HALL: I do.

19 THE COURT: And you've been over those with your
20 client --

21 MS. HALL: Yes, sir, Your Honor.

22 THE COURT: -- and explained to him what the state
23 claims that he did by way of those direct indictments?

24 MS. HALL: Yes, sir.

25 THE COURT: And you explained to him what kind of

1 sentence could be imposed upon a conviction?

2 MS. HALL: Yes, sir.

3 THE COURT: And he's discussed with you any knowledge
4 he has of the facts that relate to those allegations?

5 MS. HALL: Yes, sir.

6 THE COURT: And you explained to him about his right
7 to be arraigned on those two charges?

8 MS. HALL: We have not if I could have a moment.

9 THE COURT: Okay.

10 (Pause.)

11 MS. HALL: We will waive the arraignment, Your Honor.

12 THE COURT: All right. Are we ready for the jury
13 panel to be brought around?

14 MS. JORDAN: Yes, sir.

15 MS. HALL: I believe I have one other motion.

16 THE COURT: Okay.

17 MS. HALL: Your Honor, Mr. Mahaffey has four charges
18 that are on the trial docket this week -- burglary first
19 degree, petty larceny, possession of oxycodone and
20 possession of cocaine base.

21 I would make a motion, Your Honor, that the two drug
22 charges be severed from the burglary and the petty larceny.

23 I understand that all of these charges arise out of
24 one incident. However, it is the defendant's position that
25 the two drug charges would be too prejudicial to my client

1 if these were all tried at the same time.

2 Drugs were not alleged to have been taken out of the
3 home, had nothing to do with the alleged burglary and
4 larceny. And they were just present.

5 THE COURT: Present on his person?

6 MS. HALL: In the vehicle.

7 THE COURT: Present in a vehicle that he was in at the
8 time of his arrest?

9 MS. HALL: He was outside of the vehicle, alleged to
10 have arrived there in the vehicle.

11 THE COURT: Okay. All right. Ms. Jordan.

12 MS. JORDAN: Your Honor, judicial economy and just
13 basically the common scheme of the entire case -- these,
14 all four of these, cases arise out of the exact same set of
15 facts.

16 Briefly, the burglary occurred at the victim Andrew
17 Sustare's home at [REDACTED] in Enoree.

18 The victim was working out in his back yard, noticed a
19 vehicle that didn't belong to him. And if you're -- you
20 may not be familiar with this address, as I wasn't, but
21 it's down a 600-foot driveway surrounded by woods.

22 He notices the vehicle. He has another individual,
23 Mr. Blackwell, who's working with him. They walk around
24 the house. As they walked around the house they hear the
25 door shut, and the defendant's coming off the front porch.

1 They keep him there, call 9-1-1. Mr. Sustare notices
2 that his gun's missing, comes back out, asked the defendant
3 where his -- asked him where it is, where it is. He
4 finally says it's in the car in the center console after
5 he's been questioned by the victim.

6 The victim looks in the vehicle and sees the car --
7 sees the gun and the holster there, leaves it there until
8 police arrives. He holds him at gunpoint until the
9 officers arrive.

10 The search of the vehicle -- he was the only defendant
11 on scene. The search of the vehicle showed that he had not
12 only the gun inside the vehicle with the holster that
13 belongs to the victim in the center console, but also in
14 the -- it was a Ford Expedition. The center console is
15 right here and the two drink-cup holders -- there's another
16 little console area right there.

17 That's where the pills and the crack were found, Your
18 Honor, during an inventory search of the vehicle. To us
19 it's all part of one common scheme or plan that this guy
20 had that day, and all the charges arise out of the same set
21 of facts. And judicial economy should show that they
22 should be tried together.

23 THE COURT: Ms. Hall.

24 MS. HALL: Your Honor, I believe that judicial economy
25 should not trump my client's right to have, you know, a

1 jury of unbiased people. And as soon as they hear that
2 there were drugs in the car -- I don't believe that is a
3 part of some grand scheme as the solicitor alleges.

4 These were just drugs present in a car. There's no
5 allegation these drugs came out of the house or that there
6 was any drug activity going on.

7 I would just argue to the Court that the prejudicial
8 value or effect of these drugs far outweighs any necessity
9 for judicial economy.

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

11 What if the car were stolen? Would you think that
12 they couldn't introduce evidence that the car he used to
13 get to the house was a stolen vehicle because it really
14 wasn't -- didn't have anything to do with what he took from
15 the house and that was just his transportation there?

16 MS. HALL: I have not thought about that scenario,
17 Your Honor. But I would probably make a similar argument.

18 THE COURT: Okay. All right. The motion to sever the
19 charges is denied.

20 Anything else?

21 MS. JORDAN: Nothing from the state, Your Honor.

22 THE COURT: All right. Let's bring the jury in and
23 have them selected.

24 Ms. Hall, do you have any voir dire requests? Where
25 did you tell me this residence is located -- in Cross

1 Anchor?

2 MS. JORDAN: [REDACTED].

3 MS. HALL: Your Honor, I apologize for bringing up one
4 further matter.

5 THE COURT: Is that the Cross Anchor Highway?

6 MS. JORDAN: I listed as Cross Anchor Road in Enoree.

7 THE COURT: Okay. All right. Yes, ma'am, Ms. Hall.

8 MS. HALL: The indictment for petty larceny, Your
9 Honor, states that the defendant has at least two or more
10 prior convictions for property crimes. I would ask that
11 that information not be read to the jury.

12 THE COURT: It will be redacted before the jury
13 receives the indictment.

14 MS. HALL: Thank you.

15 THE COURT: You don't perceive that to be something
16 that should be submitted, do you, Ms. Jordan?

17 MS. JORDAN: No, sir.

18 THE COURT: Okay.

19 MS. JORDAN: Your Honor, may we approach?

20 THE COURT: Yes, ma'am.

21 (Bench conference held off the record.)

22 (The following takes place in the presence of the jury
23 venire.)

24 THE COURT: All right. Ladies and gentlemen, thank
25 you for your patience.

Jury qualification

1 We are ready to begin with jury selection in the first
2 case that's going to require some of your participation,
3 and the title of that case is the State vs. Christopher
4 Mahaffey.

5 When a person is accused of a crime in the circuit
6 court they are accused by way of a document called an
7 indictment. The indictment is simply the charging paper.
8 It sets forth the charge that's been brought against the
9 defendant and accuses him of having committed a certain
10 particular offense.

11 In this case there are four separate indictments.
12 There are four separate criminal offenses that are alleged,
13 although they are alleged to have arisen out of one
14 particular event or course of events which the state
15 alleges occurred back on January the 14th of 2012. But
16 there are four separate charges for which a jury will be
17 called upon to reach four separate and distinction
18 decisions.

19 One indictment charges the defendant, Christopher Paul
20 Mahaffey, with the crime of burglary in the first degree.
21 The state alleges by way of this indictment that he did
22 wilfully and unlawfully on January the 14th of 2012 enter a
23 dwelling that belonged to Andrew Sustare located at [REDACTED]
24 [REDACTED] in Enoree located here in Spartanburg
25 County; that he entered that residence without the consent

Jury qualification

1 of the owner and with the intent to commit a crime therein.

2 And further they allege that when effecting the entry
3 or while in the dwelling or in immediate flight therefrom
4 the defendant or some other participant involved in the
5 crime displayed what appeared to be a knife or a pistol,
6 revolver, rifle, shotgun or some other type of firearm, or
7 did use or threaten the use of a dangerous instrument, or
8 was armed with a deadly weapon during the commission of
9 that offense.

10 The second indictment charges the defendant with
11 larceny. The state alleges again on January 14, 2012, that
12 Mr. Mahaffey took, stole and carried away the personal
13 property that belonged to Mr. Andrew Sustare valued at less
14 than \$2,000. The property that he is alleged to have taken
15 is described as money, and/or a pistol, and/or a blackberry
16 phone, and/or a gold necklace.

17 They allege that he took those items with the
18 intention to permanently deprive the true owner of the use
19 and possession of his property and with the intention of
20 converting that property to his own use and purposes.

21 He's also charged in two separate indictments with
22 having committed the crimes of possession of crack cocaine
23 and possession of oxycodone, again occurring on January the
24 14th of 2012. They allege that he did knowingly and
25 intentionally have in his actual or constructive possession

Jury qualification

1 a quantity of crack cocaine and oxycodone without authority
2 of law.

3 Now, as to those allegations and as to each of those
4 indictments the defendant has entered a plea of not guilty.
5 A plea of not guilty therefore places upon the state
6 because they brought the charges to prove to the
7 satisfaction of a jury beyond a reasonable doubt that he
8 committed these crimes.

9 In other words, they must prove the allegations that
10 are set forth in each of those indictments. They must
11 prove each of the essential elements that make up the
12 crimes of burglary in the first degree, larceny, possession
13 of crack cocaine and possession of oxycodone.

14 They must satisfy the jury that he committed those
15 crimes, and the jury must be satisfied of that guilt beyond
16 a reasonable doubt before any verdict of guilty could be
17 returned.

18 And therefore we're going to be selecting 13 of you.
19 There'll be 12 primary jurors and one additional juror to
20 serve as an alternate.

21 By way of your participation you're simply going to be
22 called upon to listen to the testimony introduced during
23 the trial, to consider any other evidence that might be
24 introduced during the course of the trial, to decide what
25 you believe to be the facts as they relate to these

Jury qualification

1 allegations.

2 Once you decide the facts, you will then apply the law
3 that I will have provided you, and you will determine
4 whether or not the defendant is guilty of the crimes as
5 alleged by the state.

6 Now, before we begin with that jury selection I've got
7 some questions that I'm going to ask you. And the purpose
8 of the questions is to determine if there's some reason why
9 any one of you jurors should not be selected to participate
10 in the trial of this particular case. And so as these
11 questions are asked I would ask that you please respond to
12 them so that we can make that determination.

13 Before I ask you those types of questions I'm also
14 going to be introducing some people to you. The people I
15 will introduce would include the defendant, would include
16 the person who is alleged to be the victim, would include
17 the lawyers involved in the trial of the case and will
18 include any witness that is potentially going to be called
19 during the course of the trial.

20 The reason these folks are being introduced or the
21 witness list is being recited is because I need to find out
22 if any juror knows any of these people. Are you connected
23 to them by blood or marriage; do you know them from church,
24 from school, from work or from social -- some type of
25 social setting? I need to know what the connection is if

Jury qualification

1 there is any and whether or not that connection would in
2 any way interfere with or impair your ability to be fair
3 and impartial if called upon to serve in this case.

4 So as these folks are introduced and as these
5 witnesses are identified if you know one, you have some
6 connection with them, you've met them, please stand so that
7 we can determine what that connection is and whether or not
8 it would affect your ability to be fair.

9 Now, first of all, as I told you, the defendant, the
10 person who is accused of having committed these four
11 criminal offenses, is Christopher Paul Mahaffey.

12 Mr. Mahaffey, I'm going to ask if you'll please stand
13 and face the jury panel so that they may see who you are.

14 (Whereupon, the defendant stood.)

15 THE COURT: All right. You may be seated.

16 Mr. Mahaffey is being represented by Claire Hall and
17 Clay Allen, both with the 7th Judicial Circuit Public
18 Defender's Office. Mr. Allen is the circuit public
19 defender; Ms. Hall is an assistant public defender.

20 (Whereupon, Ms. Hall and Mr. Allen stood.)

21 THE COURT: Thank you.

22 The person who is alleged to have been the victim of
23 the burglary and the larceny is Andrew Sustare.

24 And, Mr. Sustare, I'll ask if you'll please stand and
25 face the jury panel.

Jury qualification

1 (Whereupon, the victim stood.)

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

3 And presenting the case on behalf of the state is
4 Jennifer Jordan. She's an assistant circuit solicitor for
5 the 7th Judicial Circuit.

6 In addition to those that you will become acquainted
7 with during the course of the trial we have other persons
8 who are potential witnesses.

9 And they include Mike Dominesey with the Spartanburg
10 County Sheriff's Department; Mary Elizabeth Stuart with the
11 Spartanburg County Sheriff's Department; Brandon Howard who
12 used to be with the Spartanburg County Sheriff's
13 Department; William Hopkins who is employed with the
14 sheriff's department; Chris Nepper who is employed with the
15 sheriff's department; Keith Gibbs who is employed with the
16 sheriff's department; Robert Rosenberg who is employed with
17 the sheriff's department; Bruce Bishop who is employed with
18 the sheriff's department; Jim Rhodes who is employed with
19 the sheriff's department.

20 We also have Richie Blackwell; we also have Paul
21 Edward Mahaffey.

22 We also have Mike West with the 9-1-1 communications
23 department; and we also have Mike Jones with the
24 Spartanburg County Detention Facility.

25 In addition to those we have Renee Rogers who is

Jury qualification

1 employed with Steve's Pallets; we also have Keith Johnson
2 who is employed with B B & T Bank; we also have Paul
3 Mahaffey; and we also have John Mahaffey.

4 Are there any other potential witnesses on behalf of
5 the state?

6 MS. JORDAN: No, sir.

7 THE COURT: The defendant?

8 MS. HALL: No, sir, Your Honor.

9 THE COURT: All right. Is any juror connected in any
10 way, or do you know any person who has just been identified
11 for your benefit?

12 And let me include in that because the lawyers are
13 employed by the 7th Judicial Circuit Solicitor's Office and
14 the 7th Judicial Circuit Public Defender's Office, I also
15 need to find out if any juror has any connection or knows
16 anyone in addition to those here who are employed in either
17 of those offices, the solicitor's office or the public
18 defender's office. All right. Any connection such as
19 that, please stand.

20 All right. I have one. Yes, ma'am.

21 JUROR NO. 139: Jennifer Jordan was a teacher of mine
22 at Spartanburg Methodist College.

23 THE COURT: Okay. Give me your number again, please,
24 ma'am.

25 JUROR NO. 139: 139.

Jury qualification

1 THE COURT: 139. Ms. Jordan has taught a class that
2 you took?

3 JUROR NO. 139: Yeah. It was a computer class.

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

6 JUROR NO. 139: No, sir.

7 THE COURT: Thank you. You may be seated.
8 Yes, sir.

9 JUROR NO. 129: No. 129. Personal friends with Barry
10 Barnette, and several of his staff members I've seen
11 professionally. And we coached baseball together too.

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

15 JUROR NO. 129: No, sir.

16 THE COURT: All right. Thank you. You may be seated.
17 Anyone else?

18 (No response.)

19 THE COURT: All right. Now, as I told you, these are
20 events which the state alleges occurred back on January the
21 14th of 2012. They are alleged to have occurred at a
22 residence on Cross Anchor Highway in Enoree in Spartanburg
23 County.

24 Is there any member of the jury panel that believes
25 you have heard, seen or read about anything that might

Jury qualification

1 relate to this particular case? And of course it's
2 Mr. Sustare's residence.

3 All right. If you will, stand and just tell me your
4 name and number, please, sir.

5 JUROR NO. 131: 131, Kevin O'Shields. I --

6 THE COURT: All right. And you think -- let me ask
7 the question. Just please respond to it. Don't volunteer
8 a lot of information.

9 You think you might have heard something about this
10 particular case?

11 JUROR NO. 131: It's just I work in Enoree down at the
12 mill.

13 THE COURT: All right. So --

14 JUROR NO. 131: And --

15 THE COURT: Well, have you heard anything about this
16 particular case?

17 JUROR NO. 131: I heard some people talking about it.

18 THE COURT: All right. And is the only source of your
19 information some people --

20 JUROR NO. 131: Yeah.

21 THE COURT: -- that may have had knowledge about the
22 case?

23 JUROR NO. 131: Well, they -- I mean, they think --

24 THE COURT: Is that a yes or no, sir?

25 JUROR NO. 131: No.

Jury qualification

1 THE COURT: It's a no?

2 JUROR NO. 131: No.

3 THE COURT: You haven't talked to anybody that may
4 have had knowledge of the case?

5 JUROR NO. 131: No.

6 THE COURT: Okay. You were talking about -- well,
7 then how were they discussing the case if they had no
8 knowledge of it?

9 JUROR NO. 131: I mean, it's just they talk about --
10 you know, they seem to talk cars and stuff like that and
11 just --

12 THE COURT: Okay. Well, they had some knowledge then.

13 JUROR NO. 131: Yes, sir.

14 THE COURT: All right. Well, is there anything that
15 you heard from any of those people that would have any
16 bearing upon your decision in this case?

17 JUROR NO. 131: No.

18 THE COURT: Do you have any personal information about
19 the case?

20 JUROR NO. 131: No, sir.

21 THE COURT: Do you know anybody that's involved in the
22 case that's been identified?

23 JUROR NO. 131: No, sir.

24 THE COURT: You just happened to have overheard some
25 people discussing that something had happened in Enoree

Jury qualification

1 that relates to this?

2 JUROR NO. 131: Yes, sir.

3 THE COURT: Would it have any bearing upon your
4 decision?

5 JUROR NO. 131: No, sir.

6 THE COURT: It would or would not?

7 JUROR NO. 131: No, it wouldn't.

8 THE COURT: All right. Thank you. You may be seated.
9 Anyone else?

10 (No response.)

11 THE COURT: Now, these are cases, as I have said, that
12 include the crimes of burglary and larceny, as well as
13 possession of drugs.

14 Is there any member of the jury panel or some member
15 of your immediate family -- and I'm going to define an
16 immediate family member as a parent or a spouse or a child
17 or a sibling -- a parent, spouse, child or sibling.

18 Have you or any members of your immediate family as I
19 just defined it ever been the victim of any similar type of
20 criminal offense as alleged here, or have you or some
21 member of your immediate family ever been accused of having
22 committed any type of criminal offense similar as to those
23 allegations here?

24 So have you been the victim of such -- you or an
25 immediate family member -- or have you ever been accused or

Jury qualification

1 they ever been accused of having committed such offenses?

2 If so, please stand.

3 All right. Please give me your name and number,
4 ma'am.

5 JUROR NO. 23: Triesa Cantrell, No. 23.

6 THE COURT: Twenty-three. And was it you or a family
7 member?

8 JUROR NO. 23: My brother.

9 THE COURT: It was your brother. And do you prefer --
10 do you mind answering the question where you are or would
11 you prefer to step down here to answer?

12 JUROR NO. 23: Doesn't matter to me.

13 THE COURT: Okay. It was your brother. And was your
14 brother the victim of such or was he accused of such?

15 JUROR NO. 23: Accused.

16 THE COURT: All right. And was a case made?

17 JUROR NO. 23: Yeah.

18 THE COURT: And has that case been resolved and
19 disposed of?

20 JUROR NO. 23: Well, yeah. He just got out last year.

21 THE COURT: All right. And is there anything about
22 that experience that you've had through your brother that
23 would have any bearing upon your decision in this case?

24 JUROR NO. 23: No, sir.

25 THE COURT: It would not. And your number again was

Jury qualification

1 what?

2 JUROR NO. 23: Twenty-three.

3 THE COURT: Twenty-three. Okay. Thank you, ma'am.

4 Yes, sir.

5 JUROR NO. 72: Seventy-two.

6 THE COURT: All right.

7 JUROR NO. 72: Justin Harrison.

8 THE COURT: All right. And was it you or a family
9 member?

10 JUROR NO. 72: Both.

11 THE COURT: All right.

12 JUROR NO. 72: There's two incidences.

13 THE COURT: Sir?

14 JUROR NO. 72: There's two incidences.

15 THE COURT: All right. Just tell me in relation to
16 you. Were you the victim or the accused?

17 JUROR NO. 72: Victim.

18 THE COURT: You were the victim. And what was the
19 nature of the offense?

20 JUROR NO. 72: Attempted armed robbery.

21 THE COURT: All right. And what about your family
22 member? was --

23 JUROR NO. 72: Same thing.

24 THE COURT: The victim or accused?

25 JUROR NO. 72: Victim.

Jury qualification

1 THE COURT: Same offense?

2 JUROR NO. 72: No. These are two -- yeah. Somebody
3 attempted to rob them.

4 THE COURT: Okay. And is there anything about that
5 experience that you've had and that you've had through your
6 relative that would have any bearing upon your decision in
7 this case?

8 JUROR NO. 72: No, sir.

9 THE COURT: All right. Thank you. You may be seated.
10 That's juror 72.

11 Yes, ma'am.

12 JUROR NO. 82: Myrta Holt.

13 THE COURT: All right. Was it you or a family member?

14 JUROR NO. 82: Family member.

15 THE COURT: And was the family member -- what
16 connection?

17 JUROR NO. 82: Daughter.

18 THE COURT: Daughter. And was she the victim or an
19 accused?

20 JUROR NO. 82: Victim.

21 THE COURT: And do you mind stating the type of
22 offense that it was where you are?

23 JUROR NO. 82: It was a break-in and trashing of her
24 apartment.

25 THE COURT: Okay. And was somebody charged with it?

Jury qualification

1 JUROR NO. 82: No.

2 THE COURT: They were not. Is there anything about
3 that fact or that experience that your daughter had that
4 would have any bearing upon your decision in this case?

5 JUROR NO. 82: Probably not.

6 THE COURT: Probably not?

7 JUROR NO. 82: I don't think so.

8 THE COURT: Well, can -- would you be able to fairly
9 state that you could put that event aside and not allow it
10 to influence your judgment?

11 JUROR NO. 82: I think so.

12 THE COURT: Okay. That's Juror 82.

13 Thank you, ma'am. You may be seated.

14 Yes, ma'am.

15 JUROR NO. 3: My exhusband broke in.

16 THE COURT: Tell me your number, please.

17 JUROR NO. 3: Three.

18 THE COURT: No. 3. All right. Your exhusband did
19 what?

20 JUROR NO. 3: Broke in the house.

21 THE COURT: And was he charged with it?

22 JUROR NO. 3: Yes, sir.

23 THE COURT: Did he get convicted of it?

24 JUROR NO. 3: Yes, sir.

25 THE COURT: And is there anything about that fact that

Jury qualification

1 would affect your judgment in this case?

2 JUROR NO. 3: No, sir.

3 THE COURT: All right. Thank you. You may be seated.
4 Yes, ma'am.

5 JUROR NO. 83: No. 83. And my own home has been
6 burglarized in the past.

7 THE COURT: All right. And would that experience have
8 any bearing upon your decision in this case?

9 JUROR NO. 83: No.

10 THE COURT: Could you put it aside and not allow it to
11 influence your judgment?

12 JUROR NO. 83: Yes, sir.

13 THE COURT: Thank you, ma'am. You may be seated.
14 Yes, sir.

15 JUROR NO. 37: No. 37. I was convicted 20 years ago
16 for burglary of motor vehicle.

17 THE COURT: All right. And is there anything about
18 that fact that would affect your judgment in this case?

19 JUROR NO. 37: No.

20 THE COURT: All right. You may be seated.
21 Yes, sir.

22 JUROR NO. 90: No. 90. Someone broke in my garage.

23 THE COURT: And were they charged? Were they caught?

24 JUROR NO. 90: No.

25 THE COURT: No. Is there anything about that

Jury qualification

1 experience that would affect your judgment in this case?

2 JUROR NO. 90: No, sir.

3 THE COURT: All right. Thank you. You may be seated.

4 That's Juror No. 90.

5 Is there any member of the jury panel who is a member
6 of, or do you contribute time or money to, any type of
7 organizations that might be characterized as law
8 enforcement support types of organizations or victims
9 advocacy groups?

10 And examples of those groups would be Mothers Against
11 Drunk Drivers, Citizens Against Violent Crime, the
12 Children's Advocacy Center, the troopers' association, the
13 fraternal order of police, the police benevolent
14 association, the South Carolina Law Enforcement Officers
15 Association, a neighborhood watch program or any other
16 similar type of organization or association.

17 I need to know if you belong to any or you contribute
18 time or money to any such organizations.

19 JUROR NO. 32: I contribute to the South Carolina
20 Officers Association.

21 THE COURT: All right. And your name and number,
22 please, sir.

23 JUROR NO. 32: No. 32, Samuel Cox.

24 THE COURT: All right. Well, would that fact have any
25 bearing upon your decision?

Jury qualification

1 JUROR NO. 32: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 124: Andrienne Millard, No. 124. Worked
5 with Kelly Rape Center and Mothers Against Drunk Driving
6 and also Faith Homes Rehabilitation Center.

7 THE COURT: All right. Would any of those facts have
8 any bearing upon your decision?

9 JUROR NO. 124: No.

10 THE COURT: Thank you. Be seated.

11 Yes, sir.

12 JUROR NO. 129: No. 129. I contribute monetarily to
13 many of those organizations except for MADD. That's the
14 only one I don't contribute to.

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

17 JUROR NO. 124: No, sir.

18 THE COURT: Thank you. Be seated.

19 Is any member -- has any member of the jury panel ever
20 been employed -- or are you now or have you ever been
21 employed -- as any type of law enforcement officer?

22 I also need to know if you are related by blood or
23 marriage to any person who has been or is now employed as a
24 law enforcement officer. That's either civilian or
25 military. But I need to know if you or a family member has

Jury qualification

1 ever been employed as a law enforcement officer of any
2 type. If so, please stand.

3 All right. I'll start with 32 over here.

4 JUROR NO. 32: My son-in-law was a probation officer
5 for Greenville County.

6 THE COURT: All right. And would it matter to you in
7 this case?

8 JUROR NO. 32: Not at all.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 131: My aunt Jackie Bailey was clerk of
12 court for Woodruff.

13 THE COURT: All right. And your number again?

14 JUROR NO. 131: 131.

15 THE COURT: And would that have any bearing upon your
16 decision?

17 JUROR NO. 131: No, sir.

18 THE COURT: Thank you.

19 JUROR NO. 33: No. 33. I was a probation and parole
20 agent for the State of South Carolina in Edgefield and
21 Aiken, South Carolina.

22 THE COURT: Would it affect your judgment in this
23 case?

24 JUROR NO. 33: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 164: No. 164. My sister-in-law is a former
3 military police.

4 THE COURT: Would that have any bearing upon your
5 decision?

6 JUROR NO. 164: No, sir.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am -- yes, ma'am.

9 JUROR NO. 146: 146. My son is an attorney in
10 Charleston.

11 THE COURT: All right. Would that have any bearing
12 upon your decision?

13 JUROR NO. 146: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 4: No. 4. My son was a detention officer
17 and my brother-in-law was a police officer.

18 THE COURT: Is that in Spartanburg?

19 JUROR NO. 4: Yes, sir.

20 THE COURT: Would that have any bearing upon your
21 decision?

22 JUROR NO. 4: No, sir.

23 THE COURT: And the one that was employed as a police
24 officer, what department?

25 JUROR NO. 4: He was at sheriff's. He's retired

Jury qualification

1 though.

2 THE COURT: Spartanburg County Sheriff's Department.
3 okay. It wouldn't affect your judgment?

4 JUROR NO. 4: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 103: 103. My father-in-law is a former
8 police officer in Texas.

9 THE COURT: And would that have any bearing upon your
10 decision?

11 JUROR NO. 103: No, sir.

12 THE COURT: Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 52: Fifty-two. My uncle was a state
15 trooper in Columbia and was killed in the line of duty.

16 THE COURT: All right. Would that have any bearing
17 upon your decision in this case?

18 JUROR NO. 52: No, sir.

19 THE COURT: Thank you. Be seated.

20 JUROR NO. 37: No. 37. I was in the military for nine
21 years, military police.

22 THE COURT: Would it affect your judgment in the case?

23 JUROR NO. 37: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 99: No. 99. My uncle was in the military
2 as an officer.

3 THE COURT: Would that affect your judgment?

4 JUROR NO. 99: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 83: Eighty-three. My husband is an
8 ex-state trooper or retired state trooper.

9 THE COURT: In Spartanburg County?

10 JUROR NO. 83: Yes, sir.

11 THE COURT: Would that have any bearing upon your
12 decision?

13 JUROR NO. 83: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 104: 104. My husband is Homeland Security.
17 He is a P.W. officer.

18 THE COURT: Would it have any bearing upon your
19 decision in the case?

20 JUROR NO. 104: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 137: 137. I did an internship at
24 Greenville County Detention.

25 THE COURT: And would that affect your judgment?

Jury qualification

1 JUROR NO. 137: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, sir.

4 JUROR NO. 2: No. 2. My brother was in the
5 Spartanburg Sheriff's Department.

6 THE COURT: And would that have any bearing upon your
7 decision?

8 JUROR NO. 2: No, sir.

9 THE COURT: Thank you. Be seated.

10 Has any member of the jury panel ever been called to
11 testify as a witness in a criminal case, either called by
12 the state or by a defendant -- called as a witness to
13 testify in a criminal trial? If so, please stand.

14 (No response.)

15 THE COURT: All right. I told you who the defendant
16 is; I've told you who the purported victim is; I have told
17 you who the lawyers are; and I've told you who the
18 witnesses are; and I've told you what the case is about.

19 Having that information does any member of the jury
20 panel know of any reason whatsoever why you believe you
21 could not be fair and impartial if you were called upon to
22 serve as a juror in this particular case? If so, please
23 stand.

24 (No response.)

25 THE COURT: All right. None are responding.

Jury qualification

1 Any other questions requested by the state?

2 MS. JORDAN: No, sir, Your Honor.

3 THE COURT: By the defendant?

4 MS. HALL: No, sir.

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

6 Each of your names are in the computer, and the
7 computer will select jurors randomly.

8 As your name is called you'll be asked to come
9 forward. You see the desks where the lawyers are seated.
10 There's a microphone right between the two.

11 If you'll come towards me about two or three paces
12 from that microphone towards me, turn and face your fellow
13 jurors.

14 Each side has an opportunity to have you seated for
15 service in the case or to have you excused from serving in
16 the case.

17 If either lawyer asks that you be excused from serving
18 in the case you can simply go back and have a seat where
19 you are now.

20 If both agree to have you seated for service in the
21 case you'll be having a seat in the jury box to your right
22 and to my left.

23 So please come forward as your name is called. You'll
24 be instructed as to whether you have been excused or been
25 accepted for service in the case.

Jury qualification

1 MS. JORDAN: Your Honor, may we approach?

2 THE COURT: Yes, ma'am.

3 (Bench conference held off the record.)

4 THE COURT: All right. As I say, your names will be
5 called. As you are called, please come forward. You'll be
6 instructed if you're to be excused or seated for service in
7 the case.

8 THE CLERK: No. 103, Marcie Kitchens.

9 What says the state?

10 MS. JORDAN: Please present this juror.

11 THE CLERK: What says the defense?

12 MS. HALL: Please excuse this juror.

13 THE CLERK: Juror No. 86, Mary Hunter.

14 What says the state?

15 MS. JORDAN: Please present this juror.

16 THE CLERK: What says the defense?

17 MS. HALL: Please present the juror. Seat the juror.

18 I'm sorry, ma'am.

19 THE CLERK: No. 152, Jerald Sewell.

20 What says the state?

21 MS. JORDAN: Please excuse this juror.

22 THE CLERK: No. 18, Ronald Branzuela.

23 What says the state?

24 MS. JORDAN: Please present this juror.

25 THE CLERK: What says the defense?

Jury qualification

1 MS. HALL: Please seat the juror.
2 THE CLERK: No. 133, Xavier Parks.
3 What says the state?
4 MS. JORDAN: Please excuse this juror.
5 THE CLERK: No. 183, Jack Dyches.
6 What says the state?
7 MS. JORDAN: Please present this juror.
8 THE CLERK: What says the defense?
9 MS. HALL: Please seat the juror.
10 THE CLERK: No. 156, Rosalind Smith.
11 What says the state?
12 MS. JORDAN: Please present this juror.
13 THE CLERK: What says the defendant?
14 MS. HALL: Please seat the juror.
15 THE CLERK: No. 125, Patti Mitchell.
16 What says the state?
17 MS. JORDAN: Please present this juror.
18 THE CLERK: What says the defense?
19 MS. HALL: Please strike this juror.
20 THE CLERK: No. 23, Triesa Cantrell.
21 What says the state?
22 MS. JORDAN: Please excuse this juror.
23 THE CLERK: No. 27, Marjean Chapman.
24 What says the state?
25 MS. JORDAN: Please present this juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. HALL: Please excuse this juror.
3 THE CLERK: No. 157, Ashley Snoddy.
4 What says the state?
5 MS. JORDAN: Please present this juror.
6 THE CLERK: What says the defense?
7 MS. HALL: Please seat the juror.
8 THE CLERK: No. 72, Justin Harrison.
9 What says the state?
10 MS. JORDAN: Please present this juror.
11 THE CLERK: What says the defense?
12 MS. HALL: Please excuse this juror.
13 THE CLERK: No. 16, Daniel Boutellier.
14 What says the state?
15 MS. JORDAN: Please present this juror.
16 THE CLERK: What says the defense?
17 MS. HALL: Please seat the juror.
18 THE CLERK: No. 99, Jordan Jones.
19 What says the state?
20 MS. JORDAN: Please present the juror.
21 THE CLERK: What says the defense?
22 MS. HALL: Please seat the juror.
23 THE CLERK: No. 64, John Gilliam.
24 What says the state?
25 MS. JORDAN: Please present this juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. HALL: Please seat the juror.
3 THE CLERK: No. 145, Victoria Riddle.
4 What says the state?
5 MS. JORDAN: Please present this juror.
6 THE CLERK: What says the defense?
7 MS. HALL: Please seat the juror.
8 THE CLERK: No. 4, Patricia Alexander.
9 What says the state?
10 MS. JORDAN: Please present this juror.
11 THE CLERK: What says the defense?
12 MS. HALL: Please excuse this juror.
13 THE CLERK: No. 176, Yvonne Wilson.
14 What says the state?
15 MS. JORDAN: Please present this juror.
16 THE CLERK: What says the defense?
17 MS. HALL: Please seat the juror.
18 THE CLERK: No. 139, Ashley Swofford.
19 What says the state?
20 MS. JORDAN: Please present this juror.
21 THE CLERK: What says the defense?
22 MS. HALL: Please excuse this juror.
23 THE CLERK: No. 149, Gregg Scofield.
24 What says the state?
25 MS. JORDAN: Please present this juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. HALL: Please seat the juror.
3 THE CLERK: No. 148, James Sarter.
4 What says the state?
5 MS. JORDAN: Please excuse this juror.
6 THE CLERK: No. 104, Angelica Korikova.
7 What says the state?
8 MS. JORDAN: Please present this juror.
9 THE CLERK: What says the defense?
10 MS. HALL: Please excuse this juror.
11 THE CLERK: No. 17, Sheila Boyd.
12 What says the state?
13 MS. JORDAN: Please present this juror.
14 THE CLERK: What says the defense?
15 MS. HALL: Would the Court inquire as to the juror's
16 occupation?
17 THE JUROR: At the jail.
18 MS. HALL: Please seat the juror.
19 THE COURT: This will be for the alternate.
20 THE CLERK: No. 137, Keneisha Prysock.
21 What says the state?
22 MS. JORDAN: Please present this juror.
23 THE CLERK: What says the defense?
24 MS. HALL: Please excuse this juror.
25 THE CLERK: No. 90, Timothy Jackson.

Jury qualification

1 What says the state?

2 MS. JORDAN: Please present this juror.

3 THE CLERK: What says the defense?

4 MS. HALL: Please excuse this juror.

5 THE CLERK: No. 131, Kevin O'Shields.

6 What says the state?

7 MS. JORDAN: Please excuse this juror.

8 THE CLERK: No. 87, Helen Irby.

9 What says the state?

10 MS. JORDAN: Please present this juror.

11 THE CLERK: What says the defense?

12 MS. HALL: Please present the juror.

13 (Whereupon, a jury was impaneled.)

14 THE COURT: All right. Those who have been selected,
15 I'll ask you to please go with the bailiff to your jury
16 room, and I'll bring you back in just a few minutes to
17 excuse you for lunch.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Are there any matters that need to be
21 addressed regarding jury selection by the state?

22 MS. JORDAN: No, sir, Your Honor.

23 THE COURT: By the defendant?

24 MS. HALL: No, sir, Your Honor.

25 (Whereupon, the remaining members of the jury venire

1 were excused.)

2 THE COURT: All right. Bring the jury back, please,
3 sir.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Ladies and gentlemen of the jury, we're
7 going to recess for lunch, as I told you.

8 So let me caution you that at no time during the
9 course of this trial are you permitted to talk about the
10 case.

11 You're only permitted to talk about the case after all
12 of the evidence has been received and I've instructed you
13 on the law and you've been requested to begin deliberations
14 in the jury room. So from now until that time comes no
15 discussions about the case with anybody including your
16 fellow jurors.

17 Also, do not permit yourselves to be exposed to any
18 type -- any other type of information about the case from
19 the media or from people talking about the case.

20 And also understand that you're never permitted to
21 conduct your own research or do your own investigation into
22 any issue.

23 You have to decide the case based upon the evidence
24 presented during the course of the trial and the law that
25 I'll provide you at the trial's conclusion. You're not

1 permitted to conduct outside research to supplement your
2 base of knowledge.

3 with those cautions in mind, do have a good lunch.

4 And please report to your jury room -- the one that you've
5 just been shown to. Report to that jury room at 2:30 this
6 afternoon, 2:30 this afternoon.

7 If you're not sure how to get to that jury room talk
8 to the bailiffs. They'll provide you with that information
9 as to directions. Have a good lunch. We'll see you at
10 2:30.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: All right. Court is in recess until 2:30.
14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Any matters to address before
16 the jury is brought in?

17 MS. JORDAN: No, sir.

18 MS. HALL: No, sir, Your Honor.

19 THE COURT: All right. Ask the jury to come in, and
20 tell Mr. Daniel Boutellier he is going to be the
21 foreperson.

22 (The following takes place in the presence of the
23 jury.)

24 THE COURT: Mr. Boutellier -- is that how you
25 pronounce your name, by the way?

1 THE FOREMAN: I'm sorry?

2 THE COURT: Your pronunciation of your last name is
3 what?

4 THE FOREMAN: Boutellier.

5 THE COURT: Boutellier. Okay. You're going to be
6 serving as the foreperson in this case.

7 THE FOREMAN: Yes.

8 THE COURT: The foreperson has three specific duties
9 that none of the other jurors have.

10 No. 1, you serve as the spokesperson for the jury.
11 And that just means if something arises that needs to be
12 brought to my attention -- you or a fellow juror has some
13 difficulty, problem or question -- it's you who will let me
14 know either directly or through the bailiff.

15 Secondly, you'll be called upon to preside over jury
16 deliberations when the time comes for those deliberations.
17 That of course won't be until the end of the trial after
18 all of the evidence has been received and I've instructed
19 you on the law that's applicable in the case.

20 But when the time does come for jury deliberations you
21 will preside over that process in the jury room simply to
22 ensure that those deliberations are carried out in some
23 orderly fashion.

24 Thirdly, you'll be asked to actually write the
25 decisions of the jury. You'll do that on verdict forms

1 that I'll provide you before you go back to deliberate.
2 And once you decide the verdict in a particular indictment
3 you'll indicate that verdict on the -- in the space
4 provided for the announcement of the verdict. And you'll
5 sign your name as the foreperson.

6 Now, the foreperson has those duties that I have just
7 indicated. That doesn't mean he's any more important than
8 any of you other jurors, and that's because the decision of
9 the jury is the unanimous consensus opinion of all 12
10 jurors. And so all of you are going to have an equal say
11 and an equal vote in what the ultimate decisions are in
12 this case.

13 Someone has to be delegated those responsibilities
14 that I have just indicated, and I have delegated those to
15 Mr. Boutellier in making him the foreperson. But all of
16 you jurors are equally important so far as the ultimate
17 decisions are concerned, because, as I've stated, the
18 verdict has to be unanimous. All 12 of you must be in
19 agreement.

20 Now, Ms. Irby, you've been selected as an alternate
21 juror. And the function of an alternate juror is to take
22 the place of one of the original 12 if during the trial one
23 of these 12 cannot continue to serve for some reason. And
24 if because of an emergency or some unforeseen circumstance
25 one of these original 12 jurors cannot continue to serve as

Jury sworn

1 a juror in the case, then it is you who takes that person's
2 place. In that event you become the 12th juror. In that
3 event you participate throughout the trial including the
4 jury deliberations at the trial's conclusion.

5 If however when the time for deliberations begins if
6 the original 12 jurors are able to do that, then your
7 service ends, and you don't participate any further. And
8 that's because the decision of a jury is that of 12. No
9 more than 12 can participate in that deliberation process.

10 But it is important that you pay just as careful
11 attention as we ask of all of the jurors in the case
12 because it does occur from time to time for one reason or
13 another one of these 12 may be called away. In that event
14 you become the 12th.

15 So we do appreciate your participation as an alternate
16 juror, just as we appreciate the participation of each of
17 you jurors who have been selected for the purpose of
18 deciding the verdicts in this particular case.

19 You may swear the panel.

20 (Whereupon, the jury was duly sworn.)

21 THE COURT: Ladies and gentlemen, as you know, you
22 have been selected for the purpose of deciding the verdicts
23 in the case of the State vs. Christopher Paul Mahaffey.

24 As you also know, he has been accused by the state
25 through the prosecutor and by way of these four indictments

1 of having committed four separate and distinct offenses,
2 although each of those offenses is alleged to have arisen
3 out of one particular event or course of events which the
4 state alleges occurred back on January the 14th of 2012.

5 But there are four separate indictments alleging four
6 separate and distinct offenses. Those four separate and
7 distinct offenses are burglary, larceny, possession of
8 crack cocaine and possession of oxycodone.

9 You will be rendering four separate and distinct
10 verdicts in this case. And your verdicts may be the same.
11 They may be different. That of course will depend upon
12 your determination of fact as it relates to those
13 particular allegations and then your application of the law
14 as I will have provided it to you as it relates to that
15 particular criminal charge.

16 Now, every person who is accused of a crime is always
17 presumed innocent of that charge. That presumption of
18 innocence remains with every defendant as it does with this
19 defendant from the time that he is placed under arrest and
20 throughout the course of the criminal process and even
21 throughout the course of the actual trial in the case.

22 That presumption of innocence will be with
23 Mr. Mahaffey even at the time that you go back to begin
24 with your deliberations in this case at the trial's
25 conclusion. And that presumption of innocence will be with

1 him in that jury room, and it'll be with him forever unless
2 you 12 jurors determine that he is no longer entitled to
3 that presumption of innocence.

4 In other words, after you've carefully considered all
5 the evidence in the case and from that evidence you have
6 decided the facts and after deciding the facts you apply
7 the law that I will have provided you, if you 12 jurors
8 unanimously determine that his guilt has been proven beyond
9 a reasonable doubt as to a particular charge, then he's no
10 longer entitled to that presumption of innocence because it
11 will have been removed.

12 But it's only if, unless and until you are satisfied
13 of his guilt beyond a reasonable doubt that the presumption
14 of innocence would no longer be applicable.

15 Now, the way the trial will proceed is that in a
16 moment the lawyers are going to address you in what are
17 called opening statements.

18 There are two occasions in the trial of a case where
19 lawyers are permitted to address the jury, and that is at
20 the beginning of the trial before any evidence has been
21 introduced and then again at the conclusion of the trial
22 after all of the evidence has been received.

23 But please keep in mind as I've just indicated that
24 the lawyers' statement are not evidence. The evidence
25 comes in between those statements in the form of testimony

1 and the introduction of physical objects. But while the
2 lawyers' statements are not evidence, you should listen to
3 what they have to say because those statements do serve a
4 purpose.

5 The opening statements will serve to provide you with
6 a basic understanding as to what this case is about from
7 the perspective of both the state and the defense so that
8 you'll have some context in which to place the evidence
9 that we will be receiving shortly thereafter.

10 The closing statements are accomplished after all of
11 the evidence has been received. And, again, while those
12 statements are not evidence it does afford the lawyers an
13 opportunity to discuss with you the evidence that you have
14 seen and heard during the trial of the case. And through
15 that discussion each will have an opportunity to try to
16 persuade you or to convince you that the evidence in the
17 case does or does not support a particular decision.

18 It's in between those opening and closing statements
19 that we actually receive the evidence upon which you will
20 base your decision.

21 The state, as you have been told, has the burden of
22 proof. The state must present evidence because they have
23 to establish the defendant's guilt beyond a reasonable
24 doubt. And so the state will go forward first in its
25 presentation of evidence.

1 After the state has concluded with its presentation a
2 defendant in a criminal trial may testify or not, may call
3 a witness or not, may introduce evidence or not. That's
4 the prerogative of a defendant.

5 That's because a defendant doesn't have any burden of
6 proof in a case. A defendant doesn't have to prove that he
7 or she is not guilty or to prove that he or she is innocent
8 because in some cases that might not even be possible.

9 The burden is always on the state to establish a
10 defendant's guilt beyond a reasonable doubt. And therefore
11 in a criminal trial a defendant may not even present any
12 evidence or testify.

13 If that were to happen, that's not something that you
14 jurors may consider in any way whatsoever in your
15 deliberations or in your determination as to whether or not
16 his guilt has been proven beyond a reasonable doubt.

17 You can't allow such a fact to weigh in the slightest
18 degree against the defendant, because a defendant has no
19 burden of proof. But every defendant is afforded an
20 opportunity to present evidence if he or she wishes to do
21 so.

22 In any event, after all of the evidence has been
23 received and after you have heard the final summations of
24 the lawyers, I will then instruct you fully on the law as
25 it relates to the criminal law generally and as it relates

1 to these specific crimes particularly. And after that
2 you'll be asked to go back and begin with your
3 deliberations.

4 Through that process you're simply going to be asked
5 through the exercise of good judgment and common sense
6 conscientiously applied to the testimony and evidence in
7 the case to decide the facts. And then upon your deciding
8 those facts you're going to be called upon to apply the law
9 that I will have provided you.

10 You are then going to tell us whether or not the
11 defendant has been proven guilty beyond a reasonable doubt
12 as to a particular charge. And if he has, then your
13 verdict will be guilty. If he has not, then your verdict
14 would be not guilty.

15 Now, it is important because you are the judges of the
16 facts in this case to pay careful attention throughout the
17 course of the trial. Give every witness the same degree of
18 attention as they testify from the witness stand because
19 all testimony and all evidence is important in a case.

20 You may however choose not to find it to be credible.
21 You may find -- your prerogative is to determine the
22 credibility of witness testimony. In order to do that
23 you've got to pay attention to each witness as they testify
24 so that when you do go back to begin deliberations you'll
25 be in a proper position to be able to fairly evaluate a

1 witness' testimony in light of not just that witness'
2 testimony but in light of all of the testimony and all of
3 the evidence in the case.

4 And in your assessment as to a witness' credibility
5 you get to make that decision. And you can believe
6 everything that a witness testified to. You may choose to
7 believe none of it.

8 You may believe one portion of a witness' testimony
9 and reject some other portion of that same witness'
10 testimony.

11 In any given case you may believe one witness as
12 opposed to several, or several as opposed to one. But
13 whatever your good and common sense tells you is the most
14 believable testimony is the testimony you should accept,
15 and reject any other testimony that you find not to be
16 credible or believable.

17 Again, your sole objective here is to reach the truth
18 in the matter. By doing that you will have fulfilled your
19 obligations as jurors.

20 It's also important that you keep an open mind
21 throughout the course of the trial. And that just means
22 that you are not to begin making up your minds or
23 formulating your opinions as to what you think the ultimate
24 decisions in this case ought to be until all of the
25 evidence has been received, until I have instructed you on

Opening statements

1 the law and until you've been asked to go back into the
2 jury room to begin with your deliberations.

3 That is the process that has been designed over 200
4 plus years to allow you to arrive at a fair and just
5 verdict in the case.

6 So I do want to thank you in advance for your
7 participation as well as for your careful attention. I
8 would ask that you please give the lawyers your attention
9 now as they give you their opening statements.

10 Ms. Jordan.

11 MS. JORDAN: Thank you, Your Honor.

12 Ladies and gentlemen of the jury, on January the
13 14th of 2012, this year, Andrew Sustare who is here in the
14 courtroom was at his home doing what many people do on the
15 weekends. It was a Saturday. He was working in his yard.

16 He also had someone there -- Richie Blackwell --
17 helping him work in the yard and working in the back and
18 moving some stuff around.

19 He's going to tell you a little bit about his property
20 and describe it to you. He's also going to tell you that
21 he noticed as they were coming from one side of the house,
22 from the back of one side of the house, that there was a
23 vehicle in his driveway that he didn't recognize. And he
24 wasn't expecting anyone.

25 So he and Richie walk around to the front to see the

Opening statements

1 defendant coming off -- coming through -- coming off the
2 porch, hear the door being shut. It's a wooden door, heavy
3 one.

4 At the time they confront him and keep him there.
5 They keep him there until law enforcement is able to
6 arrive.

7 And what you're going to hear about are some of the
8 things that Mr. Sustare and various officers with the
9 sheriff's department found either in the defendant's
10 vehicle or on the defendant's person when he was -- when he
11 was on that property that day.

12 You're going to hear information about the victim's
13 gun. You're going to hear about a money bag with change in
14 it. You're also going to hear about a blackberry cell
15 phone.

16 Ladies and gentlemen, listen to where the witnesses
17 from this stand and the photographs you'll see show you,
18 where those items were found.

19 You're also going to see and have in your possession
20 crack cocaine and oxycodone. Just like the items that
21 belonged to the victim, I want you to listen and see where
22 those items are also found.

23 Ladies and gentlemen, the defendant in this case is
24 charged with four separate crimes just as the judge told
25 you. He's charged with burglary in the first degree, which

Opening statements

1 is entering without consent of the owner with the intent to
2 commit a crime the dwelling of another with an additional
3 circumstance. In this case it's our position that he was
4 armed with a deadly weapon.

5 Like I said, listen to what was taken off the
6 defendant and what was missing from the house and where
7 those items were found. You're going to hear about two
8 pocketknives and a .357.

9 He's also charged with petit larceny, this meaning he
10 took the items of someone else that didn't belong to him
11 with the intent to deprive the owner of them, the same
12 items you already heard me reference.

13 He's charged with two drug offenses and possession of
14 cocaine base or crack cocaine as it's commonly known and
15 possession of oxycodone. You're going to hear Officer
16 Gibbs tell you he found a small amount of crack and a
17 couple of oxycodone pills.

18 Ladies and gentlemen, one of the things that I love
19 about the jury system in our country is that you get a
20 collection of 12 individuals who get to go back and talk
21 about the case that they've heard about.

22 And one of the things that no one is ever going to ask
23 you to do is to check your common sense at the door. You
24 get to bring in your collective common sense, apply it to
25 the facts that you're going to hear, pictures you're going

Opening statements

1 to see and all of the information that you're going to
2 receive.

3 And at the end of this case, ladies and gentlemen,
4 I'll come back to you and ask that you find the defendant
5 guilty of all four of the charges he's been accused of.
6 Thank you.

7 THE COURT: Ms. Hall.

8 MS. HALL: May it please the Court.

9 Christopher Mahaffey didn't have the first clue that
10 anything was going awry, anything was wrong or anything was
11 amiss on January the 14th until he was tackled in
12 Mr. Sustare's front yard.

13 What is going on? Something's going on I don't know
14 about. What's happening? I'm going to tell you what
15 happened.

16 They stopped the wrong man. We know that the
17 homeowner, Mr. Sustare, saw a strange vehicle in his
18 driveway. We know that he alleges there were items taken
19 out of his home or missing, and we know that Chris was
20 stopped in his yard. There is one problem with all of
21 this. They stopped the wrong man that day.

22 Now, I know it doesn't look good that Chris was in
23 Mr. Sustare's front yard, but being in a front yard is not
24 the same as committing burglary.

25 Also, there were some small amount of drugs found in

Opening statements

1 the vehicle. Having drugs is not a full burglary.

2 Now, Mr. Sustare and Chris didn't know each other.

3 You will hear that Mr. Sustare's house was down a long
4 driveway that's not visible from the road if you're just
5 driving down.

6 All of the items that were missing from his home were
7 to have been kept we're told in different places in the
8 home. And all of this is alleged to have happened while
9 people were at the residence.

10 There's no prior connection between Christopher
11 Mahaffey and Mr. Sustare.

12 The state can't put Christopher Mahaffey in the house
13 because he wasn't in there. If he wasn't in there, he
14 didn't commit burglary.

15 They stopped the wrong man in that yard. The police
16 arrested the wrong man, and now the state is prosecuting
17 the wrong man.

18 You have an important job with a heavy burden that I
19 do not envy, and all I can ask is that you listen, you
20 question and you withhold your judgment until you've heard
21 everything.

22 At the end of this trial I will speak to you again and
23 I will ask you at that time to return a not-guilty verdict.
24 Thank you.

25 THE COURT: Ms. Jordan.

Andrew Sustare
Direct examination by Ms. Jordan

- 1 MS. JORDAN: Thank you, Your Honor. The state calls
2 Andrew Sustare.
3 ANDREW SUSTARE, having been
4 first duly sworn, testified as follows:
5 DIRECT EXAMINATION BY MS. JORDAN
6 Q Please state your name for the record.
7 A Andrew Sustare.
8 Q Mr. Sustare, what is your occupation?
9 A Tooling engineer.
10 Q Where do you work?
11 A I have a business and I also work for M.S.C.
12 Industrial Supply.
13 Q Mr. Sustare, where do you live?
14 A [REDACTED].
15 Q And what county is that in?
16 A Spartanburg.
17 Q Okay. Who lives there with you?
18 A My wife.
19 Q I'm going to show you a picture of something that's
20 been marked State's Exhibit No. 1 and ask you if you can
21 tell the jury what that's a photograph of.
22 A It's an aerial view of my property.
23 Q Is that a fair and accurate view of your property?
24 A Yes, sir.
25 MS. JORDAN: Your Honor, at this time the state would

Andrew Sustare
Direct examination by Ms. Jordan

1 move State's Exhibit No. 1 into evidence.

2 MS. HALL: Without objection.

3 THE COURT: It's admitted.

4 (Google map photo marked State's Exhibit No. 1.)

5 MS. JORDAN: May I publish it to the jury?

6 THE COURT: You may.

7 BY MS. JORDAN

8 Q Mr. Sustare, could you describe your property to the
9 jury?

10 A It has several cleared areas on it. My house is
11 approximately in the middle of it. I have a long driveway
12 to my residence, and it's a house that I built.

13 MS. JORDAN: Your Honor, may I have the victim's or
14 Mr. -- the witness step down and just point to his driveway
15 and his home on the picture?

16 THE COURT: Sure.

17 (Whereupon, the witness left the stand.)

18 A Just to the left of there is my driveway, and it
19 proceeds to my home.

20 Q Okay. Approximately how long is your driveway?

21 A 600 feet.

22 Q Okay. And is your house surrounded?

23 A On the left and right you can see the wood line.
24 Behind it I have some cleared area, yes..

25 Q You may have a seat again. Thank you.

Andrew Sustare
Direct examination by Ms. Jordan

1 (Whereupon, the witness returned to the stand.)

2 Q Would you tell the jury what you were doing on
3 January the 14th of 2012?

4 A Yes. I was behind my house preparing an asparagus
5 patch.

6 Q Who was with you?

7 A Richie Blackwell.

8 Q Okay. How do you know Richie?

9 A I met Richie through -- a friend had recommended him
10 for additional work -- strong young man, had a good work
11 ethic. And he had worked for me for about a year or a year
12 and a half.

13 Q Okay. That day on your property were you expecting
14 anyone else at your property?

15 A No.

16 Q Okay. Can you tell the jury what you saw as you and
17 Richie were working on the property?

18 A Yes. As I was preparing this asparagus bed I had to
19 remove some dirt. I was working on my tractor. Richie was
20 assisting on the ground.

21 We loaded a trailer with dirt, because I was removing
22 soil and replacing it with organic material. And I had
23 left the site and gone to the other side, the west side, of
24 my property to dump the dirt.

25 Q When you say west side, could you point up on the

Andrew Sustare
Direct examination by Ms. Jordan

1 photograph or down here on the projector where the west
2 side is?

3 (Whereupon, the witness left the stand.)

4 A Where my house is at about 1:00 o'clock is where I was
5 working the west side.

6 THE COURT: Excuse me just a minute. Excuse me.

7 If you'll see there's a fishing line or a fishing pole
8 or a piece of a fishing pole right there. Use that if you
9 don't mind.

10 MS. JORDAN: Thank you, Your Honor.

11 BY MS. JORDAN

12 A I was working back in this area for the asparagus
13 patch, and there is a cross way here. That's where I was
14 dumping the dirt.

15 Q Okay.

16 (Whereupon, the witness returned to the stand.)

17 Q As you came behind your house did you notice anything
18 unusual that day?

19 A Not when I was moving in that direction with the soil,
20 because it's a process to have a dump trailer to dump the
21 dirt and get it all out.

22 It was when I was coming back to get more dirt, is
23 when I noticed something unusual in my driveway. There was
24 too much mass. It just caught my eye that there was a
25 vehicle. I immediately stopped and put it in park, and

Andrew Sustare
Direct examination by Ms. Jordan

1 both Richie and I went to the front door.

2 Q Okay. I am going to show you what's been marked as
3 State's 2 and 3.

4 THE COURT: Let me see y'all just a minute, please --
5 Ms. Hall.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 BY MS. JORDAN

9 Q Show you State's 2 and 3. Can you identify those
10 photographs?

11 A Yes. Two is the front of my home and three shows the
12 defendant's vehicle parked in the position so that I could
13 not see it from the position in which I was behind my house
14 working on the asparagus patch, but just to the left --

15 Q Let me stop you real quick. Are those -- are both of
16 those photographs fair and accurate depictions --

17 A Yes.

18 Q -- of your property on June 14th?

19 A Yes.

20 MS. JORDAN: Your Honor, the state moves two and three
21 into evidence.

22 MS. HALL: No objection.

23 THE COURT: They are admitted.

24 (Photographs marked State's Exhibits Nos. 2 and 3.)

25 Q Mr. Sustare, I have placed State's Exhibit No. 2 up on

Andrew Sustare
Direct examination by Ms. Jordan

1 the screen. Can you using the pointer show the jury where
2 you came from?

3 (Whereupon, the witness left the stand.)

4 A I came from around this corner. And that's my front
5 door right in here.

6 Q Okay. What was Richie doing as you were coming? You
7 can have a seat.

8 A Okay.

9 (Whereupon, the witness returned to the stand.)

10 Q What was Richie doing as you were coming around?

11 A Richie was right behind me. We were literally both
12 moving the front door. I was in the front.

13 Q What did you see as you got to the front of your
14 house?

15 A I saw the defendant exiting my home. His back was to
16 me, and he was shutting the door.

17 Q Did you hear anything?

18 A Yes. The door makes a specific sound squeaking, and
19 then the thud of it hitting the doorframe.

20 Q What type of door do you have on your front?

21 A It's a wooden door, a big heavy front door.

22 Q What did you do then?

23 A I immediately addressed the individual, asked him who
24 he was and what was he doing in my house. I was very
25 assertive because I knew he just came out of my home. And

Andrew Sustare
Direct examination by Ms. Jordan

1 I had to assert myself in order to gain control of the
2 situation.

3 Q Did you know the defendant?

4 A No.

5 Q Had you given the defendant consent to go into your
6 home?

7 A No.

8 Q Had you expected to see anyone at your house that day?

9 A No.

10 Q Okay. Let me ask you this just to back up for a
11 moment.

12 Do you have -- this is going to sound like an idiotic
13 question. But do you have locks on your door?

14 A Yes.

15 Q Were your doors locked that day?

16 A No.

17 Q Do you have an alarm at your house?

18 A Yes.

19 Q Was it lock -- was it on that day?

20 A No.

21 Q Why not?

22 A Because I was home, and there are times I come in and
23 out of the house during the course of the day working
24 there. And I did not have the door locked, and typically I
25 don't set the alarm if I'm home.

Andrew Sustare
Direct examination by Ms. Jordan

1 Q Okay. I'm now going to show you what's been
2 previously marked and admitted as State's Exhibit No. 3 and
3 ask you if you can describe this photograph to the jury.

4 A Yes. You can see my front door. This is the
5 defendant's vehicle parked there. And to the left you can
6 see where visually I seen the vehicle as I was driving
7 coming back to get more dirt.

8 Q Okay. And what were you driving in the background?

9 A I was driving a Ford F150 with a dump trailer.

10 Q Okay. Do you see that in the photograph?

11 A Yes. That's the tail end of it right there.

12 Q Okay. Do you know or did you know at the time you
13 were working in your back yard whose Ford Expedition this
14 was?

15 A No.

16 Q And is the Ford Expedition the vehicle that caught
17 your attention?

18 A Yes.

19 Q Okay. What did you do once you and Richie came upon
20 the defendant? What did you do at that point?

21 A I took him by the shirt and I pushed him against the
22 brick and I asked him who the blank are you.

23 It was very heated. I had to be aggressive to gain
24 control of the situation.

25 I noticed his vehicle was running. Richie was with

Andrew Sustare
Direct examination by Ms. Jordan

1 me. I told him to hold him. And I took his keys from his
2 vehicle.

3 Q Okay. Once you take the keys from the vehicle, what
4 did you do?

5 A I went into my home and I went directly to my bedroom
6 to pick up my .357.

7 Q Okay. I'm going to show you what's previously been
8 marked as State's Exhibits Nos. 5 and 6 and ask you if you
9 can just identify those pictures.

10 A Yes. No. 6 is the left side of my bed, my wife's end
11 table. And the other picture, No. 5, is my side of the
12 bed, which is my end table.

13 Q Okay. Do those pictures fairly and accurately depict
14 your house as it was back on June the -- January the
15 14th of 2012?

16 A Yes.

17 MS. JORDAN: Your Honor, the state moves State's 5 and
18 6 into evidence.

19 MS. HALL: I'm sorry. No objection.

20 THE COURT: They are admitted.

21 (Photographs marked State's Exhibits Nos. 5 and 6.)

22 Q Okay. Ms. Sustare, if you'll go back when I show this
23 to the jury and tell them what No. 5 is a photograph of.

24 A That's my side of my bed with my night end table.

25 Q Okay. Where -- you mentioned looking for a .357.

Andrew Sustare
Direct examination by Ms. Jordan

- 1 where do you normally keep that?
- 2 A When I sleep it's by my side beside that lamp.
- 3 Q Okay. How do you keep it?
- 4 A It's in its holster laying by my side.
- 5 Q Okay. What does the holster look like?
- 6 A It's a leather holster made specifically for the
- 7 firearm.
- 8 Q Okay. Do you keep that gun loaded?
- 9 A Yes.
- 10 Q How do you keep it loaded?
- 11 A It is a 7-chamber revolver. I have six projectiles in
- 12 it, one not in the chamber for safety in carrying the
- 13 weapon. But there are six bullets in the revolver.
- 14 Q Okay. Where -- what did you find when you came into
- 15 your house after locating the defendant in the front yard?
- 16 A My weapon was missing.
- 17 Q Okay. I'm going to point to a glove that's here and
- 18 ask you if you recognize that glove.
- 19 A Yes. That's my work glove.
- 20 Q Okay. Now, I'm going to focus your attention to
- 21 State's Exhibit No. 6 again and ask you just to talk to the
- 22 jury about what's in this photograph.
- 23 A That's the left side of the bed, my wife's side, the
- 24 end table there with the phone receiver.
- 25 Q Okay. What did you do on this side of the bedroom?

Andrew Sustare
Direct examination by Ms. Jordan

1 A I picked up the phone and called 9-1-1.

2 Q Okay. I'm also going to point out a glove in this
3 photograph and ask you if you recognize that glove.

4 A That would be my other work glove.

5 Q Okay. What -- were you wearing those gloves on
6 January the 14th?

7 A Yes.

8 Q Do you -- and do you recall whether or not this drawer
9 was opened?

10 A That drawer was not open. That picture was taken
11 after the police had arrived and photographs were being
12 taken, because that's where the money bag was.

13 Q Okay. Do you recall if it was open when you went to
14 use the telephone?

15 A It was not open.

16 Q Okay. Did you place a phone call to 9-1-1?

17 A Yes.

18 Q Mr. Sustare, did you listen to a 9-1-1 call this
19 morning in our office?

20 A Yes, I did.

21 Q Is State's No. 15 to your knowledge that 9-1-1 call
22 that you listened to?

23 A Yes.

24 Q Is that phone call in your recollection the entire
25 phone call that you made that day?

Andrew Sustare
Direct examination by Ms. Jordan

- 1 A Yes.
- 2 Q Did it appear to have been altered or changed in any
3 way?
- 4 A No.
- 5 MS. JORDAN: Your Honor, at this time the state would
6 move to admit State's Exhibit No. 15. It's a 9-1-1 disc.
- 7 MS. HALL: We have no objection.
- 8 THE COURT: It's admitted.
9 (9-1-1 CD marked State's Exhibit No. 15.)
- 10 MS. JORDAN: Your Honor, at this time I'd like to
11 publish it to the jury.
- 12 THE COURT: You may.
- 13 Mr. Sustare, let me remind you you might need to get a
14 little bit closer to that microphone.
- 15 THE WITNESS: Okay.
- 16 BY MS. JORDAN
- 17 Q I tell you what. While she's loading that I'm going
18 to show you State's Exhibit No. 4 and ask if you recognize
19 this.
- 20 A Yes.
- 21 Q Okay. Does that -- what's in that photograph?
- 22 A The defendant's vehicle.
- 23 Q Okay. Does it fairly and accurately depict its
24 location on June the -- January 14th of 2012?
- 25 A Yes.

Andrew Sustare
Direct examination by Ms. Jordan

1 MS. JORDAN: Your Honor, at this time we would move
2 State's 4 in.

3 MS. HALL: No objection.

4 THE COURT: It is admitted.

5 (Photograph marked State's Exhibit No. 4.)

6 (Whereupon, the CD was played for the jury.)

7 BY MS. JORDAN

8 Q Mr. Sustare, what type of phone were you using when
9 you made this phone call?

10 A It was a cordless A T & T phone. It has a recharging
11 station.

12 Q Okay. What did you do before you went or while you
13 were on the phone with 9-1-1?

14 A What did I do while I was on the phone?

15 Q Yes, sir.

16 A I looked out the window to get the description of his
17 clothes he was wearing. They asked me what the vehicle
18 was, and I went out to the vehicle and gave them the
19 license plate number. And I also picked up a .38.

20 Q Okay. Where did -- where in your home did you keep a
21 .38?

22 A My safe.

23 Q Where is your safe?

24 A In my garage.

25 Q Okay. Tell the jury what you did once you got off the

Andrew Sustare
Direct examination by Ms. Jordan

- 1 phone.
- 2 A I approached the defendant and made him get on his
- 3 knees.
- 4 Q Did you have your gun with you at that point?
- 5 A Yes.
- 6 Q Okay. Did you ask the defendant any questions while
- 7 you were out there with him?
- 8 A Yes, I did.
- 9 Q What did you ask him?
- 10 A One in particular is specifically was where is it.
- 11 Q Okay. Did you get a response to the first question?
- 12 A No.
- 13 Q What did you do then?
- 14 A I said it with more enthusiasm.
- 15 Q Okay.
- 16 A That he did respond.
- 17 Q What was his response?
- 18 A Between the front seats.
- 19 MR. HALL: Your Honor, that calls for hearsay.
- 20 THE COURT: Overruled.
- 21 Q Could you repeat your answer again?
- 22 A His response was it's between the front seats.
- 23 Q Did you ever specifically ask him where the .357 is?
- 24 A No.
- 25 Q Your question was --

Andrew Sustare
Direct examination by Ms. Jordan

1 A where is it.

2 Q Okay. I'm going to show you what's been marked as
3 State's Exhibit No. 11. I'm going to show you what's a set
4 of four pictures on one piece of paper, State's 11, and ask
5 if you can identify that.

6 A Yes. That is photographs of my .357. And one of
7 these photographs shows it exactly where it resided in his
8 console.

9 Q Okay. So after he told you where it was, what did you
10 do?

11 A I walked over to the vehicle and I opened up the
12 console and I saw the weapon.

13 Q Okay.

14 MS. JORDAN: Your Honor, at this time the state would
15 move State's Exhibit No. 11 into evidence.

16 MS. HALL: Without objection.

17 THE COURT: It's admitted.

18 (Photograph marked State's Exhibit No. 11.)

19 Q Mr. Sustare, if you could with the pointer, show the
20 jury where you saw the gun that day.

21 (Whereupon, the witness left the stand.)

22 A Right there.

23 Q Okay. And you're pointing to the top photograph.

24 A Yes, the top left photograph. That's the holster,
25 that's the handle, and this is the console in the vehicle.

Andrew Sustare
Direct examination by Ms. Jordan

1 Q Okay. If you will, have a seat again.

2 (Whereupon, the witness returned to the stand.)

3 Q Mr. Sustare, where was it you normally kept this gun?

4 A By my bed.

5 Q Okay. When you found the gun in the console, what did
6 you do with it?

7 A I left it there for the police. I never touched it.

8 Q Okay. Mr. Sustare, I'm going to show you two
9 photographs, State's Exhibits Nos. 7 and 8, and ask if you
10 can identify these objects. Showing you seven, eight and
11 ask you if you recognize what that is.

12 A Yes. Both of these photographs are of a money bag
13 which was used in our business.

14 Q Okay. Where is the money bag located in those
15 photographs?

16 A It is in my front yard.

17 Q Okay.

18 MS. JORDAN: Your Honor, this...

19 Q Are those photographs fair and accurate depictions of
20 the money bag and its contents on the day of June --
21 January the 14th of 2012?

22 A Yes.

23 MS. JORDAN: Your Honor, at this time the state moves
24 seven and eight into evidence.

25 MS. HALL: No objection.

Andrew Sustare
Direct examination by Ms. Jordan

1 THE COURT: They are admitted.

2 (Photographs marked State's Exhibits Nos. 7 and 8.)

3 Q Prior to working in your yard that day where had the
4 money bag been to your knowledge?

5 A In my wife's drawer on her side of the bed.

6 Q Is that the same photograph that we've seen earlier?

7 A Yes.

8 Q And I'm going to show you State's Exhibit No. 8. Can
9 you tell the jury whose cash that is?

10 A That belongs to our business.

11 Q When did you notice this money bag outside?

12 A After the police had come. And they actually found
13 it.

14 Q I'm going to show you what's directly in front of you
15 as State's Exhibit No. 9 and ask you if you recognize
16 what's inside this bag.

17 A Yes. That is part of my bag.

18 Q Is that...

19 MS. JORDAN: Your Honor, at this time state moves No.
20 9 into evidence, the actual money bag.

21 MS. HALL: No objection.

22 THE COURT: It's admitted.

23 (Bank bag marked State's Exhibit No. 9.)

24 Q Okay. Thank you.

25 Mr. Sustare, what did you do once the police arrived?

Andrew Sustare
Direct examination by Ms. Jordan

1 A As the officer approached I told him that I would put
2 my weapon away. Again, he approached, handcuffed the
3 suspect. I put my weapon away, and he began filling out a
4 report. And other police came.

5 Q Okay. I am now going to show you what's been marked
6 as State's Exhibit No. 10 and ask if you recognize the item
7 in this photograph. Do you recognize what's in No. 10?

8 A Yes. That is my blackberry cell phone.

9 Q Okay. Is that fair and accurate description or fair
10 and accurate depiction of your phone?

11 A Yes..

12 MS. JORDAN: Your Honor, at this time the state moves
13 No. 9 -- I'm sorry -- No. 10 into evidence.

14 MS. HALL: Without objection.

15 THE COURT: It's admitted.

16 (Photograph marked State's Exhibit No. 10.)

17 Q Mr. Sustare, can you tell -- can you tell the jury
18 where this phone was prior to you seeing the defendant in
19 your yard?

20 A Yes. It was on my dining -- in my dining room table
21 in a different part of the house.

22 Q Okay. Why was it inside your house?

23 A Because the day before I had gotten a different phone,
24 a newer model, and had a box. It was no longer active, so
25 I had my active phone on. And that was placed there with

Andrew Sustare
Direct examination by Ms. Jordan

1 the box when I came home and unloaded my day's stuff.

2 Q Okay. And I'm going to show you State's Exhibit
3 No. 12. I'm going to show you State's Exhibit No. 12 and
4 ask if you can identify this photograph.

5 A Yes. That is my dining table where the box and the
6 phone -- the box and my new phone was. That red phone was
7 inside the cardboard box. That's my dining room table.

8 Q Is No. 12 a fair and accurate depiction of your house
9 that day?

10 A Yes.

11 MS. JORDAN: At this time the state moves No. 12 into
12 evidence, Your Honor.

13 MS. HALL: Without objection.

14 THE COURT: It's admitted.

15 (Photograph marked State's Exhibit No. 12.)

16 Q I'm going to flip back to item No. 10 or photograph
17 No. 10, the picture of the blackberry, the red blackberry.
18 Once the police arrived where did you see this phone?

19 A It was brought to me by Officer Bishop. He removed it
20 off the defendant.

21 Q Okay. I do want to show you. I know we've seen the
22 google photograph of your home. But I also want to show
23 you 13 and 14 and ask if you can identify State's 13 and
24 14.

25 A Yes. Thirteen is a picture of my front yard which is

Andrew Sustare
Direct examination by Ms. Jordan

1 where the money bag was found; and 14 is entering my
2 driveway, about half way down a second posted sign.

3 MS. JORDAN: Your Honor, at this time the state
4 moves...

5 Q Are those pictures fair and accurate depictions of
6 your yard and your surroundings on January the 14th of
7 2012?

8 A Yes.

9 MS. JORDAN: Your Honor, the state moves these into
10 evidence.

11 THE COURT: What's the numbers again?

12 MS. JORDAN: The numbers are 13 and 14.

13 MS. HALL: No objection.

14 THE COURT: They're admitted.

15 (Photographs marked State's Exhibits Nos. 13 and 14.)

16 BY MS. JORDAN

17 Q Now, Mr. Sustare, the .357 that we've seen in the
18 State's Exhibit No. 11, did you receive that again that
19 day?

20 A Yes.

21 Q Okay. Was it given to you by law enforcement?

22 A Yes.

23 Q The blackberry phone that's in State's Exhibit No. 10,
24 was that also returned to you that day?

25 A Yes.

Andrew Sustare
Direct examination by Ms. Jordan

1 Q Okay.

2 MS. JORDAN: Your Honor, if I may have a moment.

3 (Pause.)

4 Q A couple -- a couple of last things.

5 (Pause.)

6 MS. JORDAN: Your Honor, may we approach as to State's
7 18?

8 THE COURT: Sure.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 BY MS. JORDAN

12 Q I'm going to show you State's Exhibit No. 18 and ask
13 if you can identify that photograph.

14 A Yes. That is the defendant.

15 Q Okay. Is that a fair and accurate depiction of how he
16 appeared on January the 14th?

17 A Yes.

18 Q And do you see him here in the courtroom today?

19 A Yes, I do.

20 Q Would you point him out?

21 MS. JORDAN: Let the record reflect he's pointing to
22 the defendant.

23 Your Honor, the state moves No. 18 into evidence.

24 MS. HALL: Your Honor, I have an objection which I can
25 state on the record during a break.

Andrew Sustare
Direct examination by Ms. Jordan

1 THE COURT: All right. Overrule the objection. It's
2 admitted.

3 (Photograph marked State's Exhibit No. 18.)

4 THE COURT: Ms. Jordan, can you bring that down -- the
5 screen -- closer to eye level for us?

6 MS. JORDAN: Yes, sir.

7 THE COURT: Thank you.

8 BY MS. JORDAN

9 Q Mr. Sustare, I'm going to show you one more photograph
10 I forgot to show to you earlier, State's 13, and ask you if
11 you can identify the photograph in 13.

12 A Yes. That is a picture of my front yard.

13 Q And, again, I ask you for purposes of the record is
14 that a fair and accurate depiction of your property on the
15 date of January the 14th.

16 A Yes.

17 MS. JORDAN: Your Honor, at this time state moves
18 State's 13 into evidence.

19 MS. HALL: No objection.

20 THE COURT: It's admitted.

21 (Photograph previously marked State's Exhibit No. 13.)

22 Q Please answer any questions Ms. Hall may have.

23 CROSS-EXAMINATION

24 BY MS. HALL

25 Q You took the keys out of the vehicle.

Andrew Sustare
Cross-examination by Ms. Hall

- 1 A Yes.
- 2 Q So you had to reach into the vehicle to do that.
- 3 A Yes.
- 4 Q And you also found a gun in the vehicle.
- 5 A Not at the time I took his keys.
- 6 Q So you went back to the vehicle a second time.
- 7 A After he told me where it was.
- 8 Q And you looked in the vehicle again.
- 9 A Yes.
- 10 Q Now, when Ms. Jordan asked you questions you testified
- 11 that you did not know that the bank bag was missing until
- 12 the police brought it to your attention.
- 13 A That's correct.
- 14 Q So you did not see that bag on Christopher Mahaffey.
- 15 A No. I did.
- 16 Q You said the police found it in the yard and that was
- 17 the first time you were aware it was missing.
- 18 A No. That's when I noticed the bag was missing.
- 19 THE WITNESS: Shall I elaborate?
- 20 THE COURT: You may.
- 21 A Initially when I checked this individual for weapons I
- 22 lifted his shirt. He proceeded to pull his pants down and
- 23 squat in my front yard protecting his front section.
- 24 I noticed something blue. Did not know what it was.
- 25 I never been burglarized. It wasn't until after the police

Andrew Sustare
Cross-examination by Ms. Hall

1 got there.

2 Q So you're saying now you saw something but you did not
3 know what it was.

4 A At the time, no, I did not recognize it down in his
5 pants.

6 Q Okay. And you did not see it around him on the
7 ground.

8 A When I saw the bag he was not near the bag.

9 Q So you did not see the bag next to him.

10 A I saw it on his person. I saw the blue bag protruding
11 out of his pants as he dropped his pants.

12 Q I believe your testimony was you saw something that
13 later you thought was the bag.

14 A The bag was brought to my attention by the police out
15 of his pants laying in the yard.

16 Q They brought it to your attention when they saw it and
17 pointed it out to you in the yard.

18 A Yes.

19 Q Is that correct?

20 A Yes.

21 Q Mr. Sustare, did you hear the front door shut?

22 A Yes.

23 Q About...

24 MS. HALL: No further questions.

25 Q Thank you.

Andrew Sustare
Redirect examination by Ms. Jordan

1 MS. JORDAN: Just followup, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. JORDAN

4 Q Mr. Sustare, the first time you went into the vehicle
5 to get the keys was the center console opened or closed?

6 A Closed.

7 Q Thank you.

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

9 we'll take a short break before we go any further. So
10 I'll ask the jury panel to please go to your jury room.
11 But do not discuss the case in any fashion. I'll bring you
12 back after that break.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: We will be in recess for 15 -- excuse me,
16 gentlemen. Have a seat. Didn't I tell you not to leave
17 this courtroom unless I give you permission?

18 UNIDENTIFIED PERSON: Yes. I thought I see you
19 pointed that way to the door.

20 THE COURT: I said until I give you permission. You
21 didn't understand that earlier?

22 UNIDENTIFIED PERSON: Yes, sir.

23 THE COURT: Y'all need to start paying attention or
24 you're going to be in a lot of trouble. Do you understand?

25 UNIDENTIFIED PERSON: Yes, sir.

1 THE COURT: Court's in recess for 15 minutes.

2 (Whereupon, a recess was taken.)

3 THE COURT: All right. Ms. Hall, would you like to
4 state your grounds for your objection to State's Exhibit
5 No. 18?

6 MS. HALL: Yes, Your Honor.

7 I understand that the Court has already overruled the
8 objection, but I'd like to state my grounds for it under
9 rule 401.

10 The photo is not relevant and does not tend to prove
11 any element of the alleged offenses. And under rule 403
12 that is unduly prejudicial against my client given that
13 apparently the photo was taken at the sheriff's department
14 after he was arrested.

15 THE COURT: But, now, you can't actually tell that it
16 was taken at the sheriff's department, can you, from the
17 photo itself?

18 MS. HALL: It is not --

19 THE COURT: I mean, is there any indication that it
20 was?

21 MS. HALL: No, Your Honor.

22 THE COURT: And what do you perceive to be the undue
23 prejudice by the admission of the photo?

24 MS. HALL: The appearance of my client looks different
25 than he does today.

1 THE COURT: But you're not in disagreement that that's
2 the way he looked on that day -- June -- January the 15th.

3 MS. HALL: That's him. That's how he looked, Your
4 Honor.

5 THE COURT: All right. Anything else you'd like to
6 put on the record?

7 MS. HALL: No, sir. That was my two grounds. Thank
8 you.

9 THE COURT: Okay. Thank you.

10 All right. Are we ready for the jury?

11 MS. JORDAN: Yes, sir.

12 THE COURT: Are y'all going to show any more photos or
13 such on the screen?

14 MS. JORDAN: I was, but I can turn it off and on.

15 THE COURT: Well, no. It's not that. I'm just going
16 to take the rope down so the jury can move down. I didn't
17 have them move down earlier.

18 MS. JORDAN: Yes, sir.

19 THE COURT: All right. You can bring the jury in,
20 please.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Let me ask y'all or suggest that you move
24 down one more. It doesn't give you a whole lot better
25 perspective of the screen, but it's better than what you

Richie Blackwell
Direct examination by Ms. Jordan

1 had, at least for those on this end.

2 All right. Ms. Jordan.

3 MS. JORDAN: Your Honor, the state calls Richie
4 Blackwell.

5 RICHIE BLACKWELL, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. JORDAN

8 Q Please state your name for the record.

9 A Richie Blackwell.

10 Q Mr. Blackwell, how tall are you?

11 A I am 6'9".

12 Q How much do you weigh?

13 A 250.

14 Q I just wanted to ask those and get them out of the
15 way.

16 How do you know Andrew Sustare?

17 A I worked for him on his property for about a year and
18 a half.

19 Q Okay. Were you working with him on January the
20 14th of 2012?

21 A Yes, I was.

22 Q What were y'all doing?

23 A We were working on his asparagus patch out in the back
24 of the property.

25 Q Okay. Were you present when Mr. Sustare -- when he

Richie Blackwell
Direct examination by Ms. Jordan

1 noticed something?

2 A Yes, I was. I was in the truck with him. We went to
3 go dump the dirt. And we were coming back. We parked
4 after he noticed the car. I was in the truck with him.

5 Q Okay. Can you tell us what happened?

6 A Yeah. He noticed the car, and we both got out and
7 started to walk around the side of the house. And at that
8 point I heard the door shut. And, like I said, I'd been
9 working there for about a year, so I know exactly what his
10 door sounds like. And I specifically heard it shut. We
11 come around the corner and he was walking off the porch.

12 Q Who is he?

13 A That would be Mr. Mahaffey.

14 Q Pointing to the defendant?

15 A Yes.

16 Q Okay. Continue on with what happened that day.

17 A And at that point Mr. Sustare grabbed him and asked
18 him what he was doing there. And then he told me to
19 restrain him. And that's when he went into the house to
20 call the police.

21 Q Okay. Can you tell the jury a little bit about what
22 happened when you were out in the yard with the defendant
23 by yourself?

24 A Yes.

25 Q If you could, speak a little louder for the court

Richie Blackwell
Direct examination by Ms. Jordan

1 reporter.

2 A Yes, yes.

3 Well, I was restraining him. I had him about the back
4 of his shirt. I just had one hand on the back of his shirt
5 just holding him there.

6 And he kept trying to go back into the house and asked
7 him to talk to Mr. Sustare, and I wouldn't let him. He
8 kept asking me to go to his car to get cigarettes out of
9 there, and I wouldn't let them do that either.

10 And at that point he kind of slipped loose and took
11 off running. He tried to run off in the woods that were in
12 the pictures in the front of the property. And so I
13 started to chase after him, and he tripped and fell.

14 So I jumped over him. And then he got back up and
15 started running in the other direction. And I turned
16 around. At that point I tackled him and held him down and
17 then dragged him back over to the front of the house.

18 Q Okay. Did anything fall off of his person during this
19 commotion?

20 A Yeah. He lost the money bag that was in his waist,
21 and I lost my hat. It was laying right beside the money
22 bag.

23 Q Okay. You've been in the courtroom this afternoon.

24 A Yes.

25 Q And you've previously seen what's been marked as

Richie Blackwell
Direct examination by Ms. Jordan

1 State's Exhibit 9 -- and I'm sorry -- 7. Can you tell the
2 jury again what that is?

3 A That's the money bag that he had stuffed in his waist.

4 Q Okay. And where is -- where is it positioned at in
5 this photograph?

6 A That would be in the front of the house going towards
7 the woods.

8 Q Prior to this day had you ever seen that money bag
9 before?

10 A I'm not positive, but I do work at their business, and
11 so I probably have seen it before. I just didn't recognize
12 it.

13 Q Okay. What happened once you were able to restrain
14 the defendant again?

15 A I brought him back over to the front of the house and
16 I held him there. He was on his knees.

17 Q Okay. Did -- did Mr. Sustare join you again outside?

18 A Yes, he did. After he got off the phone with the cops
19 he came outside with his gun, and he had it pointed towards
20 the defendant. And we both waited for the cops to arrive
21 after that.

22 Q Okay. Did you hear Mr. Sustare ask any questions of
23 the defendant?

24 A Yeah, I did. He asked him two questions.

25 Q And did you hear a response from the defendant?

Richie Blackwell
Cross-examination by Ms. Hall

- 1 A Yes, I did.
- 2 Q What was that response?
- 3 A It was in the center console.
- 4 Q Okay. What did Mr. Sustare do after he stated that it
- 5 was in the center console?
- 6 A He went over there and looked in there, and he came
- 7 back over, and he said that he knew it was in there, he saw
- 8 it.
- 9 Q Okay. Richie, did you see anyone else on the property
- 10 that day?
- 11 A No, I didn't see anybody else.
- 12 Q Please answer any questions Ms. Hall may have.
- 13 CROSS-EXAMINATION
- 14 BY MS. HALL
- 15 Q You testified that you heard the door shut.
- 16 A Yes, I did.
- 17 Q And you testified that you saw Mr. Mahaffey walking
- 18 off the porch.
- 19 A Yeah.
- 20 Q Now, you just testified that Mr. Sustare asked
- 21 Mr. Mahaffey two questions.
- 22 And you were present in the courtroom during
- 23 Mr. Sustare's testimony?
- 24 A Yes, I was.
- 25 MS. HALL: One moment, please.

Richie Blackwell
Cross-examination by Ms. Hall

1 (Pause.)

2 BY MS. HALL

3 Q On January 14th did you give a statement to the
4 police?

5 A Yes, I did.

6 Q Did you write that statement out?

7 A Yes.

8 Q Did they give you plenty of time to write that
9 statement?

10 A Yes, they did.

11 Q And you told them everything you knew at the time?

12 A I told them everything I knew.

13 Q Told them the truth. You did not put in your
14 statement anything about Mr. Sustare asking Mr. Mahaffey
15 any questions, did you?

16 A I don't remember.

17 Q Would it refresh your memory if I showed you your
18 statement?

19 A Yeah, it would.

20 MS. HALL: Your Honor, permission to approach.

21 THE COURT: You may.

22 A I didn't write it down but...

23 MS. HALL: I have no further questions for this
24 witness.

25 THE COURT: Anything else?

Richie Blackwell
Redirect examination by Ms. Jordan
Recross-examination by Ms. Hall

1 REDIRECT EXAMINATION

2 BY MS. JORDAN

3 Q Mr. Blackwell, did you put everything in that
4 statement that day?

5 A I did leave one thing out. The only thing was
6 whenever he questioned Mr. Mahaffey asking him where is it,
7 but it was a very intense situation and the first thing I'd
8 ever been in like that. So I -- my mind wasn't working
9 correctly.

10 Q Thank you.

11 MS. HALL: If I may, Your Honor, in follow up.

12 RECROSS-EXAMINATION

13 BY MS. HALL

14 Q You didn't put anything in your statement either about
15 the two times that Mr. Mahaffey allegedly ran away from
16 you.

17 A Like I said, it was an intense situation. I'd never
18 been in anything like that before.

19 Q Did you put that in your statement, that Mr. Mahaffey
20 tried to run from you?

21 A No, I did not.

22 Q Thank you.

23 MS. JORDAN: May this witness be excused, Your Honor?

24 THE COURT: You may step down. You may also be
25 excused.

Bruce Bishop
Direct examination by Ms. Jordan

1 (Whereupon, the witness was excused.)

2 MS. JORDAN: The state calls Bruce Bishop.

3 BRUCE BISHOP, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. JORDAN

6 Q Please state your name for the record.

7 A Officer Bruce Bishop.

8 Q Where are you currently employed?

9 A Spartanburg County Sheriff's Department.

10 Q How long have you been there?

11 A Twenty-five years.

12 Q What is your current position at the sheriff's office?

13 A I work uniform patrol, master deputy.

14 Q Did you have an occasion to respond to [REDACTED] --

15 MS. JORDAN: I apologize, Your Honor.

16 A [REDACTED].

17 Q -- Cross Anchor Road in Enoree?

18 A Yes, I did.

19 Q What county is that located in?

20 A That's in Spartanburg County.

21 Q Okay. Will you tell the jury what you saw when you
22 arrived on the scene?

23 A We were dispatched to the call, and it was given out
24 as a burglary in progress and the homeowner had the suspect
25 in custody.

Bruce Bishop
Direct examination by Ms. Jordan

1 And then while we were on the way they gave out
2 further information that said that the Ford Expedition that
3 the suspect was using was in the driveway.

4 So when I got to the call we came -- I got down the
5 driveway, and the Ford expedition was setting there in the
6 driveway.

7 And there were three people in the yard. Andrew
8 Sustare was over on this side close to the house;
9 Christopher Mahaffey was out in the yard here on his knees;
10 and Richie Blackwell was standing out in the yard on this
11 side toward the woods.

12 Q Did you note anything in Mr. Sustare's hands?

13 A Yes, I did. As I pulled up Mr. Sustare had a gun and
14 he had it directed toward Mr. Mahaffey. And soon as I
15 got -- approached after getting out of the car Mr. Sustare
16 said since you're here I'll put this up. And he headed
17 into the house.

18 And I went over to Christopher Mahaffey, and I
19 handcuffed him and stood him up. And then I searched his
20 pockets. And he had a pocketknife in each front pocket,
21 some keys, a lighter and some money. And in one of his
22 back pockets he had a blackberry cell phone.

23 Q I'm going to show you -- I'm going to show you what's
24 been marked and boxed as State's Exhibit No. 17 and ask you
25 if you can recognize those items.

Bruce Bishop
Direct examination by Ms. Jordan

1 A They look like the knives that were in -- one in each
2 of his front pockets.

3 Q Okay. What did you do with the knives once you took
4 them off the defendant?

5 A Well, I -- then I led him over to my patrol car and
6 sit in the right-back seat. And the items that I'd gotten
7 out of his pockets I put on the front of my patrol car
8 there. And then I closed the door.

9 Q Okay. Were you there? What did you do after you
10 placed the defendant in the back seat?

11 A Well, I got my notebook and stuff, and I went back
12 over to Mr. Sustare and Mr. Blackwell and started them
13 filling out -- getting their information from them and
14 started them on writing out voluntary statements.

15 And then so while they were -- they started writing
16 statements. And then Officer Nepper got there. So he
17 pulls up behind my patrol car and he walks over and looks
18 at the suspect in the back of the car. And then he looks
19 at the stuff on top. And he said that's a nice cell phone.

20 And Mr. Sustare was writing his statement. He looked
21 up from his statement, and he said that's my cell phone, I
22 just deactivated it yesterday.

23 Q Okay. Was a decision made as to what to do with the
24 Ford Expedition?

25 A Yes. We decided -- well, we were able to run the tag,

Bruce Bishop
Cross-examination by Ms. Hall

1 and it come back to I think Mr. Mahaffey's father. And we
2 made contact with him and basically told him we was going
3 to have it towed to the shop for processing.

4 Q When you arrived on the scene did you see any other
5 people there other than the three that you previously
6 identified?

7 A No. There were three people there that I saw.

8 Q What did you do when you left that address?

9 A Well --

10 Q Where did you take the defendant?

11 A Okay. Then I -- once we had got the statements made
12 and other officers got there I took the defendant to the
13 Spartanburg County Sheriff's Office to be interviewed.

14 Q Where -- what did you do with the knives that day?

15 A Okay. The knives were turned into evidence.

16 Actually, I believe I waited on the I.D. officer to get
17 there to take pictures and to gather evidence. But the
18 knives may have already -- I may have still had on my
19 person too. And I turned them over to Investigator
20 Dominesey.

21 Q Okay. If you will, answer any questions Ms. Hall may
22 have.

23 CROSS-EXAMINATION

24 BY MS. HALL

25 Q Did you make an incident report for this call?

Bruce Bishop
Cross-examination by Ms. Hall

- 1 A Yes, I did.
- 2 Q Okay. You listed Christopher Mahaffey as a suspect.
- 3 A Yes, I did.
- 4 Q You also listed a Ronald Kiser as a suspect.
- 5 MS. JORDAN: Objection, Your Honor.
- 6 THE COURT: Sustained.
- 7 BY MS. HALL
- 8 Q You handled the witnesses, writing their statements,
- 9 is that correct?
- 10 A Yes. I gave them the statement forms for them to
- 11 write it.
- 12 Q You gave them the blank forms?
- 13 A Yes.
- 14 Q Did you watch them when they were writing their
- 15 statements, or did you see where they were?
- 16 A They were, yeah, pretty much over there in the front
- 17 yard. We were writing statements.
- 18 Q They were writing them at the same time?
- 19 A Yes.
- 20 Q Both together in the front yard?
- 21 A Well, one I think went over to the vehicle to have
- 22 something to write on. The other one is over here.
- 23 Q Over where?
- 24 A Well, just in the area with the clipboard.
- 25 Q Okay. You gave them all the time that they needed to

Brandon Howard
Direct examination by Ms. Jordan

1 fill those statements out?

2 A Yeah. I mean, I gave them as much time as they wanted
3 to take.

4 Q Thank you.

5 MS. JORDAN: Nothing further, Your Honor. May this
6 witness be excused?

7 THE COURT: You may step down. You may also be
8 accused.

9 (Whereupon, the witness was excused.)

10 MS. JORDAN: State calls Brandon Howard.

11 BRANDON HOWARD, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. JORDAN

14 Q Please state your name for the record.

15 A Brandon Howard.

16 Q If you can, would you pull closer to the microphone?
17 Mr. Howard, where are you currently employed?

18 A Currently work at B.M.W.

19 Q Okay. Prior to working at B.M.W. where were you
20 employed?

21 A Spartanburg County Sheriff's Office.

22 Q How long were you employed there?

23 A Roughly three years.

24 Q Okay. In January of 2012, this year, what was your
25 position at the sheriff's office?

Brandon Howard
Direct examination by Ms. Jordan

1 A Was a crime scene investigator. I worked I.D.

2 Q Okay. Did you have an occasion to be called out to

3 [REDACTED] -- [REDACTED] here in Spartanburg County?

4 A I was.

5 Q On January the 14th?

6 A Yes.

7 Q When you arrived on scene what did you do?

8 A I arrived on scene. I spoke to deputies who gave me a
9 brief synopsis of the incident. And I photographed the
10 scene and collected some evidence.

11 Q Okay. I'm going to show you what's been previously
12 marked as State's Exhibit...

13 (Pause.)

14 Q Mr. Howard, I'm going to show you State's No. 19 and
15 ask you if you can identify that, and 20.

16 A It appears to be the center console.

17 THE COURT: Excuse me just a minute.

18 Use that microphone, please.

19 THE WITNESS: Oh, I'm sorry.

20 BY MS. JORDAN

21 A It appears to be the center console of the Ford
22 Expedition that was parked in the driveway.

23 Q Okay. And as part of your job as the crime scene
24 investigator did you take photographs of the console of the
25 Expedition?

Brandon Howard
Direct examination by Ms. Jordan

1 A I did.

2 Q Okay. Do those photographs, 19 and 20, fairly and
3 accurately depict the console as you found it that day?
4 More specifically, I will talk to you about State's No. 19.

5 A Nineteen appears to be the way I found it. Twenty
6 appears -- there was a little bit missing. Maybe it was
7 after Deputy Gibbs was doing the inventory possibly.

8 Q Okay. Nineteen -- is that a fair and accurate
9 depiction of the inside of the console as you found it?

10 A Yes.

11 MS. JORDAN: Your Honor, the state moves No. 19 into
12 evidence.

13 MS. HALL: No objection.

14 THE COURT: It's admitted.

15 (Photograph marked State's Exhibit No. 19.)

16 Q Mr. Howard, can you explain to the jury what they see
17 in this photograph?

18 A To the far right is the center console where the
19 firearm was located -- and the cup holder is the drug
20 paraphernalia that was located by Deputy Gibbs. And then
21 you have a Newport cigarette packets and what appears to be
22 a newspaper. And then in the passenger seat you have what
23 appears to be a blue jacket.

24 Q Okay. Is that the condition that blue jacket was in
25 when you came up on the vehicle?

Brandon Howard
Direct examination by Ms. Jordan

1 A To the best of my knowledge.

2 Q I'm going to show you what's previously been marked as
3 State's Exhibit No. 11. Been marked and admitted already.
4 Did you also take the photographs of the 30 -- of the .357
5 that day?

6 A I did.

7 Q Okay. The photograph in the far left corner, top left
8 corner, tell the jury what that is.

9 A That's the center console where the firearm was
10 located.

11 Q And what are the other photographs?

12 A The firearm after it was removed from the vehicle. I
13 laid it out and took photographs of it and the holster, the
14 firearm and the make and model.

15 Q Okay. Were you able to ascertain who the owner of
16 this firearm was?

17 A Yeah. It was determined that it belonged to the
18 victim.

19 Q Okay. Who did you return this firearm to?

20 A It was returned to the victim, Mr. Sustare.

21 Q Did you complete paperwork to that effect?

22 A I did.

23 Q Did you also go inside the home?

24 A I did. I went in and took the photographs inside the
25 residence.

Brandon Howard
Direct examination by Ms. Jordan

1 Q Okay. Once you finished with the scene at the -- at
2 [REDACTED], where did you go?

3 A I went to the sheriff's office.

4 Q Once at the sheriff's office what did you do?

5 A Investigator Dominesey was N.C.I.D.

6 Q Did you assist him in taking photographs?

7 A I phot -- I did. I took several photographs at his
8 request.

9 Q Okay. I'm going to show you a few of those
10 photographs. I'm going to show you State's Exhibit No. 23
11 and ask if you can identify that.

12 A Yes. It's currency I believe that Investigator
13 Dominesey had that I photographed.

14 Q Okay.

15 MS. JORDAN: Your Honor, the state would move to admit
16 this photograph into evidence. It's a photograph of \$187.
17 State's Exhibit No. 23.

18 MS. HALL: No objection.

19 THE COURT: It's admitted.

20 (Photograph marked state's Exhibit No. 23.)

21 Q I'm going to back up for just a moment and ask you a
22 couple of quick questions about some of the items that you
23 recovered at the address of [REDACTED].

24 Did you recover what's been previously marked and
25 admitted as State's Exhibit No. 9, a money bag?

Brandon Howard
Direct examination by Ms. Jordan

1 A I did. I recovered a blue money bag.

2 Q I'll show that. Is this the bag that you recovered
3 that's been admitted already?

4 A It is.

5 Q Was there -- at the time you recovered it where did
6 you recover it from?

7 A It was in the front yard of the residence.

8 Q Okay. Was it empty or did it have -- did it contain
9 anything?

10 A It contained an assortment of change and paper money.

11 Q Okay. What did you do with the money that was inside
12 of the money bag?

13 A I separated it out of the money bag and placed it into
14 a currency envelope for our evidence department and turned
15 it into evidence.

16 Q Okay. The currency envelope for that, did you
17 document how much money and what type of money you took
18 from?

19 A I did.

20 Q Okay. Would you just tell the jury the type -- the
21 total amount of the money that you took?

22 A It is approximately \$28.31.

23 Q How was that money broken down inside the bag?

24 A It had -- there was one \$5 bill, four \$4 [sic] bills,
25 28 quarters, 82 dimes, 40 nickels and 211 pennies.

Brandon Howard
Direct examination by Ms. Jordan

1 Q While also on scene did you also take photographs of
2 items found by Officer Keith Gibbs?

3 A I did.

4 Q I'm going to show what's been marked as State's 21 and
5 22. Do you recognize those photographs?

6 A I do.

7 Q Can you tell me what those photographs are of?

8 A Photograph labeled 22 is a cigarette packet with what
9 appears to be a green colored pill and photograph marked 21
10 appears to be a white rock substance in a clear wrapper.

11 Q Did you recognize or can you tell the jury whose hands
12 are in the photograph?

13 A That would be Deputy Gibbs.

14 Q Okay.

15 MS. JORDAN: Your Honor, at this time we would move
16 State's Exhibits Nos. 20, 21 and 22 into evidence.

17 MS. HALL: No objection.

18 THE COURT: They are admitted.

19 (Photographs marked State's Exhibits Nos. 20, 21 and
20 22.)

21 Q Also while at the sheriff's office did you recover any
22 other items from Officer Dominesey?

23 A I did. I collected two pocketknives.

24 Q Okay. I'm going to point you to what's right in front
25 of you as State's Exhibit No. 17 and ask if you can

Brandon Howard
Direct examination by Ms. Jordan

1 identify what's in that box.

2 A Appears to be two pocketknives that I collected from
3 Investigator Dominesey.

4 Q Okay. Did you document on the front of that box your
5 signature or your information?

6 A Well, yes. That's the information on the outside, is
7 same as contents.

8 MS. JORDAN: Your Honor, at this time we would move
9 the items into evidence that are marked as State's Exhibit
10 No. 17, which is two pocketknives.

11 MS. HALL: No objection.

12 THE COURT: They're admitted.

13 (Box of knives marked State's Exhibit No. 17.)

14 MS. JORDAN: Your Honor, may I just have one moment?

15 THE COURT: Okay.

16 (Pause.)

17 BY MS. JORDAN

18 Q Just briefly. The pistol that we talked about in
19 State's Exhibit No. 11, can you tell the jury what, if any,
20 or how many, if any, bullets it contained?

21 A The pistol that was recovered according to my report
22 was -- had six unfired shots in it and it was -- I believe
23 it was a 7-shot. And there was one round missing out of
24 it.

25 Q Okay. Please answer any questions Ms. Hall may have.

Brandon Howard
Cross-examination by Ms. Hall

1 CROSS-EXAMINATION

2 BY MS. HALL

3 Q You testified you determined that the weapon belonged
4 to Mr. Sustare and you returned it to him.

5 A Yes.

6 Q And there was a serial number on that weapon, correct?

7 A That is correct.

8 Q And you didn't run any report on that number?

9 A I did not. I did not have the capability in the field
10 to. I'm not -- I do not recall if one of the other
11 deputies did or not.

12 Q You took a swab from the gun for any evidence of
13 D.N.A., is that correct?

14 A That is correct.

15 Q Did you take any -- attempt any fingerprints off the
16 gun or the holster?

17 A I did not.

18 Q The money bag, the money bag that you took in as
19 evidence, did you ever attempt to take any fingerprints off
20 of that item?

21 A I don't recall directly, but I do believe I processed
22 it for prints and that there were no prints located.

23 Q Do you have a report?

24 A I do, but it's not documented as to whether I
25 processed it or not. But there was obviously no prints

Brandon Howard
Redirect examination by Ms. Jordan

1 found on any of them because I never turned any prints in.

2 Q Okay. Now, the -- I believe it was \$187, the photo
3 that we saw earlier of the bills.

4 A Uh-huh.

5 Q Where did you find that money?

6 A I did not find that. I just photographed it.

7 Investigator -- I believe it was Investigator Dominesey
8 that located it. Or it may have been one of the other
9 deputies.

10 Q Just to be clear of that, \$187 was not in the same bag
11 that you recovered.

12 A No. It was not.

13 Q Correct?

14 MS. HALL: No further questions.

15 REDIRECT EXAMINATION

16 BY MS. JORDAN

17 Q Just for clarification. The money that you referenced
18 earlier and told the jury about by denominations, was that
19 the money inside the bank bag?

20 A The money you brought up in the currency envelope?

21 Q Yes, sir.

22 A Yes. That was what I removed from the bank bag, the
23 blue bag.

24 Q Thank you.

25 THE COURT: You may step down. You may also be

1 excused.

2 (Whereupon, the witness was excused.)

3 MS. JORDAN: Thank you, Your Honor.

4 THE COURT: Ladies and gentlemen, we're going to
5 recess for the afternoon.

6 Keep in mind the caution I gave you prior to excusing
7 you for lunch. That is no discussions about the case with
8 anybody. That includes spouses, family, friends.

9 That also includes your fellow jurors. No discussions
10 until deliberations. No research, no investigation, no
11 exposure to any type of media coverage that might relate to
12 the cases.

13 Have a good evening. Please report to your jury room
14 at 9:30 in the morning, 9:30 in the morning. Have a good
15 evening.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Any other matters we need to address
19 before we recess?

20 MS. JORDAN: No, sir, Your Honor.

21 THE COURT: I need to see the lawyers just a minute
22 before we go.

23 Court's in recess until 9:30 in the morning.

24 END OF PROCEEDINGS AUGUST 27, 2012

25

1 (Proceedings August 28, 2012)

2 (The following takes place outside the presence of the
3 jury.)

4 (Copy of paycheck stub marked Defendant's Exhibit No. 1
5 for Identification; copy of bank statement marked
6 Defendant's Exhibit No. 2 for Identification.)

7 THE COURT: All right. Any matters we need to address
8 before the jury is brought in?

9 MS. JORDAN: None from the state, Your Honor.

10 MS. HALL: No, sir.

11 THE COURT: Okay. Bring them in.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: I am trying to maximize the jurors'
15 ability to be able to see that screen, and y'all are kind
16 of messing that up for me.

17 But let me ask. Let's do this. Let me ask the
18 foreperson if you'll move down one seat -- foreperson.
19 That's you. Everybody on that row move down.

20 Gentleman on the back right if you'll come forward,
21 and everybody else move down that way on the back row.
22 Thank you.

23 Good morning, ladies and gentlemen. As you know, when
24 we recessed yesterday the state was in the midst of their
25 presentation. So we're going to continue with that

Keith Gibbs
Direct examination by Ms. Jordan

1 presentation this morning.

2 Ms. Jordan.

3 MS. JORDAN: Thank you, Your Honor. The state calls
4 Keith Gibbs.

5 KEITH GIBBS, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. JORDAN

8 Q Please state your name for the record.

9 A My name is Keith Gibbs.

10 Q Where are you currently employed?

11 A Spartanburg County Sheriff's Office.

12 Q Will you do me a favor and just talk into that black
13 mic? That way the court reporter can take everything down.

14 A Okay.

15 Q How long have you been employed at the sheriff's
16 office?

17 A Just over ten years.

18 Q Okay. Were you working on January the 14th of 2012?

19 A Yes, I was.

20 Q Were you called out to [REDACTED] in -- in
21 Enoree?

22 A Yes, I was.

23 Q When you arrived there, can you tell the jury who was
24 on scene?

25 A I was the third person to arrive. Deputy Bishop was

Keith Gibbs
Direct examination by Ms. Jordan

1 there with the defendant already in the back of his car.

2 Deputy Nepper was there, and he was standing by the
3 defendant's vehicle.

4 And when I pulled up I went to stand by Nepper to find
5 out what was going on because they'd already responded and
6 it looked like everything was under control.

7 Q Did you see the defendant that day?

8 A Yes, I did. He was in the back of the Bishop's patrol
9 car.

10 Q Okay. Did you also help complete an inventory of the
11 vehicle?

12 A I did. After the I.D. officer had taken the gun out,
13 because that was determined to be the victim's, I went to
14 the car to do a vehicle inventory. And as soon as I looked
15 in the driver's door I saw in the cup holders what appeared
16 to be drug paraphernalia. And as soon as I saw that I had
17 the I.D. officer come over and start taking pictures,
18 because more than likely there's maybe other drugs in the
19 car.

20 Q Okay. I'm going to show you what's previously been
21 marked as State's Exhibit No. 20 and ask if you can
22 identify that photograph.

23 A Yes, I can. It's the console and a couple of the --
24 just in front of the center console.

25 MS. JORDAN: Your Honor, out of an abundance of

Keith Gibbs
Direct examination by Ms. Jordan

1 precaution I'm going to move to admit State's Exhibit
2 No. 20. I believe I did yesterday, but I did not mark it
3 down. And I wanted to make sure.

4 THE COURT: It's not been offered.

5 MS. JORDAN: Okay. I offer -- at this time the state
6 would move to admit No. 20.

7 MS. HALL: No objection.

8 THE COURT: It's admitted.

9 MS. JORDAN: Thank you.

10 (Photograph previously marked State's Exhibit No. 20.)

11 BY MS. JORDAN

12 Q I'm going to hand you a pointer and ask you on State's
13 Exhibit No. 20 if you can point on the screen as to the
14 item that you're talking about that drew your attention
15 first.

16 A The drug paraphernalia is right here. It's a pill
17 bottle, and the top they put some aluminum foil and poke
18 holes in the top of it. And then in the side drill a
19 little hole and put a, like a, Big pen or something like
20 that through there. And they put the drugs in the top and
21 light them and pull through it and --

22 THE COURT: Excuse me, but when you're responding to
23 the question you're turning your head away from the court
24 reporter and away from the microphone.

25 THE WITNESS: Okay. I'm sorry.

Keith Gibbs
Direct examination by Ms. Jordan

1 THE COURT: And so she's having difficulty
2 understanding your response.

3 THE WITNESS: I'll correct that.

4 THE COURT: You'll need to answer that question again.
5 BY MS. JORDAN

6 A Okay. The drug paraphernalia that I initially saw was
7 right here. And in the top of it they take aluminum foil
8 and poke holes in the top of it, and they put the drugs in
9 there and light them and pull through a Bic pen or any open
10 piece of plastic. And they pull through it just like a
11 pipe.

12 Q Okay. After you found or located the drug
13 paraphernalia, what did you do then?

14 A There was a piece of paper or a newspaper article
15 right here. I lifted it up. And it's hard to see, but
16 right about there there was a clear plastic bag with a
17 white rock substance in it. And I identified that as more
18 than likely a crack cocaine rock. And I had the I.D.
19 officer take a picture.

20 Q I'm going to show you State's 21 and 22 that I believe
21 were admitted into evidence yesterday and ask if you can
22 identify 21.

23 A Twenty-one is the white rock substance in my hand.

24 Q Okay. And 22?

25 A Twenty-two is the cigarette pack on the left of the

Keith Gibbs
Direct examination by Ms. Jordan

1 previous picture. I picked it up and looked inside, and
2 there were green pills on the inside of it, this bag.

3 Q Okay. What did you do with the pills and the white
4 substance?

5 A After the photograph was taken I took them to the --
6 the trunk of my patrol car. And I put them in an evidence
7 bag. And then I locked my trunk and went back to the car
8 and finished the inventory.

9 Q Okay. I'm going to show you what's been marked as
10 State's Exhibit No. 16 and ask if you can identify that.

11 A Yes. This is an evidence bag. And inside the
12 evidence bag we placed the drugs I found from the console.
13 And then I seal it up and turn it into the evidence drop
14 box that we have. It's like a blue mailbox. And you can't
15 get it out once it goes in.

16 Q Do you know much about the bag that you guys use to
17 place drug evidence in?

18 A This evidence bag on the inside?

19 Q Yes, sir.

20 A Well, it's for the evidence people to test the bag.

21 Q Okay. Do you seal it completely?

22 A Yeah. There's a -- this funny little squiggly line on
23 top right here, once it's sealed and taped together you
24 can't get it open again without messing that line up. And
25 if that line's messed up you know it's been tampered with.

Keith Gibbs
Cross-examination by Ms. Hall

1 And this -- this looks fine to me. I don't -- I don't see
2 a problem with it.

3 Q Did you -- did you seal it?

4 A Yes, I sealed that and signed my initials on it.

5 Q Okay. And what did do you do with it again?

6 A Then we put it in the Spartanburg County evidence
7 drop, which is like a safe.

8 Q Please answer any questions Ms. Hall may have.

9 CROSS-EXAMINATION

10 BY MS. HALL

11 Q What time did you get called out to the scene?

12 A I responded when the initial call came out.

13 Q Do you remember what time you got there?

14 A No, I do not.

15 Q Was it midday, daytime?

16 A Yes, it was daytime.

17 Q Was it about lunchtime, do you think?

18 A I believe it was after lunch.

19 Q Okay. When you took these items into evidence did you
20 take any -- attempt to take any swabs off of them to
21 collect any potential D.N.A. on them?

22 A No. I just put gloves on. And I took them straight
23 out of the console and put them in the Manila envelope.

24 MS. HALL: I have no further questions.

25 MS. JORDAN: May this witness be excused, Your Honor?

James Rhodes
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

2 (Whereupon, the witness was excused.)

3 MS. JORDAN: The state calls Jim Rhodes.

4 JAMES RHODES, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. JORDAN

7 Q Please state your name for the record.

8 A James Rhodes. Go by Jim.

9 Q Where are you currently employed?

10 A Spartanburg County Sheriff's Office.

11 Q How long have you been there?

12 A Fourteen and a half years.

13 Q What's your current position?

14 A I am currently a canine handler in their uniform
15 patrol working day shift.

16 Q Okay. Was that your position back on January the
17 14th of this year?

18 A Yes, ma'am.

19 Q Were you called out to the incident location at
20 [REDACTED] -- [REDACTED] Cross Anchor?

21 A Yes.

22 Q Okay. Could you do me a favor and just let the
23 Court -- let the jury who know what the call-out time was
24 or the incident time?

25 A I was called or the -- I believe they told me the

James Rhodes
Direct examination by Ms. Jordan

1 incident time was about 1:17. Then I responded shortly
2 after that from another call.

3 Q Okay. Was that 1:17 a.m. or p.m.?

4 A P.M. in the afternoon.

5 Q Okay. When you arrived did you also have your canine
6 with you?

7 A Yes.

8 Q Okay. What is his name?

9 A His name is Elbow.

10 Q Can you tell the Court what you did once you arrived?

11 A When I arrived I got the information that's what I was
12 told took place.

13 They wanted me to attempt to track for what we were
14 told was a possible suspect, a second suspect.

15 I deployed my canine dog. He's a patrol dog trained
16 in tracking. I deployed him and got two of the guys -- I
17 believe Deputy Gibbs and Deputy Nepper -- went with me as
18 security, because it's my job just to watch what that dog
19 does and read his behavior.

20 As we started in the yard where I was told the
21 possible second suspect fled we moved over, and I noticed
22 that something gained my dog's attention, what we call hot
23 human odor. And where that had been there was a, I believe
24 a, bank bag and a hat.

25 I made note of it and called the other deputies on the

James Rhodes
Direct examination by Ms. Jordan

1 scene. They came over and said, yes, that's where the
2 homeowner wrestled with Mr. Mahaffey.

3 And from that point on I called a cast-out trying to
4 look for a possible track to see if he hits or locates
5 another -- another track.

6 Q Could you take a moment and just explain to the jury
7 what a track is?

8 A A track would be or a trail would be where a subject
9 leaves the scene.

10 A canine has the ability just to smell that odor left
11 behind either through fresh grass or skin or odor, sweat
12 that's laid off and falls off and lays on the ground.
13 They've got the ability to smell that.

14 My dog has trained in that and is able to smell that.
15 And if we locate that I'm able to read his behavior change.
16 In other words, my dog is going to put his head down and
17 his tail up.

18 He kinda hunkers his shoulders up, and then he pulls
19 really hard from the tracking harness with me running
20 behind him. And I'm able to read that behavior.

21 In this instance we did not hit another track. We
22 searched the area, cast the area looking for that other
23 track and did not hit another track. We did not locate
24 anybody else.

25 Q Could you describe which areas of the property you

James Rhodes
Direct examination by Ms. Jordan

1 took Elbow out on or he went out on?

2 A I started in the front yard in the direction I was
3 told the possible second suspect ran.

4 And if you look out from their front yard up through
5 the wide open hardwoods all the way back up to Cross Anchor
6 Road looking from the front door, it's wide open to their
7 driveway.

8 Looking back to their right, looking away from their
9 house, there's another neighborhood that kind of backs up
10 to them.

11 At first I cast out, and we walked more or less
12 through those woods to that neighborhood trying to locate.
13 I think we may have even spoken to a couple of neighbors.
14 They were saying that they didn't see anybody, nobody ran.

15 MS. HALL: Objection. That calls for hearsay.

16 THE COURT: Sustained.

17 BY MS. JORDAN

18 Q If you will, just tell me where you tracked.

19 A I took the dog out through there. We checked that
20 neighborhood and didn't find anything.

21 We came back, and I cast him around the other way from
22 where I was told the possible suspect had ran, second
23 suspect, and did locate another track over to the yard. So
24 from the neighborhood over to the front yard is where we
25 attempted to track.

James Rhodes
Cross-examination by Ms. Hall

1 Q How long have you had Elbow?

2 A This December will be four years.

3 Q Okay. Please answer any questions Ms. Hall may have.

4 CROSS-EXAMINATION

5 BY MS. HALL

6 Q How many officers were on scene when you arrived?

7 A That I remember there was Deputy Bishop, Deputy
8 Nepper, Sergeant Hopkins and Deputy Gibbs when I arrived.

9 Q Four people had already responded when you arrived.

10 A Yes.

11 Q Do you recall what time you arrived?

12 A About ten till 2:00, I believe is when I arrived.

13 Q And you testified before that the incident you believe
14 was about 1:15 or 1:17.

15 A 1:17, yes.

16 Q You recall. Do you normally get a call to bring your
17 dog to a burglary?

18 A Yes. A burglary in progress or has just occurred,
19 yes. I respond to quite a few of those.

20 Q And when you bring your dog you're looking for
21 someone.

22 A I am looking to see what evidence we can, may or may
23 not, find.

24 Q Okay. You said you started your track by -- in the
25 yard where there was a bank bag on the ground.

James Rhodes
Redirect examination by Ms. Jordan

1 A We started just before that and came up on the -- a
2 bank bag and a hat.

3 Q Okay. Now, you testified you started in the front
4 yard and you went in one direction. The dog apparently
5 wasn't able to pick up anything. So you came back in the
6 front yard and went across the other way in the front yard.

7 A Basically, when I went out to the right looking from
8 the front doorway. I went out towards the neighborhood and
9 really didn't locate anything. Came back and made a
10 semicircle across the front yard towards the driveway to
11 try and see if he picked up anything left out from that
12 area.

13 Q So you didn't go around in the back yard.

14 A No, I didn't go around the back yard.

15 Q Okay. You didn't take the dog into the car or the
16 truck that was there.

17 A No. I did not go into the truck.

18 Q Okay. That's all.

19 REDIRECT EXAMINATION

20 BY MS. JORDAN

21 Q Did you receive any information that there was a need
22 to go into the back yard?

23 A No. Actually I was informed by responding deputies
24 that that's where the victim had come from.

25 MS. JORDAN: Nothing further.

Robert Rosenberg
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

2 MS. JORDAN: May this witness be excused, Your Honor?

3 THE COURT: He may be.

4 (Whereupon, the witness was excused.)

5 MS. JORDAN: Next the state calls Robert Rosenberg.

6 ROBERT ROSENBERG, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. JORDAN

9 Q Please state your name for the record.

10 A Robert Rosenberg.

11 Q Where are you currently employed?

12 A I am currently employed at the Spartanburg County
13 Sheriff's Office.

14 Q How long have you been there?

15 A Approximately 28 years.

16 Q What is your current job title?

17 A I'm currently assigned to the evidence division.

18 Q Okay. How long have you been in evidence?

19 A Around 11 years.

20 Q Did you have an occasion to receive some evidence in
21 this case?

22 A Yes, I did.

23 Q Setting in front of you is State's Exhibit No. 17 --
24 16.

25 A Yes.

Robert Rosenberg
Direct examination by Ms. Jordan

1 Q Do you recognize that item?

2 A Yes, I do.

3 Q Did you take that item into custody?

4 A Yes, I did.

5 Q Could you tell the jury about that?

6 A On January 17th of 2012 I took this out of our drop
7 box, which is a secure -- it's like a mailbox, secure
8 mailbox, that we have in the area where officers can drop
9 their evidence.

10 Q Okay. Is that box inside the sheriff's office, or
11 out?

12 A It's in the sheriff's office. It's in a hallway, but
13 it's secure.

14 Q Okay. Did you document when you took this out?

15 A Yes.

16 Q Okay. While this item was in your possession did you
17 alter or tamper with it in any way?

18 A The only thing, this blue bag comes in a brown bag,
19 brown envelope. We take it out of the brown envelope. I
20 write the subject's name down. And then I put a sticker on
21 it, a case sticker, where we enter it into the computer.
22 And then we put it back in the brown envelope and we set in
23 a secure area for the lab to pick up.

24 Q Okay. To the best of your knowledge while this was in
25 your custody was it altered or tampered with in any way,

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

- 1 the items inside the bag?
- 2 A No, it was not.
- 3 Q Please answer any questions Ms. Hall may have.
- 4 MS. HALL: No questions.
- 5 THE COURT: You may step down.
- 6 MS. JORDAN: May this witness be excused?
- 7 THE COURT: He may be.
- 8 (Whereupon, the witness was excused.)
- 9 MS. JORDAN: The state calls Mary Elizabeth Stuart.
- 10 MARY ELIZABETH STUART, having
- 11 been first duly sworn, testified as follows:
- 12 DIRECT EXAMINATION BY MS. JORDAN
- 13 Q Please state your name for the record.
- 14 A Mary Elizabeth Stuart.
- 15 Q Where are you currently employed?
- 16 A Spartanburg County Sheriff's Office.
- 17 Q How long have you been there?
- 18 A A little over nine years now.
- 19 Q What is your title at the sheriff's office?
- 20 A I am a forensic chemist at the sheriff's office.
- 21 Q Can you just give the jury and the Court information
- 22 about your educational background?
- 23 A Sure. I have a bachelor's of science in chemistry and
- 24 a bachelor's of science in biochemistry, both from the
- 25 College of Charleston. And I have a master's degree in

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 chemistry from the University of South Carolina.

2 I have been to the D.E.A., which is the federal drug
3 agency for forensic chemistry. I've been to the D.E.A.
4 school for clandestine labs, which we are commonly known as
5 meth labs.

6 I have been to the criminal justice academy. I am
7 certified by the American Board of Criminalistics in all
8 areas of forensic science as a fellow.

9 I have been to many agulant training schools. We're
10 required 40 hours in our main discipline and 20 hours in
11 the other discipline and training every year and so on and
12 so forth.

13 Q Have you testified --

14 MS. HALL: We'll stipulate to her qualification.

15 MS. JORDAN: Your Honor, I was going to move her in as
16 an expert in the -- as a forensic analyst.

17 THE COURT: Any objection?

18 MS. HALL: No objection.

19 THE COURT: She is so qualified.

20 BY MS. JORDAN

21 Q Investigator Stuart, I'm going to show you what's
22 previously been marked and talked about as State's Exhibit
23 No. 16. Do you recognize that?

24 A I do. On the inner bag, which I call the BEST bag --
25 has my initials, the letters OK and the date. And then in

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 the outer part -- because I would have put this all back
2 into this plastic bag which y'all see -- you see my
3 initials and the date and the lab number that I assigned
4 it, and the seal.

5 Q You used the term BEST bag. Can you explain to the
6 jury what that is?

7 A Yes. A BEST bag is -- BEST is simply an acronym for
8 best evidence sample testing.

9 We receive evidence not only from the sheriff's office
10 but every agency within Spartanburg County including
11 federable -- federal, local, state, everything. So we
12 needed a uniform way, a common way, for everyone to submit
13 evidence.

14 With a BEST bag -- I know it's hard to see -- at the
15 top it has a seal and down the sides it has lines. So once
16 the officer seals a BEST bag -- it's not tamperproof and
17 you can get in it if you want to. You can cut it -- cut it
18 with a knife or whatever. But if someone does you're going
19 to be able to tell. There'll be evidence, what's tamper
20 evident. The lines would be distorted if someone tried to
21 rip it, or it'd have to be cut open if someone had got into
22 it.

23 Q And when did you receive this item?

24 A I received it on January the 17th of 2012.

25 Q Okay. When you received it had the BEST bag as you

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 referred to it been altered or tampered with in any way?

2 A When we go to the evidence room to pick up drug
3 evidence we check inside the bag and check the BEST bag and
4 make sure it's sealed because we won't accept it if it's
5 not sealed. So that's -- I would have done that on the
6 17th.

7 On the outside of the BEST bag I have my initials, the
8 letters OK, and the date January 18th of 2012, which would
9 be the day that I actually cut the BEST bag open and test
10 it.

11 I don't put the letters OK unless it's sealed before I
12 open it.

13 So, once again, before I opened it I checked it again
14 to make sure it was sealed, wrote my initials, the date I
15 opened it and the letters OK. So it was sealed before I
16 opened it.

17 Q While this item or the items inside that bag were in
18 your custody did you perform testing on those items?

19 A I did.

20 Q Could you tell the jury specifically as to the items
21 inside what you found?

22 A All the items?

23 Q Yes, ma'am.

24 A Okay. The first item was an off-white rock substance.
25 And I performed testing on it and found it to be cocaine

Mary Elizabeth Stuart
Direct examination by Ms. Jordan

1 base commonly known as crack with a weight of 0.46 grams.

2 The other item was three and a half green tablets with
3 the inscription OP80 on it. The inscription indicated that
4 it was oxycodone. And then I found a half of a white
5 tablet, which I chose not to analyze.

6 MS. JORDAN: Your Honor, at this time we would move
7 State's Exhibit No. 16 into evidence.

8 MS. HALL: No objection.

9 THE COURT: It's admitted.

10 (Crack cocaine and oxycodone marked State's Exhibit No.
11 16.)

12 Q Please answer any questions Ms. Hall may have.

13 MS. HALL: I have no questions for this witness.

14 THE COURT: You may step down.

15 MS. JORDAN: Your Honor, at this time the state would
16 rest.

17 THE COURT: All right. Ladies and gentlemen, that is
18 all of the testimony or other evidence to be offered by the
19 state, at least in their case in chief.

20 Before we go further I've got some matters to address
21 with the lawyers. So I'll ask you to please go to your
22 jury room. Do not yet discuss the case. I'll bring you
23 back shortly.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: Any motions or other matters to address
2 before we go further?

3 MS. HALL: We would have a motion at this time if the
4 Court is ready.

5 THE COURT: All right.

6 MS. HALL: Your Honor, I would make a motion at this
7 point in the trial for a directed verdict in favor of the
8 defendant based on the Court's adverse rulings to the
9 defendant's objections throughout the trial at this point;
10 and also insufficient evidence has been presented in order
11 to allow this case to go to the jury.

12 THE COURT: Where do you perceive the state's evidence
13 to be lacking?

14 MS. HALL: Your Honor, as far as the burglary first
15 degree charge goes, lacking evidence to show my client
16 entered the residence, as well as being armed with a deadly
17 weapon.

18 THE COURT: Well, there appears to be more than
19 substantial circumstantial evidence to establish each of
20 those facts.

21 Any others?

22 MS. HALL: No, sir.

23 THE COURT: All right. Motion for a directed verdict
24 is denied.

25 Have you discussed with your client his right to

1 testify or not?

2 MS. HALL: I have, but I would ask at this time for a
3 moment again to review that with him to be certain of our
4 course.

5 THE COURT: All right. We'll take 15 minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. What does your client want to
8 do, Ms. Hall?

9 MS. HALL: Client is -- will not be testifying, Your
10 Honor.

11 THE COURT: Any other witnesses you're going to call?

12 MS. HALL: Yes, sir. I have two.

13 THE COURT: Okay. Bring the jury in, please.

14 Excuse me just a minute. Let me ask one thing.

15 Mr. Mahaffey, your lawyer tells me that you're not
16 going to testify.

17 Do you understand you do have a right to if you want
18 to?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But you understand nobody can make you.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: When you're charged with a crime you have
23 a right to remain silent, and also at the same time you
24 have a right to testify to provide a jury any evidence you
25 want to if you wish to. Nobody can require that you do

1 that. It's simply your choice.

2 If you choose to testify you'd have to answer all of
3 the questions that were asked to the extent they were
4 relevant even if some of the answers might tend to prove
5 you guilty. And if you don't testify I'm going to instruct
6 the jury they can't hold that against you.

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had plenty of time to talk with
9 your lawyers about the advantages and disadvantages of
10 testifying, as well as not testifying?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you appreciate what those advantages
13 and disadvantages are?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you reached a decision about whether
16 or not you'll testify?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what is it?

19 THE DEFENDANT: I will not testify.

20 THE COURT: And is that a decision that you reached of
21 your own free will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you're satisfied with it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Bring the jury in, please.

Renee Rogers
Direct examination by Ms. Hall

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Ladies and gentlemen, as you know, the
4 state has concluded in their presentation. So we're now
5 going to proceed with any evidence to be offered by the
6 defense.

7 Ms. Hall.

8 MS. HALL: Thank you, Your Honor. May it please the
9 Court. The defense would call Renee Rogers to the stand.

10 RENEE ROGERS, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. HALL

13 Q would you state your name for us, please?

14 A Yes. It's Renee Rogers.

15 Q And did I ask you to be here today?

16 A Yes, you did.

17 Q And we've met before, right?

18 A Yes.

19 Q Okay. Ms. Rogers, will you tell the jury where you're
20 employed?

21 A I am employed with Steve's Pallet and Box Recycling in
22 Spartanburg.

23 Q Could you tell us briefly how long you've been there
24 and what your job is there?

25 A I've been with him 18 years. Basically my job is the

Renee Rogers
Direct examination by Ms. Hall

1 office manager. I do all scheduling, payroll. That's
2 basically what I do.

3 Q Okay. Do you know Christopher Mahaffey?

4 A Yes, I do.

5 Q And how do you know him?

6 A He was employed with us.

7 Q Okay.

8 A If I'm not mistaken, it was from August of 2011 until
9 this past January of 2012.

10 Q And did you know what type of work he did?

11 A Yes. Just about anything we asked. He learned to
12 operate the denailer machine, the nail guns.

13 Q Tell me what Steve's Pallet -- what business it is.

14 A It's a recycling -- wooden pallets for transfer,
15 shipping in 18 wheelers, and also for the large box
16 business that is used for plastic pallets that they
17 recycle.

18 Q Okay. Thank you.

19 I'm going to show you what has previously been marked
20 as Defendant's No. 1. Do you recognize this document?

21 A Yes. It is the bank stubs from the checking account
22 on the payroll.

23 Q Okay.

24 MS. HALL: Your Honor, I move at this time to enter
25 this into evidence.

Renee Rogers
Direct examination by Ms. Hall

1 MS. JORDAN: No objection from the state.

2 THE COURT: It's admitted.

3 (Copy of paycheck stubs marked Defendant's Exhibit No.

4 1.)

5 Q Is there a stub on there for where Christopher
6 Mahaffey was paid?

7 A Yes.

8 Q Can you give us a check number and date and amount?

9 A The check number on 1408 was dated January the 6th of
10 2012, and he drew \$194.

11 Q Is there another check in January?

12 A Yes, ma'am. The check number is 1461 -- I'm sorry --
13 1416, and it was dated January the 13th of 2012 -- \$198.

14 Q Okay. I'd like to show you what's been marked
15 Defendant's Exhibit No. 2. I'm showing it to the
16 solicitor. Do you recognize this document?

17 A Yes. This is the bank statement that we received each
18 month. And if you'll notice there's a star next --

19 Q Did you place that on the document?

20 A No. The C.P.A. did --

21 Q Okay.

22 A -- because I received it back from them.

23 Q You requested this?

24 A Yes.

25 Q And what is marked on there with the star?

Renee Rogers
Direct examination by Ms. Hall

1 A It's Christopher's check stubs where it had cleared
2 the bank.

3 Q Okay. Can you read us the check number and the
4 amount?

5 A Yes, ma'am. On 1/6 it was check No. 1408 for \$194,
6 and on January the 13th, check No. 1416 for \$198.

7 Q And what does that mean when it's on this statement
8 like that, the date?

9 A The date is when it actually is cashed at the bank.

10 Q Okay. So that's the date it comes out of your
11 account.

12 A Yes, yes.

13 Q Okay.

14 MS. HALL: Your Honor, I'd like to move Exhibit No. 2
15 into evidence.

16 MS. JORDAN: No objection from the state.

17 THE COURT: It's admitted.

18 (Copy of bank statement marked Defendant's Exhibit No.
19 2.)

20 MS. HALL: I have no further questions.

21 MS. JORDAN: No questions, Your Honor.

22 THE COURT: You may step done.

23 THE WITNESS: Thank you.

24 MS. HALL: Your Honor, may Ms. Rogers be excused?

25 THE COURT: She may be.

John Mahaffey
Direct examination by Ms. Hall

1 (Whereupon, the witness was excused.)

2 MS. HALL: The defendant would call John Mahaffey to
3 the stand.

4 JOHN MAHAFFEY, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. HALL

7 Q Would you state your name for us please, sir?

8 A John Mahaffey.

9 Q Okay. Your first time testifying in court?

10 A Yes, ma'am.

11 Q Okay. A little bit nervous?

12 A Yes, ma'am.

13 Q I'm sorry. We will take our time. Okay. Let me know
14 if you need a drink of water or anything.

15 A Okay.

16 Q Mr. Mahaffey, do you know who I am?

17 A Yes, ma'am.

18 Q Okay. We talked before.

19 A Yes, ma'am.

20 Q Okay. And what's your relationship to Christopher
21 Mahaffey?

22 A He's my brother.

23 Q Okay. I just want to get some brief background
24 information. Can you tell us your age?

25 A I'm 35.

John Mahaffey
Direct examination by Ms. Hall

- 1 Q Okay. You're Christopher's younger brother?
- 2 A Younger brother, yes, ma'am.
- 3 Q And where do you reside.
- 4 A At [REDACTED] [REDACTED] [REDACTED] in Inman.
- 5 Q Okay. Where were you on January 14th of this year?
- 6 A I was at my father's house.
- 7 Q Where does your father live?
- 8 A [REDACTED] [REDACTED] [REDACTED] [REDACTED].
- 9 Q What city?
- 10 A Woodruff.
- 11 Q Okay. And what were you doing at your father's house
- 12 that day?
- 13 A I would down -- I come down to see him. We were going
- 14 to cook out that day.
- 15 Q Who all was there?
- 16 A Me, my brother.
- 17 Q Which brother?
- 18 A Chris.
- 19 Q Okay.
- 20 A Austin, Chase, my mother Diane, and my father Eddie.
- 21 Q Okay. About what time were you there? Can you
- 22 remember or estimate for us?
- 23 A I think I got there around 9:30 or 10:00 that morning.
- 24 Q Okay. How long did you stay?
- 25 A Stayed until about -- I think it was about 4:00 or

John Mahaffey
Direct examination by Ms. Hall

1 5:00 o'clock that afternoon.

2 Q Now, you just told us all of the people that were
3 there. Did Chris ever leave?

4 A Yes, ma'am.

5 Q Okay. How did he leave?

6 A He left in an SUV with -- there was a guy who came up.
7 My father said his name was Ronald. He left driving the
8 vehicle.

9 Q So you're saying that Chris left the house. And the
10 SUV, was it -- what kind -- can you tell us what color?

11 A It's my father's SUV. It's a green Expedition.

12 Q Okay.

13 A And the other guy left driving.

14 Q Do you recall what time it was when Chris left the
15 house?

16 A It was around -- I'm wanting to say about 11:00 --
17 11:30 or 11:00.

18 Q Could you tell what direction they went in?

19 A They headed up the road.

20 Q Okay.

21 A Which would be -- I'm not sure which way it would be.
22 I guess --

23 Q Fair enough.

24 MS. HALL: One moment, please.

25 (Pause.)

John Mahaffey
Cross-examination by Ms. Jordan

1 MS. HALL: I have no further questions.

2 Q Please answer any questions the solicitor may have for
3 you.

4 MS. JORDAN: Just a few, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. JORDAN

7 Q Mr. Mahaffey, does your brother smoke cigarettes?

8 A Yes.

9 Q Do you know what kind he smokes?

10 A Newport, I believe.

11 Q After your brother Chris left the house that day, did
12 you see him again on January the 14th back at the house?

13 A No, I did not.

14 Q Okay. And he left around 11:00 with another
15 individual?

16 A Yes, ma'am.

17 Q So after 11:00 you didn't see him.

18 A No, ma'am.

19 MS. JORDAN: No further questions, Your Honor.

20 MS. HALL: I have nothing further.

21 THE COURT: You may step down.

22 MS. HALL: May this witness be excused?

23 THE COURT: He may be.

24 (Whereupon, the witness was excused.)

25 MS. HALL: The defense rests at this time.

1 THE COURT: Any reply?

2 MS. JORDAN: No, sir, Your Honor.

3 THE COURT: Ladies and gentlemen, that's all of the
4 evidence that's going to be received. What remains to be
5 done are the lawyers' final summations, after which I'll
6 instruct you on the law. And then you can begin
7 deliberations.

8 Before we do that I've got some matters to address
9 with the lawyers. So I'll ask you to please go to your
10 jury room. Do not yet discuss the case. I'll bring you
11 back in just a few minutes.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Any motions or other matters to address?

15 MS. HALL: At this time I'd just like to renew my
16 previous motion for a directed verdict.

17 THE COURT: That motion is again denied.

18 Any requests for jury instructions from the state?

19 MS. JORDAN: Your Honor, I would request a hand-of-one
20 charge just because they have alluded to or made references
21 to another individual who was there.

22 And if that's going to be a position or a defense that
23 they're going to take in closing, I believe that the state
24 should be entitled to a hand-of-one, hand-of-all theory for
25 the jury to consider.

1 THE COURT: okay. Any objection?

2 MS. HALL: Your Honor, I wouldn't object to that, but
3 I would ask if the Court does instruct them hand of one,
4 hand of all that the Court would also give an instruction
5 of mere presence.

6 THE COURT: I will.

7 Any other requests by the state?

8 MS. JORDAN: No, sir.

9 THE COURT: Any other requests by the defendant?

10 MS. HALL: Your Honor, we're requesting a charge of
11 the lesser included burglary in the second degree.

12 THE COURT: And what would be the basis for that?

13 MS. HALL: The basis for that, Your Honor, is that
14 there is a reasonable doubt that the jury could find as to
15 being armed with a deadly weapon, precisely the gun.

16 We have testimony that my client was stopped on the --
17 in front of the house, didn't get to the vehicle. The gun
18 was found in the vehicle.

19 THE COURT: Well, it came out of the house.

20 MS. HALL: Your Honor, we had one witness I believe
21 testify to that.

22 The officer returned the weapon without doing anything
23 else to verify it did come out of the house and it
24 belonged --

25 THE COURT: Well, what would he have done to verify

1 that it came out of the house other than ask the owner?

2 MS. HALL: There was a serial number on the weapon,
3 Your Honor.

4 THE COURT: Well, how would that tell you where it
5 came from, out of the house or out of the car?

6 MS. HALL: It could have been used to establish
7 ownership.

8 We know that from testimony the homeowner did reach
9 into the car and take the keys out and went back and looked
10 again for the gun.

11 There's been testimony elicited that my client left
12 his father's house that day with another individual.

13 I think there's enough there for a jury to have a
14 reasonable doubt as to whether or not my client ever had
15 his hands on that weapon.

16 We also know that the forensic investigator took a
17 swab off the gun that didn't produce any results or
18 testing, in fact, of who could have touched it.

19 THE COURT: What's the state's position?

20 MS. JORDAN: Your Honor, the state's position is that
21 the defense is not entitled to a burglary second charge.

22 My understanding of their reading of the -- or from
23 their case point is that he didn't go in the house, that he
24 wasn't involved in going into the house, that I believe he
25 was not the right guy.

1 I don't think that they're entitled to the lesser
2 included offense if that's the defense that they're going
3 to take.

4 As to the aggravated element in the burglary first, as
5 the Court knows, the statute reads when in effecting entry
6 or while in the dwelling the defendant or another
7 participant in the crime either displays or is armed with a
8 deadly weapon. A deadly weapon could be a knife or a gun.

9 In this case we have the defendant by testimony from
10 Officer Bishop with two knives on his person, one in each
11 front pocket, along with the defendant's testimony in
12 response to the victim's question to where -- where is it,
13 where is it. His response is it's in the center console.
14 He finds his gun in the center console. The gun was last
15 seen by the victim inside this house where he always kept
16 it on the bedside table.

17 Your Honor, it's our position that we're arguing both
18 ways, that the defendant was armed when he went into the
19 house with pocketknives he had in his possession and came
20 out with them and also with the gun that he took while in
21 the dwelling.

22 MS. HALL: As to the gun, Your Honor, the state's
23 witness testified that gun was placed somewhere hidden in
24 the house, he was the first one to see it in the vehicle
25 and that it was never moved from that point.

1 The jury's entitled to believe what they want of a
2 witness, and this jury may not believe that someone took
3 that gun -- another person -- out of the house and put it
4 in the car.

5 THE COURT: You mean they might believe that
6 Mr. Sustare took the gun out of the nightstand and went
7 outside and put it in Mr. Mahaffey's father's car?

8 MS. HALL: They could believe that, Your Honor.

9 THE COURT: They could?

10 MS. HALL: Could they also believe that a
11 second suspect --

12 THE COURT: Could they also believe that Mr. Sustare
13 took some pocketknives and stuck them in Mr. Mahaffey's
14 pocket? I guess they could believe that. There wouldn't
15 be any evidence tending to support it, but I guess they
16 could believe that.

17 MS. HALL: They could also believe, Your Honor, that a
18 second suspect who was never found took that weapon and put
19 it in a car and was able to escape without being
20 apprehended.

21 The testimony is that my client was stopped in front
22 of the house. He never made it to the car. No one ever
23 saw him touching this gun. We have no D.N.A. or
24 fingerprints of his on this gun.

25 THE COURT: Well, there's also no evidence that

1 anybody else was at that house other than Mr. Mahaffey.

2 I know that somebody suggested that he was driving a
3 vehicle, but nobody said that he ever went to Mr. Sustare's
4 house. There's no evidence that anybody else was there
5 other than Mr. Mahaffey that I recall. Is there some?

6 MS. HALL: We have the -- I believe it was Officer
7 Rhodes testified he was called to look for another suspect.

8 THE COURT: Well, I suspect Officer Rhodes was called
9 to look for anything that might be helpful to resolving the
10 case, but that doesn't mean that he was actually looking
11 for somebody other than Mr. Mahaffey.

12 I mean, obviously you don't just show up at a crime
13 scene and ignore possibilities but -- but I don't know that
14 he was looking for anyone else.

15 MS. HALL: Your Honor, I'd like to if I may argue just
16 one more point about the knives.

17 The statute requires that they -- that be -- well,
18 first, armed with a deadly weapon. A pocketknife is not
19 always a deadly weapon. And plenty of people carry
20 pocketknives for reasons completely innocuous.

21 Your Honor, I carried one before I started coming
22 through courthouses with metal detectors. My client worked
23 at a pallet recycling business.

24 And as far as displaying what appears to be a knife,
25 there's no testimony that the knives were ever displayed,

1 ever used, ever used to threaten anyone.

2 He was arrested and searched. They found them in his
3 pocket.

4 THE COURT: So are you suggesting that doesn't count
5 towards the aggravating factor of burglary first?

6 MS. HALL: That is my argument. And I believe it is a
7 question for the jury to be able to consider.

8 THE COURT: Well, I certainly think it's a question
9 for the jury to consider.

10 They'd have to find that the -- that the evidence
11 supported him being armed with a deadly weapon. The
12 pocketknife obviously is a deadly weapon, I believe. I
13 guess they -- I guess they could find that he wasn't. But
14 do you think that would be reasonable? It's not a
15 contested fact, is it?

16 MS. HALL: It's not a contested fact that he had the
17 pocketknife.

18 THE COURT: Is there any other evidence from which
19 anybody could reasonably infer that he was not armed with a
20 deadly weapon?

21 MS. HALL: Reasonably they could infer that a
22 pocketknife that remains in his pocket the entire time that
23 no one ever sees until the police search him is not a
24 deadly weapon.

25 THE COURT: Okay. All right. I understand the

1 argument.

2 Do you want to be heard on that, Ms. Jordan?

3 MS. JORDAN: Your Honor, just briefly.

4 The statute just refers to displays or just refers to
5 it as a knife.

6 It doesn't give any indication as to how long the
7 knife has to be, any length of it. It doesn't exclude the
8 pocketknife. Our argument is that it is a deadly weapon.

9 THE COURT: Well, I understand. But there's no
10 evidence he displayed the knife.

11 MS. JORDAN: No, sir. There's not. But as far as
12 just being armed with a deadly weapon.

13 THE COURT: Well, I understand.

14 MS. JORDAN: I believe a knife of any sort, regardless
15 of the length, could be used as a deadly weapon.

16 THE COURT: I don't -- I don't believe in this case
17 there's any evidence from which the jury could reasonably
18 find him to be guilty of only the lesser offense. So based
19 upon that fact I'm going to deny your motion to instruct
20 the jury on the lesser included.

21 All right. Any other requests?

22 MS. HALL: I have no other requests other than your
23 standard charges, Your Honor.

24 THE COURT: Okay. All right. Bring the jury in,
25 please, sir.

Closing arguments

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Ladies and gentlemen, as you know, all of
4 the evidence has been received.

5 What remains to be done are the lawyers' final
6 summations. After that I'll instruct you on the law that's
7 applicable. And then you can begin with your deliberations
8 in the case.

9 So please give the lawyers your attention now as they
10 give you their final summations.

11 Ms. Hall.

12 MS. HALL: Thank you, Your Honor.

13 I asked you yesterday when we started this trial to
14 return a not-guilty verdict. And I'm here asking you again
15 the same thing today.

16 Burglary is a very serious crime. Everyone wants to
17 feel safe in their home. We have entire industries built
18 around making us feel safe in our houses -- burglar alarms,
19 guns, surveillance, dogs, you name it. We want to feel
20 secure.

21 The consequences for burglary are serious too. Our
22 legislature has determined that. However, it's not serious
23 enough apparently to the investigators to do a full and
24 complete investigation of this incident. If it wasn't that
25 important to them, why should they expect it to be that

Closing arguments

1 important to you?

2 I want to go over some of the testimony that you heard
3 yesterday and today.

4 Brandon Howard testified. He worked for the crime
5 scene investigation unit. What did he tell you he did? He
6 was called out to the scene. He took photographs. He took
7 two pocketknives and a bank bag into evidence, and he took
8 a swab from a gun to check for D.N.A. And he also, excuse
9 me, took photos inside the house as well.

10 But think about, what didn't he tell you that he did
11 because there wasn't time. Did he bring you any
12 fingerprints or D.N.A. off of that bank bag? Did he bring
13 you any fingerprints or physical evidence outside of that
14 house?

15 If my client who is alleged to have gone in and come
16 back out did that, then his fingerprints would have been
17 all over that door. But you don't have any fingerprints
18 from him on that door because he didn't go through it. He
19 didn't touch it. He wasn't in there. And they can't prove
20 that to you.

21 The solicitor told you at the beginning of this trial
22 the first element of a burglary is entry. How do we have
23 an entry when we don't even have any physical evidence
24 inside of that house or on that door linking my client to
25 the home?

Closing arguments

1 Burglary first also requires that the person who is
2 alleged to have entered the home be armed with a deadly
3 weapon.

4 What did you hear from the stand? That Christopher
5 Mahaffey was stopped in the front yard. He was restrained.
6 Nobody ever saw him get into that truck or anywhere near
7 it.

8 Where was this gun found? Not on my client. It was
9 found in the truck. We know he wasn't there. Nobody saw
10 him go into that truck.

11 Now, they took a swab for D.N.A. off the gun, but we
12 don't have any evidence from that. We don't have my
13 client's fingerprints or D.N.A. on that gun.

14 Now, we also know that when Christopher Mahaffey was
15 arrested they found two pocketknives in his pockets.
16 Nobody saw those knives until he was arrested and searched
17 pursuant to arrest. He didn't display it to anybody. He
18 didn't threaten anybody with it. He didn't use it.

19 Now, I would -- I don't think I would be wrong if I
20 guessed that some of you when you came here for jury duty,
21 maybe you had to think I better leave my pocketknife in my
22 car. That doesn't mean if you have a pocketknife on you
23 regularly on a daily basis that you're walking around armed
24 with a deadly weapon.

25 I certainly used to carry one around until I started

Closing arguments

1 working at courthouses and had to come through a metal
2 detector every day.

3 I want to bring you back to the testimony of the
4 homeowner, Mr. Sustare. You heard his call to 9-1-1. He
5 said I caught a man outside of my house. And he said in
6 that call that he had him lift up his shirt to check for
7 anything. And he said on the call that he had nothing.

8 He testified when he stopped my client in the yard he
9 checked him for weapons and didn't see anything on him. He
10 also testified that he, that my client, I believe pulled
11 down his pants when he was stopped.

12 If there is any weapon in there or a bank bag in his
13 pants it would have fallen out. And if Mr. Sustare was
14 aggressively taking control of the situation and if my
15 client had him pull up his shirt and my client pulled his
16 waist down, certainly he would have seen a bank bag if it
17 was there and would have taken it from him.

18 Now, you also heard Mr. Sustare say he saw my client
19 come out of his house and he heard the door shut. Well,
20 for that to happen that defies physics. If somebody comes
21 through a door and the door shuts it makes a noise after
22 that.

23 He told you that it was a heated situation. He was
24 not expecting anybody. It was a surprise to see a new car
25 in his yard or anybody there. And when we deal with

Closing arguments

1 situations like that it can be difficult for us to
2 accurately perceive everything that's going on and remember
3 it correctly. And that's nobody's fault. It's just what
4 happens when you're in a situation that surprises you.

5 Also, he testified that he asked Christopher Mahaffey,
6 quote, "where is it," and he said that my client told him
7 it was in the center console.

8 We know that Christopher Mahaffey was on the ground
9 being held by a 6-foot-plus man. He had another man who
10 was very angry holding a gun at him. I've never had a gun
11 drawn on me, but I can imagine if you do you will say
12 whatever it takes to get that person away from you and to
13 calm down.

14 First at the scene, Mr. Sustare looked into the
15 vehicle when he took the keys out. He knew he was looking
16 for something, and he was angry and he wanted the man off
17 him and away from him. It's not hard to make something up
18 or guess or, you know, okay, what does this fellow want me
19 to say.

20 Richie Blackwell testified he chased Chris through the
21 yard two times. That doesn't tend to prove his guilt. Who
22 doesn't run if you have two angry people chasing after you,
23 one of whom is armed with a weapon and you don't know what
24 the heck is going on? You want to get out of there. Who
25 wouldn't run?

Closing arguments

1 Finally, you saw a photograph of I believe \$187 that
2 was taken by the police. You heard from a Renee Rogers.
3 Chris had a job. He was paid and cashed a check for \$198
4 the day before.

5 And finally Chris' brother, John Mahaffey, testified.
6 Now, if I had a completely disinterested witness who was at
7 his dad's house that day and he saw who was there and when
8 Chris left and what car he was in and who he was with, I
9 sure would have brought that person in here. But it was a
10 family gathering.

11 Okay. Paul testified Chris was there at the house and
12 he left in that Expedition you've seen the photos of with
13 someone else.

14 You heard Officer Rhodes was called out there to bring
15 his dog to look for another suspect. But it was too easy
16 for the police when they had a warm body outside that
17 house, things alleged to be his missing, to take
18 Mr. Mahaffey into custody, go back and do their report,
19 cleared by arrest, let's move on to the next case.

20 The state hasn't proven a burglary first. Where is
21 the entry? Where is the physical evidence inside that
22 house?

23 How many officers did we hear about that showed up? I
24 don't know. Was it four or five? We had somebody from
25 forensics, investigators, a dog. And they couldn't be

Closing arguments

1 bothered to get physical evidence from outside that house
2 that they're so certain they've got the right guy, why not
3 complete your case.

4 If the state wants you to find someone guilty of
5 burglary in the first degree they should bring you a case
6 where you can give them that verdict and feel confident in
7 it. Why not bring you a case that you can give a verdict
8 in and you can live with it or you can tolerate it?

9 You get one chance to vote in this trial. There's no
10 do-over for the jury. You don't get to vote today and then
11 call me tomorrow and tell me I had some more questions or I
12 forgot about this being mentioned.

13 Nobody can go behind and change your verdict. You may
14 have heard about appellate courts. That can fix any
15 mistakes that I may make or the judge may make. But no one
16 can change your verdict. I told you in opening you have an
17 important job with a heavy burden.

18 I ask you and my client I haven't introduced you to
19 properly, Christopher Mahaffey, asks you to return a
20 not-guilty verdict in the case. Thank you.

21 THE COURT: Ms. Jordan.

22 MS. JORDAN: Thank you, Your Honor.

23 Ladies and gentlemen, if it walks like a duck and
24 talks like a duck, it's a duck.

25 We are confident in the case that we brought before

Closing arguments

1 you over yesterday and today. The defendant in this case
2 is charged with multiple charges, and I'll start with the
3 first one, burglary in the first degree.

4 As we talked the other day or yesterday, burglary in
5 the first degree requires a few elements. The first is
6 without consent of the owner.

7 You heard Mr. Sustare state that he doesn't know this
8 defendant. He wasn't expecting anybody at his house that
9 day.

10 Also requires entering. Ladies and gentlemen, there
11 is ample evidence out there that -- entered with the intent
12 to commit a crime.

13 For the entry you've got the victim stating saw a car,
14 had been working in my yard. You can see in one of the
15 photographs his vehicle in the back yard.

16 It will take a second to come up. But I urge you when
17 you're in the back -- and you'll have a chance to look at
18 all of the evidence here -- to take a look at this
19 photograph. There's his vehicle.

20 He tells you he's in the back with Richie working on
21 his asparagus patch moving dirt. He notices a car that
22 shouldn't be there, an Expedition that just happened to
23 belong to Mr. Mahaffey's family.

24 They walk around. Mr. Sustare stated I see him
25 shutting the door, coming out of the residence and shutting

Closing arguments

1 the door. He talks about the fact that his back is to him,
2 because he's shutting the door and pulling it to because he
3 was inside.

4 He also tells you that he hears a door shut. It's his
5 door. He knows that sound. He's heard it a million times.

6 Richie Blackwell who comes from behind Mr. Sustare
7 following him tells you he hears the door shut too. Been
8 working for him for over a year. Common noise he's used to
9 hearing, and that's what he heard.

10 Ladies and gentlemen, he heard it because Mr. Mahaffey
11 was coming out of the residence.

12 How else do we know that other than the testimony of
13 the two eye witnesses who are there? We know it by what
14 Mr. Mahaffey had on his person when he came out.

15 Officer Bishop tells you he pulls a red blackberry out
16 of the defendant's rear pocket, a red blackberry that we
17 come to find out belongs to, no shock, the victim.

18 You also hear testimony about the victim states that
19 he sees something blue in the waistband when he has
20 Mr. Mahaffey pull up his shirt earlier before the police
21 arrive there.

22 You heard the testimony from Richie who is just a kid
23 21 years old who was just working there that day to make
24 some money. You hear him say I had him out there by the
25 shirt, he gets away from me and runs, falls, run again, out

Closing arguments

1 of his pants falls that bank bag, the bank bag that's full
2 of as you can remember from Brandon Howard's testimony
3 contains a lot of coins and money, dollar bills. It's
4 probably heavy.

5 I would think if I was running too from somebody as I
6 was trying to get away from a place I should not have been
7 it would fall out too.

8 Mr. Sustare doesn't know his bank bag is missing until
9 the police find it, until the dog comes out and tracks too.
10 That's when he knows that it's missing.

11 Ladies and gentlemen, also, the gun. Let's talk about
12 that real quick. Mr. Sustare states that when he gets the
13 situation under control he leaves the defendant out there
14 with 6'9" Richie and goes inside to get his gun from his
15 home and then to call 9-1-1.

16 He walks into his bedroom where he told you he
17 normally keeps his gun on the nightstand, on his
18 nightstand. Guess what's not there? The gun that he
19 always keeps there, .357, custom holster. It's not there.

20 His glove's there. He goes in in a hurry and puts his
21 glove down, walks around to the other side. Guess what's
22 on the other side of the bed? His wife's nightstand and a
23 phone. Imagine him walking from one nightstand after
24 talking off the glove and realizes the gun wasn't there,
25 walks over to this side, takes off the other glove, puts it

Closing arguments

1 down and grabs the phone and calls 9-1-1.

2 He tells them on the phone my .357 is missing. Low
3 and behold, where does the .357 show up? Mr. Mahaffey's
4 vehicle. Who tells the victim it's there in response to
5 where is it, where is it? He does.

6 To believe the defense theory that he just luckily
7 happened to guess the correct place that that car -- that
8 that gun was in his car would make him one of the luckiest
9 people I know. He needs to buy a lottery ticket if he is
10 that good at guessing where something is.

11 Ladies and gentlemen, he knew the answer to the
12 question when the victim asked it because he took that gun
13 and he put it inside that vehicle in the center console
14 between the seats right where they found it. He told you
15 that through this victim when he testified to it.

16 The next element in the burglary case is that the
17 defendant be armed with a deadly weapon. That element does
18 not require that he display the deadly weapon but that he
19 be armed with it.

20 Another thing with that is not only that he be armed
21 with it but that he either had it when effecting entry,
22 when he went in, or while inside the dwelling he became
23 armed.

24 Ladies and gentlemen, he walked in armed. A lot of
25 people look at this and think, oh, it's just a pocketknife.

Closing arguments

1 A pocketknife is a weapon -- a pocketknife is a weapon, and
2 he had two of them. He had this one in one pocket and this
3 one in the other. Deadly weapons. Going into, with them,
4 one in each pocket.

5 While inside the residence he picks up another deadly
6 weapon, the .357. And I won't rehash it. We've already
7 talked about it. He tells the victim where it is.

8 I look at it in one of two ways. He comes out of the
9 house, puts down the stuff, puts down the gun in the
10 vehicle and decides either, A, be a little bit greedy. I
11 didn't get enough the first time. I'm going back.

12 I don't know if he at that point in time got the
13 gun -- or got the gun -- I think he got the gun the first
14 time he went in, and either, A, went back in at this point
15 in time headed to the kitchen table where he picked up the
16 red blackberry -- look at the photographs of Mr. Sustare's
17 kitchen and he tells you -- or dining table. He tells you
18 that he left it in there because he had just received a new
19 phone. So he had deactivated the black -- the red
20 blackberry and had a brand new phone and left it there.

21 So he either went in the first time and hit the
22 bedroom, grabbed the knife and the money bag that was in
23 the wife's nightstand, went back out, and got a little bit
24 greedy because it was easy that first time. The house was
25 unlocked and there was no alarm on it. Mr. Sustare was

Closing arguments

1 just doing what many homeowners do on the weekend, working
2 in his yard on his property.

3 Ladies and gentlemen, or Mr. Mahaffey went in and then
4 came back, went out to the vehicle, put the gun down, and
5 then decided I need to go shut that front door, I want to
6 try to disguise that anybody's been in there. Maybe they
7 won't miss the gun, maybe they won't miss the blackberry,
8 maybe they won't miss the money bag if the door's not open.

9 He just didn't anticipate Richie and Andrew coming
10 back from around the back of the yard. He didn't
11 anticipate that.

12 Ladies and gentlemen, entering a dwelling without the
13 consent of the owner and with the intent to commit a crime
14 therein and while armed with a deadly weapon. The state's
15 not required to prove that he displayed it, just that he
16 was armed.

17 Two knives, one in each pocket, and a gun that he
18 tells the victim where it is. It's not a lucky guess, not
19 a lucky guess at all.

20 He's also charged with petit larceny. Petit larceny
21 just means that he takes the goods of another. Blackberry
22 in the back pocket, money bag in the front that falls out
23 later on, gun in the vehicle, all the property of Andrew
24 Sustare, not Mr. Mahaffey.

25 He's also charged with possession of cocaine and

Closing arguments

1 possession of oxycodone. You've seen the pictures. You
2 can tell from the console photographs where these items are
3 in the vehicle. It did not belong to Mr. Sustare. It
4 belonged to Mr. Mahaffey's family, and that Mr. Mahaffey's
5 family even says he left in.

6 The drugs are right up there in a cigarette pack.
7 Remember how Richie Blackwell told you that when he
8 tried -- that when he was holding the defendant the
9 defendant tried to either -- tried to get back into the
10 house to talk to Mr. Sustare and then tried to get back to
11 his car because he wanted to go smoke. He knew there were
12 drugs in the car and he knew that gun was in the car.

13 The defense has talked about or alluded to someone
14 else being there and said the cops didn't do their job,
15 didn't do their job at all.

16 The cops brought out a dog. The dog didn't track to
17 anything other than the money bag and the hat that Richie
18 Blackwell tells you fell off of him. The dog does not
19 track. He's caught leaving the house, items on his person,
20 items in his car that belong to Mr. Sustare.

21 Even if you wanted to go with the theory that
22 somebody's out, there's another person, the second person,
23 the imaginary friend that my brother used to have that he
24 would blame stuff on when we were growing up. He didn't do
25 anything; we didn't do anything. Orlan and Eugene did it.

Closing arguments

1 My brother even gave them names. We used them many times.
2 That's the defense here. I didn't go in. Somebody else
3 was there with me. It wasn't me.

4 Ladies and gentlemen, he had the items on his
5 possession. He knew where the gun was.

6 The judge is also going to tell you when you listen to
7 the law about this law called the hand of one, and that law
8 simply states that the hand of one is the hand of all, that
9 if a crime is committed by two or more people who are
10 acting together in committing a crime the act of one is the
11 act of all.

12 A person who joins with another to accomplish an
13 illegal purpose is criminally responsible for everything
14 done by the other person which occurs as a natural
15 consequence of the actions done in carrying out the common
16 scheme or plan. Even under that theory he's guilty. On
17 his person in that vehicle, Mr. Sustare's items.

18 Going back to the blackberry, victim doesn't even know
19 it's missing until he sees it out on the patrol car near
20 the officers. And he goes, hey, that's mine. He didn't
21 even know it was missing. He didn't know it was in the
22 back pocket until Deputy Bishop pulled it out. And he told
23 you where it was inside the house, inside the house with
24 the money bag and inside the house with the gun. There is
25 only one way those items could get outside of that house,

Closing arguments

1 and that's the defendant bringing them out.

2 Ladies and gentlemen, you've seen a picture of
3 Mr. Sustare's property from google maps. You don't
4 randomly end up in his driveway up at his house, 600 feet.
5 That's the length of his driveway. You don't randomly end
6 up back there unless you're looking for trouble. Doesn't
7 know the defendant, or he doesn't know the victim. The
8 victim wasn't expecting anyone.

9 Also, in regard to his theory or the defense theory
10 that someone else was there, look at the photograph that
11 has a picture of the passenger seat in it if I can place my
12 hands on it.

13 (Pause.)

14 MS. JORDAN: Ladies and gentlemen, I can't put my
15 hands on it right now, but you'll have it back in the back,
16 and what you're going to notice when you see the console --
17 here it is -- on state's -- or when you see the passenger
18 seat in this vehicle, look what's there. A jacket.

19 It doesn't look like anybody else has been sitting
20 there with a jacket that's not sat upon, crinkled, wrinkled
21 or anything. The jacket is there because no one was in the
22 passenger seat.

23 The defendant's brother tells you they left around
24 11:00 o'clock. You heard that the dispatch time in this
25 case was at 1:17, two hours and 17 minutes -- two hours and

Jury charge

1 17 minutes.

2 One common denominator is that he left in that
3 vehicle. That vehicle shows up, [REDACTED], and
4 he's the one there.

5 Ladies and gentlemen, like I told you at the very
6 beginning of this case, no one asked you to check your
7 common sense at the door. You get to bring that in here.
8 You get to bring in your everyday experiences.

9 Christopher Mahaffey wants you to believe that he's
10 the victim in this case, he's the victim of a big
11 conspiracy that somehow placed him at this address, that
12 somehow had him to be found by Mr. Sustare and Richie with
13 Mr. Sustare's items on him. He's not the victim.

14 If it walks like a duck and quacks like a duck, it's a
15 duck. Everything in this case points to the fact that he
16 burglarized Mr. Sustare's home, that he took his items and
17 that he had drugs in his vehicle.

18 Mr. Sustare is the victim here. His home was
19 burglarized; his items were taken. His security that we
20 should all have in our homes was taken away, and it was
21 taken away by Christopher Mahaffey. Thank you.

22 THE COURT: Mr. Foreman and ladies and gentlemen of
23 the jury, you of course have now heard and seen all of the
24 evidence. You've heard the final summations of the
25 lawyers; and therefore it now becomes my duty and

Jury charge

1 obligation to instruct you on the law that's applicable.

2 Then you'll be asked to go back and begin with your
3 deliberations. And through that process you'll examine the
4 evidence, decide the facts, apply the law and arrive a fair
5 and just decision in the case, whatever that decision may
6 be.

7 It is your exclusive duty to determine what the facts
8 are. You do that through your own common-sense examination
9 and evaluation of all of the testimony and other evidence
10 received during the course of this trial.

11 You 12 jurors alone will decide what weight, value and
12 effect to give to any particular witness' testimony or
13 other evidence in the case. Your sole objective is to
14 simply reach the truth in the matter. By doing that you
15 will have fulfilled your obligations as jurors, and that is
16 to simply give both the state and the defendant a fair and
17 impartial trial.

18 Now, in this case, as you are aware, the state through
19 the prosecutor has accused the defendant with four separate
20 and distinct offenses.

21 Those offenses are alleged to have arisen out of one
22 particular event or a course of events which the state
23 alleges occurred back on January the 14th of 2012. But
24 there are four separate and distinct charges for which you
25 are to render four separate and distinct verdicts.

Jury charge

1 As I've told you previously, your verdicts may be the
2 same as to each of the charges. They may be different.
3 That of course will depend upon your determination of fact
4 as it relates to that particular charge and then your
5 application of the law to those facts as you determine
6 those facts to be.

7 But the defendant is charged with burglary in the
8 first degree, with larceny, with possession of crack
9 cocaine, and possession of a Schedule II drug, being
10 oxycodone.

11 As to those charges -- and those charges are set forth
12 in each of the indictments that I referred to prior to and
13 after your selection in the case. But please understand
14 that the indictments are not evidence of anything. They
15 don't prove anything; they don't establish anything.
16 They're simply the means by which a person is brought into
17 this court and formally accused of a crime.

18 The indictments however will be in the jury room even
19 though they're not evidence. That's because the
20 indictments will serve as the verdict form.

21 Mr. Foreman, it's going to be on the back of each
22 indictment you will be indicating the jury's verdict as it
23 relates to that particular charge. So the indictments will
24 be in the jury room, but they are there solely to serve as
25 the verdict forms. They serve no other purpose so far as

Jury charge

1 you jurors are concerned.

2 Now, as to the allegations set forth in each of those
3 indictments the defendant has entered a plea of not guilty.
4 And that plea of not guilty has placed upon the state the
5 burden of proving the allegations that they have set forth
6 in each of those indictments, the burden of proving each of
7 the essential elements that constitute the crime that is
8 alleged in a particular indictment; and therefore the
9 burden is upon the state to establish the defendant's guilt
10 as it relates to a particular charge beyond a reasonable
11 doubt before a verdict of guilty could be returned as to
12 that particular charge.

13 The burden is never upon a defendant to prove that he
14 or she is not guilty or to prove that he or she is innocent
15 because in some cases that might not be possible. The
16 burden is always upon the state because they bring the
17 charge against the defendant to establish that person's
18 guilt beyond a reasonable doubt.

19 You are further instructed that it is a vital,
20 important and cardinal rule of law that every defendant in
21 a criminal trial -- and it does not matter how serious the
22 offense might be for which that person stands charged --
23 the defendant shall always be presumed innocent of that
24 charge.

25 That presumption of innocence remains with any

Jury charge

1 defendant as it does with this defendant from the time that
2 he is placed under arrest and throughout the course of the
3 criminal process and even throughout the course of the
4 actual trial in the case.

5 As I told you, that presumption of innocence will be
6 with Mr. Mahaffey even as you go back to begin your
7 deliberations, and that presumption of innocence will be
8 with him in that jury room, and it'll be with him forever
9 unless you 12 jurors determine that he's no longer entitled
10 to that presumption of innocence.

11 In other words, after you've carefully considered all
12 the evidence in the case, and from that evidence you've
13 determined the facts, and upon determining those facts you
14 apply the law that I have provided you, if you 12 jurors
15 unanimously determine that his guilt as to a particular
16 charge has been proven beyond a reasonable doubt, then he
17 would no longer be entitled to the presumption of innocence
18 as it relates to that charge. But it's only if, unless and
19 until you are satisfied of his guilt beyond a reasonable
20 doubt that the presumption of innocence would no longer be
21 applicable.

22 Now, while the state does have the burden of proving
23 the defendant's guilt beyond a reasonable doubt, that does
24 not mean the state has to prove his guilt beyond all doubt
25 or beyond any possible doubt. But it does require the

Jury charge

1 state to prove his guilt to your satisfaction beyond a
2 reasonable doubt.

3 The term reasonable doubt should be given its plain
4 and ordinary meaning. A reasonable doubt is the kind of
5 doubt that would cause a reasonable person to hesitate to
6 act upon the information provided.

7 A defendant in a criminal trial is entitled to any
8 reasonable doubt that arises from the evidence or lack of
9 evidence in a case. And if upon any factual issue
10 essential to a finding of a verdict of guilty you have some
11 reasonable doubt as to how that issue should be resolved,
12 it would be your duty to resolve that reasonable doubt in
13 favor of the defendant.

14 And therefore if upon your consideration of the whole
15 case as it relates to a particular charge you have a
16 reasonable doubt as to his guilt you must resolve that
17 reasonable doubt in his favor and return a verdict of not
18 guilty as it relates to that particular charge.

19 At the same time, after you've considered all the
20 evidence and decided the facts and applied the law, if you
21 have no reasonable doubt as to his guilt as it relates to a
22 particular charge, then it would be your corresponding duty
23 to find him guilty of that charge where you have been
24 convinced beyond a reasonable doubt of its commission by
25 him.

Jury charge

1 The same law that provides that you are the judges of
2 the facts also provides that I am the judge of the law.
3 And that simply means that nobody's going to tell you how
4 to arrive at your determination of fact in this case. You
5 do that as I've stated through the exercise of good
6 judgment and common sense conscientiously applied to the
7 testimony and evidence in the case.

8 You must however accept the law as I provide it to you
9 as being the law that you are to apply in the case. In
10 other words, you're never to concern yourself with what you
11 thought the law was before you came to serve as a juror
12 this week or what you think the law ought to be.

13 Under your oath as a juror you must accept the law as
14 I provide it to you as being the law that you are to apply
15 in the case. You then simply take that law and you apply
16 it to the facts as you 12 jurors determine those facts to
17 be based upon your own common-sense examination of the
18 evidence received in the case.

19 Now, because you are the judges of the facts in this
20 case you are therefore necessarily the sole judges of the
21 credibility, that is the believability, of each witness
22 that has testified during the course of this trial. And
23 therefore you should consider several factors in arriving
24 at your assessment as to a particular witness' credibility,
25 and I'm going to list those factors for you.

Jury charge

1 You should consider the demeanor of the witness as the
2 witness testified from the witness stand. Was the witness
3 straightforward in responding to questions, or was the
4 witness hesitant or evasive in responding to questions that
5 were asked of the witness.

6 Simply put, did the witness appear to you to be
7 telling the truth and to have knowledge of the facts to
8 which that witness has testified.

9 You should also consider whether or not the testimony
10 of a witness is consistent, or is it inconsistent with that
11 witness' own testimony or statements made by that same
12 witness outside of court, as well as whether or not the
13 testimony of a witness is consistent or inconsistent with
14 other witnesses' testimony or other evidence in the case.

15 You should also consider how the witness came to know
16 the facts to which that witness has testified. In other
17 words, what was that witness' opportunity and ability to
18 perceive the existence of those facts to which that witness
19 has testified by having previously used his or her senses.
20 And then what is that witness' ability to be able to come
21 into court and to accurately recollect to you as to what
22 they have previously perceived.

23 You should also consider any bias or prejudice or
24 interest that a witness might have with regard to the case.
25 In other words, do you find some reason why a particular

Jury charge

1 witness would come into court and would testify one way or
2 another to help or to hurt one side or the other.

3 And you may consider any interest that a witness might
4 have in the outcome of the case if you determine that a
5 witness does have such an interest and you find that that
6 interest would bear upon that particular witness'
7 credibility.

8 You should also consider whether or not the testimony
9 of a witness is strengthened, or is it weakened by other
10 testimony or other evidence received during the course of
11 the trial.

12 Now, because you are the sole judges of the facts and
13 because you are the sole judges of the credibility of each
14 witness that has testified you are permitted to believe as
15 much or as little of what a witness has testified to as you
16 deem is appropriate. And therefore you may believe
17 everything that a witness testified to. You may choose to
18 believe none of it. You may believe one portion of a
19 witness' testimony and reject some other portion of that
20 same witness' testimony. In a given case you could believe
21 one witness as opposed to several, or several as opposed to
22 one.

23 But whatever your good judgment and common sense tells
24 you is the most believe and credible testimony is the
25 testimony you should accept, and you should reject any

Jury charge

1 testimony or other evidence that you find not to be
2 credible or believable.

3 Again, your sole objective is to simply reach the
4 truth in the matter, and by doing that you will have
5 fulfilled your obligations as jurors.

6 Now, while there are various forms of evidence such as
7 testimony, photographs, documents, charts, maps and other
8 types of physical exhibits, there are really only two types
9 of evidence. Either or both of those two types of evidence
10 may be used to prove any fact that is in issue. But the
11 two types of evidence are direct evidence and
12 circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 testifies from actual knowledge of that fact. It is
15 testimony by a person who has perceived the existence of
16 some fact by use of their senses and they come into court
17 and they testify as to what they have previously perceived.

18 Circumstantial evidence, on the other hand, is the
19 proof of some other fact or a set of facts which taken
20 either singly or collectively may prove the existence of a
21 fact in question as a necessary consequence, that is
22 through an inference.

23 An inference is simply a deduction of fact that may
24 logically and reasonably be drawn from the proof of some
25 other fact or set of facts.

Jury charge

1 In other words, it's not a fact proven by the direct
2 testimony of a person based upon their personal perception,
3 but it is a conclusion which might reasonably be drawn from
4 the proof of other facts.

5 In other words, you may infer that a particular event
6 occurred or that a particular fact exists based upon the
7 proof of sufficient factual circumstances which would
8 reasonably warrant your arriving at such a conclusion.

9 The law makes absolutely no distinction between the
10 weight or value to be given to either direct evidence or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence as opposed to
13 direct evidence.

14 Whatever the type of evidence used to prove any fact,
15 you should consider all of the evidence presented during
16 the trial of this case. And after carefully considering
17 all of that evidence in your minds if you are not convinced
18 of the defendant's guilt as to a particular charge beyond a
19 reasonable doubt, then you must resolve that doubt in his
20 favor and return a verdict of not guilty as it relates to
21 that charge.

22 Now, in this case, as you know, the defendant is
23 charged with burglary in the first degree, larceny,
24 possession of crack cocaine and possession of oxycodone.
25 And so I'm -- those are all statutory offenses. In other

Jury charge

1 words, the legislature meets every year from January until
2 June. They pass a number of laws and rules and regulations
3 that govern our conduct in a variety of ways.

4 Some of those statutes that they pass are
5 criminal-penalty statutes, and that just means that they
6 prohibit us as citizens from engaging in particular types
7 of conduct.

8 Where we are found to have engaged in that prohibited
9 conduct in violation of a particular statute, then it
10 subjects us to some form of punishment or penalty for
11 having engaged in that conduct in direct violation of the
12 statute.

13 Please understand however that you are never to be
14 concerned with punishment or penalty. That's not something
15 that you determine nor decide. Your sole obligation and
16 duty under your oath as a juror is to determine whether or
17 not the defendant's guilt has been proven beyond a
18 reasonable doubt as it relates to a particular charge. And
19 you must make that decision without considering any
20 consequence as to punishment or as to any penalty.

21 Section 16-11-311 is the statutory provision that
22 defines the crime of burglary in the first degree. And
23 that particular section states that a person is guilty of
24 burglary in the first degree if the person enters a
25 dwelling without consent and with the intent to commit a

Jury charge

1 crime therein, and when in effecting entry or while in the
2 dwelling or in immediate flight therefrom he or any other
3 participant in the crime is armed with a deadly weapon.
4 And there are other factors which are not applicable under
5 the evidence as presented in this case.

6 So based upon the foregoing statute, before you could
7 return a verdict of guilty as to the crime of burglary in
8 the first degree it would be necessary that the evidence in
9 this case has proven to your satisfaction beyond a
10 reasonable doubt four essential elements.

11 First, it must be proven that the defendant entered a
12 dwelling. Entry is an indispensable element in the crime
13 of burglary. Entry is the act of going into a dwelling.

14 It is not necessary that actual physical force be used
15 to accomplish the entry, nor does any door, window or other
16 barrier have to be opened or removed in order to effect an
17 entry. There simply must be an entry of a dwelling.

18 A dwelling is defined as a building or a structure
19 which is used or normally used for sleeping, living or
20 lodging by a person.

21 Secondly, there must be an entry of a dwelling without
22 consent. Entering without consent means to enter a
23 dwelling without the consent of the owner or person
24 otherwise in lawful possession of the premises.

25 Thirdly, there must be an entry of a dwelling without

Jury charge

1 consent and with the intent to commit a crime in the
2 dwelling. There must be an intent to commit a crime,
3 whether or not the crime is actually committed,
4 accomplished or completed.

5 The mere entering of a dwelling without an intent to
6 commit a crime does not constitute burglary. It is only
7 when there is an entering accompanied with an intent to
8 commit a crime that the crime of burglary is complete. And
9 a crime of any grade or severity is sufficient to satisfy
10 this particular element of the crime of burglary.

11 And the term intent means the state of a person's mind
12 which directs his actions toward a specific object or goal.
13 The entering of a dwelling without consent and with the
14 intent to commit a crime therein completes the crime of
15 burglary.

16 The fourth element necessary to establish a burglary
17 in the first degree is either that when effecting entry or
18 while in the dwelling or in immediate flight therefrom the
19 defendant or another participant in the crime is armed with
20 a deadly weapon.

21 So in order to be found guilty of the crime of
22 burglary in the first degree it would be necessary that the
23 state has established to your satisfaction beyond a
24 reasonable doubt that the defendant or another participant
25 in the crime did enter a dwelling without consent with the

Jury charge

1 intent to commit a crime therein and at the time was armed
2 with a deadly weapon.

3 The defendant is also charged with the crime of
4 larceny. Larceny is commonly referred to and known as
5 stealing.

6 Larceny is defined in the law as the taking, the
7 stealing and the carrying away of the personal property of
8 another with the intention of depriving the true owner of
9 use and possession of his property and converting that
10 property to the taker's own use.

11 Grand larceny is the larceny or theft of property
12 having a value of more than \$1,000.

13 Petit larceny is the theft of personal property that
14 belongs to another having a value of \$1,000 or less. In
15 this case the state has alleged the defendant to be guilty
16 of the crime of petit larceny.

17 A person who is charged with the commission of a crime
18 may be convicted of that crime as a principal offender or
19 as an accomplice. An accomplice is one who knowingly and
20 voluntarily and with a common intent with a principal
21 offender unites with that principal offender in the
22 commission of the crime.

23 An accomplice is sometimes referred to as an aider or
24 an abettor. But such a person is also deemed to be a
25 principal under the law.

Jury charge

1 In this case the state is alleging that the defendant
2 is guilty of the crimes of burglary and of larceny as a
3 principal or as an aider and an abettor in the commission
4 of those crimes.

5 It is the law of this state that where two or more
6 people act together with a common intent and purpose and
7 they combine, conspire, plan or otherwise agree to the
8 commission of a crime, each person who is present to aid,
9 abet, assist or participate in the commission of that crime
10 is equally guilty.

11 The act of one is deemed to be the act of all. Any
12 person who joins with another or others to accomplish an
13 illegal purpose is held to be criminally responsible for
14 everything that was done by any other person which occurs
15 as a natural and probable consequence of the acts done
16 pursuant to and in furtherance of that common plan and
17 purpose.

18 And therefore where two or more people are acting
19 together and they are aiding, abetting, assisting and
20 participating with each other in the commission of a crime,
21 the acts of one become the acts of all. The hand of one is
22 the hand of all. And all are equally guilty of any crime
23 accomplished by those joint efforts.

24 In order to be guilty as an aider or as an abettor in
25 the commission of a crime one must be actually present at

Jury charge

1 the scene of the crime with the intention of aiding,
2 abetting, assisting or participating in the commission of
3 that crime, and the crime is completed.

4 Prior knowledge by a defendant that some other person
5 is intending to commit a crime without more is not
6 sufficient to make the defendant guilty of the crime of
7 which he is shown to have had knowledge. And, likewise,
8 the mere presence of the defendant at the scene of a crime
9 or in close proximity thereto even with knowledge that
10 another is intending to commit the crime is not sufficient
11 standing alone to prove the defendant guilty of the crime
12 of aiding and abetting in the commission of that crime.

13 In order for the defendant to be found guilty of a
14 crime under the legal theory of aiding and abetting it must
15 be proven beyond a reasonable doubt that the defendant was
16 actually present at the scene of the crime with the
17 intention of aiding, abetting, assisting or participating
18 in the common plan or scheme which culminates in the
19 completion of that crime.

20 A criminal intent is also a necessary element which
21 must be established beyond a reasonable doubt, for there
22 must be a common design or intent to commit a crime, and
23 the crime must be completed with the defendant committing
24 the crime or aiding, abetting, assisting and participating
25 in the commission of a crime by another.

Jury charge

1 An intent means the state of a person's mind which
2 directs his actions towards a specific object or goal. A
3 criminal intent is a state of mind that operates jointly
4 with an act in the commission of a crime.

5 Criminal intent is a mental state of conscious
6 wrongdoing in contrast to the commission of some act which
7 is the result of accident, inadvertence or mistake. An
8 intent may be proven by acts, declarations and conduct of
9 the defendant, as well as any other circumstances which are
10 established by the evidence in the case from which you
11 might naturally and reasonably infer any such intent.

12 Now, I will instruct you on the law as it relates to
13 the two offenses where the defendant is alleged to have
14 been in possession of a controlled substance or possessing
15 a drug unlawfully.

16 Section 44-53-375 of the Code of Laws provides that it
17 should be unlawful to possess cocaine base, which is
18 sometimes referred to as crack cocaine.

19 Section 44-53-370 of the Code of Law provides that it
20 shall be unlawful to possess a Schedule II controlled
21 substance unless the substance was obtained pursuant to a
22 valid prescription which was authorized and dispensed by a
23 person authorized under the law to dispense such substances
24 in the course of their professional practice.

25 You are also instructed that oxycodone is classified

Jury charge

1 as a Schedule II controlled substance under the law of this
2 state.

3 Before a person may be deemed to be in possession of a
4 substance it must be proven beyond a reasonable doubt that
5 that person did knowingly or intentionally have in his
6 actual or constructive possession the substance which is
7 alleged to have been possessed. In this case the
8 substances are crack cocaine and oxycodone.

9 Knowingly is defined as having knowledge of the fact.
10 It's an act which is done wilfully, purposefully and
11 consciously.

12 Intentionally is defined as purposefully, that is by
13 aim or design and not by accident or inadvertence.

14 It may be further defined as the state of a person's
15 mind which directs his actions toward that specific object
16 or goal.

17 Actual possession of a substance occurs when the
18 substance is shown to have been in the actual physical
19 custody or control of the person charged with possession
20 and with knowledge of its presence.

21 Constructive possession of a substance, on the other
22 hand, occurs when a person although not in actual physical
23 custody of the substance exercises dominion and control
24 over the substance or has the right to exercise dominion
25 and control over that substance.

Jury charge

1 A person has possession of a substance within the
2 meaning of the law when he has both the ability and the
3 intent to control the disposition or use of that substance.

4 The act of possession, as well as the element of
5 knowledge, may be proven by either direct evidence or by
6 circumstantial evidence or a combination of both of those
7 two types of evidence. And possession of a substance may
8 be jointly shared by two or more persons.

9 You are permitted to infer the act of possession, as
10 well as the element of knowledge, from evidence of acts,
11 declarations or conduct of the person charged with
12 possession, as well as any other circumstances which have
13 been established by the evidence in the case from which you
14 might reasonably infer such knowledge and possession.

15 You are however instructed that the proof of mere
16 presence of the defendant at or near a location where a
17 quantity of an unlawful substance is found is not
18 sufficient by itself to prove the defendant to be guilty of
19 possessing that substance.

20 A defendant's mere presence where a quantity of a drug
21 is located even with knowledge of its presence is not
22 sufficient standing alone to prove the crime of possessing
23 that substance.

24 If after your review of the evidence in this case you
25 determine that the state has only proven that the defendant

Jury charge

1 was merely present at or near a place where a quantity of
2 crack cocaine or oxycodone was located but they failed to
3 prove that the defendant did have it in his actual or
4 constructive possession, then you must find the defendant
5 not guilty of that particular charge.

6 And, on the other hand, if after you review all of the
7 evidence in the case you determine that the state has
8 proven beyond a reasonable doubt that the defendant did
9 knowingly have in his actual or his constructive possession
10 the substance alleged to have been possessed by him, then
11 your verdict would be guilty as to that particular charge.

12 You are further instructed, and I emphasize to you,
13 that the fact that a defendant does not testify during the
14 course of a criminal trial is not a circumstance that may
15 be considered by you in any way whatsoever during your
16 deliberations or in your determination as to whether or not
17 his guilt has been proven beyond a reasonable doubt.

18 You may not permit such a fact to weigh in the
19 slightest degree against a defendant. As I've told you,
20 the burden is on the state to prove his guilt beyond a
21 reasonable doubt.

22 The burden is not upon a defendant to prove that he is
23 not guilty or to prove that he is innocent of any charge
24 the state claims that he has committed.

25 And therefore you are not to reach any conclusion nor

Jury charge

1 are you to draw any inference from the fact that a
2 defendant does not testify during the course of the trial,
3 nor may you even discuss that fact during your
4 deliberations, nor may you allow that to enter in any way
5 in your determination as to whether or not his guilt has
6 been proven beyond a reasonable doubt.

7 As I have stated, I'm not concerned with what your
8 decisions are. But as I have told you, the verdicts must
9 be unanimous. All 12 of you must be in agreement.

10 Mr. Foreman, as you know, you're going to be called
11 upon to preside over the jury deliberations simply to
12 ensure that they are carried out in some orderly fashion.
13 But all jurors are expected to participate because the
14 verdict is the unanimous consensus opinion of all.

15 You have four separate indictments. You have one for
16 burglary; you have one for larceny; you have one for
17 possession of crack cocaine; you have one for possession of
18 oxycodone.

19 On the back of each of those indictments in the lower
20 left-hand corner you'll see the word verdict. It's beneath
21 that word, Mr. Foreman, that you're going to indicate the
22 jury's decision as it relates to that particular charge.

23 With respect to each of the separate indictments you
24 have two potential verdict forms. Those potential verdict
25 forms are guilty and not guilty. So whatever that decision

Jury charge

1 is, indicate it in the space provided. Sign your name as
2 the foreperson. You are the only juror that has to sign
3 the verdict form. And also place the appropriate date.

4 During your deliberations there may come a time where
5 you have a question about the evidence in the case, you
6 have a question about the testimony. I am never permitted
7 to respond to questions that relate to issues of fact or
8 evidence.

9 Also, please understand that no additional evidence
10 may be introduced now that you're going back to begin with
11 your deliberations.

12 Sometimes jurors go back to deliberate and they think
13 there's something else that might help them resolve the
14 matter, and so they ask if it exists, and if it does can
15 they have it.

16 Please understand that it doesn't matter whether it
17 exists or not. You cannot have it because the evidence is
18 closed. The case is now going to be submitted to you for
19 your determination.

20 So no additional evidence may be received whether it
21 exists or not. So don't ask about the reception of
22 additional evidence.

23 If you have a question about witness testimony and you
24 think that that question can be answered by having a
25 witness' testimony reheard, then you are permitted to have

Jury charge

1 a replay of testimony.

2 I do not have transcripts of the witnesses' testimony.
3 But if you want to hear a witness' testimony replayed in
4 some part or in whole, let me know. We'll bring you back
5 into the courtroom to accomplish that purpose.

6 If at any time you ever have a question about the law
7 that is applicable, I am permitted to answer those
8 questions. So if you need a reinstruction, if you need an
9 additional instruction, you need a clarification or some
10 explanation of the law that you are to apply, I am
11 permitted to answer those questions that relate to
12 questions as to the law.

13 So, Mr. Foreman, if at any time you need to address
14 some matter to me or you have an issue that you'd like some
15 help with, then I can help you resolve, or you need further
16 guidance as to the law, if you'll write that matter or that
17 issue or that question on a piece of paper, give it to the
18 bailiff, he'll provide it to me and I'll respond
19 accordingly.

20 I don't know if we have any smokers on the jury. If
21 we do, you can smoke during deliberations, but you cannot
22 smoke in the jury room. You'll have to be taken outside
23 for that purpose. So if anybody wants to smoke let the
24 bailiff know. He will take you outside for the purpose of
25 accomplishing that.

Jury charge

1 But please understand that if any juror is absent from
2 the jury room for some authorized purpose the deliberations
3 have to stop. They may only resume when all 12 jurors are
4 present so that all may participate.

5 If you get to a point in your deliberations -- you
6 never know how long deliberations are going to take. That
7 obviously depends upon the jury's discussions and how
8 quickly you come to a resolution or an agreement.

9 But if you get to a point during your deliberations
10 that you believe it's appropriate to order lunch, you can
11 also let the bailiff know that you'd like to order lunch.
12 And the clerk will come in there to take your lunch orders.

13 It usually takes about an hour, maybe a little over an
14 hour, to have the lunches ordered, prepared and brought to
15 the jury room for your benefit. So keep that in mind as
16 you go back and you make your determination as to whether
17 or not you think it appropriate to order lunch. I'll just
18 wait to hear from you as to that point.

19 Mr. Foreman, after you and your fellow jurors have
20 reached a unanimous decision you're going to knock on the
21 jury room door. Tell the bailiff you have reached your
22 decisions, and we'll bring you back into the courtroom to
23 receive those verdicts.

24 You will hold onto the verdict forms. Do not give
25 those to the bailiff. I'll receive those from you after

Jury charge

1 you have returned to the courtroom and been seated in the
2 jury box.

3 I think that covers everything, but if it doesn't I'm
4 sure one of these lawyers will remind me that I have
5 neglected to provide you with something that I should have.

6 So I'm going to ask you right now with the exception
7 of Ms. Irby who I'll ask to remain with me in the courtroom
8 -- I'm going to ask the 12 primary jurors to please retire
9 to your jury room. But do not begin deliberations until I
10 send you word to do so.

11 I'll discuss some matters with the lawyers. If I
12 don't need to bring you back I'll send word by way of the
13 bailiff. And in that event he'll bring to the jury room
14 all of the exhibits which have been introduced.

15 And to you, Mr. Foreman, he'll also bring the
16 indictments which will serve as the verdict form.

17 So please retire to your jury room, but do not begin
18 deliberations until I send you word to do so.

19 (Whereupon, the jury retired to deliberate at
20 12:12 p.m.)

21 (Whereupon, the alternate juror was excused.)

22 THE COURT: Are there any exceptions taken to the
23 instruction or requests for additions to the instruction by
24 the state?

25 MS. JORDAN: Your Honor, the only thing -- and I don't

Jury charge

1 think it really has an impact in the factual situation
2 here -- is that the petit larceny is up to two thousand
3 instead of up to a thousand. But there's no question as to
4 monetary value here.

5 And the other thing is as to that indictment. It does
6 contain the third or subsequent language.

7 THE COURT: Yes. I did err with the value, but I
8 don't think it does make any difference here, does it?

9 MS. HALL: No, Your Honor.

10 THE COURT: I mean --

11 MS. HALL: You described both the petty and the grand.

12 THE COURT: They're only going to be able to consider
13 the petit larceny. So, I mean, if they find him guilty of
14 larceny we all are in agreement it is petit larceny.

15 MS. JORDAN: Yes, sir.

16 MS. HALL: Yes, Your Honor.

17 THE COURT: Yes. And as far as the -- as far as that
18 indictment goes, do you have a redacted version?

19 MS. JORDAN: I do not yet. If I can get some whiteout
20 I can redact one and make a copy real fast.

21 THE COURT: Okay.

22 MS. JORDAN: Your Honor, may we approach?

23 (Bench conference held off the record.)

24 THE COURT: All right. The indictment has been
25 appropriately redacted?

verdict

1 MS. JORDAN: Yes, sir, Your Honor.

2 MS. HALL: Yes, sir.

3 THE COURT: And all the exhibits are accounted for?

4 MS. JORDAN: Yes, sir.

5 MS. HALL: Yes, sir. My only objection was the
6 noninclusion of burglary second.

7 THE COURT: Okay. All right. Send the exhibits back,
8 and the verdict forms. Tell the jury to begin their
9 deliberations and notify us when they have concluded.

10 We will be at ease while the jury is deliberating.

11 (Whereupon, a recess was taken.)

12 (Question from the jury marked Court's Exhibit No. 1.)

13 THE COURT: All right. I'm told the jury has reached
14 a decision in Mr. Mahaffey's case. Are we ready to receive
15 it?

16 MS. JORDAN: Yes, sir.

17 MS. HALL: Yes, sir, Your Honor.

18 THE COURT: Okay. Bring them in, please.

19 (Whereupon, the jury returned to the courtroom at
20 3:20 p.m. to report its verdict.)

21 THE COURT: Mr. Foreman, have you and your fellow
22 jurors reached a unanimous decision on each of the separate
23 indictments?

24 THE FOREMAN: Yes, sir, we have.

25 THE COURT: And have you indicated those decisions on

verdict

1 the back of the indictments as requested?

2 THE FOREMAN: Yes, I have.

3 THE COURT: Have you signed your name as the
4 foreperson and dated each?

5 THE FOREMAN: Yes, I have.

6 THE COURT: If you would, please hand those up by way
7 of the bailiff.

8 You may publish the verdicts.

9 THE CLERK: In the General Sessions Court, Case No.
10 2012-GS-42-730, State of South Carolina vs. Christopher
11 Paul Mahaffey, indictment for burglary first degree, the
12 verdict is guilty. This is signed and dated by the
13 foreperson.

14 Case No. 2012-GS-42-731, indictment for petit larceny,
15 the verdict is guilty. This is also signed and dated by
16 the foreperson.

17 Case No. 2012-GS-42-2836, indictment for possession of
18 cocaine base, the verdict is guilty. Signed by the
19 foreperson and dated today's date.

20 Case No. 2012-GS-42-2837, indictment for possession of
21 oxycodone, the verdict is guilty. Signed by the foreperson
22 and dated today's date.

23 Ladies and gentlemen of the ver -- of the guilt -- of
24 jury, if these are your verdicts and still your verdicts,
25 please raise your right hand.

Verdict

1 (Whereupon, all jurors responded in the affirmative.)

2 THE CLERK: So say you all.

3 THE COURT: Does the defendant wish to have the jury
4 polled?

5 MS. HALL: Yes, Your Honor. We request the jury
6 polling.

7 THE COURT: All right. Poll the jury please, ma'am.

8 THE CLERK: Ladies and gentlemen of the jury, I will
9 pose a question to you, after which I'll ask you to stand
10 individually and answer the question, the question being is
11 this your verdict and still your verdict.

12 Ms. Hunter.

13 THE COURT: The question is is this your verdict. And
14 if it is still your verdict, indicate so.

15 THE JUROR: Yes.

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

17 THE CLERK: Thank you.

18 Mr. Branzuela.

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Mr. Dyches.

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Ms. Smith.

23 THE JUROR: Yes.

24 THE CLERK: Ms. Snoddy.

25 THE JUROR: Yes.

Sentence

1 THE CLERK: Mr. Boutellier.
2 THE JUROR: Yes.
3 THE CLERK: Ms. Jones.
4 THE JUROR: Yes, ma'am.
5 THE COURT: Mr. Gilliam.
6 THE JUROR: Yes.
7 THE CLERK: Mr. Riddle.
8 THE JUROR: Yes.
9 THE CLERK: Ms. Wilson.
10 THE JUROR: Yes.
11 THE CLERK: Mr. Scofield.
12 THE JUROR: Yes.
13 THE COURT: Ms. Boyd.
14 THE JUROR: Yes.
15 THE CLERK: Your Honor, the jury has been polled.
16 THE COURT: All right. All have responded in the
17 affirmative.
18 Any other matters we need to address with the jury
19 present?
20 MS. HALL: No, not at this time.
21 (Whereupon, the trial jury was excused.)
22 THE COURT: All right. Any other matters we need to
23 address prior the imposition of sentence?
24 MS. HALL: Your Honor, the defense needs to make a
25 motion at this time for a new trial based on the grounds

Sentence

1 that I gave the Court earlier in my motion for a directed
2 verdict, and also for the Court's refusal to issue a charge
3 on the lesser included burglary second.

4 THE COURT: Okay. That motion is denied.

5 Do y'all have sentencing sheets?

6 MS. JORDAN: Yes, sir, Your Honor. I've passed them.

7 (Pause.)

8 THE COURT: All right. Anything further from the
9 state?

10 MS. JORDAN: Yes, Your Honor.

11 As to the defendant's prior record, he has a 1998
12 driving under suspension; a 2005 open container; a 2008
13 driving under suspension; 2008, public disorderly conduct;
14 2009, criminal domestic violence; 2009, shoplifting; and in
15 2009 he also has a use of a vehicle without owner's consent
16 and a petit larceny.

17 He has a 2011 driving under suspension third; and in
18 2012 he was -- he pled guilty to habitual traffic offender
19 three days prior to committing this offense.

20 I do not know if Mr. Sustare would like to be heard at
21 this time if I may have a moment.

22 THE COURT: All right.

23 MS. JORDAN: Your Honor, if Mr. Sustare could be heard
24 briefly.

25 THE COURT: Sure.

Sentence

1 THE VICTIM: Your Honor, considering all of the
2 evidence and the facts in this case I feel that this
3 defendant is a dangerous person, and I am hopeful that he
4 is sentenced to the fullest extent of the law.

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

6 MS. JORDAN: Thank you, Your Honor. Nothing further
7 from the state.

8 THE COURT: Ms. Hall.

9 MS. HALL: Thank you, Your Honor.

10 First, Mr. Mahaffey is 39 years old. He is from
11 Woodruff, South Carolina, and graduated Woodruff High
12 School.

13 He's been doing construction and labor work his entire
14 life. And as you heard during the trial, he had been
15 working for the pallet recycling company before he was
16 arrested.

17 He's been in custody since January the 14th of this
18 year.

19 I'd like to point out present in the courtroom with
20 him is his father, Paul Mahaffey.

21 His mother Diane is not here because of her health.

22 Also his brother, John, his oldest son, Austin, who is
23 18 is here, and his youngest son, Chase, who is 12 are all
24 present in the courtroom showing their support for Chris.

25 I represented him since April of this year. We've had

Sentence

1 a number of occasions to speak and meet. And I know the
2 facts of this incident didn't look good, but I don't
3 believe, sincerely do not believe, that Chris is an evil
4 person, Your Honor.

5 The solicitor read his record. This is by far the
6 most serious offense that this man has ever faced and been
7 convicted of. A majority of the others were magistrate
8 level misdemeanor charges.

9 We are asking the Court to show as much mercy as you
10 can on my client and run your sentences to these charges,
11 convictions, all concurrent.

12 We know he is facing some substantial time in the
13 Department of Corrections. And, as I stated, he's already
14 39 years old.

15 Can I have one moment, please?

16 (Pause.)

17 MS. HALL: My client would like to address the
18 Court --

19 THE COURT: All right.

20 MS. HALL: -- if given that opportunity.

21 THE COURT: Sure. Mr. Mahaffey.

22 THE DEFENDANT: Your Honor, upon your sentencing me
23 today I hope you have mercy on me and you look at my family
24 and have mercy for me for them where I can get, try to get,
25 back out there to them and be there for them.

Sentence

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

2 Anything further from anyone?

3 MS. HALL: No, sir, not at this time.

4 THE COURT: Ms. Hall, let me ask you.

5 You're in agreement with the state that the sentence
6 on the larceny is properly enhanced pursuant to 16-1-57
7 based upon his prior shoplifting and the prior larceny
8 convictions?

9 MS. HALL: My review of the record I was provided,
10 yes, Your Honor, it does show at least two prior, the
11 shoplifting and petit larceny.

12 THE COURT: Okay. All right. On Indictment 2012-730,
13 an indictment for burglary, wherein you have been found
14 guilty by the jury of that offense, burglary in the first
15 degree, Sentence of the Court is you, Christopher Paul
16 Mahaffey, be confined to the South Carolina Department of
17 Corrections for a period of 25 years.

18 Indictment 2012-731, larceny, ten years.

19 Indictment 2012-837 -- excuse me -- 2837, possession
20 of oxycodone, two years.

21 Indictment 2012-2836, possession of crack cocaine, two
22 years.

23 Now, Mr. Mahaffey, you have a right to appeal the
24 verdict of the jury and the Sentence of the Court. You
25 must file any notice of your intention to appeal those

Sentence

1 decisions within ten days of today's date.

2 END OF REQUESTED TRANSCRIPT OF RECORD

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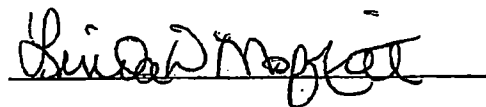
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 27th and 28th days of August 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 15, 2012



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG)

2015-CP-42-4267Christopher Paul Mahaffey.
#00338083)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Center, 430 Oakland Road Pelzer, SC 29669.
2. Name and location of Court which imposed sentence Court of General Sessions
County of Spartanburg.
3. Name(s) of co-defendant(s) (if any) Not Applicable
4. The indictment number or numbers (if known) upon which and the offenses for which

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sentence was imposed:

- (a) 2012-GS-42-730 1st Degree Burglary
- (b) 2012-GS-42-731 Petit Larceny
- (c) 2012-GS-42-2837 Possession of Oxycodone
- (d) 2012-GS-42-2836 Possession of Cocaine Base

5. The date upon which sentence was imposed and the terms of the sentence: August 28, 2012.

- (a) 2012-GS-42-730 1st Degree Burglary (25 years)
- (b) 2012-GS-42-731 Petit Larceny (10 years)
- (c) 2012-GS-42-2837 Possession of Oxycodone (2 years)
- (d) 2012-GS-42-2836 Possession of Crack Cocaine (2 years)

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed: South Carolina Court of Appeals
- (b) the result in each such Court to which you appealed: Affirmed
- (c) the date of each such result: December 10, 2014
- (d) if known, citations of any written opinion or orders entered pursuant to such results: It is unpublished Opinion Number 2014-UP-449

9. If you answered "no" to (7), state your reasons for not so appealing: N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) The PCR Applicant alleges Trial Counsel Failed to render reasonably effective assistance under prevailing professional norms.

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 M. HOPKINS
 BLACKLEY

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- (b) Ineffective Assistance of Counsel.
 - (c) The PCR Applicant alleges there is a reasonable probability, but for Counsel's unprofessional errors, the result of the Applicant's Trial would have been different.
 - (d) The PCR Applicant alleges that Trial Counsel's errors are so serious, that trial Counsel was not functioning as the Trial Counsel's guaranteed, the Defendant/Applicant by the Sixth Amendment.
 - (e) The PCR Applicant alleges there is a reasonable probability that, absent trial counsel's error, the Jury would have had a reasonable doubt as to Applicant's guilt.
 - (f) The PCR Applicant alleges that Trial Counsel's deficiencies set forth with specificity in the attached Application for Post Conviction Relief.
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Please see the attached Application for Post Conviction Relief.
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
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - (c) the disposition thereof:
 - i. N/A
 - (d) the date of each such disposition:
 - i. N/A
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

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- i. N/A
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
- (b) the proceedings in which each ground was raised:
- i. N/A
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) This PCR Application is being used to present the ineffective and unqualified assistance of Trial Counsel.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? No plea was ever offered. I was represented by Meghan Terry Davis at the Preliminary Hearing.
- (b) your trial, if any? Yes, Claire Hall, the Public Defender.
- (c) your sentencing? Yes, Claire Hall, the Public Defender.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, David Alexander.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None.
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. Meghan Terry n/k/a Meghan Terry Davis and she is with the Firm of Hogen, Boom & Talbert, LLP, 1225 Michigan Avenue, Suite 1220, Chicago, IL 60603
- ii. Claire Hall, Public Defender and she is now with the Firm of Houser, Newman & Beasley, LLC, 215 East Bay Street, Suite 303, Charleston, SC 29401.
- (b) the proceedings at which each such attorney represented you:
- i. Preliminary Hearing: Meghan Terry, n/k/a Meghan Terry Davis

ii. **Trial and Sentencing: Claire Hall.**

19. State clearly the relief you seek in filing this application:

A new Trial and/or for the sentence to be set aside and/or for the sentence to be reduced.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

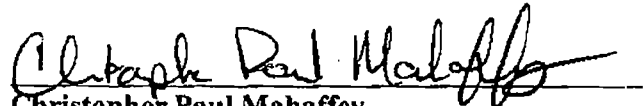
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VERIFICATION

COUNTY OF SPARTANBURG)

)

I, **Christopher Paul Mahaffey**, 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.


Christopher Paul Mahaffey

SWORN to and subscribed before me this 2nd
day of September, 2015.

October 2015 Tamara Conwell
Notary Public

My Commission Expires: September 23, 2018

SPARTANBURG COUNTY
2015 OCT 15 PM 2:46
M. HOPE BLACKLEY

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, **Christopher Paul Mahaffey**, 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.


Christopher Paul Mahaffey

SWORN or affirmed to and subscribed before me this

2nd day of ~~September~~, 2015. October

October Tammara Canwell
Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

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 M. HOPE BLACKLEY
 REVISIONS

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
CASE NO.: 2015-CP-42-_____

Christopher Paul Mahaffey.

Inmate Number: 00338083.

Applicant.

vs.

State of South Carolina,

APPLICATION FOR POST-CONVICTION RELIEF

The Applicant alleges that he had ineffective assistance of counsel and the trial representation was so deficient the it deprived Mr. Mahaffey of a fair trial as follows:

1. Mr. Mahaffey was represented at trial by Claire Hall, a Public Defender in Spartanburg County, South Carolina.
2. Mr. Mahaffey realized he had a problem with Ms. Hall when his attorney turned to the client for help in drawing the jury. Mr. Mahaffey informed his trial attorney that he had never picked a jury and did not know how to do so. Mr. Mahaffey's attorney then informed him that it was also the first jury that she had ever drawn. Ms. Hall is now in private practice in Charleston, South Carolina.
3. Ms. Hall's inexperience led to Mr. Mahaffey's ridiculously long sentence of twenty-five (25) years. An experienced counsel would have gotten a lesser sentence and/or pushed for a plea, which never occurred. No plea negotiations ever occurred.
4. Also, Ms. Hall failed to properly investigate the case and interview witnesses and allowed for a trial to occur within seven (7) months of Mr. Mahaffey's arrest. Also, prior to Ms. Hall being involved in the case, Mr. Mahaffey was represented by Meghan N. Terry, who then quit the case to move because she was getting married. Mr. Mahaffey was very pleased with the representation of Ms. Terry, but she was no longer handling his case and it was passed to Ms. Hall.
5. Throughout the time the case was pending, Mr. Mahaffey was incarcerated at the Spartanburg County Detention Center. Ms. Hall only met with Mr. Mahaffey on two occasions before the trial for short periods of time.
6. Throughout the trial, Ms. Hall's ineffectiveness was quite apparent as this was her first case. Also, the week before trial, instead of preparing for the trial and/or meeting with Mr. Mahaffey and his witnesses, Ms. Hall took off a week, which is

2015 OCT 15 PM 2:46
DOPE BLACKKEY

quite unfathomable that she would take off the week before her first trial for a vacation. Ms. Hall was not prepared for the trial, did not interview witnesses and did not meet with Mr. Mahaffey.

7. Mr. Mahaffey alleges that Ms. Hall did not review the jury pool list and did not properly pick the jury, since she did not know how to do so and turned to the client for help in picking the jury. This case was not ready for trial and Ms. Hall should have made a Motion for a Continuance.
8. The next major issue showing Ms. Hall's deficient representation was the fact that Ms. Hall failed and/or refused to instruct the Court and/or object to the Court when the Court failed to instruct the jury in regard to the lesser offense of second degree burglary. A deadly weapons list was contained in South Carolina Code Section 16-11-330 (Supp. 2000) and mentions, "a pistol, dirk, sling shot, metal knuckles, razor or other deadly weapon....usually used for the infliction of personal injury" Obviously, pocket knives are not listed and realistically, are carried by millions of males in this country. None would consider that a small pocket knife would be for the 'infliction of personal injury.' In Clyde Timothy Bunkley vs. Florida, 123 S.Ct. 2020, 155 L.Ed 2d 1046, the Court stated that any pocket knife with a blade of four inches or less is a common pocket knife. If this issue had been properly before a jury, a competent jury could not have found the pocket knife to have been a deadly weapon. Most males in South Carolina carry a pocket knife.
9. Mr. Mahaffey was carrying a pocket knife and it should not have been considered a deadly weapon. Mr. Mahaffey used the small pocket knife at work and it was a family tradition, as it is with numerous southern men, to carry a pocket knife for utility purposes. The knife was not used in the commission of the crime.
10. Ms. Hall also failed to file a Motion to Suppress in regard to the pocket knife, since it is not a deadly weapon and was not used in the commission of any crime. This issue should have been handled prior to trial. No Motion, on any issue, including the pocket knife issue, was resolved prior to trial. Not only was this argument not made before the trial, no argument was made to the Trial Judge to define a deadly weapon. Ms. Hall did not request a charge be given to the jury in regard to what constituted a deadly weapon and whether a small pocket knife was included therein.
11. This is a vital argument for the ineffective assistance of counsel as this deprived Mr. Mahaffey of the right to have had the lesser included offense of second degree burglary to be considered by the jury. In State vs. Funchess, 267 S.C. 427, 430, 229 S.E. 2d 331, 332 (1976.) in defining the difference between first and second degree burglary, a deadly weapon must be available for "committing a crime."

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 H. HARRIS
 S. J. ARMENTRY

Mr. Mahaffey alleges that Ms. Hall assured him that the pocket knife would not be considered a deadly weapon, however this issue was never resolved and/or even addressed prior to trial, during the trial and/or during instructions to the jury.

11. Mr. Mahaffey received a twenty-five (25) year sentence due to this egregious error. Even when the Prosecutor, Jennifer Jordan, laid out the elements to the jury of a deadly weapon being used by Mr. Mahaffey in this crime, Ms. Hall never objected.
12. Mr. Mahaffey did not go to Andrew Sustare's house to commit a crime. Mr. Mahaffey went to the home of the alleged victim with Ronald Keiser, Mr. Mahaffey's girlfriend's son. Mr. Mahaffey and Mr. Keiser's Mother had a tenuous relationship and Mr. Mahaffey had ended the relationship. Mr. Keiser asked Mr. Mahaffey to take him to the State's main witness's house, who was Andrew Sustare. As soon as Mr. Mahaffey got to the house, Mr. Keiser separated from Mr. Mahaffey and then Mr. Keiser disappeared. Ms. Hall failed to adequately investigate the case or to even try to find Mr. Keiser. Mr. Mahaffey and his Father, Edward Mahaffey, requested that Ms. Hall try to find Ronald Keiser and/or present evidence at trial to show that Keiser was the one that committed the crime, if any was committed. Mr. Keiser is in prison now and has similar burglary charges pending, yet the State, Ms. Hall, nor the investigators ever looked into Mr. Keiser as the perpetrator of this alleged crime.
13. Next, the State never showed that Mr. Mahaffey entered the home of Andrew Sustare, though they argued same. Ms. Hall failed to object in regard to this issue. The Prosecutor falsely stated Mr. Mahaffey had entered the home armed with a deadly weapon. No objection was made on either part of the statement. There was never any evidence that Mr. Mahaffey entered the home. No one found Mr. Mahaffey in the home and no fingerprints were ever recovered from the home, which showed Mr. Mahaffey had been in the home. Mr. Mahaffey's fingerprints were not any of the items that Mr. Sustare alleged that Mr. Mahaffey had taken from the home, yet Ms. Hall did not address these issues with the Trial Court.
15. Ms. Hall failed to attack the credibility of Mr. Sustare who was grossly inconsistent in his testimony. Mr. Sustare was on a tractor at the back of his property, yet he wrongly testified that he had direct knowledge of what allegedly went on. Ms. Hall failed to make any objections in regard to his testimony. Mr. Sustare claimed the money found on Mr. Mahaffey was his money, when obviously, there was \$187.00, the exact amount left from his check where he was paid the day before. Once again, Ms. Claire Hall was totally defective in her representation of Mr. Mahaffey by not bringing such issue to the Court. If Ms. Claire Hall had gotten ready and prepared properly for the trial, Mr. Mahaffey would not be in prison for twenty-five (25) years. Ms. Claire Hall took a week off

2015 OCT 15 PM 2:46
MAHAFFEY

for vacation and/or personal reasons and if she had taken that time to prepare for Mr. Mahaffey's trial the outcome would be totally different. Mr. Sustare claimed that \$200.00 was stolen by Mr. Mahaffey and when he was searched he only had \$187.00 which is what Mr. Mahaffey had left from his pay check. Ms. Claire Hall did not cross examine most witnesses and did not question Mr. Sustare as to the money issue. Furthermore, Sustare claimed the \$187.00 was part of the \$200.00 stolen, yet the difference was never found on Mr. Mahaffey and Mr. Sustare was not impeached by Ms. Hall on his inconsistent statement.

16. There are several other issues as to Assistant Solicitor, Jennifer Jordan, misleading the jury, but once again, Ms. Claire Hall was ineffective by not objecting every time Ms. Jordan made false or misleading statements. When attorneys are ineffective in a trial by not objecting, it is a lot more serious when it costs a person twenty-five (25) years of their life. Mr. Mahaffey is suffering the consequences due to Ms. Claire Hall's inexperience and this being the first case she had ever tried.
17. Once again, Ms. Hall did not question that Mr. Mahaffey stated that he never went into the house. Section 16-11-311 of the South Carolina Code states that a person is guilty of burglary in the first degree, "if a person enters a dwelling without consent and with the intent to commit a crime." There was no proof that he entered the dwelling nor that he intended to enter to commit a crime since he only had a "common pocket knife." When Mr. Mahaffey was arrested outside the house, he is not guilty of Burglary First Degree. Ms. Hall should have raised all of these issues before the trial, at the trial and in post-trial motions. None of this happened.
18. We allege that under the two-pronged test from Strickland vs. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).
 - (1) Trial counsel "failed to perform reasonable assistance under prevailing professional norms." Porter vs. State 368 S.C. 378, 629 S.E. 2d 353, 356 (2006).
 - (2) There is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Suber vs. State 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007).
19. We allege that in trial of this P.C. R., we can prove that Ms. Hall's performance was deficient, "meaning that counsel made errors and trial counsel's performance was deficient." We further allege that "counsel made errors so serious that the counsel was not functioning properly as the counsel, which is guaranteed to the Defendant by the Sixth Amendment." Edwards vs. State, 392 S.C. 249, 66, 710

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 M. BOETTCHER
 CLERK

S.E. 2d 60, 64 (2011). We allege clearly that we can show that there is a "reasonable probability" that Mr. Mahaffey could not have been found guilty of burglary. As stated above, Mr. Mahaffey should never have been charged with burglary 1st. since Mr. Mahaffey never entered the house, he did not intend to commit a crime and he did not commit the crime. The same would apply to the larceny charge because Mr. Mahaffey did not have a weapon on him. We shall present at trial all the evidence that would bring out these deficiencies and that in effect, Mr. Mahaffey had no representation.

20. Other deficiencies in the trial of Chris Mahaffey are as follows:

- (1) Ms. Hall did not try to work out a guilty plea;
- (2) Prior counsel Meghan Terry filed her Notice of Representation of Mr. Mahaffey on March 16, 2012;
- (3) Ms. Terry continued to represent Mr. Mahaffey until and through the Preliminary Hearing;
- (4) Obviously, Ms. Hall was put into the case after the Preliminary Hearing but never filed a Notice of Representation;
- (5) Ms. Hall filed no Pre-Trial Motions;
- (6) No discussion of the case occurred by Ms. Hall with Mr. Mahaffey, except in a "couple of visits at the Detention Center." Yet, even the issues Mr. Mahaffey asked Ms. Hall to address were ignored.;
- (7) No Motion to suppress the alleged weapon was made prior to trial;
- (8) The issue of whether common pocket knives were deadly weapons was never brought before any Judge prior to trial by a Motion;
- (9) No Motion to Dismiss the Burglary 1st Charge was filed Pre-Trial;
- (10) A Motion to Dismiss would contain the issue as to whether the pocket knives were a deadly weapon and/or whether Burglary 1st was a proper charge since Mr. Mahaffey alleges he did not enter the house and therefore, once again, the burglary charge should have been motioned to be dismissed;
- (11) Mr. Mahaffey's first attorney Ms. Meghan Terry and Mr. Mahaffey's second attorney Ms. Hall should have attempted to locate Mr. Keiser who

2015 OCT 15 PM 2:46
 STATE OF ARIZONA
 SUPERIOR COURT
 CRIMINAL DIVISION
 PHOENIX
 THE PEOPLE BY
 JUDGE

was the person who actually entered into the house. Mr. Keiser is actually now in prison for a similar burglary charge;

- (12) Ms. Hall did not attempt to locate Mr. Keiser and/or his Mother who set this crime up allegedly to get even with Mr. Mahaffey;
- (13) The Burglary First charge was an improper charge since it did not occur at night. The actual alleged break-in was in the morning;
- (14) Furthermore, Mr. Mahaffey did not enter the house nor break into the house;
- (15) Mr. Mahaffey was not armed with a deadly weapon;
- (16) Mr. Mahaffey did not cause physical injury to any person and Mr. Mahaffey was not a participant in the crime;
- (17) Mr. Mahaffey did not threaten the use of a dangerous instrument;
- (18) Mr. Mahaffey did not display what appeared to be a knife or firearm;
- (19) Mr. Mahaffey did not have a prior record of conviction for two or more for burglary or house breaking or combination or both;
- (20) Mr. Mahaffey did not remain in or exit the house during the night time and there were no aggravating circumstances;
- (21) That there were no Motions to suppress any evidence in regard to the firearm and that it did not belong to Mr. Mahaffey;
- (22) No Motion for Directed Verdict was ever made;
- (23) No objection to Jury Charge (lessor included offence should have been included);
- (24) Ms. Hall did not object to any exhibits that were entered into evidence at the trial;
- (25) Ms. Hall did no Pre-trial investigations;
- (26) Ms. Hall did not call witnesses for Mr. Mahaffey;
- (27) Ms. Hall did not keep in contact with Mr. Mahaffey;

STACIA HALL
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M. HOPE BLACKLEY

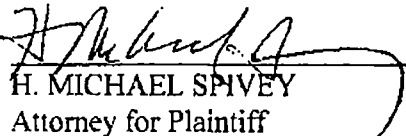
- (28) There was no evidence that Ms. Hall questioned Mr. Sustare in a manner needed;
- (29) Ms. Hall failed to resolve the issue as to the gun.
- (30) Ms. Hall went on vacation the week before Mr. Mahaffey's trial, though she had never tried a case before.

Ms. Hall admitted to me in an interview that Mr. Mahaffey was her first trial. Furthermore, it has been less than six (6) months since my interview with Ms. Hall and she has now changed jobs again and went with another firm in Charleston. Ms. Meghan Terry n/k/a Meghan Davis is now with a firm in Chicago. The Public Defender's Office in Spartanburg County is a short term training position and does not provide adequate representation. Ms. Hall's failed to render reasonably effective assistance under prevailing professional norms and there is a reasonable probability, but for Trial Counsel's unprofessional errors, the result of Mr. Mahaffey's Trial would have been different. Therefore, as a result of the foregoing, Mr. Mahaffey alleges his sentence should be set aside, he should be given a new trial and/or his sentence should be reduced to second degree burglary since the evidence substantiates same.

Greenville, South Carolina

Dated: October 12 2015

The Spivey Law Group, LLC


H. MICHAEL SPIVEY

Attorney for Plaintiff

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hmichaelspivey@bellsouth.net

14. HOPE BLACKLEY

2015 OCT 15 PM 2:47

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Christopher Paul Mahaffey, #338083,	)	Case No.: 2015-CP-42-4267
	)	
Applicant,	)	
	)	RETURN AND PARTIAL MOTION
v.	)	TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief ("PCR") filed October 15, 2015, would respectfully show this Court:

I.

Christopher Paul Mahaffey ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for burglary, first degree (2012-GS-42-0730) and petit larceny (2012-GS-42-0731). Applicant was subsequently indicted at the June 2012 term of the Spartanburg County Grand Jury for possession of cocaine base (2012-GS-42-2836) and possession of oxycodone (2012-GS-42-2837). M. Claire Hall, Esquire, and Clay T. Allen, Esquire, represented Applicant. On August 27, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. On August 28, 2012, the jury convicted Applicant as indicted. Judge Cole sentenced Applicant to imprisonment for concurrent terms of 25 years for burglary, 10 years for petit larceny, three years for the possession of cocaine base, and two years for the possession of oxycodone.

A timely Notice of Appeal was filed on Applicant's behalf, and David Alexander, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's

conviction on December 10, 2014. State v. Mahaffey, Op. No. 2014-UP-449 (S.C. Ct. App. filed December 10, 2014). The remittitur was returned on January 8, 2015.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, trial transcript and appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to negotiate a plea deal;
 - ii. Counsel failed to obtain a shorter sentence;
 - iii. Counsel failed to properly investigate the case and interview witnesses;
 - iv. Counsel allowed the trial to occur within seven months of Applicant's arrest;
 - v. Counsel only met with Applicant twice before trial for short period of time;
 - vi. Counsel failed to prepare for trial;
 - vii. Counsel failed to review the jury pool and properly pick a jury;
 - viii. Counsel failed to make a motion to continue the trial;
 - ix. Counsel failed to ask the court to charge the jury on the lesser offense of second degree burglary;
 - x. Counsel failed to make a Motion to Suppress the pocket knife;
 - xi. Counsel failed to request a charge be given to the jury in regards to what constituted a deadly weapon;
 - xii. Counsel failed to object to the prosecutor's false or misleading statements;
 - xiii. Counsel failed to attack the credibility of witnesses;
 - xiv. Counsel failed to file any pre-trial motions;
 - xv. Counsel failed to file a notice of representation;
 - xvi. Counsel failed to make a motion pre-trial motion to dismiss the burglary charge;
 - xvii. Counsel failed to call witnesses for Applicant;
 - xviii. Counsel failed to make a motion for directed verdict;

- xix. Counsel failed to keep in contact with Applicant.
- 2. The elements of first degree burglary were not met¹

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014).

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's

¹ See page 6, paragraphs 13-21, of the Application.

deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's claims related to whether the elements of first-degree burglary were met are not appropriate for PCR because they are direct appeal issues, and as such, they are procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Not only could Applicant have raised these issues on appeal, but in fact, Applicant did raise the issue of the circuit court's failure to charge the lesser included offense of second degree burglary. Furthermore, the court of appeals affirmed the circuit court's denial of Applicant's request to charge second-degree burglary. State v. Mahaffey, Op. No. 2014-UP-449 (S.C. Ct. App. filed December 10, 2014). Accordingly, Respondent request that these allegations be dismissed pursuant to S.C. Code Ann. § 17-27-20(b), and Rule 12(b)(6), SCRPC, for failure to state a claim for which relief can be granted.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing.

Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRPC. All claims should be made well in advance of the PCR hearing. Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. See Rule 11, SCRPC.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained herein is denied.

VII.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel.

Respectfully submitted,

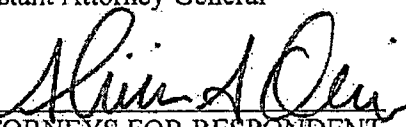
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

April 1, 2016.

By: 
ATTORNEYS FOR RESPONDENT
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
CHRISTOPHER P. MAHAFFEY, #338083,	)	2015-CP-42-4267
	)	
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. H. Michael Spivey, Esquire
The Spivey Law Group, LLC
PO Box 809
Mauldin, SC 29662

DATED this 1st day of April, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

1

INDEXWITNESSESPAGE

CHRISTOPHER PAUL MAHAFFEY

Direct examination by Ms. Spivey 5

Cross-examination by Ms. Giovanoli 31

Redirect examination by Ms. Spivey 40

PAUL EDWARD MAHAFFEY

Direct examination by Ms. Spivey 42

Cross-examination by Ms. Giovanoli 49

MARY CLAIRE HALL

Direct examination by Ms. Giovanoli 51

Cross-examination by Ms. Spivey 70

Redirect examination by Ms. Giovanoli 83

Recross-examination by Ms. Spivey 87

CLAY THOMAS ALLEN

Direct examination by Ms. Giovanoli 89

Cross-examination by Ms. Spivey 95

JENNIFER ANN JUDY JORDAN

Direct examination by Ms. Giovanoli 103

Cross-examination by Ms. Spivey 106

Certificate of reporter 112

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Transcript of 911 call	15	15
A-2	Arrest warrant and investigative report	22	22
A-3	Motor Vehicle Tow and Inventory Report	40	40

1 THE COURT: Okay, we'll call to bar the case of Thomas --
2 no, I'm sorry, Christopher ---

3 MS. GIOVANOLI: Christopher ---

4 THE COURT: --- Paul Mahaffey vs. South Carolina,
5 2015-CP-42-4267. Alright, Ms. Giovanoli, I'd be happy to hear
6 from ya, ma'am.

7 MS. GIOVANOLI: Thank Your Honor. We're before the Court
8 on an application for post-conviction relief that was filed on
9 October 15th 2015. Applicant is presently confined in the
10 South Carolina Department of Corrections pursuant to orders of
11 commitment of the Spartanburg County Clerk of Court.
12 Applicant was indicted at the February 2012 term of the
13 Spartanburg County Grand Jury for burglary first degree,
14 2012-GS-42-0730, and petty petty larceny 2012-GS-42-0731.
15 Applicant was subsequently indicted at the June 2012 term of
16 the Spartanburg County Grand Jury for possession of cocaine
17 base, 2012-GS-42-2836 and possession of Oxycodone,
18 2012-GS-42-2837. M. Claire Hall and Clay T. Allen, esquires
19 represented Applicant and on August 27, 2012 Applicant
20 proceeded to trial before the Honorable J. Derham Cole and a
21 jury. On August 28, 2012 the jury convicted Applicant as
22 indicted. Judge Cole sentenced Applicant to imprisonment for
23 concurrent terms of 25 years per burglary, 10 years for petty
24 larceny, 3 years for possession of cocaine base and 2 years
25 for the possession of Oxycodone. A timely notice of appeal

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 was filed on Applicant's behalf and David Alexander, esquire
2 perfected the appeal. The South Carolina Court of Appeals
3 affirmed Applicant's conviction on December 10th 2014 in *State*
4 *v. Mahaffey* opinion number 2014-UP-449, the remittitur was
5 returned on January 8, 2015. The State is present and ready
6 to proceed, the Applicant is also present and represented by
7 counsel, um, Mrs. Spivey, I apologize, uh, as well as Mi --
8 Mr. Michael Spivey, um, and I'll hand it over to counsel at
9 this point.

10 THE COURT: Alright, Ms. Spivey.

11 MS. SPIVEY: Your Honor, we'd like to call Christopher
12 Mahaffey.

13 THE COURT: Okay. Alright, Mr. Mahaffey, if you'd come
14 up please.

15 (Whereupon, the Applicant came forward.)

16 THE COURT: Place your left hand on the Bible, raise your
17 right. Left hand on the Bible, sir, raise your right.

18 CHRISTOPHER PAUL MAHAFFEY, having
19 been first duly sworn, testified as follows:

20 THE COURT: Alright, you take a seat right there
21 (indicating) then state your full name for the record, please.

22 THE APPLICANT: Uh, my name is Christopher Paul Mahaffey.

23 DIRECT EXAMINATION BY MS. SPIVEY:

24 Q. Mr. Mahaffey, who was represented you first in this case?

25 A. That woulda been, uh, Meghan Terry.

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. And what happened to Ms. Terry?

2 A. Um, she I think got married and moved.

3 Q. Okay, and then subsequent thereto were you appointed a
4 different counsel?

5 A. Uh, yes.

6 Q. And who was that?

7 A. That was Claire Hall.

8 Q. Okay, and how long had Claire Hall been in your case
9 before your case got called to trial?

10 A. Um, it wasn't long, it was, uh, three months, four
11 months.

12 Q. Okay, and did Ms. Hall ever meet with you?

13 A. Uh, she met with me, uh, two times on the, uh, burglary
14 charge and one time on, she was also representin' me on a, uh,
15 probation violation I think, uh, if I'm not mistaken but it
16 was, uh, about two times on the burglary charge.

17 Q. Okay, and about how long combined in those two times did
18 she meet with you?

19 A. Um, it was probly twenty, thirty minutes.

20 Q. Twenty, thirty minutes each time or twenty, thirty
21 minutes total?

22 A. Total.

23 Q. So she met with you thirty minutes total to prepare for
24 your trial.

25 A. Yes, ma'am.

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. Did you ask Ms. Hall to request a bond hearing for you?

2 A. Yes, ma'am.

3 Q. Did she ever do that?

4 A. No, ma'am, I never, I was never took up for a bond.

5 Q. Alright. Were you ever arraigned on the drug charges?

6 A. Um, I don't even know what that means, uh, but I do
7 remember in trial, when I went to trial I did not know I was
8 goin' up for the drug charges, ---

9 Q. And, ---

10 A. --- uh, at that time.

11 Q. --- and, Mr. Mahaffey, didn't the trial judge bring it to
12 your trial counsel's attention that you hadn't been arraigned
13 on those drug charges?

14 A. Yes, he asked sumtin' 'bout bein' arraigned and I still
15 to this day I don't know what that means.

16 Q. Did she ever explain that to you?

17 A. No.

18 Q. Did, and you didn't even know you were up for for a trial
19 on your drug charges.

20 A. No.

21 Q. And she didn't explain to you that you had the right to
22 go before a judge to see what the charges were against you and
23 you could enter a plea of guilty or not guilty?

24 A. No, ma'am, she never did once said anything 'bout the
25 arraignment.

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. And and had you known that you had that right would you
2 have pled guilty to those drug charges?

3 A. Uh, yes, I would have.

4 Q. A and Ms. Hall never explained that arraignment process
5 to you.

6 A. No, ma'am.

7 Q. And did Ms. Hall tell you this was her first case?

8 A. Um, yes, ma'am, when we walked in the courtroom, uh, um,
9 she sit down, uh, beside me and, uh, told me that this was her
10 first trial, um, and was tellin' me to, that I would be
11 helpin' her pick the jury. Um, ---

12 Q. Did you know ---

13 A. --- I ---

14 Q. --- how to pick a jury, Mr. Mahaffey?

15 A. No, actually I looked at their tennis sh -- at their
16 shoes to see, uh, who I was gonna pick and who I wasn't gonna
17 pick.

18 Q. So is it your testimony under oath that, uh, Ms. Hall did
19 not know how to pick a jury at your trial?

20 A. That is correct.

21 Q. Did she look to you and ask for your help in pickin' the
22 jury?

23 A. Uh, yes, she did 'cause I looked at, there was some kinda
24 paperwork that you could look at and see the person, their
25 name, uh, where they worked at, where they were from, I was

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 lookin' at all that information when I was lookin' at the
2 jurors.

3 Q. And did Claire Hall meet with you the Saturday before
4 your trial?

5 A. Yes.

6 Q. And did she tell ya that she been on vacation the week
7 before her first trial?

8 A. Yes.

9 Q. Did that not concern you that she had never tried a case
10 before and she went on vacation the week before your case?

11 A. At that time I did not know she's never had a case in
12 fronta her. Had I known when I found out then in courtroom
13 that this was her first trial if I coulda stood up and asked
14 the judge, say, Your Honor, I would ra -- rather have a
15 different attorney, had I known that I would have stood up and
16 asked 'cause I did not know, uh, that was her first trial
17 until she told me during the trial when we's already sittin'
18 at the table.

19 Q. Now the State's gonna call Clay Allen, had you ever met
20 with Clay Allen?

21 A. No.

22 Q. Did you even know who Clay Allen was?

23 A. No, ma'am.

24 Q. Did you ever have any discussions with Clay Allen about
25 your case?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. No, ma'am.

2 Q. Did he ever meet with any a your witnesses ---

3 A. No, ma'am.

4 Q. --- as far as you know? Did he ever come to the jail and
5 meet with you?

6 A. No, ma'am.

7 Q. Do you know whether he knew anything about your case?

8 A. No, ma'am.

9 Q. Did he assist Claire Hall in any way during that trial?

10 A. Uh, no, ma'am.

11 Q. Was he just present in the courtroom?

12 A. Uh, yes, ma'am, he was present in courtroom and, uh, um,
13 it was, uh, he went up to a, the bench. When the judge called
14 for him to come to the bench, he went to the bench one time
15 and that was it.

16 Q. Did he ever have any conversations with you?

17 A. No.

18 Q. Did the State turn over evidence at the last minute prior
19 to your trial?

20 A. Uh, yes.

21 Q. And did that consist of a hundred and seventy-one phone
22 calls and a 911 call?

23 A. Uh, yes, ma'am.

24 Q. And had -- have -- after you are hired us did we get you
25 a copy of those phone calls and that 911 call?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Yes, ma'am.

2 Q. And are those phone calls over forty hours long?

3 A. Yes, ma'am.

4 Q. And it was quite time consuming for us to listen to those
5 calls, was it, Mr. Mahaffey?

6 A. Yes, ma'am.

7 Q. And, had Ms., had Ms. Hall ever listened to those phone
8 calls prior to your trial?

9 A. When she come to the Spartanburg County Detention Center
10 on a Saturday tellin' me that she had, uh, some CDs with phone
11 calls on it, she attempted to play the phone calls which at
12 that time she could not get it to play so she said she would
13 get back with me on Sunday, she would try to go home and
14 figure out what was goin' on. Uh, Claire Hall never returned
15 on Sunday and prior to trial I never know what them phone
16 calls consisted of, I did not know what them phone calls
17 consisted of until you come to the jailhouse and I got to
18 listen or sent 'em to the jailhouse and I got to listen to
19 'em.

20 Q. Did Ms. Hall ever ask for a continuance so she would have
21 time to review this evidence that was turned over at the last
22 minute?

23 A. No, ma'am.

24 Q. Is there any way possible she coulda listened to all
25 these calls prior to your trial?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. No, ma'am, it took me a long time.

2 Q. And she had just gained possession of these Saturday
3 before your trial on Monday.

4 A. Yes, ma'am.

5 Q. To to your knowledge did Ms. Hall ever meet with any a
6 your witnesses?

7 A. Uh, no, ma'am.

8 Q. Did you tell her who you wanted her to talk to as
9 possible witness in your case?

10 A. Uh, yes, ma'am, I wanted her to talk to my fa -- my whole
11 family 'cause my whole family was there, I had my father,
12 mother, brother, uh, youngins, uh, ant, uncle but, uh, no one
13 was ever, uh, talked to.

14 Q. And, Mr. Mahaffey, when we got Claire Allen's [sic] file,
15 didn't we also have trouble opening those phone calls and that
16 911 call?

17 A. Uh, yes, ma'am, they's a still some phone calls that you
18 cannot understand what the people are sayin'.

19 Q. And did we have to hire computer expert to see if they
20 could open those files?

21 A. Yes, ma'am.

22 Q. And were they able to open those files?

23 A. No, ma'am.

24 Q. And did we have to get those phone calls from Jennifer
25 Jordan the assistant solicitor in your case?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Yes, ma'am.

2 Q. So there's no way Claire Hall coulda listened to those
3 calls.

4 A. No, ma'am.

5 Q. And the reason that we couldn't listen to those calls is
6 'cause there was not an AutoRun program installed on that
7 disk, ---

8 MS. GIOVANOLI: Your Honor, ---

9 Q. --- was there?

10 MS. GIOVANOLI: --- I'm gonna object at this point to
11 this line of question, it's outside the scope of his PCR,
12 there's never been any allegations about well a late coming
13 discovery or any phone calls that were not, um, in possession
14 of ---

15 MS. SPIVEY: Your Honor, ---

16 MS. GIOVANOLI: (Indiscernible cross-talk.)

17 MS. SPIVEY: --- it's in the trial scri -- transcript
18 where it's discussed at the beginning of the trial that she
19 has not listened to the calls and we're saying she was
20 deficient because she did not properly prepare for ---

21 THE COURT: Okay, ---

22 MS. SPIVEY: --- the case or ask for a continuance.

23 THE COURT: --- I think that's a misrepresentation what
24 the transcript says; however, there is an allegation that she
25 didn't adequately apray -- prepare so I'll, uh, I'll allow you

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 to ask the question.

2 MS. SPIVEY: Thank you, Judge. Your Honor, may I
3 approach?

4 THE COURT: Yes, ma'am.

5 (Whereupon, counsel approached the Applicant.)

6 BY MS. SPIVEY:

7 Q. Now, Mr. Mahaffey, I'm gonna show you this, this is the
8 transcript of the 911 call and di -- did part a that 911 call
9 did it have a bearing on your case?

10 A. Yes, ma'am.

11 Q. And how did it have a bearing on your case?

12 A. Uh, because the, uh, State was sayin' that I was armed.

13 Q. Okay, and this was a 9 -- the 911 call from the victim
14 Andrew Sustare, is that correct?

15 A. That's correct.

16 Q. And on page 2 a that trans -- let's see, make sure I got
17 the right -- on page 2 a that transcript the 911 officer
18 ask -- 91 [sic] operator asked Mr. Sustare, Is he armed, and
19 he says what on line 23?

20 A. He said, He is unarmed. I have checked him. I've held
21 him with a friend a mine and there was, he heard this man pass
22 three no trespass signs and, uh, ---

23 Q. Okay. On page 5 a that transcript does the 911
24 operator ask him again, Does he have any weapons on him? Oh,
25 I'm sorry, let me help ya out there, I'm sorry. And does he

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 ask him again, Does he have any weapons on him, and what does
2 Mr. Sustare say in line 17 and 18, 19 and 20?

3 A. Not that I can see. I won't let him back to his vehicle.
4 I made then lift his shirt up, I do not see anything on him.

5 MS. SPIVEY: Your Honor, I'd like to mark this as
6 Applicant's No. 1.

7 THE COURT: Okay, any objection?

8 MS. GIOVANOLI: No, Your Honor.

9 THE COURT: Alright, without objection the same is
10 introduced as Applicant's first exhibit.

11 MS. SPIVEY: Thank you, Judge.

12 (Transcript of 911 call marked Applicant's Exhibit
13 No. 1 for identification and admitted into evidence.)

14 BY MS. SPIVEY:

15 Q. Mr. Mahaffey, wasn't it important to your case whether
16 you were armed or not?

17 A. Yes, ma'am, that's one a the statues [sic] of a first
18 degree burglary.

19 Q. And did Ms. Hall ever bring this 911 call to the Court's
20 attention?

21 A. Uh, no, ma'am.

22 Q. Did she ever file a motion to dismiss based upon the
23 victim himself saying you were unarmed?

24 A. No, ma'am.

25 Q. Did she ever make a directed verdict motion based upon

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 the 911 call in your case?

2 A. No, ma'am.

3 Q. Did she ever make an argument for a lesser included
4 offense based upon the 911 call, uh, for you to be, a jury
5 charge to be given for burglary second?

6 A. No, ma'am.

7 Q. And what would that have meant to you if you would have
8 gotten a burglary second conviction rather than burglary
9 first?

10 A. It makes a whole lotta difference, uh, it's a a a fir --
11 a first degree burglary is, uh, 15 to life, uh, if you, uh,
12 drop it down, it starts at 0 to to 10 years, ---

13 Q. And how much ---

14 A. -- that's a lot --

15 Q. --- did you get sentenced, Mr. Mahaffey?

16 A. I got 25 years.

17 Q. So that woulda made a difference of even if if the
18 judge sentenced you the maximum of 10 years, that woulda made
19 15 difference of years in your life, is that correct?

20 A. That is correct.

21 Q. And based upon those jailhouse calls, Ms. Hall refused to
22 call your father as a witness, is that correct?

23 A. That is correct.

24 Q. And that was based upon Jennifer Jordan telling her
25 that there was things in those calls that would impeach your

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 father ---

2 A. That is correct.

3 Q. --- and but she had never listened to those calls so she
4 didn't know for sure whether they impeached your father.

5 A. That is correct. She told me she wasn't gonna put me on
6 the stand because a the phone calls.

7 Q. And she had never listened to 'em, had she?

8 A. No.

9 Q. And in listenin' to those calls were there -- was there
10 anything that could have impeached your father in those phone
11 calls?

12 A. No.

13 Q. And would your father's testimony have been important to
14 your case, Mr. Mahaffey?

15 A. Uh, yes, it would.

16 Q. And why would that have been import -- why would his
17 testimony have been important to your case?

18 A. Because had, uh, he'd been put on the stand he coulda
19 brought to attention to the jury's attention of things that
20 would've, um, led to a reasonable doubt of me committin' a
21 first degree burglary.

22 Q. And you were at your father's house the day of this
23 incident, is that correct, ---

24 A. That is correct.

25 Q. --- and a Ronald Keiser was with you ---

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. That is correct.

2 Q. --- and Ronald Keiser knew the alleged victim, didn't
3 he?

4 A. Yes, ma'am.

5 Q. Andrew Sustare?

6 A. Yes, ma'am.

7 Q. And did Ms. Hall ever bring that to the Court's
8 attention?

9 A. No, ma'am.

10 Q. And that was the State, did she ever object when the
11 State said that you had no connection to Mr. Sustare?

12 A. Um, Ms. Hall never objected but one time through my whole
13 trial on anything.

14 Q. Is that a no, Mr. Mahaffey, ---

15 A. That is a no.

16 Q. --- she didn't object? And the State was allowed to
17 present evidence that you just were at, uh, you just showed up
18 to rob this man's house, right?

19 A. That's correct.

20 Q. And and Ms. Hall never presented this evidence to show
21 that you had a reason to be over there.

22 A. That's correct.

23 Q. And you and Mr. Keiser were goin' over there because
24 Mr. Sustare owed Mr. Keiser money, didn't he?

25 A. That is correct, he, uh, Mr. Keiser done some work for

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 him.

2 Q. Okay, and when you got there to Mr. Sustare's house, did
3 you have a flat tire?

4 A. Uh, yes, sir. Uh, prior to pullin' in his driveway, um,
5 I called my father let him know I had a flat tire, um, how did
6 I get the flat, the tire down from the backside of the
7 vehicle.

8 Q. And could Mr., your father Mr. Mahaffey have testified
9 that you called him and told him that you had a flat tire at
10 Mr. Sustare's house?

11 A. Yes, ma'am.

12 Q. But Claire Allen did not call, I mean, Claire Hall Hall
13 did not call him.

14 A. That is correct.

15 Q. Would you have robbed somebody's house with a flat tire,
16 Mr. Mahaffey?

17 A. I would not think so, uh-uh.

18 Q. Did you go to Mr. Sustare's house with the intent to
19 steal anything from his house?

20 A. No, ma'am.

21 Q. Did you ever break into his house?

22 A. No, ma'am.

23 Q. Did you ever enter his house?

24 A. No, ma'am.

25 Q. Did you ever steal anything from his house?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

- 1 A. No, ma'am.
- 2 Q. Did you ever take a gun from his house?
- 3 A. No, ma'am.
- 4 Q. Do you feel like you were set up on this charge,
- 5 Mr. Mahaffey?
- 6 A. Yes, ma'am.
- 7 Q. And Mr. Keiser was the son of your former girlfriend, is
- 8 that correct?
- 9 A. That is correct.
- 10 Q. And you had just broken up with your girlfriend two weeks
- 11 prior to this incident.
- 12 A. Yes.
- 13 Q. And she was pretty mad at you, wasn't she?
- 14 A. Yes, ma'am.
- 15 Q. And your father also evicted her.
- 16 A. Yes, ma'am, she was livin' in a, um, home.
- 17 Q. And she was gonna get even with ya.
- 18 A. Yes, ma'am.
- 19 Q. And at the time you had no idea that this was goin' on.
- 20 A. No, ma'am.
- 21 Q. Could your father have also testified to Ms. Keiser
- 22 threatening to get even with you?
- 23 A. Yes, ma'am.
- 24 Q. And Ms. Hall never put him on stand to question him about
- 25 any these things.

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. No, ma'am.

2 Q. And did Mr. -- Ms., uh, Hall ever tell you that she was
3 overwhelmit -- overwhelmed with the case load that she had?

4 A. Um, yes, ma'am, Ms. Hall said she just come into the
5 public defender's office and I think she had like a hundred
6 and thirty-seven cases and she said she was, uh, just, uh, had
7 a lotta cases and it was, uh, hard for her to, uh, talk to
8 everybody.

9 Q. And were there some accusations that you had stolen some
10 jewelry from Mr. Sustare's house?

11 A. Yes, ma'am.

12 Q. And was that jewelry ever recovered?

13 A. No, ma'am.

14 Q. And did they also include that on your warrant?

15 A. Yes, ma'am.

16 Q. And did Ms. Hall ever bring it to the Court's attention
17 that this property was never recovered?

18 A. No, ma'am.

19 Q. And they still included that in the value for the simple
20 larceny charge.

21 A. That is correct.

22 Q. And on the face of your warrant it says that you sold two
23 thousand dollars worth a property, I'm gonna show that to you.
24 Is that (indicating) your warrant on the simple larceny
25 charge?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Yes, ma'am.

2 Q. And does it say that you took U.S. currency, a gun,
3 Blackberry phone and a gold necklace?

4 A. That is correct.

5 Q. And it says that it's valued at two thousand dollars.

6 A. Yes.

7 Q. Okay. I'm gonna show you the police investigative
8 report, did you know that these items were not even valued in
9 at two thousand dollars based upon the sheriff's department's
10 own paperwork?

11 A. No, ma'am.

12 MS. SPIVEY: Your Honor, I'd like to introduce this as,
13 uh, Petitioner's No. 2.

14 THE COURT: Okay. Objection, ma'am?

15 MS. GIOVANOLI: No objection.

16 THE COURT: Alright, without objection the same, okay,
17 admitted.

18 (Arrest warrant and investigative report marked
19 Applicant's Exhibit No. 2 for identification and admitted into
20 evidence.)

21 BY MS. SPIVEY:

22 Q. Did Ms. Hall ever bring this to the Court's attention?

23 A. No, ma'am.

24 Q. Did she ever file any motions to have this case
25 dismissed?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. No, ma'am.

2 Q. And she never brought to the Court's attention that the
3 warrant on its face was incorrect.

4 A. No, ma'am.

5 Q. Mr. Mahaffey, how else was Ms. Hall deficient, um, in
6 offering a and being your attorney in the trial this matter?

7 A. Um, so I can speak freely here?

8 Q. Yes, sir.

9 A. Um, had Ms. Hall woulda sit down and and really went over
10 this case with me and brought all the evidence to the jury's
11 attention I do not think that they woulda found me guilty of
12 first degree burglary. Ms. Hall when, like I said when we
13 went into the trial, when I -- when she told me this was her
14 first trial had I known that I coulda stopped this trial and
15 got another attorney I would have, um, I did not know I could
16 do that. Um, Ms. Hall when we, um, was sittin' at the, uh,
17 trial, uh, when she asked me about pickin' the jury, um, I
18 told her I didn't, I mean, I don't know how to pick no jury
19 and she told me she didn't know how to pick the jury, um, the
20 only thing I could do was look at people's shoes to pick the
21 jury. Um, she was handin' me some cards that's got
22 information on the people, uh, but I did not understand what
23 them cards meant, I don't -- I'm -- I d -- I don't know how to
24 pick no jury. Um, she told me that she, uh, uh, worked for a
25 judge doin', uh, some kinda work for a judge. Um, Ms. Hall,

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 um, she never did, uh, tell me that the hand a one, the hand a
2 all, um, that they was even gonna charge a hand a one, hand a
3 all. Um, I don't have a -- if if no one else is charged in my
4 crime, uh, it takes two people for a hand of one, a hand a
5 all, I don't un -- I didn't understand that.

6 Q. Did she object when that jury instruction was given to
7 the jury?

8 A. No, ma'am, um, uh, and I'll go back to Ms. Hall never
9 objected to anything, uh, throughout the trial except for one
10 thing: she did not argue about the pocket knife. When we went
11 into the trial, my biggest whole thing was was the pocket
12 knife's not a deadly weapon and she assured me that a pocket
13 knife wasn't a deadly weapon but when we get into trial she
14 tells the jury that sometimes it is and sometimes it's not.

15 Q. Did she ever file a pretrial motion for a determination
16 on whether the pocket knife was a deadly weapon?

17 A. No, ma'am.

18 Q. Did she ever file a motion to suppress the pocket
19 knife?

20 A. No, ma'am, she never filed no motions for anything, uh,
21 no pretrial motions, uh, um, she never objected to anything
22 where I could have it for the appellate court to look at, um,
23 had and and and through statue, uh, I mean, um, uh, the the
24 defender I had on the appellate case, uh, Alexandra I think is
25 the one told me that she shoulda objected to all the evidence

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 comin' in 'cause he coulda brought it up on appeal.

2 Q. So she failed to properly argue and preserve her pair --
3 'pellate re -- review whether you were entitled to the lesser
4 included jury charge on the burglary second?

5 A. That is correct.

6 Q. Did she fail to properly argue and preserve for appellate
7 review whether a pocket knife was a deadly weapon?

8 A. Yes, ma'am.

9 Q. Did she ever attempt to locate Ronald Keiser?

10 A. No, ma'am.

11 Q. Did you tell her where Ronald Keiser was?

12 A. Yes, ma'am.

13 Q. And where is Ronald Keiser now?

14 A. He is in Department of Corrections for a, uh, burglary.

15 Q. Burglary first?

16 A. Yes, ma'am.

17 Q. The same, the same charge?

18 A. Yes, ma'am.

19 Q. But it wasn't related to this case.

20 A. No, ma'am.

21 Q. Did the police ever find a gun on you, Mr. Mahaffey?

22 A. No, ma'am.

23 Q. Did Ms. Hall ever object when they introduced a picture
24 of a gun at the trial?

25 A. No, ma'am.

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. Did she ever require that they produce the actual gun?

2 A. No, ma'am.

3 Q. A and the, and the police never found a gun on you.

4 A. No, that's correct.

5 Q. And she never filed any motions for that to be excluded
6 or suppressed from the ---

7 A. That ---

8 Q. --- trial.

9 A. --- that is correct.

10 Q. And that's one of the, uh, factors that the Court used in
11 charging with a burglary first.

12 A. That is correct.

13 Q. Did -- were your fingerprints ever found inside the
14 house, Mr. Mahaffey?

15 A. My fingerprints were never found nowhere.

16 Q. They were not found on any of the items that were alleged
17 to have been stolen?

18 A. No, ma'am.

19 Q. They weren't found on the front door, ---

20 A. No, ma'am.

21 Q. --- they weren't found inside the house, ---

22 A. No, ma'am.

23 Q. --- they weren't found on the money bag.

24 A. No, ma'am.

25 Q. Did Ms. Hall fail to cross-examine two witnesses at the

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 trial?

2 A. That is correct.

3 Q. Did she ask very little questions of the State's
4 witnesses?

5 A. That that is correct.

6 Q. And in two of 'em she didn't ask any questions of 'em.

7 A. That's correct.

8 Q. Do you feel like she failed to adequately represent you
9 by not cross-examining the State's witnesses?

10 A. Yes, ma'am.

11 Q. Do you feel like she failed to adequately represent you
12 by not calling your father as a witness?

13 A. Yes, ma'am.

14 Q. Did Ms. Hall ever present any case law to the judge, the
15 trial judge in regard to what constituted a deadly weapon?

16 A. No, ma'am.

17 Q. Did she ever include any case law to the judge about, um,
18 including the lesser included offense of second degree
19 burglary to the trial judge?

20 A. No, ma'am.

21 Q. And was Mr. Sustare, the alleged victim, was he grossly,
22 did he change his story a lot, Mr. Mahaffey?

23 A. Yes, ma'am, uh, there's some, uh, statements to
24 where, um, they may, uh, on paper that says when they got to
25 the ---

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 MS. GIOVANOLI: Objection ---

2 A. --- e ---

3 MS. GIOVANOLI: --- to hearsay.

4 THE COURT: Okay, I I sustain as to hearsay. Um, uh,
5 would you rephrase the question, please.

6 Q. Did Mr. Sustare change his story from what his police
7 statement till his -- to his trial testimony?

8 A. Yes, ma'am.

9 Q. And did Ms. Hall cross-examine him adequately in regard
10 to the inconsistencies in his statement?

11 A. No, ma'am.

12 Q. And based upon his testimony he was, he -- that should
13 she not objected to part of his testimony being hearsay?

14 A. Yes, ma'am.

15 Q. And that was due to him being in the backyard and
16 allegedly testifying that you were comin' out of his house in
17 the front ---

18 A. That's correct.

19 Q. --- and he never even saw you come out of the front, did
20 he?

21 A. That is correct.

22 Q. And so he had no knowledge of anything that happened in
23 front of his house.

24 A. That is correct.

25 Q. Did she ever object to that?

CHRISTOPHER PAUL MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. No, ma'am.

2 Q. Was that a an essential element of the burglary first
3 that you had to enter the house?

4 A. That is correct.

5 Q. Did Ms. Hall object to any exhibits that were entered
6 into evidence at your trial?

7 A. No, ma'am.

8 Q. Mr. Mahaffey, is there anything else you want this court
9 to know how Ms. Hall did not adequately represent you in this
10 matter?

11 A. Um, I just feel like if she woulda put in more motions,
12 uh, to the Court to determine if the pocket knife was a deadly
13 weapon that, um, it was up to, um, the judge to determine
14 before we went to trial if a pocket knife was a deadly weapon,
15 um, I feel that if she woulda adequately investigated, went
16 through everything in my discovery, uh, I wouldn't be sittin'
17 here today, um, . . .

18 Q. And did her representation, uh, cause your appeal to get
19 denied by the Court of Appeals?

20 A. That is correct.

21 Q. And do you think that the outcome of your trial woulda
22 been different if you had received proper re -- representation
23 in this matter?

24 A. Yes, ma'am.

25 Q. And that woulda been that you would have gotten a lesser

1 sentence.

2 A. That is correct.

3 Q. And that would be significant 'cause it would be 15
4 years.

5 A. That would be a whole lot, yes.

6 Q. And, Mr. Mahaffey, it's important to you 'cause you have
7 children, don't you, ---

8 A. That is correct.

9 Q. --- and you have two boys ---

10 A. Yes, ma'am.

11 Q. --- and they're without their father.

12 A. Yes, ma'am.

13 Q. And you've already served almost 5 years ---

14 A. Yes, ma'am.

15 Q. --- and in theory you would be out right now ---

16 A. That would be correct.

17 Q. --- as if the lesser included offense ---

18 A. Yes, ma'am.

19 Q. --- was given to the jury. Are you -- have Mr. Spivey
20 and I done everything that you've asked of us?

21 A. Yes, ma'am.

22 Q. Have we answered all your questions?

23 A. Yes, ma'am.

24 Q. And do you feel like we've investigated your case
25 adequately?

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 A. Yes, ma'am.

2 Q. Do you feel like we've talked to all the witnesses that
3 you've given to us?

4 A. Yes.

5 Q. And are you satisfied with our representation of you in
6 this matter?

7 A. Yes.

8 Q. Nothin' further, Your Honor.

9 THE COURT: Okay. Yes, ma'am.

10 MS. GIOVANOLI: Thank you.

11 CROSS-EXAMINATION BY MS. GIOVANOLI:

12 Q. Good afternoon, Mr. ---

13 A. Yeah.

14 Q. --- Mahaffey. I'm gonna take you back to, um, your
15 statements about, your testimony today about the arraignment.
16 Um, do you recall that after the solicitor brought it to the
17 attention of Mrs. Hall that you had not been arraigned, that
18 you had a brief pause in the proceedings and you had a
19 discussion with your counsel, do you recall that?

20 A. Yes, ma'am.

21 Q. Do you remember what you guys talked about in that little
22 brief meeting?

23 A. Yes, ma'am. Ms. Hall co -- turned to me and told me that
24 we did not need me, uh, or we do not leave -- need need to
25 leave the courtroom to be arraigned, we just do arraignment

1 here.

2 Q. What else did she tell you?

3 A. That's all she told me.

4 Q. Okay. Did you, uh, she explain to you what an
5 arraignment was?

6 A. No, ma'am.

7 Q. Okay. Did she ask you if you wanted to waive your
8 arraignment?

9 A. No, ma'am.

10 Q. Did you ask her if you had the option pleading guilty?

11 A. Uh, no, ma'am, I didn't know what a arraignment was, I
12 still don't know what arraignment is.

13 Q. Did you know what pleading guilty versus not guilty was?

14 A. Uh, yes, ma'am.

15 Q. And did you ever ask your attorney if you could plead
16 guilty in this case?

17 A. Um, did I ask her?

18 Q. Yes.

19 A. No.

20 Q. Do you ever express any interest in pleading guilty in
21 this case?

22 A. Uh, at the time when they was talkin' about arraignment I
23 did not know that it was the time to say I wanna pled guilty
24 or not guilty, I did not know that at that time. I th -- I
25 thought at that time when I walked in courtroom when they said

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 I was goin' before a burglary charge and the drug charges that
2 I had to plead not guilty to all of it because now it's all in
3 courtroom because Ms. Hall was supposed to, was tryin' to
4 sever the charges and that was the reason why is because the
5 drug, uh, the -- that's the reason I asked her to do the
6 severin' because the drug charges I woulda pled guilty to but
7 when they stopped the Court and asked me about arraignment she
8 never did say arraignment means that that's when you plead
9 guilty or not guilty, only thing she said was we don't, we
10 don't need to leave the courtroom to do arraignment if we can
11 go ahead and do an arraignment now.

12 Q. Okay, if you don't mind I just would like to clarify, I
13 thi -- I believe you just said that you were told that you had
14 to plead not guilty?

15 A. No, I was under the the understandin' of when we walked
16 in the courtroom when I said not guilty to the burglary
17 charge, a first degree burglary that that meant all the
18 charges, I did not know that I could go burglary charge and
19 say not guilty and go to a a a drug charge and say guilty or
20 a, uh, petty larceny say guilty or ---

21 Q. Okay.

22 A. --- whatever else, I just thought it was all a one
23 package deal: when I walked through that door that I either
24 had to plea not guilty to all of it or guilty to all of it.

25 Q. Okay, and and now did you ever express any interest or

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 any desire to plead guilty to your counsel to Mrs. Hall?

2 A. On the drug charges yes, that's why I asked her to do the
3 sever charges because that, uh, I was guilty of the, of drug
4 charges.

5 Q. So it's your testimony today that you told Mrs. Hall you
6 wanted to plead guilty to the drug charges?

7 A. That is correct.

8 Q. Okay. Now there were allegations that, uh, Mrs. Hall
9 never spoke to your family members or actually, excuse me,
10 never called them to the stand as witnesses on your behalf,
11 um, and earlier in your testimony you said, quote, My whole
12 family was there, I just wanted to clarify where was your
13 whole family, at the scene of the incident or where?

14 A. No, um, on on some a the, um, uh, investigation when we
15 were talkin' about what happened, um, I was givin' her names
16 of all the witnesses she could call before the judge, um, when
17 we proceeded to trial, the only people that was, she wanted to
18 to to, uh, um, investigate or ask questions or be a witness
19 was my father and my brother and the lady that I work for, um,
20 she never did, um, go ask anybody else a the names that I told
21 her that was there, she never did go ask them any questions
22 that coulda put anything to my case.

23 Q. Okay, I'm sorry, but I misunderstand. You said that was
24 there, where where do you mean, ---

25 A. Okay, ---

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 Q. --- where are these ---

2 A. --- there, ---

3 Q. --- other witnesses?

4 A. --- that that was, when I left the home, when I left my
5 house, uh, my father's house, um, ---

6 Q. So they were at your father's house?

7 A. Yes.

8 Q. Okay, not at where this ---

9 A. No, ---

10 Q. --- the robbery ---

11 A. --- no.

12 Q. --- occurred, okay. 'kay, and earlier, um, counsel read
13 into the record part a the, actually you read into the record
14 part a the transcript with regard to a ni -- um, uh, the 911
15 call in Applicant's Exhibit 1, um, and they said, quote, that
16 they lifted, uh, the victim lifted up your shirt and did not
17 see in pock -- any any weapons, ---

18 A. That is ---

19 Q. --- that ---

20 A. --- correct.

21 Q. --- that's -- okay, did Sustare, the victim, search your
22 pockets?

23 A. No, ma'am, what I done is I lifted my shirt and pulled my
24 pants down, showed this man I had nothing.

25 Q. Okay, and did law enforcement search your pockets?

1 A. Well when they put the handcuffs on me yes, ma'am.

2 Q. And were two pocket knives found in your ---

3 A. Yes, ma'am.

4 Q. --- pockets? Okay. You also testified earlier that you
5 had a flat tire prior to arri -- arriving at the victim's
6 house?

7 A. That is correct. When I pulled in the victim's driveway,
8 that's when I was on the phone talkin' to my family statin'
9 how do I get the tire off the vehicle.

10 Q. Okay, so you had a flat tire and it took you exactly the
11 full length of his 600-foot driveway to the end where your car
12 was photoed?

13 A. What you mean?

14 Q. That you had a flat tire.

15 A. Yes, ma'am.

16 Q. So your testimony it's, uh, today is that as you were
17 driving you had a flat tire and you pulled into the victim's
18 driveway, went down his 600-foot driveway and parked it at the
19 end of his driveway with a flat tire.

20 A. When I was on the highway goin' to right close to his
21 home, I hit sumtin' in the road ---

22 Q. Okay.

23 A. --- and that's when I called them and told them I thought
24 the p -- the tire was goin' flat 'cause I hear and felt it in
25 the steerin' wheel, ---

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 Q. So you were ---

2 A. --- um-hum.

3 Q. --- stopping to change the tire?

4 A. No, ma'am.

5 Q. Okay.

6 A. I pulled in his, we was close to his house so I went
7 ahead and eased the vehicle onto Mr. Statue's [sic] driveway
8 and pulled down into his vehicle up ---

9 Q. Okay, ---

10 A. --- to his house.

11 Q. --- and parked it at the end of his driveway.

12 A. Yes. I think theys a, uh, paper statin' of the when the
13 rollback picked it up that it states that it does have a flat
14 tire.

15 Q. Okay. You also stated on direct that you, no gun was
16 found on you once law enforcement arrived, correct?

17 A. That is correct.

18 Q. Okay. Was a gun found in your car?

19 A. Yes, ma'am.

20 Q. Who did that gun belong to?

21 A. Uh, to this day I still don't know.

22 Q. Okay. You don't know who that gun belonged to?

23 A. No, ma'am, I never seen the, I never seen the gun, only
24 thing I seen, I seen 'em pull it out but I never seen it up
25 close.

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 Q. Did the victim ask you where the gun was ---

2 A. No, ma'am.

3 Q. --- or verbatim, Where is it?

4 A. No, ma'am.

5 Q. He didn't ask you that?

6 A. No, ma'am.

7 Q. The Court's indulgence please, Your Honor.

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 Let's just draw the Court's attention to, uh, the
11 transcript on page 74, this is, this is the direct examination
12 of the victim, um, that he asked the defendant, "Where is it,"
13 referring to the gun, he asked it again on line 14, "I said it
14 with more enthusiasm," "Okay," question, answer, "That he did
15 respond," question, "What was his response," answer, "between
16 the front seats." Okay, and moving along, uh, you also
17 testified that no fingerprints were found anywhere at the
18 crime scene?

19 A. That's correct.

20 Q. Um, what was your job at the time?

21 A. Um, I worked at a pallet yard.

22 Q. 'kay, so you worked with pallets.

23 A. Uh, no, I usually just, uh, drive a, uh, forklift and set
24 'em on truck.

25 Q. Okay, is that why you had pocket knives in your pocket?

CHRISTOPHER PAUL MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 A. Yes, and they they have to cut the straps on the,
2 uh, ---

3 Q. Okay. Did you also own gloves?

4 A. No.

5 Q. Did you also own gloves?

6 A. Unglove?

7 Q. Own gloves.

8 A. No, ma'am.

9 Q. You didn't own gloves or use gloves in your job?

10 A. Uh, usually not, no, ma'am.

11 Q. Okay. You also testified on direct that the victim was
12 in the back of his house and therefore didn't see you going in
13 his house, inside of his house or leaving his house, is that
14 correct?

15 A. Can you repeat that.

16 Q. You testified on direct that the victim was in the back
17 of his house and therefore didn't see you.

18 A. That is correct.

19 Q. Okay. Didn't he testify at trial that he was in the back
20 of his house but as he came around he saw your vehicle, he saw
21 you leaving his house?

22 A. Uh, yes, ma'am.

23 Q. Okay, and he also testified that he heard the door
24 shutting on your way out of his house, isn't that correct?

25 A. Uh, yes, ma'am.

CHRISTOPHER PAUL MAHAFFEY - REDIRECT EXAMINATION BY MS. SPIVEY

1 Q. Okay, I have no further questions for this witness.

2 THE COURT: Okay. Any redirect, ---

3 MS. SPIVEY: And ---

4 THE COURT: --- ma'am?

5 MS. SPIVEY: --- just a few, Your Honor.

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION BY MS. SPIVEY:

8 Q. Mr. Mahaffey, I'm gonna show you Spartanburg County
9 Sheriff's Office Motor Vehicle Tow and Inventory Report and
10 does the sheriff's department's own document show that your
11 car was flat, had a flat tire?

12 A. Yes, ma'am.

13 Q. Your Honor, I'd like to mark this as, uh, Petitioner's
14 No. 3.

15 THE COURT: Okay, any objection, ma'am?

16 MS. GIOVANOLI: No objection, Your Honor.

17 THE COURT: Alright, without objection it's, it is
18 admitted.

19 (Motor Vehicle Tow and Inventory Report marked
20 Applicant's Exhibit No. 3 for identification and admitted into
21 evidence.)

22 BY MS. SPIVEY:

23 Q. And did Ms. Hall ever bring this to the Court's attention
24 or cross-examine the deputies in regard to the flat tire?

25 A. No, ma'am.

CHRISTOPHER PAUL MAHAFFEY - REDIRECT EXAMINATION BY MS. SPIVEY

1 Q. The State ask you about the gun in the console, did
2 Mrs. -- Mr. Sustare wasn't he the only one that had access to
3 your car at this time?

4 A. Uh, Mr. -- yes, ma'am, Mr. Statue [sic] went to the
5 vehicle two times and was lookin' through the vehicle and the
6 second time he come outta the vehicle, um, he proceeded to
7 say, I got your, ---

8 Q. You can go ahead and say it for ---

9 A. --- I got your ass now.

10 Q. And did he rummage around in your vehicle?

11 A. Yes, ma'am.

12 Q. And did he move things around?

13 A. Yes, ma'am, and and they some pictures, uh, in the
14 discovery it shows where things were moved around. Uh, the
15 Coke was on, uh, the console, um, and you had to move the
16 con -- the Coke to look inside the console. Uh, there was a
17 gray phone sittin' on the console where the Coke was, they got
18 a picture of the phone layin' in the back floorboard, um, so,
19 yes, ma'am.

20 Q. And did Ms. Hall ever cross-examine Mr. Sustare about
21 being in your vehicle?

22 A. No, ma'am.

23 Q. Did she ever cross-examine him about havin' the
24 opportunity to plant that gun in your vehicle?

25 A. No, ma'am.

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. Nothin' further, Your Honor.

2 THE COURT: Okay. Recross, ma'am?

3 MS. GIOVANOLI: Nothing further, Your Honor.

4 THE COURT: Okay. Thank you, Mr. Mahaffey, you step
5 down, I appreciate it, sir.

6 (Whereupon, the Applicant left the stand.)

7 THE COURT: Anything further from the Applicant?

8 MS. SPIVEY: Yes, sir, Your Honor, we'd like to call
9 Edward Mahaffey, ---

10 THE COURT: Okay.

11 MS. SPIVEY: --- call Edward Mahaffey.

12 THE COURT: Alright, sir, if you'd come up, please, place
13 your left hand on the Bible and raise your right.

14 (Whereupon, the witness came forward.)

15 THE COURT: Yes, sir, there you go.

16 PAUL EDWARD MAHAFFEY, having been
17 first duly sworn, testified as follows:

18 THE COURT: Alright, you can take a seat, sir, state your
19 name for the record.

20 THE WITNESS: My name's Paul Edward Mahaffey.

21 DIRECT EXAMINATION BY MS. SPIVEY:

22 Q. Mr. Mahaffey, how do you know Chris?

23 A. He's my oldest son.

24 Q. And did Chris sign a release with our office to help you
25 assist us in this case?

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Do what now?

2 Q. Did did Chris sign a release with our office so that you
3 could help us assist in his case, ---

4 A. Yes.

5 Q. --- PCR? And have have we in fact met with you on
6 multiple occasions?

7 A. Yes.

8 Q. And when we got Claire Hall's file you and I met, didn't
9 we?

10 A. Yes, we did.

11 Q. And we were gonna listen to the jailhouse calls and the
12 911 call.

13 A. Yes.

14 Q. And were we o -- able to open that disk?

15 A. No, ma'am.

16 Q. And did you subsequently take that disk to Legal Eagle?

17 A. Yes, I did.

18 Q. And was a computer expert able to open that disk?

19 A. No.

20 Q. And why was that disk unable to be opened?

21 A. Because it it didn't have no, uh, AutoRun in it.

22 Q. And were you ever called as a witness, uh, at Chris's
23 trial?

24 A. No.

25 Q. And why was that?

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Ms., uh, Hall no aint sta -- well she would come call me
2 then she stated that, uh, they had some kinda phone call,
3 three phone calls statin' that it would impeach me.

4 Q. And these were the phone calls that were contained on
5 that disk that couldn't be opened.

6 A. Yes.

7 Q. And when were you informed that you weren't gonna
8 testify?

9 A. Says at the trial.

10 (Noise heard from the bench.)

11 THE COURT: Go ahead, I'm sorry.

12 Q. Okay. Sorry, what happened? Um, and h -- how how many
13 minutes prior to the trial starting did Ms. Hall tell you
14 weren't gonna testify?

15 A. Just a few minutes.

16 Q. And did you ask Ms. Hall what in the phone calls
17 impeached you?

18 A. Yes, I did.

19 Q. And what was her answer?

20 A. She didn't know.

21 Q. And you and I subsequently listened to those calls,
22 didn't we?

23 A. Yes, we did.

24 Q. And that they were very long ---

25 A. They was a hundred and seventy sumtin'.

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. --- and they were more than forty hours long ---

2 A. Yes.

3 Q. --- and were anything in those calls, did any, uh,
4 anything in those calls impeach you?

5 A. No.

6 Q. And, in fact, some a those calls were for somebody that
7 weren't even Chris, right?

8 A. Right.

9 Q. And there were some African American gentleman's
10 calls ---

11 A. And ---

12 Q. --- that were on this disk.

13 A. Right.

14 Q. And this disk was only turned over two days before the
15 trial.

16 A. Yes.

17 Q. And it had evidence that didn't even, part of it didn't
18 even pertain to Chris.

19 A. Right.

20 Q. And you attempted to call assistant solicitor Je --
21 Jennifer Jordan to ask her for a copy a those calls.

22 A. Yes, I did.

23 Q. And and the State couldn't give 'em to you, could they?

24 A. They couldn't produce.

25 Q. And so we eventually got 'em from her file.

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 A. Right.

2 Q. But prior to that time nobody, none a Chris's attorneys
3 had ever had a copy of the actual calls and the 911 call.

4 A. No, ma'am.

5 Q. What do y -- could you have testified at trial that
6 woulda helped Chris's case?

7 A. The fact that, uh, Ronald Keiser come to my house. We
8 have a cookout every January and honor my mother, my father.
9 My mother's birthday's on, uh, [REDACTED] my daddy's
10 is De, uh, [REDACTED], we always have a cookout in
11 January right around the 12th to the 13th in honor a those
12 every year and Chris was there, my t -- youngest son, Chris's
13 sons, my sister, my wife was there. When Keiser showed up at
14 the, uh, house and everything which Chris was goin' with his
15 mama at the time and we had, uh, that's how we knowed her and
16 Keiser was that she -- he was datin' her and he asked to
17 borrow my vehicle so I told him no and I wouldn't let him
18 borrow my vehicle but Chris could go with him, he got a phone
19 call and everything and he told, I don't know who was on the
20 other line, but he told him everything he was comin' to get
21 his money then that's when I found out everything, uh, Keiser
22 didn't mention no name but he said I, the man owes me some
23 money and I'll put you some gas in, if you'll let me use the
24 car, Chris can go with me.

25 Q. Okay, and did Chris call you, uh, on the way to wherever

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 they were going?

2 A. Yes, he was ---

3 Q. And what did he tell ya?

4 A. He told me he was pullin' in the driveway to the guy's
5 house, that, uh, the man owed Keiser money and the tire was
6 going flat makin' a noise and he asked me and everything, uh,
7 when he got down the end a driveway and everything he asked me
8 and everything how'd I get the spare tire down so I told him
9 over the phone everything how to get the spare tire down.

10 Q. And did Chris tell you that he had a flat tire?

11 A. Yes.

12 Q. And you you known Chris his whole life, would he have
13 been dumb enough to rob somebody's house with a flat tire?

14 A. No, ma'am.

15 Q. And could you have testified to that at trial?

16 A. Yes, I could have.

17 Q. Did Ms. Hall ask you to say anything on Chris's behalf
18 during sentencing?

19 A. No, ma'am.

20 Q. Did she ever -- did you ever -- well you were in the
21 courtroom when all this was happening, ---

22 A. Yes.

23 Q. --- did she ever ask the trial judge to reduce his
24 sentence?

25 A. No, ma'am.

PAUL EDWARD MAHAFFEY - DIRECT EXAMINATION BY MS. SPIVEY

1 Q. And did ya'll bring to her attention that there was a
2 African American gentleman in the next courtroom that had
3 pistol-whipped somebody and ---

4 MS. GIOVANOLI: Objection as to relevance.

5 THE COURT: Uh, you can finish the question but I think
6 I'll probly sustain it.

7 MS. SPIVEY: Yes, sir.

8 THE COURT: If you're tryin' to compare one sentence to
9 another then I'll probly sustain it.

10 BY MS. SPIVEY:

11 Q. --- um, and that he received a lesser sentence than Chris
12 did?

13 A. Yeah.

14 THE COURT: Alright, I sustain the objection.

15 Q. Has Chris ever been a violent person?

16 A. No, ma'am.

17 Q. And during the trial did Ms. Hall ever try to include the
18 lesser included offense of burglary second?

19 A. No, ma'am.

20 Q. And has this had a serious impact on Mr. Mahaffey's
21 life?

22 A. Yes, it has.

23 Q. And have you had to raise one of his boys for him?

24 A. Yes, ma'am, I have.

25 Q. And he he doesn't have anybody else that can raise him

PAUL EDWARD MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 but you.

2 A. That's true.

3 Q. And he he would have in theory already have been out now
4 and he could be raisin' his boy?

5 A. Yes.

6 Q. Nothin' further, Your Honor.

7 THE COURT: Okay.

8 CROSS-EXAMINATION BY MS. GIOVANOLI:

9 Q. I just ---

10 THE COURT: Cross.

11 Q. --- wanna clarify one thing. You said that, uh, your
12 son was dating Mr. Keiser's mom at the time of this incident?

13 A. He -- they had broke up prior to that and he stopped and
14 everything and asked about usin' the vehicle but if I had
15 known that 'cause she made the statement, Lauren Keiser made
16 the statement on my phone that she would get even with
17 Chris ---

18 Q. But without saying what she said on your phone do you
19 know when Mrs. Keiser broke up with your son?

20 A. It was 'bout two weeks before ---

21 Q. Okay.

22 A. --- he, Keiser come out ---

23 Q. Alright, ---

24 A. --- there.

25 Q. --- thank you, I just wanted clarification. Nothing ---

PAUL EDWARD MAHAFFEY - CROSS-EXAMINATION BY MS. GIOVANOLI

1 THE COURT: Any redirect, ma'am?

2 MS. SPIVEY: Nothin' further ---

3 THE COURT: Okay.

4 MS. SPIVEY: --- Your Honor.

5 THE COURT: Thank you, sir, I appreciate, if you would
6 step down.

7 (Whereupon, the witness left the stand.)

8 THE COURT: Any additional witnesses?

9 MS. SPIVEY: May I have just a second, Your Honor?

10 THE COURT: Sure, yes, ma'am.

11 (Pause.)

12 MS. SPIVEY: Nothin' further, Your Honor. We reserve the
13 right to call Ms. Hall if the State does not call her.

14 THE COURT: Okay, good enough. Yes, ma'am.

15 MS. GIOVANOLI: And the State would call Claire Hall to
16 the stand.

17 THE COURT: Okay.

18 MR. SPIVEY: Your Honor, may I have a short break?

19 THE COURT: Sure, let's take a break.

20 MS. GIOVANOLI: Okay.

21 THE COURT: Uh, we'll come back in five or ten minutes.

22 (Whereupon, a recess was taken.)

23 THE COURT: We ready to proceed?

24 MS. GIOVANOLI: Yes, Your Honor.

25 THE COURT: Okay, alright. Okay, you may call Ms. Hall

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 to the stand.

2 MS. GIOVANOLI: Okay.

3 THE COURT: Ms. Hall, if you come up please, place your
4 left hand on the Bible, raise your right.

5 (Whereupon, the witness came forward.)

6 MARY CLAIRE HALL, having been
7 first duly sworn, testified as follows:

8 THE COURT: Okay, you can have a seat, ma'am, and state
9 your full name for the record, please.

10 THE WITNESS: Mary Claire Hall.

11 DIRECT EXAMINATION BY MS. GIOVANOLI:

12 Q. Good afternoon, Ms. Hall, thank you for bein' here. How
13 long have you been practicing criminal law?

14 A. I do not currently practice criminal law, ---

15 Q. Okay, ---

16 A. --- um, ---

17 Q. --- at the time a this trial how long have you been
18 practicing criminal law?

19 A. I started with the public defender's office that year.

20 Q. Okay, and what time that year, oh, date?

21 A. I don't remember the exact date, I think it was April.

22 Q. Okay. How long had you been with the public defender's
23 office at the time a this trial?

24 A. Since April.

25 Q. Okay, do you recall the date of the trial?

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. I think it was the end of August or beginning of
2 September.

3 Q. That's correct, August 27th and 28th. Um, so you stated
4 you worked with the public defender's office, I'm assuming
5 you were appointed to this case.

6 A. Yes, they appointed ---

7 Q. And ---

8 A. --- me.

9 Q. --- and do you recall that he was previously appointed
10 Mrs. Terry?

11 A. Yes, when I started I, uh, assumed I think most, if not
12 all, Ms. Terry's cases.

13 Q. And what happened to Mrs. Terry?

14 A. She moved outta state.

15 Q. Okay. Did you get to talk with her, discuss this case
16 prior to her departure?

17 A. Um, she had already left when I started but, um, I know
18 her personally so if I, I don't remember if we talked about
19 this or not but I know that, um, if I had any cases where I
20 wanted to ask her somethin' about it I could have.

21 Q. Um, do you know at what -- how much she had handled at
22 the point in which you stepped in?

23 A. Um, I think it had been a couple months prior, well this
24 happened in January, I think I heard, um, earlier so I'm as --
25 I think she got the case immediately pretty much, I'm not sure

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 if she represented him before that on somethin' else.

2 Q. Okay, well whe -- when was your first meeting with
3 Applicant?

4 A. I can't tell you the date.

5 Q. Okay, uh, about after you were appointed how long
6 afterwards approximately?

7 A. Um, I I don't wanna guess, I'm sorry.

8 Q. Okay. Um, do you recall, um, the Applicant requesting a
9 bond hearing from you?

10 A. Um, I don't recall that, I think, um, in my notes I had
11 something about conversation with his father about it, um, I
12 know he had a probation revocation I think went to do, maybe
13 went to do some time on that ---

14 Q. Okay.

15 A. --- and may, we may have discussed it when he got back.

16 Q. Why didn't you pursue a bond hearing?

17 A. In this case I can't remember.

18 Q. Okay. In your practice back then what were -- what are
19 some reasonable reasons why you would not pursue a bond
20 hearing?

21 A. Um, ---

22 MS. SPIVEY: Your Honor, I'm gonna object unless it
23 applies to this case ---

24 MS. GIOVANOLI: Her ---

25 MS. SPIVEY: --- 'cause it's speculative.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 MS. GIOVANOLI: --- her specific recollection isn't clear
2 so I'm trying to get to her general practice question.

3 THE COURT: Okay, I'll allow you to ask the question,
4 I ---

5 MS. GIOVANOLI: Okay.

6 THE COURT: --- overrule your objection.

7 A. Um, either if we thought there was no way he's gonna get
8 a bond, trial was soon anyway, um, other pending charges ---

9 Q. Okay, uh, so do you recall your first meeting with the
10 Applicant?

11 A. Not specifically.

12 Q. You recall any meeting with the Applicant?

13 A. Yes, I m -- I met with him, I can't recall the first one
14 or second or ---

15 Q. How many times did you meet with him?

16 A. I can't tell you a number, um, ---

17 Q. Approximately.

18 A. I mean, more than a few I think, unfortunately I look
19 back in my file and I'm not sure if my notes on when I met
20 with him, the dates or ended up in another file 'cause there
21 was more than one matter, um, but I could not find an exact
22 record of my meetings. I do remember Mr. Mahaffey, I remember
23 meeting with him.

24 Q. Uh, how often do your notes indicate that you met with
25 him?

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. I don't have specific notes in this file.

2 Q. Okay. Was it your general practice, uh, to meet with
3 Applicants more than twice before a trial, to meet with
4 defendants, clients?

5 A. Oh, yeah, it would be my practice to meet with them
6 however often it was necessary ---

7 Q. Okay.

8 A. --- get ready.

9 Q. You recall the evidence in this case?

10 A. Yeah, generally.

11 Q. Okay. Can you give a brief description of what your
12 understanding of the evidence was.

13 A. Um, he was at the scene, they had, uh, a handgun in the
14 car that was alleged to belong to the victim and come out of
15 his house, um, a money bag, like a bank zippered money bag, it
16 was alleged to come outta the victim's house, um, unrelated to
17 the burglary there's some, apparently some, a little bit a
18 drug in the car, um, there were no fingerprints because as I
19 recall the victim would not allow the investigators to dust
20 for fingerprints inside his house, um, I know Mr. Mahaffey had
21 some cash on him but, uh, believe that was his and there was
22 allegation that he had taken money outta the house.

23 Q. Okay, uh, in your meetings with Applicant did he ever
24 discuss his version of the facts?

25 A. Um-hum, yes.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. You recall that?

2 A. Um, yeah, he told me that he went there with, um,
3 Mr. Keiser, that he did not go in the house, um, that he
4 didn't know, I think he'd, I can't remember if he said
5 Mr. Kei -- he saw Mr. Keiser go in but I know he told me he
6 did not go in the house.

7 Q. Did he ever tell you that, uh, what reason they were at
8 Sustare's house?

9 A. If I'm recalling correctly, um, what he told me from our
10 meetings -- the reason why they went you said?

11 Q. Yes.

12 A. I think maybe somethin' about Mr. Kieser had worked for
13 this gentleman, like knew him somehow.

14 Q. Okay. Did you, uh, obtain all of the discovery in this
15 case?

16 A. Yes.

17 Q. Okay. Did you review it?

18 A. I did.

19 Q. Did you review it with the Applicant?

20 A. I believe I did, I can't remember specifically, I know I
21 had a note that I think I sent a copy of all of it to him.

22 Q. Okay, so your testimony today is that you sent a copy to
23 him?

24 A. Um-hum.

25 Q. Okay, is it -- was it your general practice to review it

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 with him in person?

2 A. Yes.

3 Q. Did you discuss, um, his right to plead guilty or not
4 guilty?

5 A. Again, I don't remember specifically this case but I'm
6 sure I did.

7 Q. Okay. Did he ever express to you a desire to plead
8 guilty?

9 A. I can't recall specifically conversations but I know I
10 tried to discuss with the solicitor options for, um, a plea
11 offer so, um, and I I had a note in my file 'bout apparently
12 somethin' he told me he would, um, be willing to take were it
13 offered.

14 Q. Okay, and in your attempts to obtain a a plea offer from
15 the solicitor were you successful?

16 A. No, she, um, was -- is pretty adamant she wasn't makin'
17 an offer.

18 Q. Okay, um, whose decision was it to go to trial?

19 A. Um, the client.

20 Q. You didn't force him to go to trial.

21 A. No.

22 Q. Uh, did you, did you let him know he could plead guilty
23 without a s -- an offer from the solicitor?

24 A. Uh, that I'm I'm not sure.

25 Q. Is that -- was that your general practice at the time?

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. To tell people they could plead straight up?

2 Q. Yes, ---

3 A. Um, ---

4 Q. --- to give them that option.

5 A. --- I maybe in the conversation if it came up but I
6 don't, that's not somethin' I, you know, I don't know as a
7 practice say you also have option to plead with no plea offer.

8 Q. So he had e -- you don't recall if he expressed a desire
9 to plead guilty and you were not successful in getting an
10 offer from the solicitor, ---

11 A. Correct.

12 Q. --- that you didn't discuss with him that he could plead
13 guilty, an open plea ---

14 (Indiscernible cross-talk.)

15 A. I don't remember.

16 Q. Okay. Um, during the beginning of the trial, uh, did you
17 have any troubles, uh, drawing the jury?

18 A. I don't remember any of that.

19 Q. Was this your first trial?

20 A. Yes.

21 Q. Okay, and did you ask the Applicant to help you in
22 drawing the jury?

23 A. Um, I didn't ask him to help me so much as offered his
24 opinions on who we had.

25 Q. Okay. Did you have another attorney sitting as co-

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 counsel?

2 A. I did.

3 Q. And who was that?

4 A. Clay Allen.

5 Q. Okay. Did he assist you in any manner in this trial?

6 A. Um, he was there the entire trial and that beforehand,
7 um, at least I know when we're discussing Ms. Jordan 'bout
8 seeing if there was a plea, um, so yes, I mean, he as -- he
9 assisted me.

10 Q. If you had, um, doubts about your ability to draw a jury
11 would you have asked for help from Mr. Allen?

12 A. Yes.

13 Q. Did you ever see a need to ask for a continuance on the
14 day of trial?

15 A. Um, we had an issue with the cell phone calls that were
16 mentioned earlier, um, but we came to, uh, an agreement with
17 the State that they would limit that to, um, I think it was
18 only one call that they may use in rebuttal but not in their
19 case in chief, um, had we not come to that then I think there
20 woulda been a need to continue.

21 Q. Okay. Have, um, have you had a chance to re -- review
22 the transcript in this case?

23 A. Um, I have, I mean, I have not read it ---

24 Q. Okay.

25 A. --- entirely word-for-word but ---

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Do you recall the discussions about the recordings on the
2 record?

3 A. Uh, yeah, I've I just look at that.

4 Q. Okay. Do you feel you had enough time to prepare this
5 case for trial?

6 A. Yes, I mean, at some point you gotta try it, you'd always
7 want more but ---

8 Q. If you felt, ---

9 A. --- felt like I knew what I needed to.

10 Q. --- if you felt like you needed more time, would you have
11 requested a continuance?

12 A. Yes.

13 Q. Uh, did you take a vacation the week prior to the
14 trial?

15 A. I don't remember exactly what I was doing week prior to
16 trial, I think there may have been some training that I went
17 to before this and that may be the the case.

18 Q. Uh, is it your common practice to prepare a trial the
19 week before the trial?

20 A. I mean, it's ongoing.

21 Q. Okay. And you, um, actually had a a thorough colloquy
22 with the Court with regard to the burglary second charge, do
23 you recall that?

24 A. I remember there being a discussion and I I'm pretty
25 certain I asked for a charge on second.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Yes, and, um, do you recall your arguments? No?

2 A. Think it had to do with a weapon.

3 Q. 'kay and whi -- and which weapon 'cause there were a few
4 weapons.

5 A. I think my argument was they didn't have the sufficient
6 proof that he ever was in possession of the gun, that he got
7 it outta the house and then I think he had a pocket knife on
8 him and the argument was that that's not a deadly weapon.

9 Q. Okay, and, um, there the two pocket knives, did you make
10 an argument with regard to burglary second on the two pocket
11 knives not being a deadly weapon?

12 A. I believe I did.

13 Q. And the record will so reflect. Um, did you keep up with
14 this case when it went on appeal?

15 A. No.

16 Q. Okay, so you're not aware that the two, one of the main
17 issues was the pocket knife ---

18 A. No.

19 Q. --- and, uh, being in possession of a deadly weapon, the
20 lack of the Court, uh, the failure of the Court to, uh,
21 instruct the jury on a burglary second charge that was one a
22 the main issues in the appeal, are you familiar with that?

23 A. Um, only from what I've heard today.

24 Q. Why didn't you file a motion to suppress the pocket
25 knives?

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. I don't know.

2 Q. Do you think there was any basis to file a motion to
3 suppress mo -- the pocket knives?

4 A. I can't think of any right now.

5 Q. Okay. Are you aware of any South Carolina or federal
6 authoritative law that, uh, pocket knives are not deadly
7 weapons?

8 A. I'm not.

9 Q. Okay. Did you try to track down Mr. Keiser?

10 A. Um, I did some research into him, I did not try to go see
11 him.

12 Q. Okay, uh, what what did your res -- re, uh, research
13 indicate?

14 A. Uh, I think he was in prison at, uh, the time we were
15 preparing.

16 Q. Alright. You didn't -- you never had an opportunity to
17 interview him?

18 A. No.

19 Q. Why didn't you?

20 A. Um, I believe the conclusion was the point of
21 interviewing him would be to basically ask him to admit to
22 committing a burglary first degree and that I didn't think
23 that was gonna go anywhere for Mr. Mahaffey unfortunately.

24 Q. Did the Applicant provide a list of witnesses to you?

25 A. I don't remember getting a list, um, we may have

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 discussed people.

2 Q. S -- did the Applicant give you names?

3 A. Um, Mr. Keiser, I remember the name Lori, his family.

4 Q. All family members?

5 A. Um, I think it was father and his brother maybe.

6 Q. And, uh, did you interview them?

7 A. Um, I know I spoke to his father, his brother pretty
8 sure ---

9 Q. Okay, and ---

10 A. --- and ---

11 Q. --- did you call either one a those to the stand during
12 the trial?

13 A. I think it was his brother.

14 Q. Why didn't you call his father?

15 A. I can't remember exactly the reason now, I think it had
16 something to do with, uh, one a the jail phone calls that
17 would have been, uh, used in rebuttal maybe if he were called
18 as a witness 'cause I think there was some call where part a
19 the discussion, um, Ms. Jordan whatever you said, I ca -- I
20 don't remember exactly why.

21 Q. Did you listen to these phone calls?

22 A. Um, I did not listen to all of them, I listened to the
23 ones, what I could a the ones she told me that, um, she was
24 planning on using initially.

25 Q. How many was that, do you recall?

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. That I listened to?

2 Q. Um-hum.

3 A. I'm gonna guess 'bout twenty or so maybe.

4 Q. And in total how many were there 'proximately?

5 A. I think it was over a hundred.

6 Q. Do you know if all one hundred contained, uh, Applicant's
7 phone calls?

8 A. Um, I heard someone say today that some were, uh, made by
9 another inmate and I don't know if I actually remember that
10 being the case or it's just 'cause I heard it today that I ---

11 Q. Okay.

12 A. --- know that they weren't all his.

13 Q. The phone call that, uh, you're claiming they would use
14 in rebuttal if you had called the ---

15 A. Um-hum.

16 Q. --- father to the stand, do you recall the contents of
17 that phone call?

18 A. All I remember is I think it was a call between, uh,
19 Mr. Mahaffey and his father and there may have been some
20 alluding in the phone call by Mr. Mahaffey that placing
21 himself and acknowledging having done this and or being a part
22 of it.

23 Q. Did the Applicant ever mention a flat tire to you?

24 A. I did not remember that.

25 Q. Uh, did he tell you that he called his father about a

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 flat tire?

2 A. I don't remember him tellin' me that, I ---

3 Q. Okay. Did your notes indicate anywhere that he had told
4 you that?

5 A. Yes, may I just ---

6 Q. Did you have an opportunity to see -- may I approach,
7 Your Honor, ---

8 THE COURT: Yes, ma'am.

9 Q. --- it's just one a your exhibits.

10 MS. SPIVEY: Yeah.

11 (Whereupon, counsel approached the witness.)

12 Q. I'm showing you what's been marked as Applicant's
13 Exhibit 3 ---

14 A. Okay.

15 Q. --- and admitted, did you have an opportunity to see that
16 tow report?

17 A. I'm sure I did.

18 Q. Okay. Did you notice down at the bottom it said flat
19 tire?

20 A. Yeah, I see it here today, I don't remember if I noticed
21 that or not.

22 Q. Is it possible that he had got flat tire after the
23 incident?

24 A. It's possible.

25 MS. SPIVEY: Your Honor, I'll object to the speculation.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 THE COURT: Okay, overruled.

2 Q. Uh, with regard to, um, the probable cause affidavit,
3 there was a accusation that he had stolen jewelry, was there
4 any evidence they, um, that backs that accusation up?

5 A. Um, I th -- would think the only evidence would be a
6 statement by the victim.

7 Q. Okay, and was any evidence introduced at trial with
8 regard to stolen jor -- jewelry?

9 A. I can't remember.

10 Q. Okay. And what's your understanding of the petty larceny
11 statute, the amount?

12 A. Less than two thousand dollars?

13 Q. And in this case do you recall how much, uh, the evidence
14 that the State put on how much he had stole -- he had
15 stolen?

16 A. I think the allegation was around two hundred dollars?

17 Q. You, and do you recall how much was in the bank bag?

18 A. I don't remember if money was in the bag when they found
19 it.

20 Q. 'kay. The record will reflect that it was twenty-eight
21 dollars and some change. Okay. And you recall -- do you
22 recall your cross-examination of the victim in this case
23 Sustare Sustare?

24 A. Yes, 'bout somewhat.

25 Q. Okay, um, did you use his, uh, previous statement he gave

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 to law enforcement?

2 A. I think I may have or tried to that may have been, I may
3 have gotten an objection that was sustained.

4 Q. Why did you not object to any exhibits being admitted
5 into evidence in this case?

6 A. I think I did object to least one I can remember, it was
7 a photograph a ---

8 Q. Which photograph?

9 A. Is a photograph of my client, uh, taken, I think he was
10 in handcuffs, ---

11 Q. Okay, ---

12 A. --- uh, ---

13 Q. --- and ---

14 A. --- the the day after he was arrested.

15 Q. --- and the rest of the exhibits why did you not object
16 to them?

17 A. If I didn't object to 'em I suppose I didn't think I had
18 grounds.

19 Q. What was your theory of the case?

20 A. That there was, that he -- well; one, that they couldn't
21 prove he went in the house and, um, second, that it's, if the
22 the bank bag and the gun if it were the victim's, um, someone
23 else took 'em outta the house.

24 Q. So your theory of it was wrong guy.

25 A. Um-hum.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Okay, and so all the evidence that was admitted played
2 along with that theory, correct?

3 A. Um, ---

4 Q. The evidence was a picture of a gun in in the
5 vehicle, ---

6 A. Um, ---

7 Q. --- um, uh, the picture of the bank bag, uh, the picture
8 of the Applicant like you said, so, uh, would there be any
9 basis to object to that evidence based on your theory being
10 they got the wrong guy?

11 A. I I can't think of one.

12 Q. Okay. Uh, did the Applicant ever inform you that his
13 ex-girlfriend was out to get him and that he was set up?

14 A. I'm sorry, this is another one a those things where I'm
15 not sure if I'm actually remembering this or it's just I heard
16 it today and I think remember us discussing this. Um, I
17 remember that there was a girlfriend and there was a
18 relationship between her and the gentleman he said he was
19 with, there may have been sumtin' he told me where she was mad
20 at him, like that type a thing, ---

21 Q. Okay.

22 A. --- I don't remember this, I don't think I remember this
23 allegation that she had a scheme ---

24 Q. Okay.

25 A. --- to get him back.

MARY CLAIRE HALL - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Did you try to interview that, uh, ex-girlfriend?

2 A. Um, I had, um, if I remember correctly an investigator
3 with our office and I believe Mr. Allen may have gone too to
4 try to, um, find her, talk to her.

5 Q. You know the results of that search?

6 A. I wanna say they they were not successful 'cause I don't
7 remember talking to her.

8 Q. Okay. Did you make a motion for a directed verdict in
9 this case?

10 A. I'm certain I did.

11 Q. As well as a renewed?

12 A. Yes.

13 Q. Oh, and I can't remember if I asked you do you remember
14 the brief recess with the arraignment discussion the
15 Applicant?

16 A. Um, I noticed in the transcript there was ---

17 Q. Okay.

18 A. --- the, uh, pause and apparently we had a conversation,
19 I can't remember exactly what we discussed.

20 Q. Okay. Uh, would it be reasonable to conclude that you
21 discussed what an arraignment was with ---

22 A. Yeah.

23 Q. --- him, is that ---

24 A. Yes.

25 Q. Okay, thank you. Did you discuss with him all of his

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 constitutional rights: his right to a jury trial, his right to
2 confront witnesses, his right to remain silent?

3 A. I would think so.

4 Q. Was it your general practice then ---

5 A. Yes.

6 Q. --- to discuss those rights with him, with clients?

7 A. Yes.

8 Q. Okay, thank you, nothing further.

9 A. Um-hum.

10 CROSS-EXAMINATION BY MS. SPIVEY:

11 Q. Ms. Hall, you only had this case, what, about three
12 months before it went to trial?

13 A. Um, maybe four.

14 Q. And during those three or four months did you ever meet
15 with Paul Edward Mahaffey or John Mahaffey?

16 A. Uh, I know, I'm pretty certain I met with them before
17 trial ---

18 Q. And you met with them ---

19 A. (Indiscernible cross-talk.)

20 Q. --- in the hallway 'bout ten minutes before the trial
21 started.

22 A. I can't remember the ---

23 Q. But prior ---

24 A. --- exact ---

25 Q. --- to ---

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 A. (Indiscernible cross-talk.)

2 Q. --- the day of the trial you never met with them.

3 A. In person I don't know.

4 Q. How many days before the trial were you provided the one
5 hundred and seventy-one jailhouse calls and the 911 call?

6 A. I think it was the week prior.

7 Q. And you only met with Mr. Mahaffey the Saturday before
8 the trial?

9 A. You mean the only time ever or ---

10 Q. No, right before the trial.

11 A. Um, I don't remember exactly. If he says I met with him
12 on Saturday, I assume I did.

13 Q. And you don't remember that you couldn't get those calls
14 to play.

15 A. No, I remember there was some difficulty of hearing some
16 of them.

17 Q. And and you don't remember that you couldn't get 'em to
18 play at all.

19 A. I don't remember anything about not being able to play
20 them.

21 Q. Why did the trial judge have to bring to your attention
22 that your client hadn't been arraigned on the drug charges?

23 MS. GIOVANOLI: Objection, um, on an inaccurate statement
24 of events.

25 THE COURT: I understand, I I'll overrule the objection.

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 You may ask question.

2 A. I don't remember.

3 Q. Um, don't you think it woulda been important take care a
4 this before the day of trial?

5 A. Um, I'm not sure if it woulda made a difference.

6 Q. Well you heard Mr. Mahaffey say he woulda pled guilty to
7 the charges, the the drug charges, ---

8 A. Um-hum.

9 Q. --- and you don't think that it impacted his trial at all
10 on the burglary that he also had these drug charges?

11 A. Um, I mean, it may have, I know we tried to sever those
12 charges and have them tried separately.

13 Q. And and he wanted to plead guilty to those so he coulda
14 pled guilty to those that day ---

15 A. I suppose he could have.

16 Q. --- and you didn't let him even though he wanted to.

17 A. I don't remember that part.

18 Q. Didn't it prejudice him that he looked like he was some
19 druggie that was tryin' to steal at the trial?

20 A. Um, would think it probly did.

21 Q. And so you think it woulda been important to handle those
22 drug charges prior to this trial?

23 A. You could say that's one way of dealin' with it.

24 Q. And Mr. Mahaffey was quite upset that a picture of him
25 was allowed to come into the trial.

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 A. I was upset.

2 Q. And the State was trying portray him as a drug addict.

3 MS. GIOVANOLI: Objection, it's misstating the evidence.

4 THE COURT: Okay. Alright, I'll s -- I'll sustain, uh, I
5 don't know if it makes any difference what the State's theory
6 of the case was or not.

7 Q. And why did you not move for a continuance based upon the
8 late discovery?

9 A. Um, I guess that's a 2-part answer. Um, we had whittled
10 down what the State said they might use and they wouldn't use
11 it in chief and based on that, um, I didn't feel like we
12 needed one but if I asked for one I don't think we woulda
13 gotten one.

14 Q. Do you not think that prejudiced Mr. Haffey --
15 Mr. Mahaffey?

16 A. For what?

17 Q. Not getting continuance.

18 A. I'm not sure how that would affect it.

19 Q. Well those phone calls kept you from calling a witness
20 and you hadn't even listened to 'em, correct?

21 A. I know I heard the one that was the reason I think why I
22 didn't call his father.

23 Q. You told the trial judge that you didn't listen, there
24 was actually three not just one, right?

25 A. There may have been three and I I feel like we got it to

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 one ---

2 Q. And you ---

3 A. --- by the time ---

4 Q. --- told the trial ---

5 A. --- of trial.

6 Q. --- judge that you had not listened to all three.

7 A. I don't remember that, if it -- if I said it in the
8 transcript then that's what I said.

9 MS. SPIVEY: Your Honor, I refer, uh, the Court to
10 transcript page 8 lines 2 through 5.

11 THE COURT: Yes, ma'am, I've read it, thank you.

12 MS. SPIVEY: Thank thank you, Judge.

13 BY MS. SPIVEY:

14 Q. And you weren't aware that the disk that you had given us
15 did not have AutoRun so you couldn't listen to any of the
16 calls.

17 A. I don't remember givin' ya'll a disk, um, I don't
18 remember having trouble listening to the calls, I know I was
19 able to listen to the ones that, um, Ms. Jordan brought my
20 attention to that she might use, I don't know if I maybe
21 needed some IT assistance initially, I I'm not sure.

22 Q. And why couldn't you explain to Mr. Mahaffey's father
23 what -- how these calls impeached him right before you were
24 walkin' into the trial?

25 A. Why couldn't I s -- explain to his father?

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. Yes.

2 A. I don't know that I couldn't have.

3 Q. But and and you're aware that he testified that you
4 didn't 'cause you hadn't listened to the calls, that's why you
5 didn't, you couldn't explain it to him.

6 A. I'm not sure how to answer that.

7 Q. Do you dispute that?

8 A. I'm not sure what -- can you clarify and what am I ---

9 Q. Mr. Mahaffey says he specifically ask you, the elder
10 Mahaffey, ---

11 A. Okay.

12 Q. --- that he specifically ask you how these calls
13 impeached him ---

14 A. Um-hum.

15 Q. --- and you couldn't explain it to him because you hadn't
16 listened to them.

17 A. I don't remember that conversation.

18 Q. And and he's -- and do you realize that Mr. Chris
19 Mahaffey feels like that the State bluffed you outta calling
20 one of his key witnesses based upon phone calls that you
21 didn't listen to.

22 A. I I understand his position.

23 Q. And you have nothing dispute Mr. Mahaffey when he says
24 that you only met with him for a total of twenty minutes.

25 A. I have nothing to dispute that other than I feel

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 confident it would have taken me more than twenty minutes to
2 go through the evidence with him and discuss the options and
3 what he knew and his version.

4 Q. And you no longer do criminal law?

5 A. I do not.

6 Q. What do ya do now?

7 A. I'm in private practice.

8 Q. And what kinda law do ya do?

9 A. Uh, mostly economic developments, um, civil litigation.

10 Q. And how long did you do criminal law?

11 A. Um, I think it was just over three years.

12 Q. And Mr. Mahaffey was your very first case.

13 A. He was the first one that I, uh, I tried, there may have
14 been one that I started that pled in the trial, I can't
15 remember that was before or after him.

16 Q. Do you not find it important to bring to the Court's
17 attention that the warrant was inaccurate on the simple
18 larceny charges?

19 A. I'm not sure what the inaccuracy is.

20 Q. It says that they were valued at two thousand and the
21 items were never valued at two thousand.

22 A. Oh, um, I don't remember that issue.

23 Q. Well did you review the discovery?

24 A. Yes.

25 Q. Did you add up the value of the items?

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 A. I'm assuming that I was looking at it as it's a simple
2 larceny so value was two thousand dollars or less and ---

3 Q. You don't think it's important that that your clients
4 when they're charged with a crime that the warrant's
5 accurate?

6 A. Yeah, but I also think in this case he was indicted and
7 that point it was moot.

8 Q. You don't think you shoulda brought it to the trial
9 Court's attention?

10 A. Not if he'd been indicted.

11 Q. Why didn't you file a motion?

12 A. 'cause I did did not think this was an issue.

13 Q. Why didn't you file any motion in limine for a definition
14 of what constituted a deadly weapon?

15 A. 'cause it never occurred to me.

16 Q. Didn't Mr. Mahaffey make it clear to you that this issue
17 of a pocket knife was very important to him?

18 A. I'm sure he did.

19 Q. And it never attempted to you to get a clarification on
20 whether the pocket knife was a deadly weapon or not?

21 A. I suppose I thought that would be an issue at trial.

22 Q. Did you ever bring to the trial court's attention any
23 case law on the issue of whether pocket knife was considered a
24 deadly weapon?

25 A. I don't remember if I did.

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. Did you bring to the Court's attention the *Bunkley vs.*
2 *Florida* case as persuasive authority that a blade of lesser
3 than 4 inches is not considered a deadly weapon on a pocket
4 knife?

5 MS. GIOVANOLI: Objection to an incorrect statement of
6 law, that case particularly, ---

7 THE COURT: Okay.

8 MS. GIOVANOLI: --- and the case doesn't say that.

9 THE COURT: Alright, I can take judicial notice of the
10 law, I'll let you ask the question.

11 A. I don't know the name of that so I'm guessing I did
12 not.

13 Q. Were you aware that your failure to preserve the issue of
14 the lesser included offense of burglary second, uh, procluded
15 [sic] Mr. Mahaffey's appellate counsel from bein' successful
16 on the appeal?

17 A. I was not aware a that.

18 Q. Were you aware of the fact that, uh, your failure to
19 preserve the issue of whether the pocket knife was a deadly,
20 uh, weapon procluded his appellate counsel from being
21 successful on his appeal?

22 A. I was not aware a that.

23 Q. Would -- had the lesser included offense been included,
24 would that have made a big difference for Mr. Mahaffey?

25 A. It woulda given the jury another option.

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. And it coulda potentially saved him 15 years or more.

2 A. Could have.

3 Q. Why didn't you perfect the record for appeal in regarding
4 to severing the drug charges?

5 A. I didn't intentionally try to not preserve anything if
6 that's what you're asking.

7 Q. But but didn't that prejudice Mr. Mahaffey?

8 A. On his appeal?

9 Q. Yes.

10 A. I'm not familiar with his appeal.

11 Q. Did you ever make an argument under Rule 404(b) to have
12 the drug charges or other evidence precluded of the drugs in
13 this case?

14 A. I don't remember, if whatever the transcript says what I
15 did.

16 Q. Well I didn't see it in there so did ya do that?

17 A. If it's not in the transcript, I guess I didn't.

18 Q. Did you ever introduce any case law to the, to the trial
19 judge about, um, where a charge of a lesser included offense
20 must be viewed by the Court in light most favorable to the
21 defendant like like *State vs. Brayboy*, did you bring any case
22 law to the Court's attention?

23 A. I don't remember if I did.

24 Q. Don't you think it woulda been been important to perfect
25 this appeal to bring the case law to the judge's attention?

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 A. Um, I'm not sure if you're required to do that but,
2 um, ---

3 Q. Don't you think ---

4 A. --- wouldn't a hurt to present some.

5 Q. Why why didn't you cross-examine two a the State's
6 witnesses, Robert Rosenberg and Mary Elizabeth Stewart?

7 A. I'm not su -- I don't remember what they testified about
8 and probably felt like if I don't -- didn't cross-examine
9 somebody that ---

10 Q. Well didn't it ---

11 A. --- wasn't anything to be gained by doin' so.

12 Q. Didn't ya think you shoulda least put up some sorta
13 defense?

14 A. I did put up a defense.

15 Q. You only ask a few questions to each a the State's
16 witnesses, why didn't you ask 'em more questions on cross?

17 A. I musta felt like those were the necessary questions and
18 didn't wanna ask questions that weren't gonna help.

19 Q. You notice you usually only ask about five, five to ten
20 questions.

21 A. If that's what's in the transcript I believe.

22 Q. Why didn't you file a motion to dismiss for Mr. Mahaffey
23 prior to the case because there was no evidence that he
24 entered the dwelling and in regard to there was no evidence he
25 had a deadly weapon?

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 A. Um, didn't occur to me and probly because I don't think
2 that motion woulda been successful.

3 Q. Well don't ya think that Mr. Mahaffey deserved to be
4 given every opportunity to have these charges dismissed by his
5 trial counsel?

6 A. Yes, but that's within reason.

7 Q. Did you tell Mr. Mahaffey that you were overwhelmed with
8 the case load that ya had?

9 A. I don't remember telling him that.

10 Q. Did Mr. Mahaffey ask you to call the rollback driver to
11 testify that the tire was flat on his car?

12 A. I have no recollection of him telling me that.

13 Q. Were you able to listen to the 911 call before the
14 trial?

15 A. I think so.

16 Q. Wasn't that 911 call fairly significant to Mr. Mahaffey's
17 defense?

18 A. What part of it?

19 Q. I don't know, you tell me. Well did you not find it
20 fairly significant to his defense?

21 A. I'm not sure, I ---

22 Q. You didn't find it fairly significant that the victim
23 himself said that Mr. Mahaffey was unarmed?

24 A. I mean, that sounds significant but I believe they found
25 pocket knives on him.

MARY CLAIRE HALL - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. But you didn't know the content of that 911 call prior to
2 the trial?

3 A. I believe I did.

4 Q. And that was the one that was turned over at the last
5 minute?

6 A. No, I believe the ones turned over last minute were the
7 jail phone calls.

8 Q. And that 911 call was also on that same list.

9 A. And may have been but I feel pretty certain I already had
10 that.

11 Q. Why didn't you perfect the record on appeal in regard to
12 the, a hand of one, hand of all jury charge?

13 A. I don't remember if that was charged.

14 Q. You don't remember Ms. Jordan specifically insisting that
15 that be a jury charge?

16 A. I do not remember that.

17 Q. And you don't remember to --- you don't think you should
18 have objected to that if it was a jury charge?

19 A. Um, I guess that would be standard, yes, you should.

20 Q. How come during the sentencing phase of the trial you
21 were not fully aware of Mr. Mahaffey's record?

22 A. I know I had it and had gone through it.

23 Q. Don't you think it woulda been important as his trial
24 counsel to know what his prior record was?

25 A. Yes.

MARY CLAIRE HALL - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Why didn't you ask for the judge to reduce the sentence?

2 A. I don't know.

3 Q. Don't you think that Mr. Mahaffey was prejudiced by you
4 not as -- asking for a sentence reduction?

5 A. I I'm not sure.

6 Q. Don't you think this would have perfected that issue for
7 appeal?

8 A. If that's what you have to do.

9 Q. Nothin' further, Your Honor.

10 THE COURT: Okay. Redirect?

11 MS. GIOVANOLI: Yes, Your Honor.

12 REDIRECT EXAMINATION BY MS. GIOVANOLI:

13 Q. Do you recall that you in fact did make a motion to sever
14 the drug charges at the beginning of the trial?

15 A. Yes.

16 Q. And that motion was denied?

17 A. Um-hum, yes.

18 Q. And you in fact made that prejudiced argument in your
19 motion.

20 A. Think so.

21 Q. Is it your understanding that, um, had you called the
22 father to the stand that the State would then impeach him
23 using the the tape you had listened to?

24 A. Yes.

25 Q. And that, is that why you didn't call the father to the

MARY CLAIRE HALL - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 stand?

2 A. I think that was the reason, I think I called his brother
3 instead because he could testify to the same thing.

4 Q. Were there any phone calls with his brother?

5 A. None that, um, I was aware of that woulda been used.

6 Q. And therefore the State couldn't have impeached his
7 testimony.

8 A. Correct.

9 Q. Um, do you remember the jury instruction in this case
10 from the judge, from the bench?

11 A. I remember he didn't instruct on burglary second.

12 Q. Did he instruct on petty larceny up to a thousand
13 dollars?

14 A. I don't remember specifically but I would assume so.

15 Q. Uh, you didn't bring case law to the judge's attention
16 when making your motion for a directed verdict, was it re --
17 was it -- would it be reasonable to conclude that the Court
18 was aware of the standard and when ruling upon a motion for
19 directed verdict?

20 MS. SPIVEY: I'm gonna object, that's speculative.

21 THE COURT: Alright, I'll overrule.

22 Q. You may answer.

23 A. I'm sorry, what was the question again?

24 Q. Would it be reasonable to conclude that the judge was
25 aware of the standard in ruling on a motion for a directed

MARY CLAIRE HALL - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 verdict?

2 A. That's reasonable.

3 THE COURT: I hope that's not speculative.

4 (Laughter.)

5 THE COURT: We -- Judge Judge Cole's back there, ---

6 MS. SPIVEY: Yeah, ---

7 THE COURT: --- could ask ---

8 MS. SPIVEY: --- just don't, ---

9 THE COURT: --- him.

10 MS. SPIVEY: --- don't tell him, Judge, please.

11 (Laughter.)

12 BY MS. GIOVANOLI:

13 Q. And, uh, there there was some te -- there's some
14 testimony earlier about your five to ten questions on your
15 cross-examination, ---

16 A. Um-hum.

17 Q. --- do recall if one of those questions was consistent,
18 uh, uh, across the board with all of the State's witnesses?

19 A. I don't know but maybe I asked if they had evidence
20 Mr. Mahaffey was in the house?

21 Q. No, that -- well, do you recall asking them if they were
22 present when the, at the crime scene at the time a the
23 incident?

24 A. Oh, that way makes sense, I don't remember but ---

25 Q. Okay, would that be in line with your theory of the case?

MARY CLAIRE HALL - REDIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Yes, never saw him in the house.

2 Q. Okay. Um, there was also a little bit of talk about the
3 911 call, ---

4 A. Um-hum.

5 Q. --- um, you recall that that was actually in fact
6 admitted into evidence on page 72, line 12 of the transcript
7 the, uh, 911 call?

8 A. State ---

9 Q. That's right?

10 A. --- introduce that? Okay.

11 Q. Was it played for the jury, was it published?

12 A. It looks like it. Think that may have been the first --
13 no, there was already evidence before that, sorry.

14 Q. Okay, so it -- that evidence actually was, that evidence
15 was actually presented to the jury, uh, where the victim said
16 that the guy, the Applicant was not armed.

17 A. Yes, apparently it was played.

18 Q. And you did not object to the hand of one, hand of all
19 charge, that's cor -- is that correct?

20 A. Um, if that's what's reflected in the transcript, that's
21 correct.

22 Q. And and that was charged because the theory of your case
23 was that someone else committed the burglary, not your client.

24 A. Right.

25 Q. Okay, nothing further.

MARY CLAIRE HALL - RECROSS-EXAMINATION BY MS. SPIVEY

1 THE COURT: Okay. Yes, ma'am, recross?

2 MS. SPIVEY: Your Honor, I just have a few.

3 THE COURT: Sure.

4 RECROSS-EXAMINATION BY MS. SPIVEY:

5 Q. Ms. Hall, didn't the trial judge preclude you from going
6 into any evidence in regard to Ronald Keiser? When you, when
7 you questioned a police officer, ---

8 A. Um-hum.

9 Q. --- the judge did not allow you to go into that.

10 MS. GIOVANOLI: Objection, outside the scope of
11 cross-examination.

12 THE COURT: I'll let ya ask it.

13 MS. SPIVEY: No, I I'm goin' in the one -- the hand of
14 all, Your Honor.

15 MS. GIOVANOLI: Okay.

16 THE COURT: Okay.

17 MS. GIOVANOLI: Alright.

18 THE COURT: Okay.

19 A. Uh, I remember correctly I think I may have tried to
20 bring that up and, um, judge sustained an objection.

21 Q. And so wouldn't it have been important because none of
22 the evidence was allowed in that you objected to that hand of
23 one, hand of all jury charge.

24 A. I'm not sure, I'd have to think about the whole case and
25 the theory to tell you what I think would be the better, uh,

MARY CLAIRE HALL - RECROSS-EXAMINATION BY MS. SPIVEY

1 response to that.

2 Q. In re -- in regard to the 911 call, the question was why
3 didn't you file a motion to dismiss based upon it before the
4 trial started?

5 A. Of him not being armed?

6 Q. Yes.

7 A. I would imagine because when he was arrested they found
8 the pocket knife ---

9 Q. And that would also go along with ---

10 A. --- and -- sorry.

11 Q. I'm sorry, go ahead.

12 A. And that although I disagreed with the State's theory
13 that there was a weapon found in the car that the victim
14 alleged came from his house and so he'd become armed during
15 the burglary, that's a burglary first, so I would assume I
16 woulda thought about it and decided that that wouldn't go
17 anywhere.

18 Q. And you don't think it woulda been important to try to
19 get him a lesser included offense?

20 A. I think it is important, I made that motion.

21 Q. But you didn't perfect it for appeal.

22 A. If you say I didn't, apparently I did not.

23 Q. Nothing further, Your Honor.

24 THE COURT: Okay. Alright, you step down, thank you very
25 much, ---

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 THE WITNESS: Thank you.

2 THE COURT: --- I appreciate it. Anything else from the
3 State?

4 MS. GIOVANOLI: Yes, Your Honor, the State would call
5 Clay Allen.

6 THE COURT: Alright, Mr. Allen, if you'd come up.

7 MS. GIOVANOLI: And may Ms. Hall be excused?

8 THE COURT: Yes.

9 MS. GIOVANOLI: Thank you.

10 (Whereupon, the witness came forward.)

11 THE COURT: Mr. Allen, place your left hand on the Bible
12 and right hand . . .

13 CLAY THOMAS ALLEN, having
14 been first duly sworn, testified as follows:

15 THE COURT: Alright, sir, you can have a seat, state your
16 full name for the record.

17 THE WITNESS: Clay Thomas Allen.

18 DIRECT EXAMINATION BY MS. GIOVANOLI:

19 Q. Good afternoon, Mr. Allen, ---

20 A. Hi.

21 Q. --- how long have you been practicing law?

22 A. I think it's thirty-seven plus years, ---

23 Q. Yeah.

24 A. --- since 1979.

25 Q. And of that time how much has been criminal law?

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 A. Almost all of it. Um, I spent four years in the Army
2 Ju -- Judge Advocates General Corps, active duty 2-year, one
3 year as a, uh, trial counsel which is a prosecutor and two
4 years as a trial defense attorney, I've also spent four years
5 as -- three years as an assistant public defender in Richland
6 County, four years as an assistant solicitor in Greenville
7 County, ten years, uh, during which I was in private practice
8 and was on the Greenville County's, um, uh, contract system
9 where they -- where I did public defender type cases for those
10 ten years and then I've been associated with the Spartanburg
11 County Public Defender's Office since, uh, 2001.

12 Q. And what is your title over there at the Spartanburg
13 County Public Defender's Office?

14 A. Currently I'm the Seventh Judicial Circuit Public
15 Defender, I oversee the Spartanburg and Cherokee County
16 offices.

17 Q. Okay, and at the time of this trial which was August
18 2012, uh, what was your position there?

19 A. The same, ---

20 Q. Alright.

21 A. --- Seventh Judicial Circuit Public Defender.

22 Q. Okay, and how did you, uh, let's say, let's ask you, uh,
23 what was your participation in this case?

24 A. Primarily I sat with Ms. Hall, uh, on the day a trial, I
25 may have talked to her, uh, or talked with her either the last

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 work day before trial or and I may have talked to her
2 periodically, uh, during the -- while the case was pending,
3 um, as as well but I don't recall specifically those
4 conversations and my main job in this case was to sit with
5 her. I like to sit with, um, all of the new attorneys and by
6 "new attorneys" I also mean newly-hired attorneys, uh, wanna
7 make sure that they don't miss something important in South
8 Carolina's, uh, criminal procedure which is a lot different
9 than in other states where they may have trained and also
10 trying to keep them straight with error preservation which is,
11 uh, difficult to do in s -- in some cases.

12 Q. Okay, and also whenever you are participating in a newer
13 attorney's case do you help them investigate the case?

14 A. Not necessarily.

15 Q. Okay. Do you recall if you helped, uh, Ms. Hall
16 investigate this case?

17 A. I don't think I did.

18 Q. Uh, were you familiar with the discovery in this case?

19 A. Somewhat, um, yeah, did I read over it and I certainly
20 didn't listen to the phone calls they're talkin' about but,
21 um, I was familiar with, uh, um, she had briefed me on the
22 case and course I have access to anything, uh, had I needed to
23 look over it.

24 Q. Okay. Did, uh, you hear, on the day of trial, did you
25 hear, uh, Ms. Hall and the Applicant discussing anything about

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 jury selection?

2 A. No, not really and, you know, that's probly what I was
3 there for as well is to help her with jury selection. I think
4 the -- what I typically do and and what I invited her to do I
5 think is, uh, to get your client's input into whether or not
6 certain jurors, you know, whether or not they may want certain
7 jurors. You know sometimes you know you're going to excuse a
8 juror, sometimes you ki -- feel kinda iffy about a potential
9 juror so you kinda ask the client what they think and ---

10 Q. Okay. Did she ---

11 A. --- go ---

12 Q. --- ask ---

13 A. --- with that.

14 Q. --- for Applicant's input in this case?

15 A. I don't recall specifically.

16 Q. Okay. Did you hear the Applicant, Mrs. Hall discussing
17 anything about a a heavy caseload, heavy workload?

18 A. I don't recall that, I I mean, Ms. Hall's caseload was
19 certainly in line with other attorneys in the office that ---

20 Q. In that trial, uh, can you just describe to me how you
21 guys were situated at your defense table: Ms. Hall, lead
22 chair, defendant, you?

23 A. I don't really remember but my impression is he was
24 sitting, uh, between us?

25 Q. Okay, so close enough for you to be able to hear their

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 discussions.

2 A. Yes.

3 Q. Did you, uh, was there anything funny about the jury
4 selection in this case?

5 A. I I assume by funny you mean pre, uh, peculiar, ---

6 Q. Peculiar.

7 A. --- uh, uh, I don't recall anything peculiar about the
8 selection of this case.

9 Q. Did Ms. Hall ask you any questions with regard to jury
10 selection on this case?

11 A. She may have, I mean, like what do I think or somethin'
12 like that, I mean, I'll t -- tryin' to keep her straight with
13 my notes about certain jurors who answer, you know, some of
14 the voir dire questions in a certain way, you know, like
15 people who knew, I think there was, I was lookin' over it a
16 little bit earlier, I think it was like somebody's a friend of
17 Barry Barnette's and, ya know, tryin' to keep up with some a
18 that information; also, Judge Cole, I think was in front a
19 Judge Cole, does not announce the strikes to s -- each side,
20 um, prior to the selection a the jury, that is his, uh, habit
21 and so I wanna make sure that she was aware how many strikes
22 we had.

23 Q. Okay. Did you ever hear any discussion between the
24 Applicant and Mrs. Hall regarding arraignment?

25 A. You know I didn't remember that issue till it was

CLAY THOMAS ALLEN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 testified, uh, to earl -- earlier today, ---

2 Q. Okay.

3 A. --- uh, but I don't really recall specifically any
4 discussion about arraignment, I may have well -- very well
5 been involved in that when it came up, I, you know, looked at
6 the transcript a little bit about the arraignment, I was just
7 tryin' to get through that particular procedure.

8 Q. Did Mrs. Hall ever express to you that that that because
9 of her caseload or that she wasn't, she felt unprepared to go
10 forward with trial?

11 A. She did not ---

12 Q. Okay.

13 A. --- and I did not detect that she was not prepared.

14 Q. Did you ever meet with the Applicant?

15 A. Um, prior to trial, uh, mighta met with him and
16 Ms. Hall here in the courthouse somewhere but I don't think I
17 met with him in, I don't think I met with them prior to that.

18 Q. Would you -- do you you recall anything from that
19 meeting?

20 A. Not really.

21 Q. Okay. Uh, did you meet with him before the trial at the
22 courthouse?

23 A. Probably.

24 Q. Did you talk to the Applicant?

25 A. Oh, oh, no, no, if I met with him I met with him with

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 Ms. Hall, ya know.

2 Q. Okay.

3 A. Now I wanna make it clear that she and at least in his
4 eye 'cause he's been dealin' with her that she was the lead
5 attorney as it were, I was just there for technical support if
6 you will.

7 Q. Uh, I guess while you were there was he informed that you
8 guys were proceeding with a trial that day?

9 A. I'm sure that he was quite aware that ---

10 Q. Did he -- did ---

11 A. --- was a trial.

12 Q. --- you ever hear him express any desire plead guilty?

13 A. No.

14 Q. Have you represented Applicant in any other cases?

15 A. Have I represented Mr., uh, ---

16 Q. Mist ---

17 A. --- Mahaf -- did I re -- represent ---

18 Q. Have you ever represented this Applicant on other cases?

19 A. I don't think I did.

20 Q. Okay, nothing further from this witness.

21 THE COURT: Ms. Spivey.

22 CROSS-EXAMINATION BY MS. SPIVEY:

23 Q. Mr. Allen, you you never had any conversations with
24 Mr. Mahaffey, right?

25 A. I recall any conversations Mr. Mahaffey?

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. Yes.

2 A. No, I did not have any one-on-one conversations with him
3 and I don't recall specifically any conversations with him and
4 Ms. Hall.

5 Q. So you wouldn't have any knowledge whether he expressed a
6 desire plead guilty or not, would you?

7 A. Other than through the notes I see in the file but but
8 no.

9 Q. And, uh, don't you think it would have been appropriate
10 for Ms. Hall to take care of the is -- the arraignment issue
11 prior to bein' at that trial?

12 A. No, this happens periodically, uh, in fact, I had a death
13 penalty case few years ago where we had to do the arraignment
14 right before we selected the jury so it is a, uh, a procedure
15 that's required especially in direct indictment cases but, I
16 mean, it's ---

17 Q. And Mr. Mahaffey wasn't afforded that right, was he?

18 A. Well he was arraigned prior to the selection a the jury
19 or prior to the trial.

20 Q. Didn't Ms. Hall waive that for him?

21 A. Well, okay, I don't recall the, whatever the record says
22 then.

23 Q. Yeah, so he was deprived a that right, correct?

24 A. I wouldn't say he was deprived of that right, I'm sure
25 she -- we would have discussed it and that we were or that she

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 would have discussed it with him in my presence at that point
2 and decided not to go forward with it.

3 Q. And you know that Mr. Mahaffey wanted to plead guilty to
4 those drug charges.

5 A. I don't know that for a fact.

6 Q. And it would have impacted his trial greatly had those
7 drug charges not been brought up.

8 A. Well and the fact that he was found with drugs when when
9 he was arrested I think could still have been brought up
10 whether he pled guilty to them or not.

11 Q. But couldn't ya'll have used that as a basis to sever the
12 charges?

13 A. I'm sorry, I didn't hear.

14 Q. Could, I mean, could you not have used that as a basis to
15 not have the charges brought up at the trial?

16 A. It coulda been basis for an objection but ---

17 Q. And ---

18 A. --- still coulda been brought up in my opinion.

19 Q. --- and that was never made, was it?

20 A. It was not.

21 Q. And wasn't Mr. Mahaffey prejudiced by on his, uh, with
22 his appellate counsel because the, uh, issues of the lesser
23 included offense and whether the pocket knife was a deadly
24 weapon was not properly preserved for the appellate counsel?

25 A. Well I don't know, I haven't seen the appellate decision

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 or the appellate, uh, opinion but that's not the way that I
2 was looking at the case. I was looking at the case in the
3 sense that the aggravating circumstance that would take a
4 burglary second to a burglary first is that either at the time
5 of the entry or in flight therefrom that the defendant or
6 another participant were armed or became armed with a deadly
7 weapon and what they were claiming was that the -- a gun was
8 stolen from the house and a gun that the homeowner claimed
9 came out of his house was found, uh, in Mr. Mahaffey's car so
10 I didn't really see where the pocket knife was that big of a
11 deal when we got the theft of a weapon as being part and
12 parcel of the burglary which would make it a burglary first
13 so ---

14 Q. Yeah, and Ms. Hall never brought up the fact that
15 Mr. Sustare had set up Mr. Mahaffey, did she?

16 A. I I'm sorry, I didn't catch all that.

17 Q. Ms. Hall never brought up the fact that Mr. Sustare had
18 set up Mr. Mahaffey.

19 A. I think that's what she was trying to do through
20 cross-examination.

21 Q. But she never did that, did she?

22 A. I don't recall specifically the cross-examination.

23 Q. And and she didn't cross-examine two of their witnesses,
24 did she?

25 A. I don't recall how many witness she cross-examined or

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 not, I know I heard you say, ask twice that she didn't
2 cross-examine two a the witnesses but it's, but not
3 cross-examinatio -- not cross-examining some a the witnesses
4 is not necessarily that important, it depends on what the
5 witnesses had to say. I know Mr. Rosenberg, for example,
6 witness that you mentioned earlier, is primarily an, a, uh,
7 evidence custodian, he's also a, uh, crime scene person where
8 he gets items a evidence, uh, from the scene and preserve them
9 so ---

10 Q. But if you don't properly cross-examine the witnesses to
11 bring out the theory of your case then you failed your client,
12 correct?

13 A. Not necessar -- it depends if that witness is gonna give
14 us anything that will help us with the, with the case or help
15 us with our theory of the case, I mean, if he is picking up an
16 item and putting it into evidence, he may or may not be able
17 to provide that information.

18 Q. You think Ms. Hall should proceeded with the case when
19 she had not reviewed all of discovery material prior to the
20 trial?

21 A. By not reviewing all the discovery material I presume
22 you're talking about the jail telephone calls?

23 Q. And the 911 calls.

24 A. Okay, I'm not sure if she had not reviewed the 911 calls,
25 I thought ---

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. But you have ---

2 A. --- she ---

3 Q. --- no direct knowledge of that, do you?

4 A. I'm sorry?

5 Q. You have no direct knowledge a that, do you?

6 A. I do not know because that's correct. The jail calls, I
7 mean, and I've had jail calls dropped on me right before trial
8 and that seems to be something the prosecutor likes to do or
9 some prosecutors like to do, problem with the jail calls is
10 that if there's anything's beneficial to your client because
11 your client is party to the jail call can't be used because
12 it's a self-serving statement and it's not admissible unless
13 your client testifies. The only other things that they can be
14 used for is if your client makes some sorta damaging statement
15 so what I and other people in my office have taken to do is
16 that when they're given a load of phone calls shortly before
17 trial, uh, we want to know specifically from the prosecutor
18 which phone calls you're gonna use so we know which ones they
19 think are damaging so that we can limit our need to have to
20 listen to all of them.

21 Q. But she admitted that she didn't even listen to the
22 relevant ones, didn't she?

23 A. Uh, that's not my recollection of ---

24 Q. Didn't she ---

25 A. --- the testimony.

CLAY THOMAS ALLEN - CROSS-EXAMINATION BY MS. SPIVEY

1 Q. --- admit to the trial judge that she only listened to
2 two a the three calls?

3 A. I don't know what the -- I don't recall what the
4 transcript says on that.

5 Q. Your Honor, I I would refer the Court to transcript page
6 8 lines 1 through 5.

7 THE COURT: Yes, ma'am, I've ---

8 MS. SPIVEY: Okay, ---

9 THE COURT: --- read it, ---

10 MS. SPIVEY: --- thank you.

11 THE COURT: --- yeah.

12 BY MS. SPIVEY:

13 Q. And don't you think it would be important to review the
14 evidence especially if you're gonna exclude one a your
15 witnesses based upon the State's assertion that these phone
16 calls would impeach them in some way, don't you think it would
17 be appropriate that you actually listen to those phone calls
18 before you just took the State's word for it?

19 A. Oh, I I would agree with that, yes.

20 Q. Nothin' further, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. GIOVANOLI: Just wanted to clarify the record on page
23 8 lines 1 through 5 I believe Ms. Hall said that two of the
24 three she had trouble hearing them, uh, they were the jail
25 calls.

JENNIFER ANN JUDY JORDAN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 THE COURT: Okay.

2 MS. GIOVANOLI: Nothing further.

3 THE COURT: Okay, good enough. Thank you, Mr. Allen, I
4 appreciate it.

5 THE WITNESS: Um-hum, okay.

6 (Whereupon, the witness left the stand.)

7 THE COURT: Anything further from the State?

8 MS. GIOVANOLI: Um, State would call Jennifer Jordan.

9 THE COURT: Okay.

10 MS. SPIVEY: Your Honor, I wasn't advised of this witness
11 prior to trial, she wasn't listed as a witness.

12 MS. GIOVANOLI: And there was no request for a witness
13 list in this case.

14 THE COURT: Okay, is there a discovery request?

15 MS. SPIVEY: No, sir, Your Honor.

16 THE COURT: Okay. Alright, c'mon up, Ms. Jordan.

17 (Whereupon, the witness came forward.)

18 THE COURT: Place your left hand on the Bible please and
19 raise your right.

20 JENNIFER ANN JUDY JORDAN, having
21 first been duly sworn, testified as follows:

22 THE COURT: Okay, have a seat, please state your full
23 name for the record.

24 THE WITNESS: Jennifer Ann Judy Jordan.

25 DIRECT EXAMINATION BY MS. GIOVANOLI:

JENNIFER ANN JUDY JORDAN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Good afternoon, Ms. Jordan, uh, what what is your
2 position?

3 A. I'm an assistant solicitor here in the Seventh Circuit.

4 Q. Okay. Were you, uh, holding that position on August 27th
5 through the 28th of 2012?

6 A. Yes, ma'am.

7 Q. And did you prosecute the case against Mr. Christopher
8 Mahaffey?

9 A. Yes, ma'am.

10 Q. Um, how did you come to, uh, let me rephrase. In that
11 case did you ever extend a plea offer?

12 A. No, ma'am.

13 Q. Okay. Uh, were you approached by Mrs. Hall, uh, in order
14 to negotiate a plea?

15 A. Um, I reviewed my electronic file in PCMS and saw where
16 Meghan Terry had contacted me about a reduction when she had
17 the case before the prelim and I also had an email in there
18 from Claire asking if there was gonna be any offer and my
19 response was, uh, no.

20 Q. Okay, but do you recall any meeting with Ms. Hall or
21 discussions?

22 A. We discussed the case, um, going back and looking at the
23 notes looks like it was on a trial docket in July as well as
24 when we ended up trying it I think which was in August, we
25 discussed it, I I did not make an offer.

JENNIFER ANN JUDY JORDAN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 Q. Okay, and can I just take you back to what you just said
2 about the reduction, were you referring to a bond reduction
3 hearing?

4 A. No, I was referring to a reduction in the charge.

5 Q. Okay, alright. Um, why didn't you extend a plea offer in
6 this case?

7 A. A few, a few days prior to committing this offense I had
8 pled the defendant on another charge for habitual traffic
9 offender so he was only a few days shy or a few days post-
10 pleading in court when he was arrested for this charge at the
11 scene and he was on probation at the same time.

12 Q. And, uh, was he -- why was he later indicted on the, for
13 the drug charges?

14 A. If I recall correctly we were waiting on a drug analysis
15 from the chemist at the sheriff's department.

16 Q. Uh, there was some mention about some phone calls that
17 were provided to the defense late, uh, why did you provide
18 phone calls to the defense the week before trial?

19 A. I would assume that I made a late request for them.

20 Q. Okay, and is that typical?

21 A. Sometimes, yes, ma'am.

22 Q. You recall how many phone calls you provided?

23 A. No, ma'am, it was just a disk with a a lot on it.

24 Q. And can you briefly just describe the evidence that you
25 had against, uh, the State had against the defendant in the

JENNIFER ANN JUDY JORDAN - DIRECT EXAMINATION BY MS. GIOVANOLI

1 case.

2 A. Yes, ma'am, he broke in or he was caught at the scene of
3 Mr. Sustire's [sic] house, Mr. Sustire's house had a long
4 driveway that had trees on it and the house was back well off
5 of the, um, the main road, I think you said a 600-foot
6 driveway, he was caught coming outta the house or right in the
7 front yard a the house, the vehicle that he was in was
8 running, Mr. Sustire had an, a younger teenage guy helping him
9 out at the property and the kid was like 6 foot 9 and they
10 were able to hold him at the scene until police got there.
11 The, uh, the teenager described him having a money bag that
12 fell out of his waistband that had some money in it that was
13 identified by the victim as being his, inside of the car was a
14 gun that the victim stated was his and I think you referred
15 earlier to the victim's testimony at trial 'bout how he asked
16 the defendant, Where is it, where is it, and he finally said,
17 It's in the car between the consoles, I don't remember the
18 exact statement that the victim said the defendant gave, so
19 basically it was a burglary first where he was caught coming
20 outta the house, two knives in his pocket and the victim's gun
21 as Mr. Allen just stated that he got while in, you know, pr --
22 not in progress but I guess while in progress or in flight
23 from the house he came into possession of a weapon at that
24 point too.

25 Q. Okay, and you provided all of the discovery, all

JENNIFER ANN JUDY JORDAN - CROSS-EXAMINATION BY MS. SPIVEY

1 of the evidence that the State was in possession of to the
2 defense ---

3 A. Yes.

4 Q. --- including those late phone calls.

5 A. Yes.

6 Q. Okay, um, I have no further questions.

7 THE COURT: Yes, ma'am, cross-examination?

8 CROSS-EXAMINATION BY MS. SPIVEY:

9 Q. Ms. Jordan, you knew that the de -- di -- were you aware
10 that the defendant had a difficulty opening those phone calls
11 because the AutoRun was not installed on the disk?

12 A. No, ma'am.

13 Q. And you di -- you don't recall that I had to come to your
14 office and get those calls because Mr. Mahaffey was not in
15 possession of those?

16 A. I recall that ya'll requested a meeting with me and to
17 review my file and that I I had that, I had a meeting with you
18 and let you review my files.

19 Q. And and you gave us a copy of those calls, at that time
20 you burned a disk for us, do ---

21 A. If you asked for 'em, yes, I would've given it to you.

22 Q. And I I missed it earlier, why did you say that that the
23 calls were only given a few days prior to the trial?

24 A. Sometimes I request them earlier in a case and sometimes
25 I wait till later in a case and I'm assuming in this one I

JENNIFER ANN JUDY JORDAN - CROSS-EXAMINATION BY MS. SPIVEY

1 must have waited till later in the case, I can't say that for
2 sure.

3 Q. When were they turned over to the defense?

4 A. It was, it was right before trial, I don't remember the
5 exact date.

6 Q. Was a couple days before trial?

7 A. Probably, I just don't remember the exact date.

8 Q. And the State, that the, uh, sheriff's department never
9 investigated Ronald Keiser as a suspect, did they?

10 A. If I recall they brought the dog out and I think Claire
11 talked about the dog at trial or there was a dog, um, they
12 bought a dog to track out there and if I recall, and if I had
13 it to look at I would look at it, that the incident report
14 reflected the defendant stating somebody else was out there
15 but they saw no other signs of anybody else being out there
16 and I remember in photographs of the defendant's vehicle at
17 the scene there was a lotta stuff in the front seat that made
18 it look like nobody else coulda been sitting in the front
19 passenger seat.

20 Q. And that was after Mr. Sustare had gone into the vehicle,
21 moved things around.

22 A. I don't know that he moved things around but I do know
23 that he went in there I believe and found his gun.

24 Q. And but he had, he was the only person that had access to
25 the car at that time 'cause they were holding Mr. Mahaffey at

1 gunpoint.

2 A. They were holding him down, yes.

3 Q. At gunpoint ---

4 A. Yes.

5 Q. --- and Mr. Sustare went back to the car several times
6 and he's the only one that had access to the car.

7 A. I don't know how many times he went back.

8 Q. And Ms. Hall never brought any a this up at trial, did
9 she?

10 A. I don't recall if she did or did not.

11 Q. And the information as to Mr. Keiser was not allowed in
12 by the trial judge, was it?

13 A. I don't recall that it was, um, and I haven't reviewed
14 the complete transcript and I I can't even remember if in this
15 case I filed a motion against third-party guilt or to keep
16 third-party guilt out which is something that I typically do
17 in those kinda cases but I don't know if I did that in this
18 one or not.

19 Q. And and Ms. Hall never made, despite the evidence not
20 comin' in, she never made an objection to your jury charge of
21 the hand of one is the hand of all.

22 A. I don't specifically recall.

23 Q. Nothing further, Your Honor.

24 THE COURT: Okay. Any redirect?

25 MS. GIOVANOLI: Uh, no, your Honor.

MOTIONS AND MATTERS

1 THE COURT: Okay, alright, thank you, ---

2 THE WITNESS: Thank you.

3 THE COURT: --- appreciate it.

4 (Whereupon, the witness left the stand.)

5 THE COURT: Anything further from the State?

6 MS. GIOVANOLI: No, the State will rest.

7 THE COURT: Okay, anything further from the Applicant?

8 MS. SPIVEY: Your Honor, we would just like to say that
9 we feel like we have proven a case that, uh, Ms. Hall did not
10 adequately represent, uh, Mr. Mahaffey, the late discovery
11 that she got that fur -- that she didn't even review, she
12 excluded a witness based upon the State telling her what the
13 evidence was rather than reviewin' it herself, she didn't file
14 a continuance so that she could have time to review this, it
15 was really significant to his case and that a motion coulda
16 been filed, uh, with the victim's own statements that
17 Mr. Mahaffey was unarmed and it could have impacted the
18 burglary first versus a burglary second, also, there, he was
19 not arraigned on the ju -- drug charges and those shoulda been
20 handled prior to that day in court, we just feel like Ms. Hall
21 was not prepared for this matter and Mr. Mahaffey wanted to
22 plead guilty on those drug charges and that prejudiced him by
23 having to go forward on all those charges that day by not
24 being allowed to plead guilty separately to those drug charges
25 and he had no idea that he was even being char -- uh, tried

MOTIONS AND MATTERS

1 for the drug charges that day because he had only met with
2 Ms. Hall for twenty minutes, also we feel like he was greatly
3 prejudiced that, uh, because Ms. Hall failed to, uh, uh, it
4 affected his appeal 'cause the appellate counsel could not,
5 was not successful on appeal because she did not preserve the
6 issue of the lesser included offense a burglary second and
7 whether a pocket knife was a deadly weapon so that greatly
8 prejudiced him and, Your Honor, we feel like that had he had a
9 adequate representation that a burglary second could have
10 greatly impacted his sentence, uh, versus 25 years, he
11 could've gotten 10 or less.

12 THE COURT: Okay, thank you, ---

13 MS. SPIVEY: Thank you.

14 THE COURT: --- I appreciate it. Anything from the
15 State, anything you need put on the record?

16 MS. GIOVANOLI: I'll just briefly address the issues that
17 she raised, um, that with regard to the continuance there's
18 testimony that there wasn't any basis for a request for a
19 continuance, that t -- counsel had ample opportunity to
20 pare -- prepare the case for trial and she in fact felt
21 prepared to go forward with trial and had she not felt
22 prepared she would have requested a continuance, um, the 911
23 call that was admitted into evidence of the victim's tes --
24 statement in in that 911 phone call about the Applicant not
25 being armed, uh, was part of that 911 phone call that was

MOTIONS AND MATTERS

1 presented to the jury, um, the arraignment issue there was a
2 brief pause in in that's, uh, illustrated in the record, um,
3 after the the solicitor brought it to the attention of the
4 Court that the Applicant had not been arraigned on the drug
5 charges, um, it's reasonable to conclude that during that
6 discussion counsel talked to Applicant about the arraignment
7 and the decision to waive the arraignment, um, he -- there was
8 also the testimony is consistent that no one, he had never
9 expressed a desire to plead guilty to those charges at that
10 point in time, um, the issue with burglary second not being
11 preserved, um, that I would submit to you that that issue was
12 in fact preserved and it was a main issue taken up on appeal
13 and ruled on by the Court of Appeals and they in fact affirmed
14 the Court's decision not to charge the jury on burglary
15 second, um, and I believe that's just about all those
16 outstanding issues.

17 THE COURT: Okay. Alright, I'm gonna take it under
18 advisement, I'll go back and read, uh, that appellate decision
19 and I'll go back and read as well the transcript which I have,
20 I've made fairly copious notes and I'll review all context
21 from notes that I've made and I'll get back to ya fairly short
22 order. Thank you very much.

23 MS. SPIVEY: Thank you, Your Honor.

24 MS. GIOVANOLI: Thank you, Your Honor.

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on Marcy 23, 2017 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 111, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

January 29, 2016

Margaret A. Woods

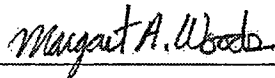
Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
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10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 January 29, 2018

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
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RECEIPT FOR EXHIBITS

Case # 2015 GS/CP 42 - 4207 Judge Robin B. Stilwell

Plaintiff Christopher Paul Mahaffey Atty Spivey

Defendant The State Atty Valerie G. Giovanoli

Received from Maggie Woods, Circuit Court Reporter, the following exhibits:

P=Plaintiff, D=Defendant, S=State, C=Court, J=Joint

	EV	EV
A-1 <u>911 call transcribed/Andrew Sustar</u>	_____	_____
A-2 <u>Arrest warrant & Deputy report for incident</u>	_____	_____
A-3 <u>Motor vehicle Tow & Inventory Report</u>	_____	_____

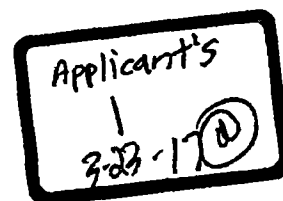
2017 MAR 24 PM 12:57
M. HOPE BLACKLEY

Received by Alexandra Mullen, Clerk of Court
Date 3-22-17 Mabel Mullen

911 CALL

ANDREW SUSTARE

 **COPY**



LEGAL EAGLE

Certified Verbatim Reporters

Post Office Box 5682

Greenville, South Carolina 29606

864-298-0082 or 864-467-1373

depos@legaleagleinc.com

1 911:

2 Spartanburg 911, what is the address of your
3 emergency?

4 MR. SUSTARE:

5 [REDACTED].

6 911:

7 What's your name?

8 MR. SUSTARE:

9 Andrew Sustare.

10 911:

11 And your phone number?

12 MR. SUSTARE:

13 This phone number is [REDACTED]-7769.

14 911:

15 Okay, what's going on there?

16 MR. SUSTARE:

17 I just came up to my house and I caught a man coming
18 out of my house and I'm missing a .357 Magnum that
19 was by my bedroom.

20 911:

21 Uh-huh.

22 MR. SUSTARE:

23 He is unarmed. I have checked him. I have him held
24 with a friend of mine that was here. This man
25 passed three no trespassing signs coming down my

1 driveway and I come around the corner and he's
2 coming out of my house and I'm missing my gun and I
3 want his vehicle searched because he has stolen from
4 me.

5 911:

6 Alright, Mr. Sustare, are you in a car or are you in
7 your house?

8 MR. SUSTARE:

9 I'm in my house right now.

10 911:

11 And where is the man at?

12 MR. SUSTARE:

13 He's out in my front yard right now. I have
14 somebody else here with me that is holding him
15 because I want the police to come and check this
16 person out and do -- look at his vehicle. I caught
17 him coming out of my house.

18 911:

19 Okay, hold on one moment for me, okay?

20 MR. SUSTARE:

21 Yeah.

22 911:

23 Is this in Enoree?

24 MR. SUSTARE:

25 Yes, it is.

1 911:

2 Can you tell me if he's a white male or a black
3 male?

4 MR. SUSTARE:

5 He's a white male.

6 911:

7 And what color clothes is he wearing?

8 MR. SUSTARE:

9 He's wearing white tennis shoes, blue jeans and like
10 a blue shirt, like a blue jacket kind of thing.

11 911:

12 Okay. Is somebody else there with you, sir?

13 MR. SUSTARE:

14 Yes, I got a boy here that's six foot eight holding
15 this guy and --

16 911:

17 Is he trying to fight with you?

18 MR. SUSTARE:

19 Pardon?

20 911:

21 Is he trying to fight to get away?

22 MR. SUSTARE:

23 No, but I'm making sure he -- he -- he doesn't try
24 to escape. I took his car keys; and when I came
25 around the corner he had come out my house and I

1 just called my wife because I've got a .357 Magnum
2 that was by my bedside and it's gone and it was
3 there this morning. This guy -- I was dumping dirt,
4 I don't know how long he's been here but I caught
5 him coming out of my house. I need to have the
6 police down here because I want his vehicle
7 searched. He has stolen from me. I don't know what
8 else he's done.

9 911:

10 Sir, stay on the phone with me, okay? I've got the
11 police call-in already. Are you right there at
12 Cedar Shoals Church Road?

13 MR. SUSTARE:

14 Yeah, it's right across the street from me.

15 911:

16 Okay. Does he have any weapons on him?

17 MR. SUSTARE:

18 Not that I can see. I won't let him back to his
19 vehicle. I made him lift his shirt up. I don't see
20 anything on him.

21 911:

22 Okay. And you don't know who this subject is,
23 correct?

24 MR. SUSTARE:

25 I have no idea. I've never seen him --

1 911:

2 what color is your house?

3 MR. SUSTARE:

4 It's brick. I got a 600 foot long driveway.

5 911:

6 Is the numeric on the mailbox at the end of the
7 driveway?

8 MR. SUSTARE:

9 I don't have a mailbox.

10 911:

11 No mailbox?

12 MR. SUSTARE:

13 No, I got big rocks out front. When you take exit
14 38 off of 26 by the Hot Spot and you're heading down
15 46, I'm one mile on the left there's big rocks out
16 front.

17 911:

18 They'll see the rocks from the roadway?

19 MR. SUSTARE:

20 Yeah, you can see it. It's big -- big rocks by my
21 driveway.

22 911:

23 Okay.

24 MR. SUSTARE:

25 [REDACTED].

1 911:

2 okay. What -- is he just sitting there now
3 cooperating with you?

4 MR. SUSTARE:

5 He's being -- well, let's just say he ain't going
6 nowhere. I've got a six foot eight, 250 pound
7 person holding him, making sure he stays there until
8 the cops get here.

9 911:

10 okay.

11 MR. SUSTARE:

12 Is there anything else you need from me or is
13 somebody coming?

14 911:

15 They're already on the way with you -- to you I'm
16 just going to stay on the phone with you until they
17 get there, okay, if that's okay.

18 MR. SUSTARE:

19 I don't need to just hang on the phone (inaudible).

20 911:

21 Is -- is there a vehicle there that's he's been
22 driving or do you --

23 MR. SUSTARE:

24 Yes.

25 911:

1 -- can --

2 MR. SUSTARE:

3 Yeah.

4 911:

5 what kind of car is there? Mr. Sustare, can you
6 tell me what kind of car he's driving?

7 MR. SUSTARE:

8 He's driving an Expedition, Eddie Bauer. His
9 license plate is [REDACTED], again, [REDACTED].

10 911:

11 [REDACTED] November Victor, N-V?

12 MR. SUSTARE:

13 That's [REDACTED] Edward Victor.

14 911:

15 Okay. And you said it's what color Ford Expedition?

16 MR. SUSTARE:

17 It's green. Cops -- are the cops on the way?

18 911:

19 Yes, sir they are on the way already, okay?

20 MR. SUSTARE:

21 Alright, I'll see them when they get here.

22 911:

23 Okay. You call me back if anything changes.

24 MR. SUSTARE:

25 Alright, bye.

1 911:

2 Alright, bye-bye.

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1
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3 CERTIFICATE

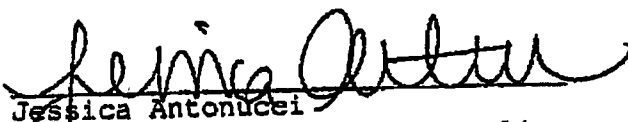
4 I, the undersigned, Jessica Antonucci, Notary Public
5 in and for the State of South Carolina do hereby certify
6 that:

7 That the foregoing tape was transcribed at the
8 request of Paul Mahaffey;

9 A court reporter was not present at the proceedings
10 and therefore cannot guarantee that every word of
11 testimony could be heard or that the speaking parties are
12 properly identified;

13 I further certify that I am neither counsel nor
14 solicitor to any of the parties in said suit, nor
15 interested in the event of the cause.

16 In witness whereof, I have hereunto set my hand and
17 seal this 5th day of May, 2016.

18
19
20 
21 Jessica Antonucci
22 Notary Public for South Carolina
23 My Commission expires 7/06/2025
24
25



Spartanburg County Sheriff's Office

Deputy Report for Incident 12010713

Nature: Burglary
Location: 46

Address: [REDACTED]
ENOREE SC 29335

Offense Codes: BRUE

Received By:

How Received:

Agency: SCSO

Responding Officers:

Responsible Officer: Bishop B

Disposition: ACT 01/14/12

When Reported: 13:17:00 01/14/12

Occurred Between: 13:00:00 01/14/12 and 15:00:00 01/14/12

Assigned To:

Detail:

Date Assigned: **/**/**

Status:

Status Date: **/**/**

Due Date: **/**/**

Complainant: 194182

Last: SUSTARE

First: ANDREW

Mid:

DOB: [REDACTED]/63

Dr Lic:

Address: [REDACTED]

Race: W

Sex: M

Phone: [REDACTED]-7769

City: ENOREE, SC 29335

Offense Codes

Reported:

Observed: BRUE Burglary, Resd, Unlawful En

Additional Offense: BRUE Burglary, Resd, Unlawful En

Circumstances

BM88 No Bias

LT20 LOC-Residence or Home

WNONE W-No Weapon Used

VTR23 Vict Relationship Unknown: RU

Responding Officers:

Unit :

Responsible Officer: Bishop B

Agency: SCSO

Received By:

Last Radio Log: **:**:** **/**/**

How Received:

Clearance: UND Under Investigation

When Reported: 13:17:00 01/14/12

Disposition: ACT Date: 01/14/12

Judicial Status:

Occurred between: 13:00:00 01/14/12

Misc Entry:

and: 15:00:00 01/14/12

Modus Operandi:

Description :

Method :

Crime Types

Crime Type Committed

Burglary-Residential

Force Used

Type of Force Used

No Force

0(02/06/12) : 00004

Deputy Report for Incident 12010713

Page 2 of 13

Method	Method of Entry/Operation	Open/Unlocked Door
Weapon, Force	Weapon or Force Used	No Weapon
Point of Entry	Point of Entry	Front Door/Window
Scene/Structure	Scene/Structure Type	Residence/House
Time of Day	Preferred Time of Day	Midday
Suspect Actions	Suspect's Actions	Put Property Pocket

Involvements

Date	Type	Description	
01/14/12	Name	MAHAFFEY, CHRISTOPHER PAUL	Suspect
01/14/12	Name	KEISER, RONALD MCQUE	Suspect
01/14/12	Name	SUSTARE, ANDREW	Complainant
01/14/12	Name	SUSTARE, ANDREW	Victim ✓
01/14/12	Name	BLACKWELL, RICHIE	Witness
01/14/12	Vehicle	GRN 0 FORD EPD SC	Involved
01/14/12	Property	SIL Firearm SMITH & WESSON 686 500	Stolen
01/14/12	Property	PLE Cellular Phone BLACKBERRY 300	Stolen
01/14/12	Property	BLU Money Bag 50	Stolen
01/14/12	Property	GLD Jewelry 500	Stolen
01/14/12	Property	GRN Money 187	Stolen

Deputy Report for Incident 12010713

Page 4 of 13

Responsible LEO:

Approved by:

Date



01/02/08/12) 3:00015
Spartanburg Sheriff's Office

Incident / Offense Report

8045 HOWARD ST SPARTANBURG SC 29303 -- (864)503-4500

Law

Number 12010713

Nature Burglary

Address

City ENOREE

State SC

Zip 29335

Contact ANDREW SUSTARE

Phone -7769

When Reported 13:17:00 01/14/2012
 (HH:MM:SS MM/DD/YYYY)

Misc. Info.

Occurred Start 13:00:00 01/14/2012
 (HH:MM:SS MM/DD/YYYY)

Occurred End 15:00:00 01/14/2012
 (HH:MM:SS MM/DD/YYYY)

VNI Issued YES

Responsible Bishop B

Agency SHERIFF'S OFFICE

Area TRACK 46

Offense(s) Burglary, Resd, Unlawful En

Circumstance(s) No Bias

LOC-Residence or Home

W-No Weapon Used

Vict Relationship Unknown: RU

MO Crime Types

Burglary-Residential

Force Used

No Force

Method

Open/Unlocked Door

Weapon, Force

No Weapon

Point of Entry

Front Door/Window

	Scene/Structure	Residence/House
	Time of Day	Midday
	Suspect Actions	Put Property Pocket
Observed	Burglary, Resd, Unlawful En	Clearance Under Investigation
Disposition	Active	Disposition Date 01/14/2012
Case(s)		

Names	1	Relationship	Complnt	Type	INDIV
	Last Name	SUSTARE	First Name	ANDREW	
	Middle/Suffix		SSN		
	Birth Date	/1963	48 Age	Juv	
	Sex	M	Race	W-WHITE, NON-HIS	
	Address				
	City	ENOREE	State	SC	
	Zip	29335	Home Phone	-7769	
	Work Phone	-9964	VNI Contact Person		
	VNI Contact Person #				

Cell Phone		DL Number/State	
Height	6' 03"	Weight	218
Hair	BRO	Eyes	BRO
SMT			
MO			
Alert Code			

Comments

Names

2

Relationship Victim

Type INDIV

Last Name SUSTARE

First Name ANDREW

Middle/Suffix

SSN

Birth Date [REDACTED]/1963

48

Age

Juv

Sex M

Race W-WHITE, NON-HIS

Address [REDACTED]

City ENOREE

State SC

Zip 29335

Home Phone ([REDACTED]) 7769

Work Phone [REDACTED] 9964

VNI Contact Person DEBORAH SUSTARE

VNI Contact Person # [REDACTED]-2429

Cell Phone

DL Number/
State

Height 6' 03"

Weight 218

Hair BRO

Eyes BRO

SMT

MO

Alert Code

Comments

3

Names

Relationship Witness

Type INDIV

Last Name BLACKWELL

First Name RICHIE

Middle/Suffix

SSN

Birth Date [REDACTED]/1990

21

Age

Juv

Sex M

Race W-WHITE, NON-HIS

Address [REDACTED] LAKE FRONT RD

City BOILING SPRINGS

State SC

Zip 29316

Home Phone [REDACTED] 1971

Work Phone

VNI Contact
PersonVNI Contact
Person #

Cell Phone

DL Number/
State

Height 6' 09"

Weight 250

Hair BRO

Eyes BLU

SMT

MO

Alert Code

Comments

Names

4

Relationship Suspect

Type INDIV

Last Name MAHAFFEY

First Name CHRISTOPHER

Middle/Suffix PAUL

SSN

Birth Date /1972

39
Age

Juv

Sex M

Race W-WHITE, NON-HIS

Address CRESENT GREEN POND RD

City WOODRUFF

State SC

Zip 29388

Home Phone -3516

Work Phone 6020

VNI Contact
PersonVNI Contact
Person #

Cell Phone

DL Number/
State

SC

Height 5' 05"

Weight 180

Hair BRO

Eyes BLU

SMT

MO

Alert Code

Comments

Names

5

Relationship	Suspect	Type	INDIV
Last Name	KEISER	First Name	RONALD
Middle/Suffix	MCQUE	SSN	
Birth Date	/1986	Age	26
		Juv	
Sex	M	Race	W-WHITE, NON-HIS
Address	MARYLAND DR		
City	WOODRUFF	State	SC
		Zip	29388
Home Phone	1708	Work Phone	
VNI Contact Person		VNI Contact Person #	

Cell Phone		DL Number/State	
Height	5' 06"	Weight	140
		Hair	BRO
		Eyes	BRO
SMT			
MO			
Alert Code			
Comments			

Vehicles

1

Relationship	Involved	Plate/State		SC
Make/Model	FORD	EPD	Plate Type	Regular Passenger Automobile
Vehicle Type	Passenger Van	Expires		
Color	Green	Year/VIN		

Local Status		Status Date	01/14/2012
UCR Status	None	Value	
Date Recovered/ Received		Amount Recovered	
Wrecker Service	County Rollback	Storage Location	BROADCAST DRIVE
Area		Date Released	
Local ID Type		Local ID	
Characteristic(s)			
Comments	BURGLARY VEHICLE		
Relationship	Owner	Type	INDIV
Last Name	MAHAFFEY	First Name	CHRISTOPHER
Middle/Suffix	PAUL	SSN	
Birth Date	1972	Sex	M
	39 Age	Race	W-WHITE, NON-HIS
Address	CRESENT GREEN POND RD		
City	WOODRUFF	State	SC
		Zip	29388
Home Phone	3516	Work Phone	6020

Property	Relationship	Stolen	Item	Firearm
	Brand	SMITH & WESSON	Model/ Year	686
	Serial	CNX7289	Value	\$500.00
	Quantity/ Measure	357	Color	Silver
		CALIBER		

UCR Code	Firearms	UCR Status	Stolen Local, Recovered Local	
Local Status	Recovered Property	Status Date	01/14/2012	
Date Recovered	01/14/2012	Amount Recovered	\$500.00	
Accumulative Amount Recov.		Owner Applied Number		
Local ID Type		Local ID		
Comments				
Relationship	Owner	Type	INDIV	
Last Name	SUSTARE	First Name	ANDREW	
Middle/Suffix		SSN		
Birth Date	1963	Age	48	Juv
		Sex	M	Race
			W-WHITE, NON-HIS	
Address				
City	ENOREE	State	SC	Zip
			29335	
Home Phone	7769	Work Phone	-9964	

Property	2	Relationship	Stolen	Item	Cellular Phone
		Brand	BLACKBERRY	Model/Year	
		Serial		Value	\$300.00
		Quantity/Measure		Color	Purple

UCR Code	Other	UCR Status	Stolen Local, Recovered Local	
Local Status	Recovered Property	Status Date	01/14/2012	
Date Recovered	01/14/2012	Amount Recovered	\$300.00	
Accumulative Amount Recov.		Owner Applied Number		
Local ID Type		Local ID		
Comments	TAKEN FROM INSIDE HOME AND RECOVERED FROM CHRISTOPHER MAHAFFEY			
Relationship	Owner	Type	INDIV	
Last Name	SUSTARE	First Name	ANDREW	
Middle/Suffix		SSN		
Birth Date	/1963	Age	48	Juv
		Sex	M	Race W-WHITE, NON-HIS
Address				
City	ENOREE	State	SC	Zip 29335
Home Phone	7769	Work Phone	9964	

Property

3

Relationship	Stolen	Item	Money Bag	
Brand		Model/Year		
Serial		Value	\$50.00	
Quantity/Measure		Color	Blue	

UCR Code	Household Goods	UCR Status	Stolen Local, Recovered Local		
Local Status	Recovered Property	Status Date	01/14/2012		
Date Recovered	01/14/2012	Amount Recovered	\$50.00		
Accumulative Amount Recov.		Owner Applied Number			
Local ID Type		Local ID			
Comments					
Relationship	Owner	Type	INDIV		
Last Name	SUSTARE	First Name	ANDREW		
Middle/Suffix		SSN			
Birth Date	/1963 48 Age Juv	Sex	M	Race	W-WHITE, NON-HIS
Address					
City	ENOREE	State	SC	Zip	29335
Home Phone		7769	Work Phone	() 9964	

Property	Relationship	Stolen	Item	Jewelry	
	Brand		Model/Year		
	Serial		Value	\$500.00	
	Quantity/Measure		Color	Gold	

UCR Code	Jewelry, Precious Metals	UCR Status	Stolen, Not Recovered
Local Status		Status Date	01/14/2012
Date Recovered		Amount Recovered	
Accumulative Amount Recov.		Owner Applied Number	
Local ID Type		Local ID	
Comments	GOLD NECKLACE-- UNKNOWN DESCRIPTION		
Relationship	Owner	Type	INDIV
Last Name	SUSTARE	First Name	ANDREW
Middle/Suffix		SSN	
Birth Date	/1963	Sex	M
	48 Age Juv	Race	W-WHITE, NON-HIS
Address			
City	ENOREE	State	SC
		Zip	29335
Home Phone	() 7769	Work Phone	() 9964

Property

5

Relationship	Stolen	Item	Money
Brand		Model/Year	
Serial		Value	\$187.00
Quantity/Measure		Color	Green

UCR Code	Money	UCR Status	Stolen Local, Recovered Local	
Local Status	Recovered Property	Status Date	01/14/2012	
Date Recovered	01/14/2012	Amount Recovered	\$187.00	
Accumulative Amount Recov.		Owner Applied Number		
Local ID Type		Local ID		
Comments				
Relationship	Owner	Type	INDIV	
Last Name	SUSTARE	First Name	ANDREW	
Middle/Suffix		SSN		
Birth Date	1963	Age	48	Juv
		Sex	M	Race
			W-WHITE, NON-HIS	
Address				
City	ENOREE	State	SC	Zip
			29335	
Home Phone	() 7769	Work Phone	() 9964	

Narrative

Narrative We received a call of a burglary in progress where the homeowner was holding the suspect at [REDACTED] information was also given that the suspect vehicle was a Ford Expedition which was in the driveway. When I arrived three people were in the yard. Andrew Sustare was standing with a firearm in his hand holding it on Christopher Mahaffey who was on his knees in the yard. Richie Blackwell was also in the yard. A. Sustare said since you're here I'll put this up and went into the house. I approached C. Mahaffey and place him in handcuffs and he stood up. I searched him and he had a pocket knife in each front pocket along with keys, money, lighter, and a Black Berry cell phone in his back pocket. I placed him in the back seat of my patrol car. A. Sustare and R. Blackwell wrote voluntary statements. A. Sustare says that he and Richie were working in the back yard and he saw a strange vehicle in his front driveway. As he came around the house he saw a person (later identified as Christopher Mahaffey) coming out of his front door.

Na. ative

(front door was not locked and alarm system was not activated because A. Sustare was at home.)They held him there. A. Sustare went inside to call 911 and while inside noticed that his gun was missing from where it stays on top of his bedside table. He came back outside and C. Mahaffey tried to run away. R. Blackwell caught him in the front yard near the wood line. A. Sustare questioned C. Mahaffey and Mahaffey told him that the gun was in the center console of the vehicle (2004 Ford Expedition) that was sitting running in the driveway. R. Blackwell says he did not see Mahaffey come out of the house but he heard the door slam (a noise he recognized) and also said he had to chase Mahaffey. C. Mahaffey said there was someone else there and said that it was Ronald Keiser.

Other units arrived. A-12 C. Nepper saw the items taken from Mahaffey's pocket and made the comment -that's a nice cell phone as he walked toward us . A. Sustare said that's my cell phone, I just deactivated it yesterday and it was laying on the kitchen table.

A-3 Sgt Hopkins ,K-3 J Rhodes , A-16 K. Gibbs arrived and started checking area for other suspect. They found a blue money bag in the yard and A. Sustare and R. Blackwell said that's where he caught Mahaffey when he ran. A. Sustare recognized it as belonging to him. (later found to contain approximately \$20.00 in coins and bills. They did not locate another suspect.

I-54 B. Howard responded. County rollback was called to tow vehicle to shop for further inventory. I-54 took pictures on Smith & Wesson .357 and holster which were located in center console of Ford Expedition.

I transported C. Mahaffey to the Sheriff's Office where he was interviewed by I-40 Dominesey.

Drug items were found in the Ford by A-16 Gibbs.

I-54 filled out forms and returned .357 to A. Sustare. He took money bag for further processing and took pictures of the cell phone .The two knives from Mahaffey's pockets into evidence.

C. Mahaffey has \$187.00 in his pocket which he says were from being paid at pallet business. I called A. Sustare and he says he is missing approximately \$200.00 from his wallet which he had withdrawn in preparation for a trip. He says he is positive the money is his. I took the money from Mahaffey to place into evidence until more certain of owner.

A-16 K. Gibbs notified Eddie Mahaffey ,owner of Ford Expedition that it was being towed to county impound.

Signature

Officer Bishop B

Badge/ID # 266

Date 01/14/2012

Signature



Spartanburg County Sheriff's Office

Motor Vehicle Tow & Inventory Report


☐ Hold for Processing

Date: 01-14-2012

Case # 12016713

Tow # 12-18

Year	Make	Model	Color	Body	Tag #	Tag Year	State	VIN
2004	FORD	EXPLD	GRN	SUV	[REDACTED]	01/12	SC	[REDACTED]

Location Vehicle Towed From:

[REDACTED]

Registered Owner:

Owner Notified ☒ Yes ☐ No

Paul Mahaffey

Name & Address of Wrecker Service:

Next On List: Yes ☒ No ☐

Registered Owner's Address:

County Jailback

[REDACTED] Crescent Greenpond Rd WINDYPT

Wrecker Service Telephone #:

Operator's Name:

Incarcerated: Yes ☐ No ☐

CHRISTOPHER PAUL MAHAFFEY

Location Where Vehicle Towed:

Shop

Operator's Address:

535 CRESCENT GREENPOND RD

Date & Time Towed:

1/14-2012

Hold:

Reason:

Yes ☐ No ☐

Reason Towed:

Charges / Citation #

OPER ARREST - BURGLARY

Officer's Name:

Badge #

Hold Authority of:

BISHOP, B

009

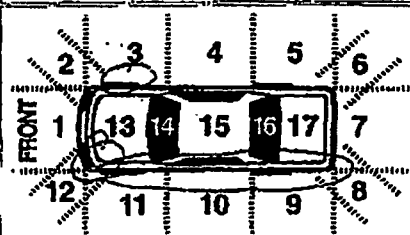
Vehicle Inventory:

UNK -

Lien Holder Name & Address (City, State, Zip Code)

Items Taken Into Custody:

NONE



Note any area's of damage: 13 - Scratches

3 - Flat tire

11-10-9 - Scratches

Respondent's

3

3-23-12 (w)

Officer's Signature:

[Signature]

Wrecker Driver's Signature:

[Signature]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Christopher Paul Mahaffey, #338083,	)	Case No.: 2015-CP-42-4267
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	WITH PREJUDICE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2017 MAY 26 PM 4:50
M. LOPEZ, CLERK

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Christopher Paul Mahaffey (Applicant) on October 15, 2015. The State (Respondent) made its return on April 1, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 23, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by H. Michael Spivey and Melissa D. Spivey, Esquires. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Paul Mahaffey ("Mahaffey"), Applicant's father, also testified. M. Claire Hall ("Counsel"), Clay T. Allen ("Allen"), and Jennifer Jordan ("Jordan"), Esquires, testified for the State. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, the trial transcript, and Applicant's direct appeal records.

PROCEDURAL HISTORY

Christopher Paul Mahaffey ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of

Court. Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for burglary, first degree (2012-GS-42-0730) and petit larceny (2012-GS-42-0731). Applicant was subsequently indicted at the June 2012 term of the Spartanburg County Grand Jury for possession of cocaine base (2012-GS-42-2836) and possession of oxycodone (2012-GS-42-2837). M. Claire Hall, Esquire, and Clay T. Allen, Esquire, represented Applicant. On August 27, 2012, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. On August 28, 2012, the jury convicted Applicant as indicted. Judge Cole sentenced Applicant to imprisonment for concurrent terms of 25 years for burglary, 10 years for petit larceny, three years for the possession of cocaine base, and two years for the possession of oxycodone.

A timely Notice of Appeal was filed on Applicant's behalf, and David Alexander, Esquire, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on December 10, 2014. State v. Mahaffey, Op. No. 2014-UP-449 (S.C. Ct. App. filed December 10, 2014). The remittitur was returned on January 8, 2015.

In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to negotiate a plea deal;
 - b. Counsel failed to obtain a shorter sentence;
 - c. Counsel failed to properly investigate the case and interview witnesses;
 - d. Counsel allowed the trial to occur within seven months of Applicant's arrest;
 - e. Counsel only met with Applicant twice before trial for short period of time;
 - f. Counsel failed to prepare for trial;
 - g. Counsel failed to review the jury pool and properly pick a jury;
 - h. Counsel failed to make a motion to continue the trial;
 - i. Counsel failed to ask the court to charge the jury on the lesser offense of second degree burglary;
 - j. Counsel failed to make a Motion to Suppress the pocket

2017 MAY 26 PM 4:50
M. HOWE & ASSOCIATES

- knife;
- k. Counsel failed to request a charge be given to the jury in regards to what constituted a deadly weapon;
 - l. Counsel failed to object to the prosecutor's false or misleading statements;
 - m. Counsel failed to attack the credibility of witnesses;
 - n. Counsel failed to file any pre-trial motions;
 - o. Counsel failed to file a notice of representation;
 - p. Counsel failed to make a motion pre-trial motion to dismiss the burglary charge;
 - q. Counsel failed to call witnesses for Applicant;
 - r. Counsel failed to make a motion for directed verdict;
 - s. Counsel failed to keep in contact with Applicant.
2. The elements of first degree burglary were not met

At the evidentiary hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel contained in his application.

SUMMARY OF TESTIMONY

I. Applicant testified to the following:

Ms. Terry was first appointed to represent Applicant. When she moved, M. Clair Hall ("Counsel") took over his case. Counsel represented him for 3-4 months before trial. Counsel also represented him on a probation revocation. Counsel met with Applicant twice prior to trial and the meetings totaled 20-30 minutes. Applicant requested a bond hearing, but Counsel never requested one. Applicant was not arraigned on two of his four charges. Applicant does not know what an arraignment is or what is done in an arraignment. Applicant testified that Counsel waived his arraignment and never explained to him what it was. Had Applicant known about arraignment, he would have pled guilty.

Counsel told Applicant that he was her first trial and she did not know how to draw a jury. Counsel needed help and asked for Applicant's help in drawing the jury. She told him she had been on vacation the week before. She also told him she was overwhelmed because she had 137

cases and could not talk to every client. Had Applicant known of this prior to the day of trial, he would have asked for another attorney. Applicant never met or talked to Clay Allen.

Counsel met with Applicant on Saturday before his trial and told him she had received some last minute discovery that day. The discovery consisted of numerous jail phone calls and one 911 call. Counsel tried to listen to the recordings with Applicant, but she could not get the audio recordings to play and told Applicant she would bring them back on Sunday to listen to them. Counsel did not return Sunday. After Applicant received the phone calls through PCR counsel, they could not open the recordings. Applicant even requested help from a computer expert who could not open the recordings.

Applicant introduced Applicant's Exhibit 1, a transcript of the 911 call made by the victim in this case, into evidence. Applicant read page 2 beginning at line 23 of the transcript into the record, which consisted of the victim stating, "He is unarmed. I have checked him. I have him held with a friend of mine that was here. This man passed three no trespassing signs coming down my driveway and I come around the corner and he's coming out of my house and I'm missing my gun and I want his vehicle searched because he has stolen from me." Applicant continued reading at page 5, line 15:

911:

Okay. Does he have any weapons on him?

Mr. Sustare:

Not that I can see. I won't let him back to his vehicle. I made him lift his shirt up. I don't see anything on him.

Counsel never listened to or allowed the jury to hear the 911 tape where the victim stated that Applicant was not armed. Counsel never made a motion to suppress the pocket knives that were found in his pockets by law enforcement or a motion for directed verdict based on the pocket knives.

137

2017 MAY 26 PM 4:50
H. JONES CLERK

Counsel told Applicant that she would not call Applicant's father to testify because the phone call recordings would be used to impeach him. However, Applicant claimed that Counsel never listened to the 911 call recording or the others. Applicant claimed that his whole family was there at court, but that Counsel never talked to any of his witnesses. His family was present at his father's house prior to the incident, where Applicant had left with a man named Ronald Kaiser, the son of his ex-girlfriend. Applicant's contention was that Kaiser had committed the crime and set him up because Applicant was not on good terms with Kaiser's mother. Had Counsel called all of his family members, they could have testified to him leaving with Kaiser.

Additionally, Applicant claimed that Kaiser knew the victim and Counsel never brought that to the jury's attention. Applicant informed Counsel that Kaiser wanted to stop by the victim's home because the victim owed Kaiser money for some work he had done, but that Counsel never brought that to the jury's attention either. Applicant also got a flat tire prior to arriving at the victim's home and called his father to ask him how to get to the spare tire. Applicant's father would have testified to this call as well, had Counsel called him to testify. Applicant would not have gone to the victim's house to rob him with a flat tire.

Applicant testified that he never went in the victim's home nor did he take anything from the victim's home. Applicant was set up by his ex-girlfriend who had threatened him she would get even with him. Kaiser was Applicant's ex-girlfriend's son. Counsel never put Applicant's ex-girlfriend or Kaiser on the stand to testify in Applicant's trial. There was an accusation that Applicant had stolen jewelry from the victim, which was included in the face of the warrant. However, no jewelry was ever recovered and no evidence was offered at trial that jewelry was taken. The arrest warrant and indictment also valued the amount stolen at less than \$2,000 and Counsel did not move to quash either based on that value.

137

Counsel failed to object to the hand of one, hand of all jury instruction. Counsel did not make an argument that a pocket knife was not a deadly weapon. Counsel told the jury that sometimes it is and sometimes it is not. Counsel made no objection about the pocket knife being a deadly weapon and thus did not preserve the issue for the appellate court to review. Counsel did not provide the Court with any case law for second degree burglary. Counsel did not provide the Court with Clyde Timothy Bunkley vs. Florida, 123 S.Ct. 2020, where the Court said that a pocket knife with a blade of 4 inches or less is a common pocket knife.

No gun was found on Applicant, either. Counsel did not insist that State present a gun as evidence. There were no fingerprints found anywhere at the scene. Counsel also failed to adequately cross examine the State's witnesses. Counsel did not even ask two witnesses any questions. The victim changed his story when he testified that he saw Applicant walking out of his front door. Counsel did not adequately cross examine the victim based on his previous statement to law enforcement that he was in the back of his house. Counsel did not ask him how he could have seen Applicant exiting the front door if he was in the back yard of his house. Counsel did not make any objections to any exhibits entered into evidence at trial. Applicant has already served five years of his sentence and has two sons who depend on him for support.

On cross examination, Applicant claimed he was not aware of what an arraignment was and during the brief break in his trial, indicated in the transcript at page 10, lines 6-10, Counsel did not discuss arraignment with him and he did not know he was waiving arraignment. Applicant admitted that the victim did not search in his pant pockets, but that law enforcement did and that is where he had two pocket knives. Applicant also confirmed that he got a flat tire while traveling down the road, but was still able to drive his vehicle all the way down the victim's 600 foot driveway to the very end at the front of the victim's house.

Applicant also admitted that although a gun was never found on his person, a gun was found in the console of his vehicle. Applicant also recalled that a picture of that gun in his vehicle's console was admitted into evidence at his trial. Applicant testified that he worked at a pallet yard, but he does not own gloves. Applicant recalled the victim's testimony was that he was working in his back yard, but walked around to the front when he saw Applicant's vehicle parked in his driveway and saw Applicant walking out of his front door.

On redirect examination, Applicant offered Applicant's Exhibit 3, a Spartanburg County Sheriff's Office Motor Vehicle Tow & Inventory Report, as evidence. The tow report indicated that Applicant's vehicle had a flat tire at the time of the tow and inventory report. Applicant also stated that the victim went to Applicant's car and placed his property inside and said to Applicant, "I got your ass now." Applicant told Counsel this and she never cross examined the victim with regard to this set up.

II. Mahaffey testified to the following:

Mahaffey is the father of Applicant. Mahaffey tried to listen to jailhouse calls with PCR counsel and could not open the files because there was no auto-run. He later listened to them when they received operable files from the Solicitor's Office. Counsel was supposed to call Mahaffey to testify, but Counsel told him a few minutes before trial that the State had recordings that could use to impeach him. Mahaffey heard nothing in the calls that could impeach him. Some of the recordings did not pertain to Applicant's case.

Mahaffey elaborated on the testimony that he could have offered if called at trial. He could testify to the fact that Applicant and Keiser were at his family cookout. He could testify that Keiser was the son of Applicant's girlfriend and that Applicant and his girlfriend were having problems.

Mahaffey would have testified that Applicant called him about a flat tire and asked about spare tire. Mahaffey would have testified that Applicant was not a violent person.

Mahaffey also claimed that Counsel never asked for a lower sentence and never tried to get burglary, second degree.

III. Counsel testified to the following:

Counsel was appointed to represent Applicant when she first began working with the Spartanburg County Public Defender's Office and took over all of Ms. Terry's cases. Counsel did not think this was her first case, but it was one of her first and early in her career. Counsel could not recall the specific number of meetings she had with Applicant, but recalls there were a few. Counsel recalls that she reviewed the discovery with Applicant and discussed the charges against him and his version of the facts. Counsel's general practice was to always inform clients of all of their Constitutional rights and does not recall Applicant being any different. Counsel never received an offer from the State nor did she advise her client to plead open to the court. Counsel believes she approached the assistant solicitor to attempt to negotiate a plea, but does not recall the specifics of that discussion. Regardless, Counsel could not recall Applicant ever expressing a desire to plead guilty.

Counsel vaguely recalled that she made some sort of bond reduction motion to have Applicant released to home detention. Counsel could not recall specifically discussing what an arraignment was with Applicant. However, she found it reasonable to conclude from the record that when she requested a moment to discuss arraignment with Applicant during his trial, and a brief pause followed, that she would have discussed Applicant's rights to be arraigned and waiver of those rights. Counsel also felt that the drug charges being tried in conjunction with the other

charges would unfairly prejudice Applicant. As such, Counsel made a motion to sever the drug charges and argued that they were unduly prejudicial. The court denied that motion.¹

Counsel denied that she told Applicant she did not know how to draw a jury or that she needed his help, although she may have asked for his input which was usual practice. Counsel confirmed she was provided with late discovery which consisted of approximately 170 recorded calls. Counsel recalled the discovery being provided to her within a week of trial, but not the exact date. Counsel listened to about twenty of the calls. The assistant solicitor told Counsel she would only potentially use three of them. Counsel took the tapes to the jail to listen to them with Applicant, but does not recall having any trouble playing the recordings – only some problems hearing some of what was said. Counsel recalled that only one recording, the 911 call, was in fact admitted at trial. Counsel did not see the late discovery as a basis for requesting a continuance as the assistant solicitor specified the three calls they would potentially use. Counsel was prepared for trial and had she felt unprepared, she would have requested a continuance. Counsel did not believe a continuance would have been granted because she had previously requested Applicant be released from jail to home detention. Counsel could not recall being out the week before Applicant's trial, and if she was, for what reason. Regardless, Counsel would have prepped the case ongoing since the start of her representation and was ready for trial the day of.

Counsel did not recall what was in the recordings that would have impeached Applicant's father, but recalled that was why she did not call the father to testify. Furthermore, Counsel did call Applicant's brother, who testified to exactly the same thing the father would have, without the assistant solicitor's ability to impeach him with the phone calls. Counsel did not interview Kaiser because her office was unable to locate him. With regard to the jewelry accusations contained in

¹ That issue was taken up on appeal and affirmed by the Court of Appeals.

the probable cause affidavit of the arrest warrant, the State did not proceed at trial on accusations of stolen jewelry. Therefore, there was no reason to move to quash the indictment on that basis. Applicant was indicted for petit larceny, value of up to \$2,000 – and the State had evidence that Applicant had taken a gun, a cell phone, and a bank bag with around \$28.

Counsel's trial strategy was the defense of "wrong guy" – that someone other than Applicant had committed the crime. Therefore, it was unnecessary to cross exam some of the state's witnesses, like the chain of custody witness and the drug analyst. Counsel also did not object to any exhibits entered, besides a photograph of Applicant, because their admission was all consistent with the defense's theory of the case.

Counsel did not recall ever being told about a flat tire or a phone call Applicant made to his father about a flat tire. Counsel believed it was possible that the flat tire indicated on the tow report could have occurred after the incident.

Counsel did request a charge for burglary second and made the argument that Applicant's pocket knives were not deadly weapons, despite no authoritative case law on that point.² The court denied her request. Counsel did not object to the assistant solicitor's request for the hand of one, hand of all charge, but insisted that if it were read, that the Judge also instruct the jury on mere presence.

IV. Allen testified to the following:

Allen has practiced criminal law for thirty-seven years and has been the Spartanburg County Public Defender since 2001. Allen was Counsel's supervisor and assisted her in the trial of Applicant. His assistance included some investigation, discussing the case with Counsel, and sitting co-chair in Applicant's trial. Allen explained that arraignment was not a big deal in criminal

² This issue was also taken up on appeal and affirmed by the Court of Appeals.

13 4

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cases, but rather a formality that is often waived. Allen was never aware of any desire on the part of Applicant to plead guilty. Even if Applicant had pled to the drug charges, the drugs would have still come in at trial.

In Allen's view, the aggravating circumstance of the case warranting a burglary, first charge was the gun found in Applicant's vehicle the State would use to prove that Applicant was armed or became armed during the commission of the burglary. Applicant never mentioned the allegation that he was set up by Kaiser prior to or at trial. Allen could not be sure if Counsel listened to the call recordings, but stated that his office's policy is for the solicitor to tell them which calls they intend to use and they, in turn, listen to only those.

V. Jordan testified to the following:

Jordan prosecuted Applicant's case. Jordan did not extend a plea offer and could not specifically recall if she had any negotiations with Counsel. Jordan did not extend an offer because she saw Applicant's case as a good case to try. Jordan believes she turned over the call recordings late because she made a late request to the jail for them, which occurs sometimes. Jordan did not have any auto-run or play problems with her copies of the calls. Jordan also recalled the Court would not permit the presentation of any information about Kaiser at the trial.

FINDINGS OF FACT AND CONCLUSIONS 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 Counsels Counsel, Allen, and Jordan to be credible. This Court further finds that the testimony by Applicant and his father 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.

This Court finds that Applicant has failed to meet his burden in proving either prong of Strickland and that Counsel Hall or Allen rendered effective assistance in their representation of

Applicant. Applicant's claim that Counsel failed to negotiate a plea deal lacks merit. Although the memory of both Counsel and Jordan is not crystal clear, Counsel believes she attempted to negotiate a plea with Jordan. Jordan testified that she did not extend a plea offer and was intent on trying the case. "The decision whether to offer a plea bargain is within the solicitor's discretion." State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996); see State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994). Counsel could not require Jordan to negotiate a plea. Furthermore, neither Counsel nor Allen recalls Applicant ever expressing a desire to plead guilty to any of his charges, and this Court finds that assertion by Counsel and Allen to be credible. For that reason, Counsel, with the assistance of Allen, prepared his case for trial. Jordan's refusal to negotiate a plea was not the result of any deficiency on the part of Counsel, but rather Jordan exercising her discretion as the assistant solicitor assigned to Applicant's case. Id. Applicant has failed to demonstrate how Counsel's failure to negotiate a plea was not reasonable in light of prevailing professional norms.

Applicant has failed to prove by a preponderance of the evidence that the waiving of the arraignment was either deficient or prejudicial. Whether an arraignment is held or not becomes irrelevant when and if there is a true bill by the Grand Jury. Furthermore, the waiving of arraignments is a fairly regular and standard practice by many member of the defense bar.

Applicant's claim that Counsel failed to obtain a shorter sentence also lacks merit. "A trial judge is allowed broad discretion in sentencing within statutory limits." Brooks v. State, 325 S.C. 269, 271, 481 S.E.2d 712, 713 (1997). The record illustrates a thorough attempt at mitigation by Counsel. Trial Tr. p. 198 l. 10 – p. 199 l. 14. Applicant also had the opportunity to address the court prior to sentencing. Trial Tr. p. 199 l. 22-25. However, the sentencing judge was also permitted to consider all of the evidence presented at trial, Applicant's prior criminal record, the

victim's request for the maximum sentence, and whatever other factors the judge found relevant. In re M.B.H., 387 S.C. 323, 692 S.E.2d 541 (2010) ("A judge must be permitted to consider any and all information that reasonably might bear on the proper sentence for a particular defendant"). The judge was the sole decision-maker of the sentence given to Applicant. Applicant has failed to show any deficiency on the part of Counsel with regard to the sentence handed down by Judge Cole.

Applicant's claim that Counsel failed to investigate the case is contradicted by the record of the trial. Counsel was well-prepared at trial. Her opening argument at the start of Applicant's trial coincided with the version of the facts as given to her by Applicant. Not only was Counsel aware of the evidence collected and presented at trial, she also drew the jury's attention to the evidence that was not collected, tests that were not done, and statements that were not made.

Applicant alleged that Counsel had not interviewed his witnesses, but this Court finds that this testimony is not credible. Counsel was aware of what both Applicant's brother and father would testify to and decided to call only the brother because the State had a jail recording between him and Applicant that they would use to impeach the father. Additionally, the brother testified to the same thing the father would have testified to, rendering the father's testimony cumulative. This Court finds Applicant's father's testimony at the hearing was not instructive to the Court as to the dispositive question of whether Counsel's conduct was deficient. Applicant has failed to demonstrate how the father's testimony could have been any more productive than the brother's and has failed to prove by a preponderance of the evidence that he was prejudiced by the failure to call the father. The substance of the father's testimony shed very little light on the facts to be determined by the jury at trial.

RP?

This Court finds not credible Applicant's allegation that his father would have also testified to his ex-girlfriend seeking revenge and his alleged flat tire. Counsel nor Allen had ever heard of the allegation that Applicant was set-up or that Applicant stopped because he had a flat tire. Lastly, Applicant insinuated that his whole family could have testified to (1) his presence at the family cookout and (2) that he left with Kaiser. This Court finds it reasonable that Counsel only prepared to call two of those family members and ultimately only called one, because of the potential of the father being impeached by the State. None of the family members were present at the victim's home and could only testify to the same two facts mentioned above. Applicant has failed to meet his burden that Counsel was deficient in her investigation or interviewing of witnesses.

Applicant's claim that Counsel allowed the trial to occur within seven months of Applicant's arrest lacks merit. There is no set time limit on how quickly a trial should occur after arrest or indictment. Counsel was prepared to try Applicant's case and the time in which it took her to become prepared is irrelevant.

Applicant's testimony that Counsel only met Applicant for two short periods of time is not credible. Although Counsel did not recall the specific number of meetings, she recalled there were a few. She was able to advise him of all of his constitutional rights, review all the discovery, including the three audio recordings that were provided later, discuss his version of the facts and potential defenses with him in her meetings with Applicant. Therefore, Applicant has failed to prove any deficiency with regard to Counsel's meetings with Applicant.

Applicant's claim that Counsel failed to review the jury pool and properly pick a jury is unsubstantiated. Other than incredible allegation that Counsel did not know how to draw a jury and had to rely on the assistance of Applicant in doing so, Applicant has failed to prove by a preponderance of the evidence that Counsel made any error during the selection of the jury.

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Furthermore, Counsel and Allen both testified that it is common practice to request a client's input during jury selection.

Applicant's complaint that Counsel did not object to the Trial Court failing to define a deadly weapon is without merit. The question of whether a pocketknife is a deadly weapon is quintessentially a question of fact for the jury. Furthermore, there was evidence of a gun in the record as well. A Trial Court is not allowed to comment on facts during the jury charge, and it would have been error for the presiding judge to tell the jury in his closing charge that a pocketknife or a gun was a deadly weapon. Counsel was correct, and indeed astute, not to request further clarification of a deadly weapon or object to the given charge.

The alleged lack of motions made by Counsel (failing to request a continuance, make a motion to suppress the pocketknife, file any pre-trial motions³, file a motion to dismiss the burglary charge, or make a motion for directed verdict⁴) is not instructive to this Court. Motions should be calculated to effect a practical end. In this matter, Counsel did not fail to make any motions that were relevant to the issues at hand, and Applicant was not prejudiced by any failure of Counsel to make impractical motions.

Applicant's complaint that Counsel failed to examine audio tapes is without merit. Counsel testified that she did review the tapes and acknowledges that she did have trouble hearing some.⁵ Applicant's assertion that Counsel did not review the tapes and could not open the same is an unsubstantiated allegation. In any event, the jailhouse tapes were never introduced at trial⁶ and there is no evidence in the record that the tapes contained relevant or exculpatory evidence.

³ Counsel did make a pre-trial motion to sever the drug charges from the burglary and petit larceny charges. Trial Tr. p. 10, l. 15 - p. 13, l. 19.

⁴ In fact, Counsel did make an initial motion for directed verdict at the close of the State's case, as well as a renewed motion for directed verdict at the close of the Defense's case. Trial Tr. pp. 131 & 142.

⁵ Counsel made this same assertion on the record to the Trial Court at trial.

⁶ Despite Applicant's claim to the contrary, the 911 audio recording was introduced at trial as State's Exhibit 15. Trial Tr. 72, ll. 5-11.

Applicant's claim that Counsel failed to ask the Trial Court to charge the jury on the lesser offense of second degree burglary is refuted by the record. Counsel did make a request for a charge of burglary in the second degree. Trial Tr. p. 143, l. 10 – p. 149, l. 20. After arguments by both the defense and the State were heard, the Trial Court denied the motion on the basis that no evidence was presented to support a charge of second degree burglary.

This Court grants Respondent's motion to dismiss with regard to Applicant's claim that the elements of first degree burglary were not met. This is not an appropriate claim for PCR because this is a direct appeal issue. As such, it is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). Not only could Applicant have raised this issue on appeal, but in fact, Applicant did raise the issue of the Trial Court's failure to charge the lesser included offense of second degree burglary. Furthermore, the Court of Appeals affirmed the circuit court's denial of Applicant's request to charge second degree burglary. State v. Mahaffey, Op. No. 2014-UP-449 (S.C. Ct. App. Dec. 10, 2014). This allegation is denied and dismissed with prejudice.

The remainder of Applicant's allegations are without merit. Applicant essentially questions each and every action or inaction of trial counsel. A Post-conviction relief application is not a venue for second-guessing decisions of trial counsel. Applicant has the burden of proving by a preponderance of the evidence that Counsel was deficient and that the deficiency was prejudicial. Applicant has failed to do so.

This Court finds that Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove any prejudice from any alleged deficiencies in Counsel's

113 7

representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application 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.

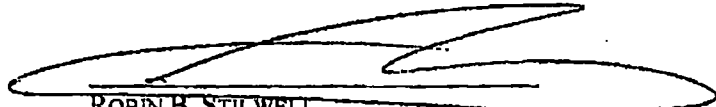
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2017 MAY 26 PM 4:59
M. HOPE WILKINSON

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 24 day of April, 2017.



ROBIN B. STILWELL
Presiding Judge
Seventh Judicial Circuit

Chesterville, South Carolina

2017 MAY 26 PM 4:51
N. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	IN THE SEVENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2015-CP-42-4267
Christopher Paul Mahaffey, #338083	)	
Applicant,	)	
	)	
vs.	)	APPLICANT CHRISTOPHER PAUL
	)	MAHAFFEY'S RULE 59(E) MOTION
	)	TO ALTER OR AMEND THE ORDER OF
The State of South Carolina,	)	DISMISSAL WITH PREJUDICE
Respondent.	)	

TO: THE HONORABLE ROBIN B. STILWELL AND THE RESPONDENT, THE
STATE OF SOUTH CAROLINA, BY AND THROUGH ITS ATTORNEY
VALERIE GARCIA GIOVANOLI OF THE OFFICE OF THE ATTORNEY
GENERAL.

NOTICE is hereby given that the undersigned, as attorney for Applicant, Christopher Paul Mahaffey, #338083, does herewith move pursuant to Rule 59 (e) for the Court to reconsider, alter or amend the Order on Applicant's Order of Dismissal With Prejudice, which was signed on May 24, 2017, clocked in on May 26, 2017 and received by the undersigned by e-mail from the Attorney General's Office on August 8, 2017. The undersigned never received the signed Order of Dismissal With Prejudice from the Spartanburg County Clerk of Court's Office and inquired to the Court on August 8, 2017 in regard to the Order. The Attorney General's Office sent the Order to the undersigned on August 8, 2017. Both the Court and the Attorney General's Office, by and through its Attorney, Valerie Garcia Giovanoli found that the Order of the entry of judgment did not occur until August 8, 2017. Grounds for said Motion includes but are not limited to the following:

ISSUES FOR THE APPLICANT'S RULE 59(e) MOTION

- 1. The Court Erred In Failing to Consider Whether the Trial Counsel's Ineffective Assistance of Counsel Effected Applicant's Appeal and Did Not Make Specific Findings of Fact and to State Expressly the Conclusions of Law Relating to This Issue.**

At the conclusion of the Applicant's Post Trial Conviction Hearing, the Court took the matter under advisement to further consider whether Trial Counsel's ineffective assistance of counsel effected the Applicant's Appeal. The Court failed to consider this issue and/or rule on this issue in the Order of Dismissal With Prejudice dated May 24, 2017. In fact, the Order of Dismissal With Prejudice does not address this specific issue at all.

Pursuant to S.C. Code Ann. § 17-27-80 (2003), the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. The failure to specifically rule on the issues precludes appellate review of the issues. *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) and *Marlar v. State*, 653 S.E. 2d 266, 267 (S.C. 2007.) The Applicant is filing the present Motion for a specific ruling on whether the Trial Counsel's ineffective assistance of counsel effected the Applicant's Appeal.

- a. The Court failed to Make Specific Findings of Fact and Conclusions of Law Relating to whether the Trial Counsel's Failure to Properly, Adequately and Fully Argue the Issue of Whether the Applicant's Drug Charges Should Be Severed Directly Effected the Applicant's Appeal.**

First, the Applicant was represented by Appellant Counsel, David Alexander, Appellate Defender for the South Carolina Commission on Indigent Defense. The Applicant argues that the ineffective assistance of Trial Counsel directly effected his appeal and led to the Court of Appeals affirming the Trial Court's decision. The Applicant's alleged that the Trial Counsel did not properly argue and/or argue completely and fully as was required the issue of whether his drug charges should have been severed. This Court did not make specific findings of fact and Conclusions of Law as to whether this ineffectiveness in Trial Counsel's representation of the Applicant effected his Appeal. The Trial Counsel failed to properly argue this Motion and preserve this issue for Appeal.

Trial Counsel failed to argue and present to the Trial Court that the joinder of the burglary charge and the drug charges would result in an admission of prior bad act evidence that would have been inadmissible under Rule 404(b). The Applicant specifically requested that the Trial Counsel have the charges severed because the State was attempting to portray him as a drug user.¹ The State showed no motive, identity nor common scheme or plan in order for the charges to be tried at the same time in accordance with *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). The Trial Counsel failed to present this to the Trial Court, make the appropriate argument and present the applicable case law and rules to the Trial Judge. This directly impacted the Applicant's Appeal and in turn led to Applicant's conviction being upheld.²

- b. The Court failed to Make Specific Findings of Fact and Conclusions of Law Relating to Whether the Trial Counsel's Failure to Properly, Adequately and Fully Argue the Issue and Demand on the Record that the Trial Judge clearly define What Constituted a Deadly Weapon directly Effected the Applicant's Appeal.**

¹ The Applicant also had the same issue with the Mug Shot being allowed to be introduced as evidence at the trial as the State introduced the Mug Shot for the mere reason of trying to portray him as a drug user. Trial Counsel failed to make the same argument in regard to the prejudicial effect, the lack of common scheme and the prejudicial effect that the Mug Shot had on the Applicant.

² The issue of whether Applicant knowingly waived his right to be arraigned on the additional drug charges he was being tried for, whether he was adequately explained the arraignment issue by the Trial Counsel will be addressed herein below and Applicant argues that same should be considered separately and in conjunction with this section.

Next, Trial Counsel failed to request a jury charge as to what constituted a deadly weapon. The Court erred in not making specific findings of fact and conclusions of law relating to this issue in the Order of Dismissal With Prejudice.

This failure of trial counsel is significant, directly impacted the Applicant's Appeal and in turn led to the Applicant's conviction being upheld. This was significant in that it took the Applicant's sentencing from ten (10) years maximum to a fifteen (15) year minimum and the Applicant ended up getting a twenty-five (25) year sentence on this charge, adding an additional fifteen (15) years of his life to the sentence. The Applicant was convicted of first degree burglary and sentenced to twenty-five (25) years on this charge. The issue was whether the Applicant was armed with a "deadly weapon" when only folded pocket knives were found, which the Applicant used in his regular course of employment on a daily basis.³ The Trial Counsel did not request the Judge to define a deadly weapon and/or give a jury instruction that a folded pocket knife did not constitute a deadly weapon. Since deadly weapon is not defined in the burglary statute, Trial Counsel failed to argue and/or request a jury instruction that a pocket knife did not constitute a deadly weapon for purposes of first degree burglary. The Trial Counsel also failed to use persuasive authority to the Trial Judge in regard to this specific issue in other jurisdictions. The Trial Counsel failed to bring to the Court's attention that in Florida, a "common pocket knife" is specifically excepted from the definition of a weapon.⁴ In Texas, the Court of Appeals found that a Trial Judge's charge to a jury that a folded pocket knife was a deadly weapon was error.⁵ There was never any evidence that Applicant displayed a weapon, that he was armed with a deadly weapon, that he threatened the use of a deadly weapon, that he caused injury to any person and/or used a weapon in any manner whatsoever. Had the Trial Counsel brought this issue and the caselaw to the Court's attention, it is likely that a jury instruction would have been given to by the Court and the Applicant would not have been convicted on first degree burglary. In the least, had Trial Counsel brought this to the Court's attention this issue would at least have been preserved for Appeal.

The ineffectiveness in Trial Counsel's representation of Applicant, not only cost him at least fifteen (15) years in prison, it directly effected his Appeal, since this issue was not preserved for appellant Court review.

2. The Court failed in properly considering the Effect of Prejudice that the Drug Charges and the Trial Counsel's waiving of the arraignment had on Applicant

As addressed above, the Trial Counsel was ineffective in waiving the arraignment on the Applicant's drug charge and not properly discussing this with the Applicant and/or even

³ The Applicant was employed full time as an employee for a pallet recycling business and he was required to use a pocket knife in his regular course of daily business.

⁴ Fla. Stat. § 790.001 (13) defines a weapon as "any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a *common pocketknife, plastic knife, or blunt-bladed table knife*."

⁵ See *Blanson v. State*, 107 S.W. 3d 103, 104 (Tx. Ct. App. 2003)

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knowing that her own client had not been arraigned on the drug charges. In fact, the Applicant was not even aware that he was being tried on the drug charges on the date of the trial, until the arraignment issue was brought up in the Court room. The Trial Counsel admitted to the Court that she had not discussed the Applicant's Right to Be Arraigned on the Drug Charges (T.T.R. p. 10, Lines 6-8.) This discussion should have taken place before the trial, but since this was Trial Counsel's first trial and she only met with the Applicant 20-30 minutes total, there was no way that she could have provided adequate representation of Applicant. The Applicant had the right to know of these drug charges against him and has the right to have full opportunity to present a defense on these charges. The Applicant did not even know he was being tried on the drug charges. Also, an arraignment would have given the Applicant the right to pled guilty to these charges or in the least to be able to assist in preparing a defense. The Applicant was greatly prejudiced by the lack of arraignment on the drug charges and Trial Counsel's deficiency and lack of preparation allowed the State to present the Applicant as a "drug addict" to the Jury. Also, as discussed previously, this should be considered in conjunction with the argument that not only did the arraignment not occur because of Trial Counsel's deficiencies, the Trial Counsel failed to properly present the Motion to Severe and/or present applicable rules and/or object that the Mug Shot and the drug evidence was inadmissible.

3. The Court failed in properly considering the Relevance of Trial Counsel's Failure to Call the Applicant's Father, Paul Edward Mahaffey to the Stand.

The Trial Counsel failed to establish a valid reason as to why she did not call the Applicant's Father to testify and Trial Counsel's lack of calling this witness directly effected the Applicant's trial. The Trial Counsel alleged that three (3) calls impeached this witness, but admitted that she did not listen to all three of the calls and/or the rest of the calls. The Trial Counsel admitted to the Trial Judge, on the record, that she had not listened to one of the calls. The Trial Counsel was unaware, since she did not properly review the alleged evidence, that not only did the calls not impeach the witness, that they included calls from other inmates that were not even related to the Applicant's case. The Trial Counsel relied on the State's representation of what was contained in the calls as to impeachment of one of the Applicant's witness, when same was not even the case. The Trial Counsel should have and failed to review the evidence and failed to call a pertinent witness that could have put Kaiser at the scene, a reason for Applicant to be at the scene for a lawful purpose, that Applicant had a flat tire on the scene and that Kaiser and his Mother had threatened to set up Applicant. But for this omission, the Applicant's trial would have had a different outcome.

Trial Counsel admitted that the State had turned over a lengthy list of telephone calls that the State alleged contained phone calls that would be used to impeach the witness Paul Edward Mahaffey, just a mere few days before the Applicant's trial. The Applicant alleges that the Trial Counsel was not able to open the calls when she met with Applicant for a short time on the Saturday before the trial and Trial Counsel was supposed to return the next day, but did not do so, to try to go over the calls with Applicant.

The Applicant's Father could have testified as to Ronald Kasier, the real perpetrator of the

crime was with the Applicant at a Family cookout and that the two (2) left to meet the alleged victim, "Sustare" to get money from Sustare that was owed to Kaiser. The Applicant's Father could have testified that Kaiser's Mother had threatened to set up the Applicant and get him good, since Applicant had broken up with her. This would have cast doubt to the jury as to whether Applicant committed the crime. Also, this witness could have testified that Applicant called him while at Sustare's house telling him that he had a flat tire and needed to know how to change it, since it was Paul Edward Mahaffey's car and he needed to know how to get the spare tire out. This flat tire issue will be addressed herein below.

4. The Court Failed in properly considering the Relevance of the Trial Counsel's Failure to Introduce Evidence and/or Testimony In Regard to the Flat Tire on Applicant's vehicle.

Evidence was turned over in Discovery and presented at the PCR Hearing, which showed that the Applicant's vehicle's tire was flat. The witness, Paul Edward Mahaffey could have verified that the tire was flat before police arrived. This would have cast doubt in the jury's mind as to why someone would rob a person's house that had an extensively long driveway, located way off the road, when the person did not have the ability to drive the car away from the crime. The Trial Counsel did not cross examine any of the State's witnesses in regard to the flat tire. The Applicant and Paul Edward Mahaffey testified and the Tow and Inventory Report showed that the Applicant's vehicle had a flat tire and the Trial Counsel's failure to introduce this evidence and testimony at trial greatly impacted the Applicant's Trial and Appeal. In *Freiburger vs. State* (Opinion Number 5295), the Court of Appeals reversed the PCR's denial of Post-Conviction relief based upon trial counsel being ineffective due to Trial Counsel's failure to introduce a letter, which would have casted doubt on the Applicant's guilt in that case. In the present case, Trial Counsel failed to introduce the Motor Vehicle Tow & Inventory Report showing the Applicant had a flat tire, failed to call Paul Edward Mahaffey as a witness who could attest to the flat tire occurring before police arrived and could have been used to impeach the State's witnesses as to why someone would rob someone's house located down a six hundred foot long driveway, would rob a house with no way to get away from the scene. In the least, it would have cast doubt in the jury's minds as to whether the Applicant committed the crime. This also directly effected the Applicant's Appeal as this issue was never preserved for appellate review, since the Trial Counsel was ineffective in failing to introduce said evidence.

5. The Court Failed In Properly considering the Relevance of Trial Counsel's Failure to File a Motion to Dismiss and/or Bring to the Trial Court's Attention that there was no evidence and/or proof presented that the Applicant stole the jewelry and/or \$200.00 that Applicant was ultimately convicted of First Degree Burglary For.

The Trial Counsel was ineffective in failing to file a Motion to Dismiss and/or a Motion for a Directed Verdict as to no evidence being presented by the State that Applicant had taken jewelry and/or monies in the amount of \$200.00. The State failed to show any evidence that Applicant was in possession of these items and/or that Applicant had ever been in possession of

these items. The alleged victim, Sustare and his associate searched the Applicant and law enforcement searched the Applicant and these items were never found and/or proven to have been taken by the Applicant. The Applicant was sentenced to ten (10) additional years of imprisonment on the larceny charge for items that the State never proved that Applicant was ever in possession of. The Trial Counsel's ineffectiveness in failing to bring Motions before and during Court and failure to cross examine witnesses in regard to these issues failed to preserve these issues for Appeal and but for these deficiencies, the outcome of the trial would have likely been different.

WHEREFORE APPLICANT PRAYS:

1. That the Applicant be granted all relief requested in this Rule 59(e);
2. That the Court reverse its rulings contained in the Order of Dismissal With Prejudice dated May 26, 2017;
3. That all relief sought in the Applicant's PCR Application be granted;
4. That the Court make specific findings and state expressly the conclusions of law relating the issues in the Applicant's Motion;
5. That the Court make specific findings and a ruling on whether the Trial Counsel's ineffective assistance of counsel effected the Applicant's Appeal; and
6. For such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

The Spivey Law Group, LLC

Melissa D. Spivey
Attorney for Applicant Christopher P.
Mahaffey
P.O. Box 809
Mauldin, SC 29662
(864) 288-6503
(864) 288-0351 facsimile

Greenville, South Carolina
August 17, 2017.

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SPARTANBURG COUNTY
2017 AUG 17 PM 4:42
M. HOPKINS BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Christopher Paul Mahaffey, #338083)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

2015-CP-42-4267

RETURN TO RULE 59(E)
MOTION TO ALTER OR AMEND

FILED
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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before the Court by way of a motion to alter or amend the order denying Applicant PCR. This Return follows.

I. ARGUMENT

Applicant has failed to set forth any sufficient reasons to persuade this Court to alter or amend the final order.

1. The Court erred in failing to consider whether trial counsel's ineffective assistance of counsel effected (sic) Applicant's appeal and did not make specific findings of fact and to state expressly the conclusions of law relating to this issue.

In his motion, Applicant alleges the Court failed to make specific findings of fact and conclusions of law with regard to the following issues:

- A. "Whether trial counsel's failure to properly, adequately, and fully argue the issue of whether the Applicant's drug charges should be severed directly effected (sic) the Applicant's appeal."
- B. "Whether the trial counsel's failure to properly, adequately, and fully argue the issue and demand on the record that the trial judge clearly define what constituted a deadly weapon directly effected (sic) the Applicant's appeal."

Applicant is asking the Court to rule on an allegation that was never made prior to this 59(e) motion. Neither in Applicant's application nor in any amendment thereto did Applicant allege that ineffective performance by trial counsel affected his appeal. Because no such

allegation was made in advance of the hearing, the State was not afforded the opportunity to call appellate counsel to defend those claims. Furthermore, no credible testimonial evidence was presented in support of these allegations. Therefore, these allegations are procedurally barred from first-time consideration in a 59(e) motion. See Mangal v. State, __ S.C. __ (2017) (Opinion No. 27726) (affirming PCR court's refusal to consider allegations not presented to the court in an application, amendment, or through evidence presented).

Regardless, Applicant did allege in his application and presented evidence at the PCR hearing that trial counsel failed to argue a pocket knife is not a deadly weapon. This issue was fully addressed in the standing order of dismissal. Because the Court found trial counsel was not ineffective in this regard, there can be no negative effect on Applicant's appeal. No allegation was made prior to the hearing or at the hearing that trial counsel failed to adequately argue the drug charges should be severed from the trial for burglary and petit larceny.

Respondent will note that the issue of the severance of Applicant's drug charges and the definition of what constitutes a deadly weapon were both thoroughly argued by trial counsel during trial. The two issues were precisely the issues briefed in Applicant's direct appeal. Applicant's convictions were affirmed on direct appeal on the merits and not because any preservation issues. Therefore, Respondent fails to see how trial counsel's alleged ineffective assistance with regard to these issues negatively affected Applicant's direct appeal.

2. The Court failed in properly considering the effect of prejudice that the drug charges and the trial counsel's waiving of the arraignment had on Applicant.

The Court's standing order of dismissal fully addresses this allegation and should not be altered or amended. It is clear from the record of the trial, Counsel discussed Applicant's waiver of arraignment at the start of the trial. Trial counsel told the trial judge she was in possession of the indictments on the drug charges, she reviewed them with Applicant, she explained to

Applicant the nature of the charges and the possible sentences the charges carried, and she discussed with Applicant his knowledge of the facts in allegations. (Trial Tr. p. 9, l. 17 – p. 10, l. 11). Additionally, trial counsel and Clay Allen¹ both testified Applicant had never expressed a desire to plead guilty. Applicant's claim that had he known about his right to be arraigned, he would have pled guilty to the drug charges is simply not credible.

3. **The Court failed in properly considering the relevance of trial counsel's failure to call the Applicant's father, Paul Edward Mahaffey to the stand.**

The Court's standing order of dismissal fully addresses this allegation and should not be altered or amended. Applicant alleges trial counsel claims she did not call Applicant's father to the stand because there were three phone call recordings that could be used to impeach him. In his motion, Applicant states trial counsel "admitted that she did not listen to all three of the calls" and that she "told the Trial Judge, on the record, that she had not listened to one of the phone calls." These assertions are conclusively refuted by the record at trial. Trial counsel told the trial judge she had listened to **all three calls** the State intended to use, but that she had trouble hearing all of the conversation on two of the calls. (Trial Tr. p. 7, l. 2-5). Nowhere in the record from trial or the PCR hearing did trial counsel ever admit she did not listen to the calls.

Applicant also states trial counsel mistakenly relied on the State's representation of what was on the calls, which Applicant alleges was a false representation. However, Applicant has offered no evidence in support of this claim. Trial counsel listened to the three calls the State intended to use – one of which was the 911 recording admitted at trial and at the PCR hearing, the other two she recalled being jail calls between Applicant and his father that the State would use to impeach the father. Interestingly, Applicant admitted the 911 recording at his PCR

¹ Allen is the Chief Public Defender for Spartanburg County and was trial counsel's supervisor at the time of trial.

hearing, but not the other two jail calls in order to substantiate his claim that the State misrepresented what was on the call or that trial counsel was ineffective for not listening to them.

Applicant further argues this Court did not consider his father would have testified that Applicant had a flat tire when he stopped at the victim's home. However, this Court directly addressed this allegation in the standing order of dismissal. Applicant's and his father's testimony regarding a flat tire was simply not credible. First, Applicant never told trial counsel or Allen about the flat tire prior to trial. Although Applicant has had the opportunity to thoroughly review the tow report after his trial, he cannot now use information contained therein to assert on PCR an argument that was not pursued at trial – that it would be absurd to rob a house with a 600 foot driveway when his vehicle has a flat tire. It is equally absurd to believe Applicant, who alleges he was driving to the victim's house because the victim owed his girlfriend's son ("Kaiser") money, got a flat tire on the way there, but was conveniently able to make it to the victim's house and down his 600 foot driveway to the front of his house.²

Applicant also argues his father would have testified that Applicant left with Kaiser from his family's house. This issue was fully addressed in the Court's standing order. But Respondent will note that Applicant was precluded by the trial court from presenting evidence regarding Kaiser (See Trial Tr. p. 99, l. 4-6). Nevertheless, Applicant's brother testified Applicant left with Kaiser and that Applicant was driving Kaiser. (Trial Tr. p. 140, l. 5-8, l. 13). Further testimony on this from the father would have merely been cumulative to that of the brother.

Applicant argues his father would have testified that Kaiser's mother (Applicant's girlfriend) had threatened Applicant that she would "get him" and that Kaiser set him up on the

² Not to mention, Applicant claims he was looking for the spare tire to change the flat, but when the victim caught Applicant exiting his home, Applicant's vehicle was still running. Most people do not change a flat tire while their car is running.

burglary.³ The Court fully addressed this issue in the standing order of dismissal. Applicant never told the "set up" story to trial counsel or Allen. The allegation is simply not credible.

4. The Court failed in properly considering the relevance of the trial counsel's failure to introduce evidence and/or testimony in regard to the flat tire on Applicant's vehicle.

Applicant is asking the Court to rule on an allegation that was never made prior to this 59(e) motion. Neither in Applicant's application nor in any amendment thereto did Applicant allege that ineffective assistance of trial counsel for failing to introduce evidence of a flat tire. Because no such allegation was made in advance of the hearing, the State was not afforded the opportunity to investigate the issue – how or when the flat tire occurred. Furthermore, no credible testimonial evidence was presented in support of these allegations. Therefore, these allegations are procedurally barred from first-time consideration in a 59(e) motion. See Mangal v. State, __ S.C. __ (2017) (Opinion No. 27726) (affirming PCR court's refusal to consider allegations not presented to the court in an application, amendment, or through evidence presented).

5. The Court failed in properly considering the relevance of trial counsel's failure to file a motion to dismiss and/or bring to the trial court's attention that there was no evidence and/or proof presented that the Applicant stole the jewelry and/or \$200 that Applicant was ultimately convicted of first degree burglary for (sic).

The Court's standing order of dismissal fully addresses this issue. But, Respondent takes this opportunity to clarify Applicant's argument that the State failed to present evidence that Applicant had taken jewelry and/or monies in the amount of \$200. There was never any requirement that the State present such evidence. Applicant's indictment for petit larceny, value up to \$2,000, alleged Applicant had taken "money and/or a Smith and Wesson 375 and/or a

³ Kaiser is not the first person Applicant alleged "set him up." Applicant also testified the victim set him up by placing his gun in Applicant's car while saying, "I got your ass now."

blackberry phone and/or gold necklace." (Emphasis added). Applicant's indictment for first degree burglary does not allege Applicant took any specific property. The evidence presented at trial showed Applicant took from the victim's house money, a gun, and a blackberry phone.

Applicant has not set forth any sufficient grounds to persuade this Court to alter or amend the judgment. Furthermore, Respondent submits oral argument would not aid in the reconsideration of the original judgment as the order of dismissal in this case fully comports with the requirements of Rule 52(a), SCRCP.

II. CONCLUSION

WHEREFORE, having made its Return to Applicant's Rule 59(e) Motion to Alter or Amend, Respondent requests that the motion be denied and dismissed.

Respectfully submitted,

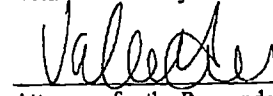
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANO
Assistant Attorney General

By:


Attorneys for the Respondent
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Columbia, South Carolina

August 24, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Christopher Paul Mahaffey,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

**ORDER DENYING MOTION TO
ALTER OR AMEND ORDER
PURSUANT TO RULE 59(E)**

C. A. No.: 2015-CP-42-4867

2017 SEP 13 AM 11:50
CLERK OF COURT
SPARTANBURG COUNTY
M. HOPE BRACKLEY

This matter comes before the Court pursuant to the Applicant's Motion to Alter or Amend the Court's Order of Dismissal with Prejudice dated on or about May 24, 2017, and filed on or about May 26, 2017, pursuant to Rule 59(E) of the South Carolina Rules of Civil Procedure. After having had the opportunity to carefully review the Motion, this Court respectfully denies the same.

Specifically, the Court finds as follows:

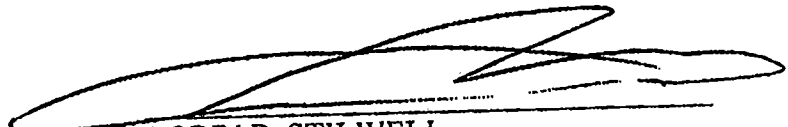
1. The Applicant failed to prove by a preponderance of the evidence that trial counsel failed to properly, adequately, and fully argue the issue of whether the Appellant's drug charges should be severed;
2. The Applicant failed to prove by a preponderance of the evidence that trial counsel was deficient in failing to properly, adequately, and fully argue the issue and demand on the record that the trial judge clearly define what constituted a deadly weapon;
3. The Applicant failed to prove by a preponderance of the evidence that trial counsel was deficient in waiving the arraignment;
4. The Applicant failed to prove by a preponderance of the evidence that trial counsel was deficient in failing to call the Applicant's father, Paul Edward Mahaffey, to the stand;



102 P3 7

5. The Applicant failed to prove by a preponderance of the evidence that trial counsel failed to introduce evidence and/or testimony in regard to the flat tire on Applicant's vehicle; and
6. The Applicant failed to prove by a preponderance of the evidence that trial counsel was deficient in failing to bring a Motion to Dismiss or to bring to trial Court's attention that there was no evidence and/or proof presented that the Appellant stole the jewelry and/or two hundred dollars.

AND IT IS SO ORDERED.



ROBIN B. STILWELL

August 22, 2017
Greenville, South Carolina

CLERK OF
SPARTANBURG COUNTY
2017 SEP 13 AM 11:50
M. HOPE BLACKLEY

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Affidavit

CLERK
SPARTANBURG COUNTY
2017 SEP 13 AM 11:50
M. HOPE BLACKLEY

This is an affidavit to attest the Order Denying Motion to Alter or Amend Order Pursuant to Rule 59)e).

In case Christopher Paul Mahaffey vs. State. The documents were received On August 31, 2017. At the time the documents were received And were mistakenly not clocked. It was brought to the attention of Affiant on September 13, 2017 and the documents were Then clocked. The correction has been made by Connie Seay on September 13, 2017. "See affidavit" is handwritten under the Clock date, as suggested by Court Administration pursuant to Rule 60 (a) Clerical Mistakes.

Sworn before me this

13 day of September, 2017

Maile Y. Hart
Notary Public of South Carolina

Connie Seay
Affiant

My Commission Expires 4-14-2021

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

CHRISTOPHER PAUL MAHAFFEY, # 338083

Applicant,

v.

STATE OF SOUTH CAROLINA,

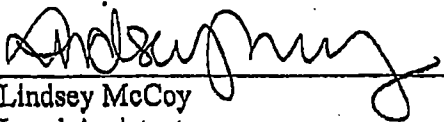
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order Denying Motion to Alter or Amend Order Pursuant to Rule 59(e)** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

H. Michael Spivey, Esquire
The Spivey Law Group, LLC
Post Office Box 809
Mauldin, South Carolina 29662

This 13th day of September, 2017.


Lindsey McCoy
Legal Assistant

SWORN to before me this 13th day of September, 2017.


Notary Public for South Carolina.
My Commission Expires: 5/20/2025

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

THE HONORABLE ROBIN B. STILWELL
CIRCUIT COURT JUDGE

Case No: 2015-CP-42-4267

The State of South Carolina.....Respondent

v.

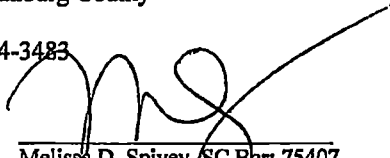
Christopher Paul Mahaffey, #338083.....Appellant.

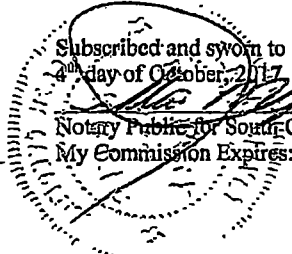
PROOF OF DELIVERY

PERSONALLY appeared before me, Melissa D. Spivey of The Spivey Law Group, LLC, who being duly sworn deposes and states that she did serve one (1) copy of the Notice of Appeal and Proof of Service upon the Supreme Court, Proof of Service on M. Hope Blackley, Clerk of Court for Spartanburg County, Proof of Service on Valerie Giovanoli, Assistant Attorney General for the South Carolina Attorney General's Office, Proof of Service on the South Carolina Commission on Indigent Defense, Appellate Division, Paula Murdoch, Order of Dismissal of Prejudice and Order Denying Motion to Alter or Amend Order Pursuant to Rule 59(e) and Letter to Margaret A. Woods, Court Reporter requesting transcript, upon the below listed individual on the 4th day of October, 2017, by first class mail, postage prepaid to the following address:

M. Hope Blackley
Clerk of Court for Spartanburg County
P.O. Box 3483
Spartanburg, S.C. 29304-3483

October 4, 2017
Greenville, South Carolina.


Melissa D. Spivey, SC Bar: 75407
Attorney for Appellant
The Spivey Law Group, LLC
Post Office Box 809
Mauldin, S.C. 29662
Telephone: (864) 288-6503
Facsimile: (864) 288-0351
hmichaelspivey@bellsouth.net

Subscribed and sworn to before me this
4th day of October, 2017

Notary Public for South Carolina
My Commission Expires: 2-28-2020

WITNESSES

Spartanburg County Sheriff's Office

DATE ENTERED

DATE FILED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND

FINE CARD MADE

ARREST WARRANT NUMBER

M757490

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 08 28 2012

DOCKET NO. **12-GS-42-0730**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2012

TERM

THE STATE

VS.

Christopher Paul Mahaffey

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

FILED

2012 FEB 29 PM 1:45

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2012

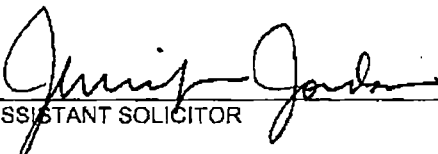
At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

The Defendant, Christopher Paul Mahaffey, did in Spartanburg County, on or about January 14, 2012, wilfully and unlawfully enter the dwelling of Andrew Sustare located at [REDACTED], Enoree, South Carolina 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, he or another participant in the crime either displays what appears to be a knife or pistol, revolver, rifle, shotgun or other firearm, and/or uses or threatens the use of a dangerous instrument and/or is armed with a deadly weapon or explosive, in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

401

COUNTY OF SPARTANBURG

STATE VS.

Christopher Paul Mahaffey

AKA:

Race: W Sex: M Age: 39

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Woodruff, SC 29388-8842

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree 15 years - life

INDICTMENT/CASE#: 2012GS4200730

A/W#: M757490

Date of Offense: 1/14/2012

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

JORDAN, JENNIFER A

69423

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

August 28, 2012

2053

ARREST WARRANT 1-19-12 mL

M-757490

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Christopher Paul Mahaffey

Address:

Woodruff, SC 29388-8842

Phone: -4950 SSN

Sex: M Race: W Height: 5 5 Weight: 180

DL State: SC DL #:

DOB: Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Michael Dominesey - 0613

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Mahaffey, Christopher
on 1-14-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Michael Dominesey whobeing duly sworn deposes and says that defendant Christopher Paul Mahaffeydid within this county and state on or about 01/14/2012 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

In the following particulars:

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degreeI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on January 14, 2012, in the city/county of Spartanburg, one Christopher Paul Mahaffey did enter a dwelling located at
, ENOREE, SC without consent and with intent to commit a crime therein. Christopher Paul Mahaffey
entered the dwelling in the day time and armed with a deadly weapon.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/14/2012 defendant Christopher Paul Mahaffey

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degreeHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 01/14/2012Signature of Issuing Judge
Keith Sherlin (L.S.)

Keith Sherlin

Judge Code: 7230Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-Judge's Telephone (864)596-3424Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

402

Computer

2012 JAN 19 AM 11:27
M. HOPKINS
CLERK

WITNESSES

SPARTANBURG COUNTY SHERIFF'S OFFICE

CARD PULLED

INDEXED

SEARCHED

SERIALIZED

SPARTANBURG COUNTY SHERIFF'S OFFICE

ADJUTANT GENERAL

FILED CARD INDEX

TRAFFIC VIOLATION

ARREST WARRANT NUMBER

M757491

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 12-GS-42-0731

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2012

TERM

THE STATE

VS.

Christopher Paul Mahaffey

Indictment for

PETIT LARCENY

SC Code: 16-13-0030 (A); 16-1-57

CDR Code: 3419

Class FEL/E

2012 FEB 29 PM 1:45
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 23 2012

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

PETIT LARCENY

That Defendant, Christopher Paul Mahaffey, did in Spartanburg County on or about January 14, 2012, feloniously take and carry away the goods belonging to Andrew Sustare, valued at less than Two Thousand Dollars, described as follows: Money and/or a Smith and Wesson 375 and/or a blackberry phone and/or gold necklace, with the intent to deprive the owner permanently of such property, further, that the Defendant has at least (2) two or more prior convictions for property crimes, in violation of §16-13-30 (A) and §16-1-57, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

405✓

COUNTY OF SPARTANBURG
STATE VS.

Christopher Paul Mahaffey

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address:

City, State, Zip: Woodruff, SC 29388-8842

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Petit or Simple Larceny - \$2,000 or less 3rd or sub 0-10 years

INDICTMENT/CASE#: 2012GS4200731

A/W#: M757491

Date of Offense: 1/14/2012

S.C. Code § : 16-13-0030(A)/16-1-57

CDR Code #: 3596

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(A)/16-1-57 of the S.C. Code of Laws, bearing CDR Code # 3596

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

JORDAN, JENNIFER A

69423
SC Bar#

Defendant

Attorney for Defendant

78229
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

August 28, 2012

ARREST WARRANT 1-19-12 mL

M-757491

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Christopher Paul Mahaffey

Address:

Woodruff, SC 29388-8842

Phone: -4950 SSN: [REDACTED]

Sex: M Race: W Height: 5 5 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: 12-15-1979 Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Michael Dominesey - 0613

Offense: Larceny / Petit or Simple Larceny - \$2,000 or less

Offense Code: 3419

Code/Ordinance Sec: 16-13-0030(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Mahaffey, Christopher

on 1-14-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Michael Dominesey who

being duly sworn deposes and says that defendant Christopher Paul Mahaffey

did within this county and state on or about 01/14/2012 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Larceny / Petit or Simple Larceny - \$2,000 or less

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 14, 2012 in the city/county of Spartanburg, one Christopher Paul Mahaffey did take and carry away Smith and Western 375, US currency, Blackberry phone, and Gold necklace, with the intent to permanently deprive the owner of the property which is valued at \$2000 and is the property of being Andrew Sustare.

THIS IS A THIRD AND SUBSEQUENT OFFENSE AND SECTION 16-1-57 APPLIES, BECAUSE THE DEFENDANT HAS TWO OR MORE PROPERTY CRIME CONVICTIONS BASED ON VALUE. bg

Affiant's belief is based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/14/2012 defendant Christopher Paul Mahaffey

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Petit or Simple Larceny - \$2,000 or less

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 01/14/2012

(L.S.)

Signature of Issuing Judge

Keith Sherlin

Judge Code: 7230

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-

Judge's Telephone (864)596-3424

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

406

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 14 2012 the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION COCAINE BASE

That Christopher Mahaffey did in Spartanburg County on or about January 14, 2012, possess or attempt to possess a quantity of Cocaine Base, a schedule II controlled substance, in violation of § 44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

409

COUNTY OF SPARTANBURG

STATE VS.

Christopher Paul Mahaffey

AKA:

Race: W Sex: M Age: 39

DOB: SS#:

Address:

City, State, Zip: Woodruff, SC 29388-8842

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Drugs / Possession of less than one gram of cocaine base, 1st offense 0-3 years and/or fine up to \$5000

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3009

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

JORDAN JENNIFER A

69423

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 288.40

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2012GS4202836

A/W#: 2012GS4202836

Date of Offense: 1/14/2012

S.C. Code § : 44-53-0375 (A)

CDR Code #: 3009

SENTENCE SHEET

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

2053
August 28, 2012

WITNESSES

DOCKET NO.

12-GS-42-2837

The State of South Carolina

County of Spartanburg

Barry J Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 21 2012

TERM

ARREST WARRANT NUMBER

DIRECT INDICTMENT

THE STATE
VS.

CHRISTOPHER MAHFFFEY

ACTION OF GRAND JURY

True Bill

JUN 14 2012

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: *0828 2012*

Indictment for

POSSESSION OF OXYCODONE

SC Code: 44-53-370

FILED
CLERK OF COURT

2012 JUN 20 AM 10:09

JULY 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

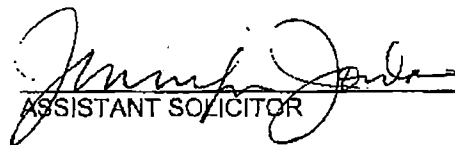
INDICTMENT

At a Court of General Sessions, convened on JUN 14 2012 the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF OXYCODONE

That Christopher Mahaffey did in Spartanburg County on or about
January 14, 2012, knowingly or intentionally possess a quantity of
Oxycodone, a Schedule II controlled substance, in violation of § 44-53-370,
THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case
made and provided.


ASSISTANT SOLICITOR

412

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Christopher Paul Mahaffey

AKA:

Race: W Sex: M Age: 39

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Woodruff, SC 29388-8842

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession of Oxycodone 1st 0-6 months and/or fine up to \$1000

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4202837

A/W#: 2012GS4202837

Date of Offense: 1/14/2012

S.C. Code § : 44-53-0370(d)

CDR Code #: 0179

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0370(d) of the S.C. Code of Laws, bearing CDR Code # 0179

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

JORDAN, JENNIFER A 69423 SC Bar# [REDACTED] Defendant [REDACTED] Attorney for Defendant 78229 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years

and/or to pay a fine of \$ 1000; provided that upon the service of 1 days/months/years and/or payment

of \$ 1000; plus costs and assessments as applicable*; the balance is suspended with probation for 1

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ 1000 plus 20% fee: \$ 200

Payment Terms: [REDACTED]

☐ Set by SCDPPPS [REDACTED]

Recipient: [REDACTED]

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 8.40

TOTAL \$ 288.40

PTUP [REDACTED]

[REDACTED] days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. [REDACTED]

May serve W/E beginning [REDACTED]

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ [REDACTED] beginning [REDACTED]

\$ [REDACTED] paid to Public Defender Fund

Other: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk [REDACTED]

Court Reporter: [REDACTED]

SCCA/217 (03/2011)

Presiding Judge [REDACTED]

Judge Code: 2853

Sentence Date: August 28, 2012