

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED

MAY - 7 2012

S.C. Supreme Court

THOMAS CURTIS HAMILTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

MATTHEW J. FRIEDMAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
CLERK OF COURT RECORDS	220
APPLICATION FOR POST-CONVICTION RELIEF	225
RETURN	232
POST-CONVICTION RELIEF HEARING TRANSCRIPT	238
ORDER OF DISMISSAL	287
NOTICE OF MOTION AND MOTION OF APPLICANT TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59(e) SCRCIVP	296
RETURN AND MOTION TO DISMISS MOTION TO ALTER OR AMEND PURSUANT TO 59(e) SCRCP	298
ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO 59(e) SCRCP	301
ORDER DATED SEPTEMBER 14, 2011	304

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS
06-GS-10-8212/8213

STATE OF SOUTH CAROLINA,)
PLAINTIFF.)
vs.)
THOMAS CURTIS HAMILTON,)
DEFENDANT.)

 ORIGINAL

TRANSCRIPT OF RECORD

June 5-6, 2006
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

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

JAMES P. STACK, ESQ.
D. BRUCE DURANT, ESQ.
Attorneys for the State.

MARTHA KENT JENKINSON, ESQ.
W. TED SMITH, ESQ.
Attorneys for the Defendant.

VIVIAN H. CROSS
OFFICIAL COURT REPORTER.

I N D E X
JUNE 5, 2006
(DAY 1 OF TRIAL)

	<u>PAGE</u>
<u>JURY SELECTION PROCESS:</u>	
VOIR DIRE	3
JURY SELECTION	24
OPENING ADDRESS BY THE COURT:	40
OPENING ARGUMENTS BY THE STATE, MR. STACK:	49
OPENING ARGUMENTS BY THE DEFENSE, MS. JENKINSON	53
DEFENSE MOTIONS	56
<u>NEIL v. BIGGERS MOTION - STATE'S WITNESSES:</u>	
<u>WILLIAM MILLER:</u>	
DIRECT EXAMINATION BY MR. STACK	60
CROSS-EXAMINATION BY MS. JENKINSON	68
THOMAS RIVERS:	
DIRECT EXAMINATION BY MR. STACK	69
EXAMINATION BY THE COURT	73
DEFENSE MOTIONS	80
<u>WILLIAM SHRYOCK MILLER:</u>	
DIRECT EXAMINATION BY MR. STACK	84
CROSS-EXAMINATION BY MS. JENKINSON	106
REDIRECT EXAMINATION BY MR. STACK	109
<u>THOMAS RIVERS:</u>	
DIRECT EXAMINATION BY MR. STACK	111
CROSS-EXAMINATION BY MS. JENKINSON	116
REDIRECT EXAMINATION BY MR. STACK	117
<u>HOLLY ANN CONNOLLY:</u>	
DIRECT EXAMINATION BY MR. STACK	119
CROSS-EXAMINATION BY MS. JENKINSON	128
<u>ANITA MARIE MAESTAS:</u>	
DIRECT EXAMINATION BY MR. STACK	130
CROSS-EXAMINATION BY MS. JENKINSON	134
<u>REINA GASCON:</u>	
DIRECT EXAMINATION BY MR. STACK	142
CROSS-EXAMINATION BY MS. JENKINSON	146
<u>LAURIE CICCARELLI:</u>	
DIRECT EXAMINATION BY MR. STACK	148
CROSS-EXAMINATION BY MS. JENKINSON	154
REDIRECT EXAMINATION BY MR. STACK	156
RE-CROSS-EXAMINATION BY MS. JENKINSON	157
STATE RESTS	159
DEFENSE MOTIONS	160
COURT'S EXAMINATION OF THOMAS CURTIS HAMILTON	
AS TO RIGHT TO TESTIFY:	162

I-N-D-E-X
JUNE 6, 2006
 (DAY 2 OF TRIAL)

	<u>PAGE</u>
COURT'S EXAMINATION OF THOMAS CURTIS HAMILTON AS TO RIGHT TO TESTIFY (RESUMED):	166
REQUESTS TO CHARGE - FORM OF VERDICT - DEFENSE MOTIONS	167
DEFENSE RESTS - THE COURT'S STATEMENT TO JURY	174
CLOSING ARGUMENTS BY THE STATE - MR. STACK	176
CLOSING ARGUMENTS BY THE DEFENSE - MS. JENKINSON	191
THE COURT - CHARGES ON THE LAW	197
EVIDENCE AND FORM OF VERDICT TO JURY - BEGIN DELIBERATIONS	214
VERDICT	215
DEFENSE MOTIONS AND SENTENCING	221
REPORTER'S CERTIFICATION	227

EXHIBITS

<u>STATE'S EXHIBITS</u>		<u>IDENTIFICATION</u>	<u>ENTERED</u>
1	PHOTO - FRONT-20 TRAPMAN ST.	3	96
2	PHOTO - BEHIND 20 TRAPMAN ST.	3	96
3	PHOTO - CLOSE-UP BEHIND TRAPMAN	3	96
4	PHOTO - GATE BEHIND 20 TRAPMAN	3	96
5	PHOTO - SAME AS #4, DIFFERENT ANGLE	3	96
6	PHOTO - BACK DOOR - 20 TRAPMAN	3	96
7	PHOTO - C-D PLAYER	3	96
8	PHOTO - SAME AS #7, DIFFERENT ANGLE	3	96
9	PHOTO - SONY PLAY STATION TWO	3	96
9	PHOTO - C-D AND PLAY STATION ON FLOOR	3	96
11	PHOTO - PLAY STATION SERIAL #	3	96
12	PHOTO - PLAY STATION ON FLOOR	3	96
13	PHOTO - INTERIOR OF APARTMENT	3	96
14	PHOTO - ENTERTAINMENT CENTER	3	96
15	PHOTO - DESK IN APARTMENT	3	96
16	PHOTO - AREA UNDER DESK	3	96
17	PHOTO - LIVING ROOM OF APT.	3	96
18	PHOTO - SAME AS #17, DIFFERENT ANGLE	3	96
19	911 TAPE	3	105
20	GRAY TEE SHIRT	3	127
21	BLUE JEANS	3	127
22	DOO-RAG	3	127
23	SEARCH WARRANT	3	125
24	BURG 2 ND CONVICTION	3	145
25	BURG 1 ST CONVICTION	3	145

<u>COURT'S EXHIBITS</u>		<u>IDENTIFICATION</u>	<u>ENTERED</u>
1	INTENT TO SEEK L-WOP		225
2	INTENT TO SEEK L-WOP - COPY TO DEFENDANT		225

P R O C E E D I N G S

(11:27 A.M.)

(NOTE 1: STATE'S EXHIBITS 1 - 25 WERE PRE-MARKED FOR IDENTIFICATION PRIOR TO THE COMMENCEMENT OF TRIAL.)

THE COURT: GOOD MORNING LADIES AND GENTLEMEN OF THE JURY PANEL. MY NAME IS KNOX MCMAHON. I AM FROM LEXINGTON COUNTY - FROM THE 11TH JUDICIAL CIRCUIT. IT IS MY PRIVILEGE AND MY HONOR TO BE ASSIGNED TO A TERM OF GENERAL SESSIONS COURT IN CHARLESTON COUNTY THIS WEEK.

I HAVE BEEN ASSIGNED TO CHARLESTON COUNTY FOR ABOUT TWO MONTHS AND HAVE ENJOYED MY STAY DOWN HERE VERY MUCH.

I TELL JURY PANELS, WHEN I GO BACK HOME EVERY FRIDAY EVENING - OR EVEN LATER - MY WIFE AND GRANDCHILD STILL RECOGNIZE ME, BUT THE DOGS AREN'T EXACTLY SURE WHO I AM AND WHO THAT IS COMING HOME ON FRIDAY EVENINGS.

TODAY WE'RE - MOMENTARILY WE'LL BEGIN THE SELECTION OF A JURY IN THE CASE OF 2004-GS-10-8212 AND 2004-GS-10-8213. THESE ARE CRIMINAL CHARGES. IT IS, THE STATE VERSES THOMAS CURTIS HAMILTON, AN INDICTMENT FOR BURGLARY FIRST DEGREE, AND AN INDICTMENT FOR PETTY LARCENY.

THE BURGLARY INDICTMENT READS THAT THOMAS CURTIS HAMILTON DID, IN CHARLESTON COUNTY, ON OR ABOUT AUGUST 3RD 2004, ENTER THE DWELLING OF WILLIAM S. MILLER, LOCATED AT 20 TRAPMAN STREET, WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN.

1 THAT, IN ADDITION, THE DEFENDANT HAS A PRIOR RECORD WITH
2 TWO CONVICTIONS FOR BURGLARY, HOUSEBREAKING, OR A COMBINATION
3 OF BOTH IN VIOLATION OF SECTION 16-11-311 OF THE SOUTH
4 CAROLINA CODE OF LAWS. THAT INDICTMENT HAS BEEN TRUE-BILLED
5 BY THE CHARLESTON COUNTY GRAND JURY.

6 AND THE OTHER INDICTMENT - PETTY LARCENY - READS THAT
7 THOMAS CURTIS HAMILTON DID, IN CHARLESTON COUNTY, ON OR ABOUT
8 AUGUST 3RD 2004, AT 20 TRAPMAN STREET, TAKE AND CARRY AWAY THE
9 PERSONAL PROPERTY OF WILLIAM S. MILLER. TO WIT, AN (SIC)
10 PORTABLE STEREO AND A SONY PLAY STATION TWO GAME SYSTEM WITH
11 THE INTENT TO PERMANENTLY DEPRIVE THE OWNER THEREOF AND TO
12 CONVERT THE SAME TO HIS OWN USE.

13 THIS IS IN VIOLATION OF SECTION 16-13-30 OF THE CODE OF
14 LAWS OF SOUTH CAROLINA. THAT IS ALSO A TRUE-BILLED
15 INDICTMENT.

16 THE INDICTMENTS ARE NOT EVIDENCE. THEY ARE ONLY THE
17 CHARGING PAPERS. THEY ARE ONLY THE METHOD BY WHICH A
18 DEFENDANT IS REQUIRED TO APPEAR BEFORE THE COURT AND KNOW
19 WHAT THE ALLEGATIONS ARE AGAINST HIM. BUT, THEY ARE NOT
20 EVIDENCE IN ANY MANNER.

21 IN THIS PARTICULAR CASE, THE STATE IS REPRESENTED BY THE
22 ASSISTANT SOLICITOR, JIM STACK, WITH THE NINTH CIRCUIT
23 SOLICITOR'S OFFICE. MR. STACK, WOULD YOU PLEASE STAND AND
24 INTRODUCE YOURSELF TO THE JURY PANEL? AND ANY OF YOUR
25 COLLEAGUES THAT WILL BE PARTICIPATING IN THIS TRIAL?

1 (WHEREUPON, JAMES STACK AND BRUCE DURANT STOOD AND
2 PRESENTED THEMSELVES TO THE JURY PANEL.)

3 MR. STACK: THANK YOU, YOUR HONOR. LADIES AND
4 GENTLEMAN, MY - MY NAME IS JIM STACK, AND I WORK WITH THE
5 CHARLESTON OFFICE OF THE NINTH CIRCUIT HERE. I WORK IN THE
6 SOLICITOR'S OFFICE OF CHARLESTON COUNTY.

7 TODAY ALSO WILL BE MR. BRUCE DURANT WHO ALSO WORKS IN
8 THE CHARLESTON COUNTY SOLICITOR'S OFFICE. THANK YOU.

9 THE COURT: THANK YOU, MR. STACK. HAS ANY MEMBER OF THE
10 JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN
11 PROSECUTED BY MR. STACK OR MR. DURANT OR ANY MEMBER OF THE
12 NINTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE
13 STAND.

14 (NO RESPONSE FROM THE JURY PANEL.)

15 THE COURT: THANK YOU. NO ONE STANDS. THE DEFENDANT IN
16 THIS CASE IS REPRESENTED BY MS. MARTHA KENT JENKINSON.
17 MS. JENKINSON, WOULD YOU PLEASE STAND AND INTRODUCE YOURSELF
18 AND ANY OF YOUR COLLEAGUES AND YOUR CLIENT TO OUR JURY PANEL,
19 PLEASE?

20 (WHEREUPON, MARTHA KENT JENKINSON STOOD AND PRESENTED
21 HERSELF TO THE JURY PANEL.)

22 MS. JENKINSON: THANK YOU, YOUR HONOR. GOOD MORNING.
23 MY NAME IS MARTHA KENT JENKINSON. THIS IS MY CLIENT, THOMAS
24 CURTIS HAMILTON. AND THIS IS TED SMITH, HE'S ALSO WITH THE
25 PUBLIC DEFENDER'S OFFICE.

1 **THE COURT:** AND, MR. HAMILTON, WOULD YOU MIND STANDING
2 AND FACING JURY PANEL? AND - AND YOU ALSO, PLEASE,
3 MR. SMITH?

4 (WHEREUPON, THOMAS CURTIS HAMILTON AND TED SMITH STOOD
5 AND PRESENTED THEMSELVES TO THE JURY PANEL.)

6 **THE COURT:** THANK YOU. YOU MAY BE SEATED. HAS ANY
7 MEMBER OF THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE
8 FAMILY EVER BEEN REPRESENTED BY MS. JENKINSON OR MR. SMITH OR
9 ANY ATTORNEY WITH THE CHARLESTON COUNTY PUBLIC DEFENDER'S
10 OFFICE? IF SO, PLEASE STAND.

11 (NO RESPONSE FROM THE JURY PANEL.)

12 **THE COURT:** IS ANY OF - MEMBER OF THE JURY PANEL RELATED
13 BY BLOOD OR MARRIAGE TO ANY OF THE ATTORNEYS INVOLVED IN THIS
14 CASE? EITHER MR. STACK, MR. DURANT, MS. JENKINSON, OR
15 MR. SMITH? IF SO, PLEASE STAND.

16 (NO RESPONSE FROM THE JURY PANEL.)

17 **THE COURT:** IS ANY MEMBER OF THE JURY PANEL RELATED BY
18 BLOOD OR MARRIAGE OR A CLOSE PERSONAL FRIEND OF THOMAS CURTIS
19 HAMILTON? IF SO, PLEASE STAND.

20 (NO RESPONSE FROM THE JURY PANEL.)

21 **THE COURT:** ALL RIGHT. I'M GONNA ASK YOU-ALL A -
22 ANOTHER SERIES OF QUESTIONS CONCERNING YOUR QUALIFICATIONS TO
23 SERVE ON THIS JURY PANEL.

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE

1 HEARING OF THE JURY PANEL, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 **THE COURT:** IS THERE ANY MEMBER OF THE JURY PANEL THAT
4 HAS BEEN A WITNESS IN A CIVIL OR CRIMINAL CASE? IF SO,
5 PLEASE STAND.

6 (NO RESPONSE FROM THE JURY PANEL.)

7 **THE COURT:** LET THE RECORD REFLECT THAT NO ONE STANDS.

8 IS THERE ANY MEMBER OF THE JURY PANEL THAT IS A FORMER
9 LAW ENFORCEMENT OFFICER OR EMPLOYEE? OR ANY MEMBER OF YOUR
10 IMMEDIATE FAMILY OR CLOSE PERSONAL FRIENDS EMPLOYED BY A
11 LAW-ENFORCEMENT AGENCY? IF SO, PLEASE STAND.

12 YES, MA'AM? YOUR NUMBER AND NAME, PLEASE?

13 **MS. FUHLBRICK:** MY NUMBER IS 263. MY FATHER WAS A
14 POLICEMAN, BUT HE IS NOW DECEASED.

15 AND, TWO OF MY BROTHERS WERE POLICEMEN BUT NO LONGER
16 WORK IN LAW-ENFORCEMENT.

17 I DIDN'T KNOW IF THAT HAD ANY BEARING, SO...

18 **THE COURT:** ALL RIGHT. NOW, WHAT IS YOUR NAME, PLEASE?

19 **MS. FUHLBRICK:** MY NAME IS THERESA FUHLBRICK.

20 **THE COURT:** ALL RIGHT. MA'AM, THE FACT THAT YOUR FATHER
21 WAS A POLICE OFFICER AND YOU HAD TWO BROTHERS THAT WERE
22 FORMER POLICE OFFICERS, COULD YOU STILL BE A FAIR AND
23 IMPARTIAL JUROR TO BOTH THE STATE AND TO THE DEFENDANT IN
24 THIS CASE?

25 **MS. FUHLBRICK:** YES, SIR.

1 **THE COURT:** THANK YOU, MA'AM. YOU MAY BE SEATED. ANY
2 OTHERS? YES, SIR? YOUR NUMBER AND NAME PLEASE?

3 **MR. TYLER:** 233. YOUR HONOR, I WORKED AT THE GOVERNOR
4 OFFICE IN GUARDIAN AD LITEM PROGRAM. (SIC) IS THAT A FACTOR
5 IN THIS?

6 **THE COURT:** I - YOUR NAME, SIR?

7 **MR. TYLER:** CHARLES TYLER.

8 **THE COURT:** AND - AND I APOLOGIZE, SIR, I DIDN'T QUITE
9 UN- -- HEAR WHAT YOU SAID.

10 **MR. TYLER:** I - I DO WORK UNDER - VOLUNTEER WORK AT THE
11 GOVERNOR (SIC) OFFICE AT THE GUARDIAN AT LITEM PROGRAM.
12 WOULD IT BE A FACTOR IN THIS?

13 **THE COURT:** THE FACT THAT YOU WORK WITH THE GUARDIAN AD
14 LITEM PROGRAM, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR
15 TO BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

16 **MR. TYLER:** YES, I CAN, YOUR HONOR.

17 **THE COURT:** ALL RIGHT, SIR. THANK YOU VERY MUCH, SIR.
18 YOU MAY BE SEATED. ANY OTHERS?

19 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

20 **THE COURT:** IS THERE ANY MEMBER OF THE JURY PANEL WHO
21 HAS BEEN - OR ANY - ANY MEMBER OF YOUR IMMEDIATE FAMILY OR
22 CLOSE PERSONAL FRIENDS WHO HAVE BEEN - A VICTIM OF A VIOLENT
23 CRIME? IF SO, PLEASE STAND.

24 YES, MA'AM? YOUR NUMBER AND NAME PLEASE?

25 **MS. SPENCE:** I'M JUROR 224. MY NAME IS SUSAN SPENCE.

1 **THE COURT:** ALL RIGHT. MS. - MS. SPENCE, WOULD YOU MIND
2 COMING FORWARD FOR ME, PLEASE?

3 (WHEREUPON, THE FOLLOWING JURORS APPROACHED THE BENCH
4 AND CONVERSED IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE
5 THE HEARING OF THE JURY PANEL. COUNSEL WAS ALSO PRESENT AT
6 THE BENCH.)

7 (WHEREUPON, SUSAN SPENCE, JUROR NUMBER 224, CAME
8 FORWARD.)

9 **THE COURT:** YOU STAND RIGHT UP HERE. YOU SAID YOUR LAST
10 NAME WAS SPENCE?

11 **MS. SPENCE:** SPENCE.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
14 HEARING OF THE JURY PANEL, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 **THE COURT:** WAS IT YOU OR A MEMBER---

17 **MS. SPENCE:** IT WAS MY SON.

18 **THE COURT:** YOUR SON?

19 **MS. SPENCE:** HE WAS HELD AT - AT GUNPOINT AT HIS HOUSE.

20 **THE COURT:** THE FACT THAT YOUR SON WAS A VICTIM OF A
21 VIOLENT CRIME, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR
22 TO BOTH THE STATE AND THE DEFENDANT?

23 **MS. SPENCE:** YES, SIR, I CAN.

24 **THE COURT:** THANK YOU, MS. SPENCE, YOU MAY BE SEATED.

25 **MS. SPENCE:** THANK YOU.

1 (WHEREUPON, SUSAN SPENCE, JUROR NUMBER 224, RETURNED TO
2 HER SEAT.)

3 THE COURT: WAIT, WE HAVE ANOTHER ONE. YES - YES,
4 MA'AM? YOU MAY COME FORWARD.

5 (WHEREUPON, THERESA FUHLBRICK, JUROR NUMBER 263 CAME
6 FORWARD.)

7 THE COURT: AND THIS IS NUMBER 273, IS THAT RIGHT?

8 MS. FUHLBRICK: 263.

9 THE COURT: 263?

10 MS. FUHLBRICK: UH-HUH.

11 THE COURT: GLAD YOU CORRECTED ME.

12 MS. FUHLBRICK: YES, SIR.

13 THE COURT: NUMBER 263. AND YOUR NAME AGAIN, MA'AM?

14 MS. FUHLBRICK: THERESA FUHLBRICK.

15 THE COURT: AND WAS IT YOU, OR?

16 MS. FUHLBRICK: YEAH, I WAS MUGGED.

17 THE COURT: HOW LONG AGO?

18 MS. FUHLBRICK: TWENTY SOME YEARS AGO NOW.

19 THE COURT: THE FACT THAT YOU WERE MUGGED TWENTY
20 SOMETHING YEARS AGO, COULD YOU STILL BE A FAIR AND IMPARTIAL
21 JUROR TO BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

22 MS. FUHLBRICK: UH-HUH.

23 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY BE
24 SEATED.

25 (WHEREUPON, THERESA FUHLBRICK, JUROR NUMBER 263,

1 RETURNED TO HER SEAT.)

2 (WHEREUPON, AUDIO TO ENTIRE JURY PANEL RESUMED.)

3 THE COURT: ALL RIGHT, ANY OTHERS?

4 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

5 THE COURT: ALL RIGHT. THIS MAY BE A -- A MORE SPECIFIC
6 QUESTION AS TO THAT LAST QUESTION. BUT, IS THERE ANY MEMBER
7 OF THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY OR
8 CLOSE PERSONAL FRIENDS BEEN A VICTIM OF A BURGLARY? IF SO,
9 PLEASE STAND.

10 ALL RIGHT. ALL RIGHT, YES, MA'AM? I'LL START ON THIS
11 END HERE. YOUR NUMBER AND NAME, PLEASE?

12 MS. HOLLAND: NUMBER 110, HELEN HOLLAND.

13 THE COURT: AND WAS IT YOU THAT WAS A VICTIM OF A
14 BURGLARY OR A MEMBER OF YOUR FAMILY?

15 MS. HOLLAND: MY SON.

16 THE COURT: YOUR SON?

17 MS. HOLLAND: YES.

18 THE COURT: THE FACT THAT YOUR SON WAS A VICTIM OF A
19 BURGLARY, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR TO
20 BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

21 MS. HOLLAND: YES, SIR.

22 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.

23 AND NOW I HAVE NUMBER 263 AGAIN. IS THAT CORRECT?

24 MS.---

25 MS. FUHLBRICK: THERESA FUHLBRICK.

1 THE COURT: RIGHT. AND WAS IT YOU OR A MEMBER OF YOUR
2 FAMILY?

3 MS. FUHLBRICK: UH - ALL OF US, I SUPPOSE. OUR HOUSE
4 HAS BEEN ROBBED SEVERAL TIMES.

5 THE COURT: ALL RIGHT. THE FACT THAT YOU HAVE - YOUR
6 HOUSE HAS BEEN ROBBED SEVERAL TIMES, COULD YOU STILL BE A
7 FAIR AND IMPARTIAL JUROR TO BOTH THE STATE AND THE DEFENDANT
8 IN THIS CASE?

9 MS. FUHLBRICK: YES, I BELIEVE I CAN BE.

10 THE COURT: AND THAT MAY JUST BE SEMANTICS WHEN YOU SAY,
11 "I BELIEVE I CAN BE." IN OTHER WORDS, THAT JUST MAY BE THE
12 WAY YOU EXPRESS YOUR - YOURSELF. I - I NEED YOU TO BE SURE.
13 CAN YOU BE SURE THAT YOU CAN BE FAIR TO BOTH THE STATE AND
14 THE DEFENDANT IN THIS CASE?

15 MS. FUHLBRICK: YES.

16 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.

17 YES, SIR? YOUR NUMBER AND NAME, PLEASE?

18 MR. FOX: JAMES FOX, NUMBER 79.

19 THE COURT: AND WAS IT YOU, SIR, OR A MEMBER OF YOUR
20 FAMILY?

21 MR. FOX: MYSELF.

22 THE COURT: THE FACT THAT YOU WERE A VICTIM OF A
23 BURGLARY, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR TO
24 BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

25 MR. FOX: YES, I CAN.

1 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.

2 YES, MA'AM? THIS - THIS LADY RIGHT HERE. YOUR NUMBER
3 AND NAME, PLEASE?

4 MS. EVANS: 72 - SUZANNE EVANS.

5 THE COURT: AND, MS. EVANS, WAS IT YOU OR A MEM- -- A
6 MEMBER OF YOUR FAMILY, OR?

7 MS. EVANS: BOTH.

8 THE COURT: THE FACT THAT BOTH YOU AND A MEMBER OF YOUR
9 FAMILY HAVE BEEN A VICTIM OF A BURGLARY, COULD YOU STILL BE A
10 FAIR AND IMPARTIAL JUROR TO BOTH THE STATE AND THE DEFENDANT
11 IN THIS CASE?

12 MS. EVANS: YES.

13 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.
14 YES, SIR?

15 MR. LEE: MY NAME IS MARK. THE NUMBER IS 133.

16 THE COURT: SO WAS IT YOU OR A MEMBER OF YOUR FAMILY?

17 MR. LEE: IT WAS ME.

18 THE COURT: THE FACT THAT YOU HAVE BEEN A VICTIM OF A
19 BURGLARY, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR TO
20 BOTH THE STATE AND TO THE DEFENDANT IN THIS CASE?

21 MR. LEE: YES, SIR.

22 THE COURT: THANK YOU, SIR. YES, SIR?

23 MR. PRESTIDGE: MY NAME IS WILLIAM PRESTIDGE, JUROR 177.

24 THE COURT: AND WAS IT YOU, SIR, OR A MEMBER OF YOUR
25 FAMILY?

1 MR. PRESTIDGE: IT WAS ME.

2 THE COURT: THE FACT THAT YOU WERE A VICTIM OF A
3 BURGLARY, COULD YOU STILL BE A FAIR AND IMPARTIAL JUROR TO
4 BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

5 MR. PRESTIDGE: YES, SIR.

6 THE COURT: THANK YOU, SIR. YES, MA'AM?

7 MS. RAINES: ANNE RAINES, 282. IT WAS I, AND I CAN BE
8 FAIR AND IMPARTIAL.

9 THE COURT: THANK YOU VERY MUCH, MS. RAINES. YOU MAY BE
10 SEATED. YES, SIR?

11 MR. JOHNSTON: I'M JAMES JOHNSTON, 117. MY, UH - MY
12 WHOLE FAMILY'S BEEN ROBBED. THE HOME WAS BURGLARIZED. BUT,
13 I CAN BE FAIR.

14 THE COURT: COULD YOU BE FAIR AND IMPARTIAL TO BOTH THE
15 STATE AND THE DEFENDANT IN THIS CASE, MR. JOHNSTON?

16 MR. JOHNSTON: YES, SIR.

17 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED. ANY
18 OTHERS?

19 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

20 THE COURT: I READ THE INDICTMENTS AT THE ONSET
21 CONCERNING THE INCIDENT WHICH ALLEGEDLY OCCURRED ON
22 AUGUST 3RD OF 2004 AT THE RESIDENCE OF A WILLIAM S. MILLER,
23 AT 20 TRAPMAN STREET. THAT IS IN CHARLESTON?

24 MR. STACK: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: ALL RIGHT. HAS ANY MEMBER OF THE JURY PANEL

1 READ OR HEARD OR HAVE ANY KNOWLEDGE ABOUT THE FACTS OF THIS
2 CASE? IF SO, PLEASE STAND.

3 (NO RESPONSE FROM THE JURY PANEL.)

4 **THE COURT:** ALL RIGHT, NO ONE STANDS. HAS ANY MEMBER OF
5 THE JURY PANEL FORMED OR EXPRESSED ANY OPINION CONCERNING THE
6 GUILT OR THE INNOCENCE OF MR. HAMILTON AS HE SITS HERE THIS
7 MORNING? IF SO, PLEASE STAND.

8 (NO RESPONSE FROM THE JURY PANEL.)

9 **THE COURT:** LET THE RECORD REFLECT NO ONE STANDS. HAS
10 ANY MEMBER OF THE JURY PANEL SERVED ON A JURY BEFORE? IF SO,
11 PLEASE STAND.

12 ALL RIGHT, WE HAVE A FEW FREQUENT FLIERS OUT THERE, I
13 SEE. AND THE QUESTION BECOMES, IF - IF SO, DID - DID THE
14 PRIOR JURY SERVICE IN ANY WAY AFFECT THE WAY YOU WOULD VIEW
15 THIS PARTICULAR CASE? AND I'LL START AGAIN WITH THIS YOUNG
16 LADY ON THE END. YOUR NUMBER AND NAME AGAIN, MA'AM?

17 **MS. HOLLAND:** 110, HELEN HOLLAND. IT WOULD NOT
18 AFFECT ME.

19 **THE COURT:** ALL RIGHT. THANK YOU, MA'AM. YOU MAY BE
20 SEATED. AND, 263?

21 **MS. FUHLBRICK:** THERESA FUHLBRICK, YES, SIR.

22 **THE COURT:** AND, UH---

23 **MR. FUHLBRICK:** NO, IT WOULD NOT AFFECT ME.

24 **THE COURT:** THANK YOU, MA'AM. YES, MA'AM, YOUR NUMBER
25 AND NAME, PLEASE?

1 MS. FLEMING: EMILY FLEMING, 75. NO, IT WOULDN'T
2 AFFECT ME.

3 THE COURT: THANK YOU, MS. FLEMING. THIS YOUNG LADY?

4 MS. WOOD: 249, SUSAN WOOD. NO, IT WOULD NOT AFFECT ME.

5 THE COURT: THANK YOU, MS. WOOD. YOU MAY BE SEATED.
6 YES, MA'AM?

7 MS. CARROLL: 38, GAIL CARROLL. NO, IT WOULDN'T
8 AFFECT ME.

9 THE COURT: YES, MA'AM?

10 MS. CRABTREE: 259, SHANTEISHA CRABTREE. IT WOULD NOT
11 AFFECT ME.

12 THE COURT: THANK YOU, MA'AM.

13 MS. EVANS: 72, SUZANNE EVANS. NO.

14 COURT REPORTER: I MISSED HER NUMBER, YOUR HONOR.

15 THE COURT: 72. YES, SIR?

16 MR. PRESTIDGE: JUROR 177, WILLIAM PRESTIDGE. IT WOULD
17 NOT HAVE AN AFFECT.

18 THE COURT: THANK YOU, SIR. YES, MA'AM?

19 MS. LUBERT: 135, KATHLEEN LUBERT. IT WOULD NOT AFFECT
20 ME AT ALL.

21 THE COURT: THANK YOU, MA'AM. YES, SIR?

22 MR. MALCOLM: NAT MALCOLM. I THINK THE NUMBER'S 272.
23 IF SOMEONE WOULD CONFIRM THAT, I'D APPRECIATE IT.

24 THE COURT: MR. WILSON?

25 CLERK (MR. WILSON): THAT'S RIGHT, YOUR HONOR.

1 THE COURT: ALL RIGHT. WOULD IT AFFECT YOUR ABILITY TO
2 BE A FAIR AND IMPARTIAL JUROR IN THIS CASE, SIR?

3 MR. MALCOLM: NO, YOUR HONOR.

4 THE COURT: THANK YOU VERY MUCH. I APPRECIATE THAT.
5 AND, UM - I ALWAYS LIKE TO PLAY JEOPARDY AND TRY TO REMEMBER
6 WHO I'M TALKING TO, BUT I'VE LOST MY NUMBERS RIGHT NOW.
7 YOU'RE---

8 MR. JOHNSTON: JAMES JOHNSTON, 117.

9 THE COURT: ALL RIGHT, SIR. AND---

10 MR. JOHNSTON: IT WOULDN'T AFFECT ME.

11 THE COURT: THANK YOU, SIR. MR. JOHNSTON, I APPRECIATE
12 IT. YOU MAY BE SEATED.

13 COURT REPORTER: WAS 272 CORRECT, YOUR HONOR?

14 THE COURT: IT WAS 270---

15 CLERK (MR. WILSON): YES, 272 WAS CORRECT.

16 THE COURT: ---272 WAS THE CORRECT NUMBER, YES.

17 CLERK (MR. WILSON): NAT MALCOLM.

18 THE COURT: YES, MA'AM. IS THERE ANY MEMBER OF THE JURY
19 PANEL, OR ANY MEMBERS OF YOUR IMMEDIATE FAMILY, MEMBERS OF
20 VICTIM RIGHTS OR LAW ENFORCEMENT ORGANIZATIONS SUCH AS:
21 CITIZENS AGAINST VIOLENT CRIME, KNOWN AS C.A.V.E.; PEOPLE
22 AGAINST RAPE, KNOWN AS P.A.R.; MOTHERS AGAINST DRUNK DRIVING,
23 KNOWN AS M.A.D.D.; PERSONS EMPOWERED TO SAVE TEENS, KNOWN AS
24 P.E.S.T.; ANY COMMUNITY WATCH GROUP PROGRAMS; OR, ANY OTHER
25 LIKE ORGANIZATIONS? IF SO, PLEASE STAND.

1 MR. TYLER: GOOD MORNING, YOUR HONOR.

2 THE COURT: AND THIS WOULD BE MR. TYLER---

3 MR. TYLER: YES, SIR.

4 THE COURT: ---233? IS THAT CORRECT?

5 MR. TYLER: YES, SIR - 233.

6 THE COURT: ALL RIGHT, SIR. AND WHAT GROUP ARE YOU A
7 MEMBER OF, MR. TYLER?

8 MR. TYLER: I'M A MEMBER OF THE UNION HEIGHTS COUNCIL.
9 WATCH GROUP AND COUNCIL OF THE COMMUNITY.

10 COURT REPORTER: I'M SORRY, I DIDN'T UNDERSTAND.

11 THE COURT: AND WHAT WAS THE SECOND GROUP?

12 MR. TYLER: UNION HEIGHTS COUNCIL.

13 THE COURT: UNION HIGH (SIC) COUNCIL?

14 MR. TYLER: A MENTORING AGENCY - A - A MENTORING AGENCY
15 OF THE - OF THE COMMUNITY.

16 THE COURT: ALL RIGHT, SIR. AND THE FACT THAT YOU ARE A
17 MEMBER OF THOSE COMMUNITY GROUPS AND THEY ARE SIMILAR TO
18 THESE TYPES OF ORGANIZATIONS I HAVE LISTED, COULD YOU STILL
19 BE A FAIR AND IMPARTIAL JUROR TO BOTH THE STATE AND THE
20 DEFENDANT IN THIS CASE?

21 MR. TYLER: YES, I CAN, YOUR HONOR.

22 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED. ALL
23 RIGHT, I'M GONNA CALL OUT A LIST OF NAMES WHICH ARE POTENTIAL
24 WITNESSES IN THIS CASE. AND THE QUESTION IS, WHETHER OR NOT
25 YOU'RE RELATED BY BLOOD OR MARRIAGE TO ANY OF THESE

1 INDIVIDUALS OR CLOSE PERSONAL FRIENDS OF THESE INDIVIDUALS.
2 IF SO, I WOULD ASK YOU TO STAND.

3 DETECTIVE THOMAS RIVER (SIC) OF THE CHARLESTON POLICE
4 DEPARTMENT?

5 (NO RESPONSE FROM THE JURY PANEL.)

6 **THE COURT:** AND IF ANY OF THESE WITNESSES ARE PRESENT IN
7 THE COURTROOM WHEN I CALL THEIR NAME, I WOULD ALSO ASK THEM
8 TO STAND SO THE JURY PANEL CAN SEE - SEE THEM.

9 THE WITNESSES ARE NOT REQUIRED TO BE PRESENT TODAY, SO
10 YOU MAY NOT - OR, PRESENT DURING THE JURY SELECTION. SO YOU
11 MAY NOT SEE ALL OF THEM, BUT IF ANY OF THEM ARE PRESENT.

12 WILLIAM S. MILLER?

13 (NO RESPONSE FROM THE JURY PANEL.)

14 **THE COURT:** SERGEANT CONNOLLY OF THE CHARLESTON POLICE
15 DEPARTMENT?

16 (NO RESPONSE FROM THE JURY PANEL.)

17 **THE COURT:** INVESTIGATOR LITES OF THE CHARLESTON POLICE
18 DEPARTMENT?

19 (NO RESPONSE FROM THE JURY PANEL.)

20 **THE COURT:** REINA GASCON, CHARLESTON COUNTY CLERK OF
21 COURT?

22 (NO RESPONSE FROM THE JURY PANEL.)

23 **THE COURT:** OFFICER ANITA MAESTAS? IS THAT CORRECT,
24 MR. STACK?

25 **MR. STACK:** YES, YOUR HONOR.

1 **THE COURT:** OF THE CHARLESTON POLICE DEPARTMENT?

2 (NO RESPONSE FROM THE JURY PANEL.)

3 **THE COURT:** J. C. MEIERS, WHO IS EMPLOYED WITH
4 CHARLESTON COUNTY?

5 (NO RESPONSE FROM THE JURY PANEL.)

6 **THE COURT:** SPECIAL AGENT LAURIE...

7 **MR. STACK:** CICCARELLI.

8 **THE COURT:** CICCARELLI OF SLED?

9 (NO RESPONSE FROM THE JURY PANEL.)

10 **THE COURT:** AND ARTHUR DAJAVENA (PHONETIC/SIC)?

11 **MS. JENKINSON:** DEGIOVINE.

12 **THE COURT:** DEGIOVINE. I PUT MY ACCENT ON THE WRONG
13 SYLLABLE. INVESTIGATOR?

14 (NO RESPONSE FROM THE JURY PANEL.)

15 **THE COURT:** WAS THAT ALL ON THE LIST, MR. STACK -
16 MS. JENKINSON?

17 **MR. STACK:** YES, YOUR HONOR.

18 **MS. JENKINSON:** YES, SIR.

19 **THE COURT:** AND THE QUESTION IS, IS ANY MEMBER OF THE
20 JURY PANEL RELATED BY BLOOD OR MARRIAGE OR CLOSE PERSONAL
21 FRIENDS OF ANY OF THOSE POTENTIAL WITNESSES WHOSE NAMES I'VE
22 JUST CALLED OUT? IF SO, PLEASE STAND.

23 (NO RESPONSE FROM THE JURY PANEL.)

24 **THE COURT:** LET THE RECORD REFLECT THAT NO ONE STANDS.
25 ALL RIGHT.

1 HAS ANY MEMBER OF THE JURY PANEL PERSONALLY HAD SUCH AN
2 UNPLEASANT EXPERIENCE WITH A LAW-ENFORCEMENT OFFICER THAT YOU
3 THINK IT WOULD AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL
4 IN THIS TRIAL? IF SO, PLEASE STAND.

5 (NO RESPONSE FROM THE JURY PANEL.)

6 **THE COURT:** LET THE RECORD REFLECT THAT NO ONE STANDS.

7 IS THERE ANY MEMBER OF THE JURY PANEL THAT HAS ANY
8 PARTICULAR RELIGIOUS CONVICTIONS, PHILOSOPHICAL OR MORAL
9 BELIEFS, OR POLITICAL ORIENTATIONS THAT WOULD MAKE IT
10 DIFFICULT FOR YOU TO SIT IN JUDGEMENT OF ANOTHER PERSON? IF
11 SO, PLEASE STAND.

12 (NO RESPONSE FROM THE JURY PANEL.)

13 **THE COURT:** LET THE RECORD REFLECT THAT NO ONE STANDS.

14 IS THERE ANY MEMBER OF THE JURY PANEL THAT HAS ANY
15 REASON WHATSOEVER IN YOUR MIND - THAT YOU THINK IT IS
16 IMPORTANT FOR THE COURT TO KNOW - OF WHY YOU FEEL THAT YOU
17 COULD NOT BE A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS
18 CASE TO BOTH THE STATE AND TO THE DEFENSE? IF SO, PLEASE
19 STAND.

20 (NO RESPONSE FROM THE JURY PANEL.)

21 **THE COURT:** ALL RIGHT. I DIDN'T ASK - YOU CAN MAKE IT
22 PART OF THE RECORD - I DIDN'T ASK NUMBER FOUR OR NUMBER SIX
23 ON - ON DEFENDANT'S REQUESTED VOIR DIRE. AND, I DID NOT ASK
24 NUMBER FOUR ON POINT - ON THE STATE'S. AND I AMENDED
25 SOMEWHAT NUMBER SEVEN.

1 ANYTHING FURTHER MR. STACK OR MS. JENKINSON?

2 MR. STACK: NO, YOUR HONOR.

3 MS. JENKINSON: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. AND YOU - YOU WILL BE ABLE TO
5 MAKE THAT PART OF THE RECORD, MS. JENKINSON.

6 ALL RIGHT, LADIES AND GENTLEMEN, I DIDN'T INTRODUCE SOME
7 VERY KEY PERSONNEL IN THE COURTROOM THIS MORNING ONLY BECAUSE
8 ONE OF THE VERY KEY PERSONNEL WAS NOT IN THE COURTROOM WHEN I
9 FIRST STARTED, BECAUSE HE WAS OUT DOING VERY IMPORTANT DUTIES
10 FOR ME, FOR THE COURT.

11 TO MY IMMEDIATE LEFT IS DRELTON CARSON, JUNIOR. HE IS
12 MY LAW CLERK. AS I TELL JURORS EVERY WEEK, ALL HIS FRIENDS
13 CALL HIM D. J., AND I DON'T KNOW ANYONE THAT DOESN'T CALL -
14 CALL HIM D. J.

15 FURTHER TO MY LEFT IS MR. SCOTT WILSON WITH YOU-ALL'S -
16 STAND UP FOR US MR. WILSON - WITH YOU-ALL'S CLERK OF COURT
17 OFFICE. HE WILL BE ASSISTING THE COURT IN THE TRIAL OF THIS
18 CASE.

19 TO MY RIGHT IS THE - SOME PEOPLE SAY THE - WHAT - WHAT
20 DO THEY SAY? THE HARDEST WORKING - PROBABLY THE HARDEST
21 WORKING PERSON IN THE COURTROOM IS OUR - OUR COURT REPORTER,
22 MS. VIVIAN CROSS. THIS IS A COURT OF RECORD, AND SHE TAKES
23 DOWN EACH AND EVERY WORD THAT IS SAID BY EACH AND EVERY
24 PERSON IN THE COURTROOM THROUGHOUT THESE PROCEEDINGS.

25 THERE ARE ALSO A NUMBER OF INDIVIDUALS YOU MAY HAVE SEEN

1 WHEN YOU CAME IN THE COURTROOM, IN THE JURY BOX OVER TO MY
2 RIGHT. AND THEN, I BELIEVE, THEY ARE NOW ON THE BACK ROW.
3 THESE ARE ALL LAW STUDENTS THAT ARE HERE GETTING THEIR 403
4 REQUIREMENTS.

5 I WOULD BE GLAD TO EXPLAIN THE 403 REQUIREMENTS TO YOU,
6 BUT I HAVE BEEN A LAWYER FOR SO LONG THEY DIDN'T HAVE THOSE
7 REQUIREMENTS WHEN I FINISHED LAW SCHOOL.

8 BUT, THEY - THEY ARE REQUIRED TO OBSERVE X-SO-MANY OF
9 CERTAIN TYPES OF - OF TRIALS, BOTH CIVIL, CRIMINAL, FAMILY
10 COURT, ADMINISTRATIVE. IT - IT COMES OUT TO ABOUT A DOZEN?
11 IS THAT - IS THAT CORRECT?

12 UNIDENTIFIED LAW STUDENT: YES, SIR.

13 THE COURT: SO THERE WILL BE A NUMBER OF THEM HERE
14 TODAY. ABOUT A - ABOUT A DOZEN, I GUESS. IS THAT - IS THAT
15 RIGHT? THAT WAS MY UNDERSTANDING.

16 WE ALSO HAVE OUR VERY FINE BAILIFFS. THESE - THESE
17 GENTLEMEN OVER HERE. AND I KNOW THERE'S A GENTLEMAN IN THE
18 BACK. AND I USUALLY HAVE A LADY BAILIFF SOMEWHERE. BUT,
19 THEY WOULD ASSIST THE COURT. AND IF YOU ARE FORTUNATE ENOUGH
20 TO BE SELECTED ON THIS JURY, THAT'S WHO YOU WOULD DEAL WITH
21 TO - TO DEAL WITH THE COURT.

22 I APOLOGIZE FOR NOT MAKING THOSE INTRODUCTIONS EARLIER,
23 BUT I DID WANT TO WAIT ON D. J. TO ARRIVE.

24 ALL RIGHT. I FIND THAT THE - THAT THE PANEL IS
25 QUALIFIED. MR. WILSON - MR. CLERK?

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
2 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
3 HEARING OF THE JURY PANEL, OFF THE RECORD.)

4 (WHEREUPON, COURT RESUMED.)

5 **THE COURT:** OH YES, I'M SORRY. THESE - IF - IF OUR
6 403'S WOULD PLEASE - YOU'RE WELCOME TO GO OUTSIDE UNTIL WE
7 GET THE JURY SELECTED. THANK YOU VERY MUCH, MR. WILSON.
8 SIR?

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
11 HEARING OF THE JURY PANEL, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 **THE COURT:** ALL RIGHT. THEY CAN OPEN THE DOORS AND
14 ALLOW THEM TO STAND IN THE HALLWAYS OR IN THE FOYER SECTION.
15 THANK YOU-ALL VERY MUCH.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
18 HEARING OF THE JURY PANEL, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 **THE COURT:** MR. STACK - TEN AND FIVE? IS THAT CORRECT,
21 MR. STACK AND MS. JENKINSON?

22 **MR. STACK:** YES, YOUR HONOR, TEN AND FIVE.

23 **THE COURT:** ALL RIGHT. ALL RIGHT - MR. WILSON?

24 **CLERK (MR. WILSON):** YES, SIR, YOUR HONOR.

25 LADIES AND GENTLEMEN, AS I EXPLAINED EARLIER IN THE

1 QUALIFICATIONS DOWNSTAIRS, AS I CALL YOUR NAME AND JUROR
2 NUMBER, WOULD YOU PLEASE GATHER YOUR PERSONAL BELONGINGS? AS
3 I CALL YOUR NAME, COME UP, STAND IN FRONT OF THIS PODIUM,
4 TURN AND FACE YOUR PEERS.

5 JUROR NUMBER 102, ALFREDA HAMILTON.

6 (WHEREUPON, JUROR NUMBER 102, ALFREDA HAMILTON, CAME
7 FORWARD.)

8 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

9 MR. STACK: PLEASE EXCUSE THE JUROR.

10 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE
11 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

12 (WHEREUPON, JUROR NUMBER 102, ALFREDA HAMILTON, RETURNED
13 TO HER SEAT.)

14 CLERK (MR. WILSON): JUROR NUMBER 124, ROGER KIRBY,
15 JUNIOR.

16 (WHEREUPON, JUROR NUMBER 124, ROGER KIRBY, JUNIOR CAME
17 FORWARD.)

18 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

19 MR. STACK: PLEASE PRESENT THE JUROR.

20 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

21 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

22 THE COURT: YES, MA'AM.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
25 HEARING OF THE JURY PANEL, OFF THE RECORD.)

1 (WHEREUPON, COURT RESUMED.)

2 MS. JENKINSON: PLEASE SEAT MR. KIRBY.

3 CLERK: SIR, YOU'VE BEEN SELECTED FOR THE TRIAL OF THIS
4 CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

5 (WHEREUPON, JUROR NUMBER 124, ROGER KIRBY, JUNIOR, WAS
6 SEATED IN THE JURY BOX.)

7 CLERK (MR. WILSON): JUROR NUMBER 177, WILLIAM
8 PRESTIDGE, JUNIOR.

9 (WHEREUPON, WILLIAM PRESTIDGE, JUNIOR, JUROR NUMBER 177,
10 CAME FORWARD.)

11 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

12 MR. STACK: PLEASE PRESENT THE JUROR.

13 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

14 MS. JENKINSON: PLEASE EXCUSE MR. PRESTIDGE.

15 CLERK (MR. WILSON): SIR, YOU'VE BEEN EXCUSED FROM THE
16 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

17 (WHEREUPON, WILLIAM PRESTIDGE, JUNIOR, JUROR NUMBER 177,
18 RETURNED TO HIS SEAT.)

19 CLERK (MR. WILSON): JUROR NUMBER 180, DONALD RAMSEY.

20 (WHEREUPON, DONALD RAMSEY, JUROR NUMBER 180, CAME
21 FORWARD.)

22 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

23 MR. STACK: PLEASE EXCUSE THE JUROR.

24 CLERK (MR. WILSON): SIR, YOU'VE BEEN EXCUSED FROM THE
25 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 (WHEREUPON, DONALD RAMSEY, JUROR NUMBER 180, RETURNED TO
2 HIS SEAT.)

3 CLERK (MR. WILSON): JUROR NUMBER 224, SUSAN SPENCE.

4 (WHEREUPON, SUSAN SPENCE, JUROR NUMBER 224, CAME
5 FORWARD.)

6 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

7 MR. STACK: PLEASE PRESENT THE JUROR.

8 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

9 MS. JENKINSON: PLEASE EXCUSE MS. SPENCE.

10 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE
11 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

12 (WHEREUPON, SUSAN SPENCE, JUROR NUMBER 224, RETURNED TO
13 HER SEAT.)

14 CLERK (MR. WILSON): JUROR NUMBER 134, KEVIN LOWRY.

15 (WHEREUPON, KEVIN LOWRY, JUROR NUMBER 134, CAME
16 FORWARD.)

17 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

18 MR. STACK: PLEASE PRESENT THE JUROR.

19 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

20 MS. JENKINSON: PLEASE SEAT MR. LOWRY.

21 CLERK (MR. WILSON): SIR, YOU'VE BEEN SELECTED FOR THE
22 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

23 (WHEREUPON, KEVIN LOWRY, JUROR NUMBER 134, WAS SEATED IN
24 THE JURY BOX.)

25 CLERK (MR. WILSON): JUROR NUMBER 138, DUNCAN MACKAY.

1 (WHEREUPON, DUNCAN MACKAY, JUROR NUMBER 138, CAME
2 FORWARD.)

3 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

4 MR. STACK: PLEASE PRESENT THE JUROR.

5 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

6 MS. JENKINSON: PLEASE SEAT MR. MACKAY.

7 CLERK (MR. WILSON): SIR, YOU'VE BEEN SELECTED FOR THE
8 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

9 (WHEREUPON, DUNCAN MACKAY, JUROR NUMBER 138, WAS SEATED
10 IN THE JURY BOX.)

11 CLERK (MR. WILSON): JUROR NUMBER 149, SHANEKA MEGGETT.

12 (WHEREUPON, SHANEKA MEGGETT, JUROR NUMBER 149, CAME
13 FORWARD.)

14 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

15 MR. DURANT: WHAT'S - WHAT'S THE NUMBER OR THE NAME?

16 MR. STACK: BEG THE COURT'S INDULGENCE FOR ONE MOMENT.

17 MR. DURANT: WHICH NUMBER IS THAT?

18 CLERK (MR. WILSON): 149.

19 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
20 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
21 HEARING OF THE JURY PANEL, OFF THE RECORD.)

22 (WHEREUPON, COURT RESUMED.)

23 MR. STACK: PLEASE PRESENT THE JUROR.

24 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

25 MS. JENKINSON: PLEASE SEAT MRS. MEGGETT.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR THE
2 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

3 (WHEREUPON, SHANEKA MEGGETT, JUROR NUMBER 149, WAS
4 SEATED IN THE JURY BOX.)

5 CLERK (MR. WILSON): JUROR NUMBER 30, KATHERINE BROWNE.

6 (WHEREUPON, KATHERINE BROWNE, JUROR NUMBER 30, CAME
7 FORWARD.)

8 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

9 MR. STACK: PLEASE PRESENT THE JUROR.

10 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

11 MS. JENKINSON: BEG THE COURT'S INDULGENCE ONE MOMENT.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
14 HEARING OF THE JURY PANEL, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 MS. JENKINSON: PLEASE EXCUSE MS. BROWNE.

17 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE
18 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

19 (WHEREUPON, KATHERINE BROWNE, JUROR NUMBER 30, RETURNED
20 TO HER SEAT.)

21 CLERK (MR. WILSON): JUROR NUMBER 259, SHANTEISHA
22 CRABTREE.

23 (WHEREUPON, SHANTEISHA CRABTREE, JUROR NUMBER 259, CAME
24 FORWARD.)

25 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 MR. STACK: PLEASE PRESENT THE JUROR.

2 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

3 MS. JENKINSON: PLEASE SEAT MS. CRABTREE.

4 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR THE
5 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

6 (WHEREUPON, SHANTEISHA CRABTREE, JUROR NUMBER 259, WAS
7 SEATED IN THE JURY BOX.)

8 THE COURT: WHAT WAS THAT NUMBER? WHAT NUMBER WAS THAT?

9 CLERK (MR. WILSON): THAT WAS JUROR NUMBER 259,
10 YOUR HONOR.

11 THE COURT: THANK YOU.

12 CLERK (MR. WILSON): JUROR NUMBER 133, MARK LEE.

13 (WHEREUPON, MARK LEE, JUROR NUMBER 133, CAME FORWARD.)

14 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

15 MR. STACK: PLEASE PRESENT THE JUROR.

16 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

17 MS. JENKINSON: PLEASE EXCUSE MR. LEE.

18 CLERK (MR. WILSON): SIR, YOU'VE BEEN EXCUSED FROM THE
19 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

20 (WHEREUPON, MARK LEE, JUROR NUMBER 133, RETURNED TO HIS
21 SEAT.)

22 CLERK (MR. WILSON): JUROR NUMBER 38, GAIL CARROLL.

23 (WHEREUPON, GAIL CARROLL, JUROR NUMBER 38, CAME
24 FORWARD.)

25 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

1 MR. STACK: PLEASE PRESENT THE JUROR.

2 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

3 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
5 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
6 HEARING OF THE JURY PANEL, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MS. JENKINSON: PLEASE SEAT MS. CARROLL.

9 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR THE
10 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

11 (WHEREUPON, GAIL CARROLL, JUROR NUMBER 38, WAS SEATED IN
12 THE JURY BOX.)

13 CLERK (MR. WILSON): JUROR NUMBER 169, LAURA PARKER.

14 (WHEREUPON, LAURA PARKER, JUROR NUMBER 169, CAME
15 FORWARD.)

16 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

17 MR. STACK: PLEASE PRESENT THE JUROR.

18 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

19 MS. JENKINSON: PLEASE SEAT MS. PARKER.

20 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR
21 THIS TRIAL. PLEASE HAVE A SEAT IN THE JURY BOX.

22 (WHEREUPON, LAURA PARKER, JUROR NUMBER 169, WAS SEATED
23 IN THE JURY BOX.)

24 CLERK (MR. WILSON): JUROR NUMBER 233, CHARLES TYLER,
25 JUNIOR.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 (WHEREUPON, CHARLES TYLER, JUNIOR, JUROR NUMBER 233,
2 CAME FORWARD.)

3 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

4 MR. STACK: PLEASE EXCUSE THE JUROR.

5 CLERK (MR. WILSON): SIR, YOU'VE BEEN EXCUSED FROM THE
6 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

7 (WHEREUPON, CHARLES TYLER, JUNIOR, JUROR NUMBER 233,
8 RETURNED TO HIS SEAT.)

9 CLERK (MR. WILSON): JUROR NUMBER 72, SUZANNE EVANS.

10 (WHEREUPON, SUZANNE EVANS, JUROR NUMBER 72, CAME
11 FORWARD.)

12 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

13 MR. STACK: PLEASE PRESENT THE JUROR.

14 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

15 MS. JENKINSON: PLEASE EXCUSE MS. EVANS.

16 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM
17 THIS TRIAL. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

18 (WHEREUPON, SUZANNE EVANS, JUROR NUMBER 72, RETURNED TO
19 HER SEAT.)

20 CLERK (MR. WILSON): JUROR NUMBER 284, JULIE RICHBURG.

21 (WHEREUPON, JULIE RICHBURG, JUROR NUMBER 284, CAME
22 FORWARD.)

23 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

24 MR. STACK: PLEASE PRESENT THE JUROR.

25 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

1 MS. JENKINSON: PLEASE SEAT MS. RICHBURG.

2 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR
3 THIS TRIAL. PLEASE HAVE A SEAT IN THE JURY BOX.

4 (WHEREUPON, JULIE RICHBURG, JUROR NUMBER 284, WAS SEATED
5 IN THE JURY BOX.)

6 CLERK (MR. WILSON): JUROR NUMBER 110, HELEN HOLLAND.

7 (WHEREUPON, HELEN HOLLAND, JUROR NUMBER 110, CAME
8 FORWARD.)

9 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

10 MR. STACK: PLEASE PRESENT THE JUROR.

11 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

12 MS. JENKINSON: PLEASE EXCUSE MS. HOLLAND.

13 CLERK (MR. WILSON): MA'AM, YOU'RE EXCUSED FROM THE
14 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

15 (WHEREUPON, HELEN HOLLAND, JUROR NUMBER 110, RETURNED TO
16 HER SEAT.)

17 CLERK (MR. WILSON): JUROR NUMBER 263, THERESA
18 FUHLBRICK.

19 (WHEREUPON, THERESA FUHLBRICK, JUROR NUMBER 263, CAME
20 FORWARD.)

21 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

22 MR. STACK: PLEASE PRESENT THE JUROR.

23 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

24 MS. JENKINSON: PLEASE EXCUSE MS. FUHLBRICK.

25 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.
2 (WHEREUPON, THERESA FUHLBRICK, JUROR NUMBER 263,
3 RETURNED TO HER SEAT.)
4 CLERK (MR. WILSON): JUROR NUMBER 188, MARGARET RIGGINS.
5 (WHEREUPON, MARGARET RIGGINS, JUROR NUMBER 188, CAME
6 FORWARD.)
7 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?
8 MR. STACK: PLEASE PRESENT THE JUROR.
9 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?
10 MS. JENKINSON: PLEASE SEAT MS. RIGGINS.
11 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR THE
12 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.
13 (WHEREUPON, MARGARET RIGGINS, JUROR NUMBER 188, WAS
14 SEATED IN THE JURY BOX.)
15 CLERK (MR. WILSON): JUROR NUMBER 59, SCOTT CURRY.
16 (WHEREUPON, SCOTT CURRY, JUROR NUMBER 59, CAME FORWARD.)
17 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?
18 MR. STACK: PLEASE PRESENT THE JUROR.
19 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?
20 MS. JENKINSON: PLEASE SEAT MR. CURRY.
21 CLERK (MR. WILSON): SIR, YOU'VE BEEN SELECTED FOR THE
22 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.
23 (WHEREUPON, SCOTT CURRY, JUROR NUMBER 59, WAS SEATED IN
24 THE JURY BOX.)
25 CLERK (MR. WILSON): JUROR NUMBER 106, WILLEATEA

1 (PHONETIC/SIC)---

2 MS. HAYNES: WILLIETTA.

3 CLERK (MR. WILSON): ---WILLIETTA HAYNES.

4 (WHEREUPON, WILLIETTA HAYNES, JUROR NUMBER 106, CAME
5 FORWARD.)

6 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

7 MR. STACK: PLEASE EXCUSE THE JUROR.

8 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE
9 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.
10 THE STATE HAS ONE STRIKE REMAINING.

11 (WHEREUPON, WILLIETTA HAYNES, JUROR NUMBER 106, RETURNED
12 TO HER SEAT.)

13 CLERK (MR. WILSON): JUROR NUMBER 58, ELIZABETH CROWLEY.

14 (WHEREUPON, ELIZABETH CROWLEY, JUROR NUMBER 58, CAME
15 FORWARD.)

16 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

17 MR. STACK: PLEASE PRESENT THE JUROR.

18 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

19 MS. JENKINSON: PLEASE SEAT MS. CROWLEY.

20 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN SELECTED FOR THE
21 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

22 (WHEREUPON, ELIZABETH CROWLEY, JUROR NUMBER 58, WAS
23 SEATED IN THE JURY BOX.)

24 CLERK (MR. WILSON): JUROR NUMBER 258, CRAIG CLARK.
25 THAT IS, JUROR 258.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 (WHEREUPON, CRAIG CLARK, JUROR NUMBER 258, CAME
2 FORWARD.)

3 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

4 MR. STACK: PLEASE PRESENT THE JUROR.

5 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

6 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
9 HEARING OF THE JURY PANEL, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 MS. JENKINSON: PLEASE SEAT MR. CARLSON (SIC).

12 CLERK (MR. WILSON): SIR, YOU'VE BEEN SELECTED---

13 MS. JENKINSON: CLARK, I'M SORRY.

14 CLERK (MR. WILSON): ---FOR THE TRIAL OF THIS CASE.
15 PLEASE HAVE A SEAT IN THE JURY BOX.

16 (WHEREUPON, CRAIG CLARK, JUROR NUMBER 258, WAS SEATED IN
17 THE JURY BOX.)

18 CLERK (MR. WILSON): YOUR HONOR, THOSE ARE OUR TWELVE
19 JURORS.

20 THE COURT: ALL RIGHT. ONE ALTERNATE.

21 CLERK (MR. WILSON): ONE ALTERNATE?

22 THE COURT: YES, SIR.

23 CLERK (MR. WILSON): STRIKING FOR ALTERNATES. STRIKES
24 ARE TWO AND ONE.

25 JUROR NUMBER 274, BARBARA MAUTE.

1 (WHEREUPON, BARBARA MAUTE, JUROR NUMBER 274, CAME
2 FORWARD.)

3 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

4 MR. STACK: PLEASE PRESENT THE JUROR.

5 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

6 MS. JENKINSON: PLEASE EXCUSE MS. MAUTE.

7 CLERK (MR. WILSON): MA'AM, YOU'VE BEEN EXCUSED FROM THE
8 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

9 (WHEREUPON, BARBARA MAUTE, JUROR NUMBER 274, RETURNED TO
10 HER SEAT.)

11 CLERK (MR. WILSON): JUROR NUMBER 184, SHAWN REESE.

12 (WHEREUPON, SHAWN REESE, JUROR NUMBER 184, CAME
13 FORWARD.)

14 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

15 MR. STACK: PLEASE PRESENT THE JUROR.

16 CLERK (MR. WILSON): WHAT SAY YOU FOR THE DEFENDANT?

17 MS. JENKINSON: PLEASE EXCUSE MR. REESE.

18 CLERK (MR. WILSON): SIR, YOU'VE BEEN EXCUSED FROM THE
19 TRIAL OF THIS CASE. PLEASE HAVE A SEAT BACK IN THE AUDIENCE.

20 (WHEREUPON, SHAWN REESE, JUROR NUMBER 184, RETURNED TO
21 HIS SEAT.)

22 CLERK (MR. WILSON): JUROR NUMBER 49, ALFRED CLARKSON.

23 (WHEREUPON, ALFRED CLARKSON, JUROR NUMBER 49, CAME
24 FORWARD.)

25 CLERK (MR. WILSON): WHAT SAY YOU FOR THE STATE?

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 **MR. STACK:** PLEASE PRESENT THE JUROR.

2 **CLERK (MR. WILSON):** ANY CHALLENGE FROM THE DEFENDANT?

3 **MS. JENKINSON:** NO CHALLENGE.

4 **CLERK (MR. WILSON):** SIR, YOU'VE BEEN SELECTED FOR THE
5 TRIAL OF THIS CASE. PLEASE HAVE A SEAT IN THE JURY BOX.

6 (WHEREUPON, ALFRED CLARKSON, JUROR NUMBER 49, WAS SEATED
7 IN THE JURY BOX.)

8 **CLERK (MR. WILSON):** YOUR HONOR, THE JURY'S BEEN
9 SELECTED.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
12 HEARING OF THE JURY PANEL, OFF THE RECORD.)

13 (WHEREUPON, COURT RESUMED.)

14 **THE COURT:** ALL RIGHT, ARE THERE ANY MOTIONS FROM THE
15 STATE CONCERNING THE JURY SELECTION PROCESS?

16 **MR. STACK:** NO, YOUR HONOR.

17 **THE COURT:** FROM THE DEFENSE?

18 **MS. JENKINSON:** NO, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. MR. CLERK, THESE FOLKS OUT HERE?

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
21 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
22 HEARING OF THE JURY PANEL, OFF THE RECORD.)

23 (WHEREUPON, COURT RESUMED.)

24 **THE COURT:** ALL RIGHT, FOR YOU LADIES AND GENTLEMAN THAT
25 ARE MEMBERS OF THE JURY PANEL THAT ARE BEYOND THE RAIL THAT

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
JURY SELECTION

1 WERE UNFORTUNATE ENOUGH NOT TO BE SELECTED ON THIS PARTICULAR
2 CASE, MOMENTARILY I'M GONNA EXCUSE YOU FOR THE REMAINDER OF
3 THE DAY AND ASK YOU TO CALL YOUR JUROR INFORMATION LINE AFTER
4 SIX P.M. - THAT'S AFTER EIGHTEEN HUNDRED HOURS TONIGHT - FOR
5 FURTHER DIRECTIONS CONCERNING YOUR WEEK OF JURY SERVICE.

6 IF I DO NOT HAVE THE OPPORTUNITY TO SEE ANY OF YOU-ALL
7 THE REMAINDER OF THE WEEK, YOU CERTAINLY HAVE MY PERSONAL
8 THANKS AND THE THANKS OF YOUR COMMUNITY. BECAUSE, WE COULD
9 NOT BE ABOUT THE IMPORTANT BUSINESS OF OUR JUDICIAL SYSTEM
10 WITHOUT YOU-ALL'S PRESENCE.

11 SO YOU ARE NOW EXCUSED, WITH THE INSTRUCTIONS TO CALL
12 AFTER SIX P.M. TONIGHT FOR FURTHER INSTRUCTIONS FOR THE
13 REMAINDER OF THE WEEK. AND I HOPE YOU-ALL HAVE A PLEASANT
14 AFTERNOON AND EVENING.

15 (WHEREUPON, THE BALANCE OF THE JURY PANEL WAS RELEASED
16 FOR THE DAY AT 12:16 P.M.)

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE IN THE PRESENCE OF THE JURY, AS THE REMAINDER OF
19 THE JURY PANEL EXITED THE COURTROOM, BUT OUTSIDE THE HEARING
20 OF THE JURY, OFF THE RECORD.)

21 (WHEREUPON, COURT RESUMED.)

22 **THE COURT:** ALL RIGHT. MS. CRABTREE?

23 **MS. CRABTREE:** YES, YOUR HONOR?

24 **THE COURT:** MS. CRABTREE, I'M GONNA ASK YOU TO SERVE AS
25 THE FORELADY OF OUR JURY, PLEASE.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 **MS. CRABTREE:** OKAY.

2 **THE COURT:** OUR BAILIFF WILL SHOW YOU WHERE TO SIT, AND
3 AT THE APPROPRIATE TIME I'LL EXPLAIN IN GREATER DETAILS (SIC)
4 YOUR DUTIES AND RESPONSIBILITIES. AT THE APPROPRIATE TIME I
5 WILL EXPLAIN TO YOU IN FURTHER DETAIL THE DUTIES AND
6 RESPONSIBILITIES OF BEING THE FOREPERSON OF OUR JURY.

7 MR. CLERK, WOULD YOU SWEAR OUR JURY PLEASE?

8 **CLERK (MR. WILSON):** YES, YOUR HONOR. WOULD THE
9 DEFENDANT PLEASE STAND? LADIES AND GENTLEMEN OF THE JURY,
10 WOULD YOU PLEASE STAND AT THIS TIME AND RAISE YOUR RIGHT HAND
11 AND BE SWORN? 'ONCE I'VE GIVEN THE OATH, PLEASE RESPOND
12 VERBALLY.

13 (WHEREUPON, THE JURY WAS DULY SWORN. ALL JURORS
14 ANSWERED AFFIRMATIVELY.)

15 **CLERK (MS. WILSON):** THANK YOU. PLEASE BE SEATED.

16 **THE COURT:** MR. STACK, MS. JENKINSON?

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
18 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
19 HEARING OF THE JURY, OFF THE RECORD.)

20 (WHEREUPON, COURT RESUMED.)

21 **THE COURT:** MADAME FORELADY, LADIES AND GENTLEMEN OF THE
22 JURY, THE CASE WE ARE ABOUT TO TRY IS THE CASE OF THE STATE
23 VERSUS THOMAS CURTIS HAMILTON, DEFENDANT.

24 WHAT I WILL NOW SAY IS INTENDED TO SERVE AS AN
25 INTRODUCTION TO THE TRIAL OF THIS CASE. THESE REMARKS ARE

OPENING STATEMENTS BY THE COURT

1 NOT A CHARGE ON THE LAW IN THIS CASE. I WILL INSTRUCT YOU ON
2 THE LAW APPLICABLE TO THIS CASE AT THE END OF THE TRIAL,
3 BEFORE YOU RETIRE TO CONSIDER YOUR VERDICT. THIS IS MERELY
4 AN EXPLANATION OF THE PROCEDURE THAT WE WILL FOLLOW IN THE
5 TRIAL OF THIS CASE SO THAT YOU MAY BETTER UNDERSTAND WHAT MAY
6 BE HAPPENING.

7 THE DEFENDANT IS CHARGED BY TWO INDICTMENTS FILED WITH
8 THIS COURT WITH THE CRIME OF BURGLARY IN THE FIRST DEGREE AND
9 PETTY LARCENY, THE ELEMENTS OF WHICH WILL BE EXPLAINED TO YOU
10 LATER.

11 THE INDICTMENTS ARE SIMPLY THE CHARGE BY WHICH THE CASE
12 IS BROUGHT INTO COURT, AND IT IS NOT, IN ANY SENSE, EVIDENCE
13 OF ANY OF THE ALLEGATIONS IT CONTAINS.

14 THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT.
15 THE STATE, THEREFORE, HAS THE BURDEN OF PROVING EACH AND
16 EVERY ELEMENT OF THE INDICTMENT BEYOND A REASONABLE DOUBT.
17 AND IT WILL BE YOUR DUTY, MADAME FORELADY AND LADIES AND
18 GENTLEMEN OF THE JURY, TO DECIDE WHETHER THE STATE HAS MET
19 THAT BURDEN.

20 YOUR PURPOSE AS JURORS IS TO FIND AND DETERMINE THE
21 FACTS. YOU ARE THE SOLE JUDGE OF THE FACTS. IF AT ANY TIME
22 I MAKE ANY COMMENT REGARDING THE FACTS, YOU MUST DISREGARD
23 IT. YOU ARE TO DETERMINE THE FACTS FROM THE TESTIMONY YOU
24 HEAR AND THE OTHER EVIDENCE INTRODUCED IN COURT. IT IS UP TO
25 YOU TO DETERMINE THE INFERENCES WHICH YOU FEEL MAY PROPERLY

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 BE DRAWN FROM THE EVIDENCE.

2 IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTY OF
3 DETERMINING THE FACTS DILIGENTLY AND CONSCIENTIOUSLY.
4 BECAUSE, ORDINARILY, THERE IS NO WAY TO CORRECT AN ERRONEOUS
5 DETERMINATION OF THE FACTS BY A JURY.

6 ON THE OTHER HAND, AND WITH EQUAL EMPHASIS, THE SAME LAW
7 THAT MAKE YOU THE JUDGES OF THE FACTS MAKE ME THE JUDGE OF
8 THE LAW.

9 THE LAW AS GIVEN BY THE COURT IS THE ONLY LAW YOU MAY
10 CONSIDER. YOU MUST ACCEPT AND FOLLOW IT, EVEN THOUGH YOU MAY
11 DISAGREE WITH IT. I CANNOT TELL YOU WHAT THE FACTS ARE, AND
12 YOU CANNOT DISAGREE WITH ME ABOUT WHAT THE LAW IS OR
13 SHOULD BE.

14 YOUR JOB IS TO TAKE THE LAW AS I GIVE IT TO YOU AND
15 APPLY IT TO THE FACTS AS YOU FIND THEM TO BE FROM THE
16 TESTIMONY OF THE WITNESSES AND ANY OTHER EVIDENCE THAT IS
17 INTRODUCED.

18 AFTER DOING THAT, YOU WILL RENDER YOUR VERDICT - A TRUE
19 AND JUST VERDICT UNDER THE SOLEMN OATH THAT YOU JUST TOOK AS
20 JURORS.

21 UNTIL I ADVISE YOU TO BEGIN YOUR DELIBERATIONS, YOU MUST
22 NOT DISCUSS THIS CASE WITH ANYONE - INCLUDING YOUR FELLOW
23 JURORS, FRIENDS, FAMILY MEMBERS, AND ANYONE INVOLVED IN THIS
24 CASE.

25 AFTER THE CASE IS SUBMITTED TO YOU, YOU MUST DISCUSS IT

1 ONLY IN THE JURY ROOM WITH YOUR FELLOW JURORS.

2 THE ATTORNEYS AND THE PARTIES IN THIS CASE HAVE BEEN
3 ADVISED THAT THEY ARE NOT TO TALK TO YOU AT ALL. SO, IF YOU
4 SEE ANYONE INVOLVED IN THE CASE AND THEY DO NOT EVEN SAY
5 HELLO, THEY ARE NOT BEING UNFRIENDLY OR RUDE, THEY ARE MERELY
6 FOLLOWING MY INSTRUCTIONS.

7 DURING THE TRIAL, DO NOT READ, LISTEN TO, OR WATCH ANY
8 NEWS REPORTS ABOUT THIS CASE - ALTHOUGH, THERE MAY NOT BE
9 ANY. THIS INCLUDES ANYTHING THAT MAY BE IN THE NEWSPAPERS OR
10 ON THE INTERNET, RADIO, OR TELEVISION. I FURTHER ADVISE YOU,
11 DO NOT DO ANY INDEPENDENT OR PERSONNEL INVESTIGATION
12 CONCERNING THIS CASE.

13 YOU MUST NOT CONSIDER ANYTHING YOU MAY HAVE HEARD OR
14 READ ABOUT THE CASE OUTSIDE THE COURTROOM, WHETHER BEFORE OR
15 DURING THE TRIAL.

16 NOW, LADIES AND GENTLEMEN, IT IS IMPORTANT THAT YOU KEEP
17 AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THE CASE UNTIL ALL
18 OF THE EVIDENCE HAS BEEN PRESENTED, THE PARTIES HAVE MADE
19 THEIR CLOSING ARGUMENTS, AND I HAVE INSTRUCTED YOU ON THE LAW
20 IN THIS CASE.

21 IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE GUILT
22 OR INNOCENCE OF THE DEFENDANT, AND YOUR VERDICT MUST BE BASED
23 SOLELY ON THE EVIDENCE AS IT IS (SIC) - AS IT IS PRESENTED TO
24 YOU IN THIS TRIAL, AND ON THE LAW AS I INSTRUCT YOU DURING
25 AND AT THE CLOSE OF THE TRIAL.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 NOW, IN JUST A MOMENT THE SOLICITOR WILL MAKE WHAT IS
2 CALLED AN OPENING STATEMENT IN WHICH THE SOLICITOR WILL
3 EXPLAIN TO YOU - AND THE SOLICITOR - BY THE SOLICITOR, I MEAN
4 MR. - MR. STACK OR MR. DURANT - WILL EXPLAIN TO YOU THE
5 ISSUES IN THIS CASE.. OR, AT LEAST WHAT THE SOLICITOR THINKS
6 THE ISSUES ARE IN THIS CASE.

7 THE ATTORNEY FOR DEFENDANT - EITHER MS. JENKINSON OR
8 MR. SMITH - MAY ALSO MAKE AN OPENING STATEMENT. ALTHOUGH,
9 SHE IS NOT REQUIRED TO DO SO.

10 WHAT THE ATTORNEYS TELL YOUR DURING THEIR OPENING
11 STATEMENTS IS NOT EVIDENCE IN THIS CASE, IT IS ONLY THEIR
12 CONTENTION AS TO WHAT THE ISSUES ARE.

13 THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO YOU BY
14 THE TESTIMONY OF SWORN WITNESSES FROM THIS WITNESS STAND
15 AND/OR BY EXHIBITS THAT MAY BE INTRODUCED INTO EVIDENCE.

16 FROM TIME TO TIME DURING THE TRIAL, YOU MAY HEAR ONE OF
17 THE LAWYERS SAY SOMETHING LIKE, YOUR HONOR, I BELIEVE WE HAVE
18 A QUESTION OF LAW OR A MATTER OF LAW TO DISCUSS WITH YOU.
19 OR, YOUR HONOR, MAY WE APPROACH THE BENCH? OR SOMETIME, I
20 MYSELF MIGHT FIND IT NECESSARY TO EXCUSE YOU FROM THE
21 COURTROOM FOR A SHORT WHILE SO THE ATTORNEYS AND I CAN
22 DISCUSS A MATTER OF LAW.

23 THE REASON FOR THIS IS BECAUSE YOU ARE THE JUDGES OF THE
24 FACTS IN THE CASE, AND SOMETIMES WHEN I AM DISCUSSING MATTERS
25 OF LAW WITH THE ATTORNEYS, IT MAY BE NECESSARY FOR ME TO MAKE

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 SOME COMMENT AS TO THE FACTS IN CONNECTION WITH RULING
2 WHETHER OR NOT A PARTICULAR LAW APPLIES. I AM NOT SUPPOSED
3 TO TELL YOU WHAT I THINK THE FACTS ARE. SO, I WILL EXCUSE
4 YOU FROM THE COURTROOM WHILE THESE DISCUSSIONS TAKE PLACE SO
5 THAT IN NO WAY WILL YOU BE INFLUENCED BY ANYTHING I MIGHT SAY
6 OR DO IN CONNECTION WITH THE FACTS.

7 IN DETERMINING WHAT THE TRUE FACTS ARE IN THIS CASE, YOU
8 MUST DECIDE WHETHER OR NOT THE TESTIMONY OF THE WITNESSES IS
9 BELIEVABLE.

10 IT WILL BE MY RESPONSIBILITY TO RULE AS A MATTER OF LAW
11 AS TO WHETHER CERTAIN TESTIMONY IS ADMISSIBLE AT ALL OR NOT.
12 BUT, ONCE THE TESTIMONY IS ADMITTED, WHETHER OR NOT YOU
13 BELIEVE IT IS SOLELY FOR YOU TO DETERMINE.

14 IN DECIDING WHETHER TO BELIEVE A WITNESS, YOU HAVE A
15 RIGHT TO CONSIDER THE INTEREST OF ANY WITNESS, THE BIAS OF
16 ANY WITNESS, THE PREJUDICE OF ANY WITNESS, THE OPPORTUNITY
17 FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS ABOUT
18 WHICH THE WITNESS MAY TESTIFY, AND THE WAY THE WITNESS ACTED
19 ON THE WITNESS STAND.

20 YOU HAVE A RIGHT TO CONSIDER ANYTHING THAT IS IN THE
21 RECORD THAT WILL HELP YOU EVALUATE THE TESTIMONY OF THE
22 WITNESSES.

23 THAT MEANS THAT IT IS YOUR DUTY TO PAY CLOSE ATTENTION
24 TO THESE WITNESSES, TO OBSERVE THESE WITNESSES, TO LISTEN TO
25 THE WITNESSES, AND TO PAY CLOSE ATTENTION TO THE ATTORNEYS

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 AND TO THE COURT.

2 DON'T LET YOUR THOUGHTS WANDER, BUT GIVE STRICT
3 ATTENTION TO THE TESTIMONY IN THIS CASE SO THAT AT THE END OF
4 ALL THE TESTIMONY, AFTER THE ARGUMENTS OF COUNSEL AND THE
5 CHARGE ON THE LAW BY THE COURT, YOU WILL THEN BE IN A
6 POSITION TO DETERMINE WHAT THE TRUE FACTS ARE AND TO APPLY
7 THE LAW TO THOSE FACTS AND THUS RENDER A TRUE AND JUST
8 VERDICT.

9 IT IS YOUR ADDED DUTY, MADAME FORELADY, TO PRESIDE IN
10 THE JURY ROOM AND BE THE JURORS' SPOKESPERSON HERE IN COURT.
11 IT WILL ALSO BE YOUR DUTY TO WRITE THE VERDICT. BUT, I WILL
12 GIVE YOU FURTHER INSTRUCTIONS ABOUT THAT AT THE CONCLUSION OF
13 THE CASE.

14 IF AT ANY TIME YOU NEED TO COMMUNICATE WITH THE COURT,
15 YOU WILL WRITE A NOTE AND PROVIDE IT TO THE BAILIFFS AND THEY
16 WILL THEN PROVIDE IT TO ME.

17 JUST SEVERAL OTHER THINGS ADMINISTRATIVELY. AND THIS
18 GOES - THE JURORS - THE BAILIFFS ARE WONDERFUL ABOUT THIS IN
19 CHARLESTON COUNTY, BUT IT GOES FOR THE GALLERY TOO. I HAVE A
20 VERY FIRM AND STRICT RULE CONCERNING TELEPHONES AND PAGERS
21 AND THE LIKE GOING OFF IN THE COURTROOM. I HAVE THE SHERIFF
22 SEIZE 'EM. THEY ARE CONFISCATED AND THEY ARE THEN DONATED TO
23 SHELTERS FOR BATTERED WOMEN.

24 I HAVEN'T HAD ANYBODY ESCAPE FROM THE COURTROOM YET WHEN
25 THEIR PHONE GOES OFF, BUT I - I APPLY THAT RULE VERY STRICTLY

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 TO EVERYBODY INVOLVED, INCLUDING MYSELF. THAT'S WHY MY PHONE
2 IS IN MY CAR RIGHT NOW. NUMBER ONE.

3 NUMBER TWO, WHEN - YOUR TIME AND YOUR COMFORT IS VERY
4 IMPORTANT TO ME. WHEN I NEED TO TAKE A BREAK, I CAN SAY
5 COURT WILL BE IN RECESS FOR SO LONG AND WE'LL ALL LEAVE FOR
6 SO LONG.

7 I WANT YOU TO KNOW, IF AT ANY TIME ANY MEMBER OF THE
8 JURY PANEL NEEDS A BREAK, IF YOU'LL RAISE YOUR HAND, IF YOU
9 GET MY ATTENTION, THE ATTENTION OF ONE OF OUR FINE BAILIFFS,
10 WE'LL TAKE A BREAK.

11 IF YOU CAN'T HEAR, CUP YOUR EAR. LET THE BAILIFFS KNOW
12 AND SUCH. YOU CAN'T MAKE A DECISION ON THE FACTS IF YOU
13 CAN'T HEAR THE WITNESSES.

14 I GENERALLY TRY TO RUN COURT ABOUT AN HOUR-AND-A-HALF TO
15 TWO HOURS BETWEEN BREAKS. NOW, THAT IS A LONG TIME TO SIT IN
16 ONE POSITION, AND I ACTUALLY GET UP AND MOVE AROUND A LITTLE
17 BIT UP HERE MYSELF. SO, IF ANY TIME ANY ONE OF YOU-ALL NEEDS
18 A BREAK, JUST PLEASE GET OUR ATTENTION. BECAUSE, THEN YOU'RE
19 GONNA FOCUS BETTER. IF YOU TAKE A BREAK, IT'S GONNA BE MORE
20 EFFICIENT FOR THE COURT IN THE LONG RUN.

21 I ALSO EXPECT YOU TO BE PROMPT FOR THE LUNCH BREAK, THE
22 EVENING BREAK, THE NEXT MORNING. PLEASE RETURN TO YOUR JURY
23 ROOM PROMPTLY.

24 I USUALLY HAVE THE ATTORNEYS PRESENT BEFORE YOU-ALL ARE
25 PRESENT SO THAT IF THERE ARE ANY MATTERS THAT NEED TO BE

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE COURT

1 TAKEN UP, WE WILL DO THAT AND TRY TO GET YOU IN THE COURTROOM
2 AT THE TIME I HAVE ASKED YOU TO RETURN TO YOUR JURY ROOM.

3 ANOTHER THING - I DON'T LIKE TO ENFORCE RULES THAT I
4 DON'T TELL PEOPLE ABOUT. I HAVE VERY STRICT RULES CONCERNING
5 THE MANNER IN WHICH INDIVIDUALS DRESS WHEN THEY COME TO A
6 COURTHOUSE OR A COURTROOM. I BELIEVE IT IS A PLACE OF - OF
7 HONOR WHERE ALL OUR CITIZENS HAVE A RIGHT TO COME, AND IS
8 VERY IMPORTANT FOR ALL OF US AS AMERICANS. I DO NOT ALLOW
9 SHORTS, FLIP-FLOPS, OBVIOUSLY BARE FEET, HALTER TOPS, TUBE
10 TOPS, BAGGY BRITCHES, ANYTHING IN WHICH THE MIDRIFF SHOWS, OR
11 AN INDIVIDUAL'S UNDERGARMENT SHOWS IN ANY MANNER.

12 THE - THE ONLY REASON I - I - I SAY THAT TO YOU-ALL -
13 I - I SEE NO ISSUES CONCERNING THAT - I JUST DON'T WANT, YOU
14 KNOW, SOMEBODY SHOWING UP THE NEXT DAY, LOOKS LIKE HE - HE OR
15 SHE IS FIXING TO GO SURFING AND I HAVEN'T - I HAVEN'T TOLD
16 THEM ANYTHING. IT'S - I JUST DON'T THINK THAT'S FAIR AT ALL
17 TO YOU-ALL AS JURORS. AND I REALIZE YOU-ALL ARE NOT - NOT
18 VOLUNTEERS IN THIS PARTICULAR CASE.

19 ALL RIGHT. ANY OBJECTIONS TO ANYTHING I HAVE ADVISED
20 THE JURY OF, SOLICITOR?

21 **MR. STACK:** NO, YOUR HONOR.

22 **THE COURT:** MS. JENKINSON?

23 **MS. JENKINSON:** NO, YOUR HONOR.

24 **THE COURT:** ALL RIGHT, SOLICITOR, YOU MAY ADDRESS THE
25 JURY.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE STATE - MR. STACK

1 **MR. STACK:** THANK YOU, YOUR HONOR. ALL RIGHT. GOOD
2 AFTERNOON LADIES AND GENTLEMEN. I INTRODUCED MYSELF BEFORE,
3 MY NAME IS JIM STACK AND I WORK FOR THE SOLICITOR'S OFFICE
4 HERE IN CHARLESTON COUNTY.

5 TODAY AND TOMORROW I'M GOING TO PRESENT TO YOU STATE
6 VERSUS MR. THOMAS CURTIS HAMILTON, WHO'S BEEN CHARGED WITH
7 BURGLARY IN THE FIRST DEGREE AND PROPERTY OFFENSE
8 ENHANCEMENT.

9 THE BURGLARY OCCURRED ON AUGUST 3RD---

10 **MS. JENKINSON:** MAY WE APPROACH, YOUR HONOR?

11 **MR. STACK:** SORRY?

12 **THE COURT:** YES, SIR. IF YOU WOULD APPROACH THE BENCH
13 JUST VERY QUICKLY MR. - MR. STACK?

14 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
15 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
16 HEARING OF THE JURY, OFF THE RECORD.)

17 (WHEREUPON, COURT RESUMED.)

18 **THE COURT:** THANK YOU, MR. STACK. THANK YOU---

19 **MR. STACK:** THANK YOU.

20 **THE COURT:** ---MS. JENKINSON. YOU MAY PROCEED,
21 SOLICITOR.

22 **MR. STACK:** THANK YOU, YOUR HONOR.

23 **THE COURT:** YES, SIR.

24 **MR. STACK:** THE BURGLARY OCCURRED ON AUGUST 3RD 2004, AND
25 IT OCCURRED AT AN APARTMENT AT 20 TRAPMAN STREET, WHICH IS

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE STATE - MR. STACK

1 NEAR THE INTERSECTION OF TRAPMAN AND QUEEN STREET HERE IN
2 DOWNTOWN CHARLESTON.

3 ON THAT DATE, THE VICTIM - A YOUNG MAN NAMED MR. WILLIAM
4 MIL- -- WILLIAM MILLER WAS IN THE UPSTAIRS PORTION OF THE
5 APARTMENT. THE APARTMENT'S AN UPSTAIRS/DOWNSTAIRS TYPE OF
6 THING. HE WAS IN THE UPSTAIRS PORTION, AND WHILE UP HERE, HE
7 HEARD SOME NOISE GOING ON DOWN IN THE BOTTOM AREA - IN THE
8 LOWER AREA OF THE APARTMENT. LIKE FURNITURE BEING MOVED
9 AROUND - THINGS LIKE THAT.

10 HE CALLED DOWN TO SEE WHO IT WAS, AND HE GOT NO REPLY.
11 SO, HE IMMEDIATELY WENT DOWNSTAIRS. AND, AS HE GOT TO THE
12 BOTTOM OF THE STAIRS, HE COULD SEE THE BACK DOOR OF THE
13 APARTMENT BEING PULLED CLOSED FROM THE OUTSIDE.

14 HE CALLED - STILL GOT NO REPLY. HE IMMEDIATELY WENT
15 FROM THE BOTTOM OF THE STAIRS TO THE BACK DOOR, OPENED IT,
16 AND THERE HE SAW THE DEFENDANT, MR. THOMAS CURTIS HAMILTON,
17 ABOUT FIVE FEET FROM THE BACK DOOR, HOLDING IN ONE HAND A
18 PORTABLE C-D PLAYER - A BOOM BOX TYPE OF THING - AND IN THE
19 OTHER HAND, HOLDING A SONY PLAY STATION TWO THAT WAS THE
20 VICTIM'S PROPERTY THAT HAD BEEN IN THE LIVING ROOM IN THE
21 DOWNSTAIRS PORTION OF THE APARTMENT.

22 UH - THE VICTIM AND DEFENDANT STOOD FACE-TO-FACE WITH
23 EACH OTHER WHEN HE WENT OUT INTO THE BACK COURTYARD AND FACED
24 THE DEFENDANT AND SAID, THAT'S MY PROPERTY, I WANT IT BACK.

25 AND THEY STOOD FACE-TO-FACE ABOUT THREE OR FOUR FEET

53

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE STATE - MR. STACK

1 APART FOR A LITTLE BIT OVER A MINUTE, ARGUING BACK AND FORTH
2 ABOUT THIS IS MY PROPERTY, WHAT ARE YOU DOING HERE? GIVE ME
3 MY PROPERTY BACK.

4 EVENTUALLY, THE VICTIM WAS ABLE TO GET THE PROPERTY BACK
5 FROM THE DEFENDANT.

6 THE DEFENDANT ASKED HIM NOT TO CALL THE POLICE, AND THEN
7 FLED THE AREA, HEADING EAST ON QUEEN STREET, AWAY FROM THE
8 APARTMENT.

9 THE VICTIM DID WHAT HE SHOULD'VE DONE. HE IMMEDIATELY
10 CALLED 911 AND GAVE A DESCRIPTION OF THE DEFENDANT. OF HIS
11 FACIAL FEATURES, OF HIS BODY - HIS BODY TYPE AND HIS BUILD,
12 AND THE CLOTHES THAT HE WAS WEARING AT THAT TIME.

13 HE DESCRIBED THE - THE DEFENDANT'S WEARING A GRAY SHIRT
14 WITH A LONG PAIR OF BLUE - BLUE JEANS AND A BLUE HAT OF SOME
15 TYPE.

16 HE CALLED 911, THE OFFICERS RESPONDED IN ABOUT - SOME
17 OFFICERS RESPONDED TO THE CRIME SCENE, BUT OTHER OFFICERS
18 WENT IMMEDIATELY TO THE AREA EAST OF 20 TRAPMAN STREET AND
19 STOPPED THE DEFENDANT.

20 HE WAS STOPPED ABOUT TWO-AND-A-HALF BLOCKS TO THE EAST,
21 ON LOGAN STREET. AND THEN THE VICTIM - MR. WILLIAM MILLER -
22 WAS PUT IN A POLICE CAR AND DRIVEN OUT TO THAT LOCATION AND
23 ASKED, IS THIS THE PERSON THAT ROBBED - OR, BURGLARIZED YOUR
24 HOUSE?

25 MR. WILLIAM MILLER MADE THE IDENTIFICATION WITHIN FIVE

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE STATE - MR. STACK

1 TO TEN MINUTES OF CALLING 911 WHILE THE IMAGE WAS STILL FRESH
2 IN HIS MIND, HAVING BEEN FACE-TO-FACE WITH THIS INDIVIDUAL
3 FOR ABOUT A MINUTE, DEMANDING HIS PROPERTY BACK. AND FIVE TO
4 TEN MINUTES LATER, HE'S BROUGHT DOWN THERE AND HE SAYS YES,
5 THAT'S THE INDIVIDUAL THAT ENTERED MY APARTMENT AND TOOK MY
6 STUFF.

7 HERE TODAY I NEED TO PROVE THREE THINGS TO YOU - TODAY
8 AND TOMORROW.

9 I NEED TO PROVE TO YOUR SATISFACTION THAT MR. HAMILTON
10 ENTERED THAT APARTMENT WITHOUT PERMISSION.

11 SECOND, I NEED TO PROVE THAT HE ENTERED THAT APARTMENT
12 WITHOUT PERMISSION, WITH THE INTENT TO COMMIT A CRIME
13 THEREIN - THAT IS, TO STEAL THE BOOM BOX OR STEAL THE SONY
14 PLAY STATION TWO.

15 AND THREE, IN THESE PARTICULAR CIRCUMSTANCES I MUST
16 PROVE THAT THE DEFENDANT, MR. THOMAS CUR- -- CURTIS HAMILTON,
17 HAS BEEN CONVICTED OF BURGLARY ON AT LEAST TWO PRIOR
18 OCCASIONS.

19 AND, I WILL SHOW THAT MR. HAMILTON PLEAD GUILTY, UNDER
20 OATH, IN 1989, TO BURGLARY IN THE SECOND DEGREE AND THEN
21 LATER WAS CONVICTED AT TRIAL IN 1995 FOR BURGLARY IN THE
22 FIRST DEGREE.

23 DURING THE TRIAL, WHICH WILL BEGIN PROBABLY THIS
24 AFTERNOON AND LAST THROUGH TOMORROW, YOU'LL BE HEARING
25 THE TESTIMONY OF SEVERAL PEOPLE.

5

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE DEFENSE - MS. JENKINSON

1 YOU'LL HEAR MR. WILLIAM MILLER, WHO WILL BE FIRST UP -
2 THE VICTIM. THEN OFFICER RIVERS, WHO IS A PERSON - THE
3 OFFICER THAT STOPPED THE DEFENDANT. OFFICER CONNOLLY, WHO
4 STOPPED ANOTHER PERSON ON THE STREET AND WAS IDENTIFIED -
5 DETERMINED THAT WAS NOT THE ROBBER - BURGLAR - IT WAS THE
6 OTHER MAN THERE. AND SEVERAL OTHER OFFICERS.

7 YOU'RE GONNA HEAR THE 911 TAPE WHEN MR. MILLER CALLED
8 THE 911 OPERATOR. AND YOU'RE GONNA SEE THE CLOTHES THAT
9 MR. HAMILTON WAS WEARING THAT DAY. THE LONG BLUE JEANS, THE
10 GRAY SHIRT, AND BLUE DOO-RAG TYPE OF THING.

11 AT THE END OF THIS - IT'S NOT FOR ME TO TELL YOU WHAT TO
12 DO, BUT YOU NEED - PERHAPS YOU WANT TO ORGANIZE YOUR NOTES
13 AND YOUR THOUGHTS.

14 DID MR. HAMILTON ENTER THAT APARTMENT WITHOUT
15 PERMISSION?

16 DID HE ENTER IT WITH THE INTENT TO COMMIT A CRIME
17 THEREIN? THAT IS, TO STEAL THE PROPERTY.

18 AND THREE, DOES HE HAVE TWO OR MORE PRIOR CONVICTIONS
19 FOR BURGLARY?

20 LADIES AND GENTLEMEN, AHEAD OF TIME I'D LIKE TO THANK
21 YOU FOR YOUR TIME AND YOUR EFFORT IN THIS MATTER.

22 **THE COURT:** THANK YOU, MR. STACK - SOLICITOR.

23 **MR. STACK:** THANK YOU, YOUR HONOR.

24 **THE COURT:** MS. JENKINSON, YOU MAY ADDRESS THE JURY.

25 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
OPENING STATEMENTS BY THE DEFENSE - MS. JENKINSON

1 THOMAS HAMILTON DID NOT ENTER THE HOME ON 20 TRAPMAN
2 STREET.

3 THOMAS HAMILTON LIVES DOWNTOWN, HE WORKS DOWNTOWN AS A
4 PAINTER, AND HE HAS SEVERAL JOBS IN THE AREA. AND AS YOU
5 HEARD, HE WAS DETAINED BY AN OFFICER ON LOGAN STREET AND HE
6 WAS ARRESTED.

7 HE SITS HERE TODAY BEING CHARGED WITH A BURGLARY IN THE
8 FIRST DEGREE AND LARCENY. THESE ARE VERY SERIOUS CHARGES AND
9 YOU'VE BEEN GIVEN A HUGE RESPONSIBILITY.

10 HE IS HERE BECAUSE HE IS NOT GUILTY. AND THE STATE HAS
11 THE BURDEN OF PROVING THAT - PROVING BOTH OF THESE CHARGES
12 AGAINST THOMAS HAMILTON.

13 AND JUST BECAUSE THOMAS HAMILTON WAS DOWNTOWN, WALKING
14 DOWN THE STREET - A BLACK MAN IN BLUE JEANS AND A TEE SHIRT -
15 DOES NOT MEAN THAT HE WENT INTO A HOME A FEW BLOCKS AWAY.

16 THE STATE HAS TO PROVE TO YOU THAT HE WAS IN THAT HOUSE
17 THAT DAY.

18 WHEN YOU HEAR THE EVIDENCE, YOU WILL SEE THAT THEY
19 CAN'T. MR. HAMILTON WAS NOT IN THERE.

20 THANK YOU.

21 **THE COURT:** THANK YOU - THANK YOU, MS. JENKINSON.

22 ALL RIGHT, MADAME FORELADY AND LADIES AND GENTLEMEN OF
23 THE JURY, I HAVE SOME MATTERS OF LAW TO TAKE UP. SO,
24 MOMENTARILY, WE'RE GOING TO TAKE - I'M GONNA ALLOW YOU-ALL TO
25 TAKE YOUR - YOUR LUNCH BREAK.

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
DEFENSE MOTIONS

1 I REMIND YOU THAT DURING THIS BREAK YOU ARE NOT TO
2 DISCUSS THIS CASE WITH ANYONE. THIS INCLUDES YOUR FELLOW
3 JURORS, YOUR LUNCH-MATES, YOUR FRIENDS, YOUR FAMILY, OR
4 PEOPLE INVOLVED IN THE TRIAL, OR ANYONE ELSE.

5 IF ANYONE TRIES TO TALK WITH YOU ABOUT THE CASE, PLEASE
6 LET ME KNOW IMMEDIATELY.

7 REMEMBER TO KEEP AN OPEN MIND ABOUT THE CASE UNTIL I
8 INSTRUCT YOU - INSTRUCT YOU TO BEGIN YOUR DELIBERATIONS.

9 I'M GONNA EXCUSE YOU UNTIL TWO P.M. - FOURTEEN HUNDRED
10 HOURS - TWO P.M. PLEASE BE IN YOUR NEW HOME - YOUR JURY
11 ROOM - AND THE BAILIFFS WILL SHOW YOU WHERE TO RETURN TO.

12 SO, MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY,
13 YOU ARE NOW EXCUSED FOR YOUR LUNCH BREAK UNTIL TWO P.M.
14 THANK YOU VERY MUCH.

15 (WHEREUPON, JURY LEFT THE COURTROOM AT 12:42 P.M.)

16 **THE COURT:** ALL RIGHT, MS. JENKINSON, I UNDERSTOOD YOU
17 HAD A NEIL VERSUS BIGGERS ISSUE?

18 **MS. JENKINSON:** YES, SIR, I DO. AND, I WOULD LIKE TO
19 PUT ON THE RECORD MY OBJECTION.

20 **THE COURT:** ALL RIGHT. YES, MA'AM.

21 **MS. JENKINSON:** YOUR HONOR, AT THIS TIME I WOULD MAKE A
22 MOTION FOR A MISTRIAL, DUE TO THE STATE'S INTRODUCING
23 EVIDENCE - OR, SUBMITTING TO THE JURY THAT MR. HAMILTON IS
24 CHARGED WITH A PROPERTY CRIME ENHANCEMENT CHARGE. OR, A
25 PROPERTY OFFENSE ENHANCEMENT.

1 THIS IS VERY PREJUDICIAL THAT THEY HEAR THIS. I BELIEVE
2 THAT IT IS ONLY A MATTER FOR SENTENCING PURPOSES, AND NOT FOR
3 THE JURY TO HEAR. AND AT THIS POINT, I'D MAKE A MOTION FOR A
4 MISTRIAL.

5 **THE COURT:** ALL RIGHT. SOLICITOR?

6 **MR. STACK:** THE STATE BELIEVES THE ERROR WAS HARMLESS,
7 AND IF A CORRECTION - IF IT IS APPROPRIATE - WILL BE
8 SUFFICIENT TO - TO REMEDY ANY - ANY DAMAGE. I DO NOT INTEND
9 TO REFER TO THE P-O-E ANYMORE DURING THIS CASE.

10 **THE COURT:** I UNDERSTAND. AND I - I, OF COURSE, DID NOT
11 REFER TO IT DURING, UH, THE READING OF THE PETTY LARCENY
12 INDICTMENT.

13 I'M GONNA RESPECTFULLY DENY YOUR MOTION, MS. JENKINSON,
14 BUT I WILL BE GLAD TO GIVE THE JURY ANY CURATIVE INSTRUCTION
15 YOU MAY WANT TO THINK ABOUT - IF YOU WANT TO, OVER THE LUNCH
16 BREAK. YOU KNOW, SOMETIME THAT HIGHLIGHTS IT EVEN MORE, BUT
17 IF YOU WANT TO PRESENT SOMETHING TO THE COURT AFTER LUNCH,
18 I'LL BE GLAD TO CONSIDER IT.

19 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

20 **THE COURT:** EITHER A SPECIFIC OR A GENERAL CURATIVE
21 INSTRUCTION.

22 WAS THERE - WAS THERE ANYTHING ELSE YOU NEEDED TO PUT ON
23 THE RECORD, MS. JENKINSON?

24 **MS. JENKINSON:** YOUR HONOR, I DON'T KNOW IF YOU WANT TO
25 HEAR THESE MOTIONS AT THIS TIME. I JUST HAVE A - A COUPLE TO

1 GET ON THE RECORD, IF - IF I COULD?

2 THE COURT: YES, MA'AM.

3 MS. JENKINSON: JUST TO MAKE SURE THAT THE STATE ISN'T
4 PLANNING ON INTRODUCING THIS EVIDENCE.

5 I DO NOT BELIEVE THERE ARE ANY STATEMENTS MADE BY
6 MR. HAMILTON WHILE IN CUSTODY. AND I DON'T KNOW THAT THEY
7 PLAN TO INTRODUCE ANY. I'D JUST LIKE TO...

8 MR. STACK: NO, THERE ARE NO STATEMENTS IN CUSTODY. THE
9 FIRST WITNESS - THE VICTIM - WILL BE ASKED IF THE DEFENDANT
10 SAID ANYTHING TO HIM, WHICH, I BELIEVE, FALLS IN WITH THE
11 HEARSAY EXCEPTION. BUT, BEYOND THAT I DON'T THINK IT'S A -
12 A - A JACKSON V. DENNO ISSUE, YOUR HONOR.

13 THE COURT: ALL RIGHT. YOU'RE REFERRING TO A
14 CONVERSATION BETWEEN THE BURG- -- THE BURGLAR AND MR. MILLER?

15 MR. STACK: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 MS. JENKINSON: THANK YOU, YOUR HONOR.

18 THE COURT: DOES THAT ANSWER YOUR QUESTION,
19 MS. JENKINSON?

20 MS. JENKINSON: IT DOES, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MS. JENKINSON: I - I UNDERSTAND THAT THE STATE WILL BE
23 ATTEMPTING TO INTRODUCE EVIDENCE OF MR. HAMILTON'S PRIOR
24 CONVICTIONS FOR BURGLARY. I JUST WANT THE STATE TO STATE ON
25 THE RECORD WHETHER THEY ARE INTRODUCING ANY OTHER LYLE

1 EVIDENCE THAT WOULD PERTAIN TO MR. HAMILTON OR HIS PRIOR
2 BURGLARIES.

3 MR. STACK: NO. THE GUIDANCE THAT WE'VE READ IS THAT
4 THE REQUIREMENT IS TWO PRIOR CONVICTIONS, AND WE WILL LIMIT
5 OURSELVES TO TWO PRIOR CONVICTIONS.

6 THE COURT: ALL RIGHT. AND - AND, OF COURSE, THAT -
7 THAT'S NOT - THAT'S NOT LYLE TESTIMONY, THAT'S JUST STRAIGHT
8 ELEMENT OF THE OFFENSE. SO THAT'S AN ELEMENT THAT THE
9 SOLICITOR HAS TO PROVE.

10 SO, YOU'RE - YOU'RE NOT GOING INTO THE PRIOR BURGLARIES
11 AS FAR AS LYLE'S TESTIMONY, JUST AS AN ELEMENT OF THE
12 OFFENSE?

13 MR. STACK: NO, YOUR HONOR. JUST THAT HE WAS CONVICTED
14 ON TWO DIFFERENT DATES.

15 THE COURT: RIGHT. ALL RIGHT, SIR. THANK YOU.

16 MS. JENKINSON: THANK YOU, YOUR HONOR. THE DEFENSE
17 WOULD ASK FOR ALL WITNESSES TO BE SEQUESTERED.

18 THE COURT: WELL, I, UH - I HADN'T SEEN A WITNESS HERE
19 YET, QUITE FRANKLY. OR, NOBODY STOOD UP.

20 MS. JENKINSON: YES, SIR. I THINK THAT---

21 THE COURT: I'LL ALLOW THEM TO KEEP THEIR CHIEF
22 INVESTIGATING OFFICER, THEIR EVIDENCE CUSTODIAN. USUALLY
23 THOSE ARE TWO SEPARATE AND DISTINCT INDIVIDUALS WHOSE
24 TESTIMONY WOULD NOT GENERALLY OVERRIDE.

25 MR. DURANT: I THINK THE VICTIM IS ENTITLED TO STAY BY

6

STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS HAMILTON
DEFENSE MOTIONS

1 STATUTE, YOUR HONOR.

2 THE COURT: YES, SIR. I THINK THE VICTIM CAN ALSO STAY,
3 UM - MS. JENKINSON.

4 AND SO, YOU'VE GOT THE VICTIM, YOUR CHIEF OFFICER, AND
5 YOUR EVIDENCE CUSTODIAN.

6 MR. STACK: YES, YOUR HONOR. WE WON'T BRING ANYBODY
7 ELSE IN OTHER THAN THOSE.

8 THE COURT: ALL RIGHT. IS THAT ALL RIGHT,
9 MS. JENKINSON?

10 MS. JENKINSON: THANK YOU, YOUR HONOR.

11 THE COURT: ANYTHING FURTHER?

12 MS. JENKINSON: ONLY TO ADDRESS MR. HAMILTON'S PRIOR
13 CONVICTIONS. AND I THINK THAT TO PROVE THE BURG FIRST
14 THEY'RE ONLY GONNA INTRODUCE TWO, AND THE OTHERS WILL ONLY
15 COME INTO PLAY UNLESS - UN- -- UNLESS MR. HAMILTON DECIDE -
16 DECIDES TO TESTIFY. AND I GUESS THE COURT CAN ADDRESS THAT
17 THEN?

18 THE COURT: YES - YES - YES, MA'AM. AND THAT'S MY
19 UNDERSTANDING. THE - THE - THE TWO. ONE IN '89 AND ONE IN
20 '94 OR '95, I BELIEVE?

21 MR. STACK: THAT'S CORRECT. WE'RE NOT GONNA ADDRESS
22 ANYTHING ELSE - POTENTIALLY - UNLESS THE DEFENDANT TAKES THE
23 STAND.

24 THE COURT: ALL RIGHT, SIR.

25 MS. JENKINSON: THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT, ANYTHING FURTHER BESIDES, UM, THE
2 NEIL VERSUS BIGGERS?

3 MR. STACK: NOT FROM THE STATE, YOUR HONOR.

4 MS. JENKINSON: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT, SIR, YOU'RE READY TO PROCEED ON
6 THAT, MR. STACK?

7 MR. STACK: I BELIEVE MY DEFENDANT'S (SIC) OUT IN THE
8 HALLWAY, SIR. I CALL HIM RIGHT NOW.

9 THE COURT: ALL RIGHT, SIR.

10 MR. STACK: STATE CALLS WILLIAM MILLER.

11 CLERK (MR. WILSON): SIR, IF YOU WOULD, COME FORWARD.

12 (WITNESS FORWARD.)

13 CLERK (MR. WILSON): WOULD YOU PLEASE WALK AROUND AND BE
14 SWORN?

15 SIR, IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE
16 BIBLE AND RAISE YOUR RIGHT HAND.

17 (WHEREUPON, WILLIAM MILLER WAS DULY SWORN AND TESTIFIED
18 AS FOLLOWS:)

19 CLERK (MR. WILSON): PLEASE BE SEATED. PLEASE STATE
20 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

21 MR. MILLER: WILLIAM MILLER - M-I-L-L-E-R.

22 STATE'S WITNESS AS TO NEIL VERSUS BIGGERS:

23 WILLIAM MILLER, DIRECT EXAMINATION BY MR. STACK:

24 Q GOOD MORNING - GOOD AFTERNOON, MR. MILLER. WHERE DO YOU
25 PRESENTLY LIVE?

1 A UM, I'M LIVING IN, UH, NEGRIL, JAMAICA. BUT I ALSO KEEP
2 A RESIDENCE ON CALHOUN STREET HERE IN CHARLESTON.

3 Q AND WHAT DO YOU DO DOWN IN JAMAICA?

4 A UH, WE HAVE A FAMILY RESTAURANT AND I HELP MANAGE THE
5 RESTAURANT WITH MY FATHER.

6 Q BACK ON AUGUST 3RD OF 2004, WHERE DID YOU RESIDE?

7 A UH, 20 TRAPMAN STREET.

8 Q AND WHAT DID YOU DO THEN? WERE YOU A STUDENT OR A, UH,
9 EMPLOYEE?

10 A I WAS A STUDENT AND I HAD A PART-TIME JOB.

11 Q AND WHERE WERE YOU GOING TO SCHOOL?

12 A AT THE COLLEGE OF CHARLESTON.

13 Q DO YOU RECALL THE EVENTS THAT OCCURRED ON AUGUST 3RD
14 OF 2004?

15 A UH - YES, I DO.

16 Q WOULD YOU PLEASE DESCRIBE THOSE EVENTS?

17 A SURE. UM - MID-AFTERNOON, UM, AROUND TWO O'CLOCK, I WAS
18 UPSTAIRS, UH, LISTENING TO SOME MUSIC ON MY COMPUTER. UM, A
19 FRIEND OF MINE WAS OVER. HE WAS, UH, IN THE SHOWER - ALSO
20 UPSTAIRS.

21 UM - I HEARD A NOISE FROM THE DOWNSTAIRS AREA.

22 UM - MY SISTER WAS LIVING WITH ME, BUT SHE HAD GONE OUT
23 FOR THE - FOR THE DAY.

24 UM - I - I YELLED HER NAME, ASSUMING THAT IT WAS MY
25 SISTER, UH, AND DIDN'T GET AN ANSWER.

1 SO I, UH, WALKED DOWN THE STAIRS AND JUST KIND-A LOOKED
2 AROUND. WHEN I LOOKED TOWARDS THE BACK OF THE HOUSE, I SAW
3 MY REAR DOOR BEING PULLED CLOSED.

4 UM - I RUSHED TO THE DOOR AND, UH, PULLED IT OPEN. UM -
5 AND A INDIVIDUAL WAS STANDING IN MY BACKYARD WITH A PLAY
6 STATION AND STEREO IN HIS HANDS.

7 UM, I - AT THAT POINT, I CONFRONTED HIM. UM - HE
8 ACTUALLY TURNED AROUND AND ENGAGED ME IN CONVERSATION. I
9 SAID, WHO ARE YOU? WHAT ARE YOU DOING? UM - HIS REPLY WAS,
10 I'M LOOKING FOR JERRY. IS THIS JERRY'S HOUSE? I SAID, THIS
11 IS NOT JERRY'S HOUSE; THAT'S MY STUFF.

12 UM - AT THAT POINT, HE APOLOGIZED AND SAID, OH, I'M -
13 YOU KNOW, I'M SO SORRY - I'M SO SORRY. PUT THE, UM - THE
14 PLAY STATION AND THE STEREO DOWN.

15 AND I SAID, WELL, YOU'RE BREAKING INTO MY HOUSE. HE
16 SAID, NO. NO - NO - NO - NO, THAT'S NOT HAPPENING. I SAID,
17 YEAH, IT IS, AND I'M CALLING THE POLICE.

18 MY CELL PHONE WAS IN MY POCKET. I REACHED INTO MY
19 POCKET, PULLED MY CELL PHONE OUT. UM, AT THAT POINT THE
20 SUSPECT FLED THE PROPERTY.

21 I CALLED 911. I RAN OUT AFTER HIM TO QUEEN STREET AND
22 WATCHED HIM PROCEED DOWN QUEEN STREET TOWARDS, UH, FRANKLIN.
23 UM - AND AT THAT POINT, I WAS ON THE PHONE WITH 911, SPEAKING
24 WITH THEM.

25 Q THEN WHAT HAPPENED?

1 A THEN, UM, WITHIN - GOD, LESS THAN FIVE MINUTES, A PATROL
2 CAR PULLED UP. I JUMPED IN THE PATROL CAR WITH THE POLICE
3 OFFICER. WE, UM, PROCEEDED DOWN QUEEN STREET WHERE, UM, ONE
4 OF THE POLICE OFFICERS HAD STOPPED AN INDIVIDUAL, UM, AND
5 ASKED ME IF THAT WAS HIM. IT - IT WAS NOT.

6 UM, THEN WE PROCEEDED FURTHER DOWN QUEEN STREET, TOOK A
7 LEFT ONTO LOGAN, WHERE THEY HAD, UM, ANOTHER SUSPECT, AND I
8 IDENTIFIED HIM AT - AT THAT POINT.

9 UM - WE DROVE BY ONCE. UM - I SAID, I - I'M PRETTY SURE
10 THAT'S HIM, BUT HE HAD A - I MENTIONED THAT HE HAD A HEAD -
11 HAD A DOO-RAG ON.

12 SO THEN WE - WE WENT - CIRCLED AROUND THE BLOCK. AND
13 THEN THEY HAD PUT THE DOO-RAG ON HIM AT THAT POINT AND I MADE
14 A HUNDRED PERCENT IDENTIFICATION AT THAT POINT.

15 Q OKAY. BACK WHEN HE WAS IN YOUR BACK COURTYARD, HOW FAR
16 AWAY FOR - FROM EACH OTHER WERE YOU?

17 A UM - JUST A MATTER OF FEET. LESS THAN FIVE FEET.
18 ALMOST FACE TO FACE.

19 Q YOU WERE FACING EACH OTHER, FIVE FEET AWAY FROM EACH
20 OTHER?

21 A YES.

22 Q ALL RIGHT. HOW LONG DID YOU GET TO OBSERVE HIM IN THE
23 COURTYARD?

24 A UM - AS LONG AS WE WERE ENGAGED IN CONVERSATION.
25 ROUGHLY A - ABOUT A MINUTE OR TWO.

1 Q A MINUTE OR TWO?

2 A YES.

3 Q ALL RIGHT. WAS IT DAYLIGHT?

4 A YES.

5 Q UH - AND YOU WERE OUTDOORS?

6 A YES.

7 Q OKAY. WAS THERE ANY SMOKE OR FIRE OR ANYTHING ELSE THAT
8 WOULD IMPEDE YOUR VISION OF THE DEFENDANT IN YOUR BACKYARD?

9 A NO.

10 Q IS YOUR VISION IMPAIRED IN ANY WAY?

11 A NO, IT'S NOT.

12 Q AND WERE YOU UNDER THE INFLUENCE OF ANYTHING WHEN YOU
13 OBSERVED THE DEFENDANT?

14 A NO.

15 Q WERE YOU FRIGHTENED WHEN YOU OBSERVED THE DEFENDANT?

16 A UM - I WAS - I WAS STARTLED, BUT, UM, HE WASN'T - HE
17 WASN'T THREATENING AT ALL AT THAT POINT.

18 Q WOULD BEING STARTLED AFFECT YOUR MEMORY?

19 A NO.

20 Q WERE YOU SLEEP DEPRIVED WHEN YOU OBSERVED THE DEFENDANT?

21 A NO.

22 Q AND DID YOU OBSERVE THE DIRECTION IN WHICH THE DEFENDANT
23 LEFT?

24 A UH - YES. UH - HE WALKED OUT OF MY - OR, RAN OUT OF MY
25 COURTYARD. I FOLLOWED HIM WITH THE PHONE IN MY HAND AND

1 PROCEED TOWARDS FRANKLIN STREET ON QUEEN STREET.

2 Q OKAY. IS THAT TO THE RIGHT, OR TO THE EAST?

3 A THAT WOULD HAVE BEEN TO THE RIGHT.

4 Q OKAY. AND WHEN DID YOU - DID YOU FIRST - WHEN - HOW
5 LONG - HOW MUCH TIME ELAPSED FROM WHEN HE LEFT THE AREA TO
6 WHEN YOU CALLED 911?

7 A UM - A MATTER OF SECONDS.

8 Q AND HOW LONG DID IT TAKE FROM WHEN YOU CALLED 911 FOR A
9 POLICE OFFICER TO SHOW UP AT YOUR, UH - QUARTERS?

10 A UH - LESS THAN FIVE MINUTES.

11 Q AND HOW LONG WAS IT FROM THE TIME THAT THE DEFENDANT
12 LEFT YOUR COURTYARD TO WHEN YOU IDENTIFIED HIM ON LOGAN
13 STREET? HOW MUCH TIME HAD ELAPSED?

14 A UM - PROBABLY FIVE TO TEN MINUTES AT THE MOST.

15 Q OKAY. YOU LOOKED AT A FIRST PERSON PRESENTED TO YOU AND
16 YOU SAID THAT, UH - THAT WAS NOT THE PERSON. IS THAT
17 CORRECT?

18 A UH - YES, THAT'S CORRECT.

19 Q HOW DID YOU IDENTIFY THE SECOND PERSON - THE DEFENDANT?

20 A UM - HE WAS WEARING THE EXACT SAME CLOTHING. YOU KNOW,
21 BLUE JEANS AND A VERY LARGE TEE SHIRT. A GRAY TEE SHIRT.
22 AND THE SAME FACIAL FEATURES. UH - SAME HEIGHT, SAME
23 EVERYTHING.

24 Q SAME PHYSICAL CHARACTERISTICS?

25 A SAME PHYSICAL CHARACTERISTICS.

1 Q SAME FACE STRUCTURE?

2 A CORRECT - YES.

3 Q SAME CLOTHING?

4 A YES.

5 Q OKAY. WHEN OFFICER HARGROVE - THE PERSON THAT DROVE
6 YOU - DROVE TO THE FIRST SUSPECT, WAS OFFICER CONNOLLY - THE
7 FEMALE SERGEANT - WAS SHE THERE?

8 A UH - YES.

9 Q OKAY. AND YOU WERE SHOWN THIS PERSON THEN AND ASKED IF
10 THIS WAS THE MAN WHO BURGLARIZED YOUR HOUSE?

11 A YES.

12 Q AND YOU SAID NO?

13 A ABSOLUTELY NOT.

14 Q HOW COULD YOU TELL THAT THAT PERSON WAS NOT THE BURGLAR?

15 A UM - HE WAS WEARING SHORTS AND A SWEATSHIRT, AND, UH,
16 WAS A MUCH LARGER - MUCH LARGER MAN. JUST - IT WASN'T HIM.

17 Q THEN THE OFFICER DROVE YOU TO THE SECOND SUSPECT? THE
18 SECOND PERSON PRESENTED?

19 A THAT'S CORRECT.

20 Q AND OFFICER RIVERS WAS THERE? THE TALL CAUCASIAN POLICE
21 OFFICER?

22 A UH - YES.

23 Q AND YOU IDENTIFIED THE SECOND MAN PRESENTED TO YOU AS
24 THE PERSON WHO BURGLARIZED YOUR HOUSE?

25 A YES.

1 Q OKAY, AND HOW COULD YOU TELL?

2 A UM - THE SAME CLOTHING, THE SAME PHYSICAL
3 CHARACTERISTICS. I HAD JUST HAD A CONVERSATION WITH HIM, YOU
4 KNOW, A FEW MINUTES BEFORE.

5 Q IS THERE ANY DOUBT IN YOUR MIND THAT YOU MADE THE
6 CORRECT IDENTIFICATION?

7 A ABSOLUTELY NOT.

8 Q AND AGAIN, HOW MUCH TIME ELAPSED FROM WHEN HE LEFT YOUR
9 COURTYARD TO WHEN YOU IDENTIFIED HIM?

10 A UH - LESS THAN TEN MINUTES.

11 Q YOU'RE A HUNDRED PERCENT SURE?

12 A YES.

13 Q OKAY. DO YOU SEE THE MAN WHO BURGLARIZED YOUR HOUSE IN
14 THE COURTROOM TODAY?

15 A YES.

16 Q WOULD YOU PLEASE POINT TO THAT INDIVIDUAL AND DESCRIBE
17 WHAT HE OR SHE IS WEARING?

18 A UH - YES. HE IS - HE'S RIGHT OVER HERE WITH THE WHITE
19 SHIRT AND GRAY PANTS ON.

20 Q THANK YOU.

21 MR. STACK: YOUR HONOR, THE STATE ASKS THE COURT THAT
22 THE RECORD INDICATE THE WITNESS HAS IDENTIFIED THE DEFENDANT,
23 MR. THOMAS CURTIS HAMILTON.

24 THE COURT: SO ORDERED. YES, SIR.

25 Q WILL YOU PLEASE ANSWER ANY QUESTIONS THAT DEFENSE

1 COUNSEL HAS?

2 A OKAY.

3 THE COURT: MS. JENKINSON?

4 STATE'S WITNESS AS TO NEIL VERSUS BIGGERS:

5 WILLIAM MILLER, CROSS-EXAMINATION BY MS. JENKINSON:

6 Q GOOD MORNING, MR. MILLER.

7 A GOOD MORNING.

8 Q I JUST HAVE A FEW QUESTIONS. WHEN YOU WENT TO SEE THE
9 SECOND PERSON THAT WAS BEING DETAINED BY DETECTIVE RIVERS, HE
10 WAS THE ONLY OTHER PERSON THERE?

11 A THE SUSPECT? YES.

12 Q SO IT WAS A BLACK MAN IN BLUE JEANS WITH
13 DETECTIVE RIVERS?

14 A CORRECT.

15 Q OKAY. WAS HE HANDCUFFED?

16 A I BELIEVE HE WAS, YES.

17 Q WAS HE STANDING BESIDE A POLICE CAR?

18 A UM - I SAW THE TWO OFFICERS. UM - I BELIEVE THERE WAS A
19 CAR PARKED THERE NEXT TO THEM, YES.

20 Q AND THEY WERE KIND-A HOLDING HIM OUT ON THE SIDEWALK SO
21 YOU COULD LOOK AT HIM WHEN YOU RODE BY?

22 A YES. HE WAS STANDING THERE ON THE SIDEWALK WITH THE TWO
23 OFFICERS NEXT TO HIM.

24 Q AND THEY WERE HOLDING ON TO HIM?

25 A YES.

1 Q THAT'S ALL I HAVE. THANK YOU.

2 THE COURT: ALL RIGHT. ANYTHING IN REDIRECT, MR. STACK?

3 MR. STACK: NO, YOUR HONOR.

4 THE COURT: THANK YOU. MR. MILLER, YOU MAY STEP DOWN.

5 (WITNESS STEPPED DOWN.)

6 THE COURT: YOU CAN CALL YOUR NEXT WITNESS, SOLICITOR.

7 MR. STACK: BEG THE COURT'S INDULGENCE JUST FOR A
8 MOMENT, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 MR. STACK: THE STATE CALLS OFFICER RIVERS.

14 (WITNESS FORWARD.)

15 CLERK (MR. WILSON): SIR, WILL YOU PLEASE WALK AROUND
16 AND BE SWORN?

17 SIR, WILL YOU PLEASE PLACE YOUR LEFT HAND ON THE BIBLE
18 AND RAISE YOUR RIGHT HAND?

19 (WHEREUPON, THOMAS RIVERS WAS DULY SWORN AND TESTIFIED
20 AS FOLLOWS:)

21 CLERK (MR. WILSON): PLEASE BE SEATED. PLEASE STATE
22 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

23 MR. RIVERS: THOMAS RIVERS - R-I-V-E-R-S.

24 STATE'S WITNESS AS TO NEIL VERSUS BIGGERS:

25 THOMAS RIVERS, DIRECT EXAMINATION BY MR. STACK:

1 Q GOOD AFTERNOON, OFFICER RIVERS.

2 A GOOD AFTERNOON.

3 Q SIR, WHAT DO YOU DO FOR A LIVING?

4 A I'M A INVESTIGATOR WITH THE WARRANTS DIVISION IN THE
5 CHARLESTON POLICE DEPARTMENT.

6 Q AND HOW LONG HAVE YOU WORKED FOR THE CHARLESTON POLICE
7 DEPARTMENT?

8 A EIGHT YEARS, SIR.

9 Q WOULD YOU PLEASE INFORM THE COURT OF YOUR DUTIES AND
10 RESPONSIBILITIES IN YOUR CURRENT JOB?

11 A CURRENTLY I'M ASSIGNED TO THE UNITED STATES MARSHALL'S
12 FUGITIVE TASK FORCE. AND, UH - AND I'M - I'M STILL CURRENTLY

13 A - AN INVESTIGATOR WITH THE CITY OF CHARLESTON---

14 Q BACK---

15 A ---WARRANTS DIVISION.

16 Q THANK YOU. BACK ON AUGUST 3RD OF 2004, WAS THIS THE JOB
17 YOU HAD, OR DID YOU HAVE ANOTHER---

18 A NO, SIR. I WAS ASSIGNED TO TEAM ONE PATROL DIVISION.

19 Q AND WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN THAT
20 ORGANIZATION?

21 A UH, ANSWERING CALLS FOR SERVICE IN THE, UH, TEAM ONE
22 AREA, WHICH IS NORTH OF CANNON. AND SOMETIMES ASSISTING IN
23 THE TEAM TWO AREA, WHICH IS THE PENINSULA SOUTH OF CANNON
24 STREET.

25 Q DO YOU RECALL THE EVENTS OF AUGUST 3RD 2004?

1 A YES, SIR.

2 Q COULD YOU PLEASE DESCRIBE YOUR INVOLVEMENT IN THOSE
3 EVENTS, PLEASE?

4 A ON - ON THAT DATE, I WAS PATROLLING UP IN TEAM ONE AND
5 WAS DISPATCHED TO A BURGLARY IN PROGRESS OVER ON TRAPMAN
6 STREET.

7 UM - I RESPONDED TO THE AREA, UH, AND, UH, SUBSEQUENTLY
8 STOPPED A - A PARTY THAT WAS, UH, IDENTIFIED BY THE VICTIM OF
9 THE ROBBERY AS BEING THE SUBJECT WHO HAD BROKEN INTO HIS
10 HOUSE.

11 Q OKAY. HOW LONG AFTER THE 911 CALL DID, UH - DID YOU
12 PRESENT - STOP THE DEFENDANT AND PRESENT HIM TO THE, UH,
13 VICTIM?

14 A I BELIEVE IT WAS PROBABLY ABOUT SEVEN OR EIGHT MINUTES.
15 IT - IT WAS - I WAS THERE PRETTY QUICKLY.

16 Q DID YOU HAVE TO WAIT FOR THE VICTIM TO BE BROUGHT OUT TO
17 YOU?

18 A YES, SIR.

19 Q ABOUT HOW LONG DID YOU HAVE TO WAIT?

20 A UH - HE STOPPED, UH, AT ANOTHER, UH - WITH ANOTHER
21 PERSON THAT THEY HAD STOPPED AND THEN HE CAME TO ME. SO,
22 MAYBE TWO OR THREE MINUTES.

23 Q WHERE DID THE, UH, SHOW-UP OR THE PRESENTATION OF THE
24 DEFENDANT TAKE PLACE?

25 A ON QUEEN STREET, JUST SOUTH OF MAGAZINE STREET. I WAS

1 ABOUT TWO HOUSES SOUTH OF MOMEIER ELECTRIC COMPANY ON - ON -
2 ON LOGAN STREET - I'M SORRY. ON LOGAN STREET, JUST SOUTH OF
3 MAGAZINE.

4 Q AND HOW FAR, APPROXIMATELY, IS THAT FROM 20 TRAPMAN
5 STREET?

6 A THREE BLOCKS.

7 Q WHO WAS PRESENT AT THE SHOW-UP?

8 A UH - WELL, I WAS OUT WITH, UH, THE DEFENDANT. AND
9 SERGEANT CONNOLLY SHOWED UP WITH ME. AND I BELIEVE CORPORAL
10 ADAMS WAS THERE. AND THEN, UH, OFFICER HARGROVE BROUGHT THE
11 WITNESS.

12 Q OKAY. WAS ANYTHING SAID TO THE WITNESS BY THE POLICE
13 BEFORE OR DURING THE IDENTIFICATION?

14 A I'M NOT AWARE OF THAT.

15 Q DID ANYONE TRY TO INFLUENCE THE, UH, VICTIM TO SUG- --
16 SUGGEST THIS PARTICULAR DEFENDANT?

17 A I'M NOT AWARE OF THAT.

18 Q DO YOU RECALL WHAT DESCRIPTION WAS GIVEN OVER THE 911
19 CALL?

20 A I BELIEVE IT WAS A BLACK MALE, BLUE JEANS, GRAY SHIRT,
21 WITH A BLUE HAT. LATE THIRTIES.

22 Q AND WHAT WAS THE CONDITION OF THE DEFENDANT DURING THIS
23 SHOW-UP? WAS HE IN HANDCUFFS?

24 A UH - I BELIEVE I DID HAVE HIM DETAINED WITH HANDCUFFS,
25 BUT I - I - I CAN'T SWEAR TO THAT. I DON'T KNOW FOR SURE. I

1 CANNOT RECALL.

2 Q AND WAS THE DEFENDANT ASKED TO DO ANYTHING? TO WALK OR
3 SPEAK OR PUT A HAT ON OR TAKE A HAT OFF?

4 A UM - I DON'T - I DON'T RECALL WHETHER WE HAD, UM, HIM
5 PUT THE DOO-RAG BACK THAT HE HAD WITH HIM. UM, BUT I - I
6 KNOW - I KNOW FOR A FACT THAT ALL WE'D HAD HIM DO WAS STAND
7 UP AND FACE THE PATROL CAR. I CAN - I CAN SAY THAT FOR A
8 FACT.

9 Q HOW CERTAIN WAS THE WITNESS WHEN HE MADE THE
10 IDENTIFICATION?

11 A I WAS NOT IN THE CAR WITH THE WITNESS.

12 Q THANK YOU.

13 MR. STACK: NOTHING FURTHER, YOUR HONOR.

14 THE COURT: THANK YOU, SOLICITOR. MS. JENKINSON?

15 MS. JENKINSON: I DON'T HAVE ANY QUESTIONS FOR THIS
16 WITNESS. THANK YOU, YOUR HONOR.

17 STATE'S WITNESS AS TO NEIL VERSUS BIGGERS:

18 THOMAS RIVERS, EXAMINATION BY THE COURT:

19 Q OFFICER, COULD I ASK YOU - SERGEANT, YOU SAID THAT THE
20 SUSPECT HAD A DOO-RAG?

21 A YES, SIR. HE HAD A, UH - A BLUE DOO- -- BLUE - A DARK
22 BLUE AND LIGHT BLUE, UH, DOO-RAG. UM - AND I - I BELIEVE IT
23 WAS IN HIS BACK POCKET, BUT I'M - I DON'T RECALL WHETHER HE
24 HAD IT ON HIS HEAD OR NOT.

25 Q ALL RIGHT. DO YOU RECALL IF THAT FACT WAS PART OF THE

1 DESCRIPTION?

2 A THE DESCRIPTION SAID BLUE HAT.

3 Q THANK YOU, SERGEANT. I DON'T HAVE ANY FURTHER
4 QUESTIONS.

5 MR. STACK: THAT'S ALL WE'RE GONNA CALL, YOUR HONOR.

6 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

7 MR. RIVERS: THANK YOU.

8 (WITNESS STEPPED DOWN.)

9 THE COURT: ANY OTHER WITNESSES, SOLICITOR?

10 MR. STACK: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. DO YOU HAVE ANY WITNESSES
12 CONCERNING THIS ISSUE?

13 MS. JENKINSON: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. ALL RIGHT, I'LL BE GLAD TO HEAR
15 FROM YOU, MS. JENKINSON.

16 MS. JENKINSON: THANK YOU, YOUR HONOR. THE DEFENSE
17 WOULD SUBMIT THAT THE I-D BY WILLIAM MIL- -- MILLER ON THAT
18 DAY IN AUGUST OF 2004 WAS SUGGESTIVE.

19 FIRST, YOUR HONOR, IT WAS A CROSS-RACIAL I-D. THE
20 VICTIM IS A WHITE MALE AND MR. HAMILTON IS A BLACK MALE.
21 THERE IS A VERY HIGH RATE OF ERROR WHEN WE HAVE CROSS - A
22 CROSS-RACIAL IDENTIFICATION. AND, IT IS A DANGER THAT IT -
23 IT IS SPELLED OUT FOR US IN STATE VERSUS WHALEY THAT THERE IS
24 A LARGER RATE OF ERROR WHEN A, UM, WHITE VICTIM IS
25 IDENTIFYING A BLACK, UM, DEFENDANT OR VICE VERSA. UM - WE

1 ASK THE COURT TO CONSIDER THAT.

2 SECOND, UM, MR. MILLER HAD JUST FOUND SOMEONE IN HIS
3 HOME. UM - HE WAS VERY EXCITED, UM, VERY NERVOUS, AND - IT -
4 IT - IT'S A HUGE DANGER TO, UM, ALLOW HIM TO RIDE BY JUST
5 AFTER BEING ROBBED AND HAVE A ONE-ON-ONE SHOW-UP I-D OF
6 MR. HAMILTON WHEN HE IS STILL IN SHOCK FROM WHAT HAPPENED TO
7 HIM. HE JUST FOUND SOMEONE IN HIS HOME.

8 UM - ONE-ON-ONE SHOW-UPS ARE USUALLY NOT RECOMMEND.
9 MR. HAMILTON WAS THE ONLY PERSON BEING DETAINED ON
10 LOGAN STREET. HE WAS HANDCUFFED. UM, HE WAS BEING HELD
11 THERE BY AT LEAST TWO OFFICERS THAT WE KNOW FROM, UM,
12 DETECTIVE RIVERS' TESTIMONY. UM - AND, HE'S STANDING THERE
13 BESIDE A POLICE CAR. THERE'S, UH, NO ONE ELSE THERE TO
14 COMPARE HIM TO OR, UH, FOR THE VICTIM TO LOOK AT, YOUR HONOR.

15 UH, THIS SHOW-UP PROCEDURE WAS VERY SUGGESTIVE. UM - HE
16 WAS TAKEN THERE BY THE OFFICER WHO RESPONDS TO THE SCENE, AND
17 OF COURSE HE IS - IS TOLD TO GET IN THE CAR, SOMEONE IS BEING
18 TAINED (PHONETIC/SIC) - DETAINED AND WE WANT YOU TO TRY TO
19 IDENTIFY HIM.

20 THERE IS A GREAT DEAL OF PRESSURE ON HIM AT THAT TIME,
21 AND I THINK MOST IMPORTANTLY IS THE FACT THAT MR. HAMILTON IS
22 THE ONLY ONE THERE. UM, HE'S FLANKED BY TWO OFFICERS, UM,
23 HE'S HANDCUFFED, AND HE'S STANDING BESIDE A POLICE CAR.

24 THE COURT: THANK YOU. IS WHALEY A RICHLAND COUNTY
25 CASE?

1 (NO RESPONSE.)

2 THE COURT: STATE VERSUS WHALEY?

3 (NO RESPONSE.)

4 THE COURT: IS THAT THE CASE THAT ORIGINALLY ALLOWED,
5 UH, EXPERT---

6 MS. JENKINSON: I THINK IT IS, YOUR HONOR.

7 THE COURT: ---EYEWITNESS TESTIMONY WITH JUDGE BAGGETT?

8 MS. JENKINSON: YES, SIR.

9 THE COURT: THANK YOU. MR. STACK?

10 MR. STACK: YES, YOUR HONOR. YOUR HONOR, STATE VERSUS
11 JOHNSON DOES INDICATE THAT SINGLE PERSON SHOW-UPS ARE
12 DISFAVORED, BUT MAY BE - BE RELIABLE BASED ON THE TOTALITY OF
13 THE CIRCUMSTANCES.

14 THE YOUNG MAN SAW HIM FOR A MINUTE OR MORE, FROM A RANGE
15 OF THREE TO FOUR FEET HE SAID. HE SAW HIM FOR OVER A MINUTE.
16 AND, THE IDENTIFICATION WAS MADE - IN HIS WORDS - FIVE TO TEN
17 MINUTES LATER.

18 WHAT ADDS COMPETENCE TO HIS IDENTIFICATION IS IT WAS THE
19 SECOND PRESENTATION. THE FIRST BLACK MALE PRESENTED TO HIM
20 WAS DETERMINED NOT TO BE THE, UH - NOT TO BE THE BURGLAR. HE
21 IDENTIFIED - MADE THAT DETERMINATION QUICKLY, AND THEN WAS
22 PRESENTED TO THE SECOND MAN THAT WAS STOPPED. HE WAS
23 IDENTIFIED BASED ON HIS CLOTHES, THE STRUCTURE OF HIS FACE,
24 AND HIS PHYSICAL APPEAR- -- APPEARANCE.

25 STATE VERSUS MANSFIELD ESTABLISHES SIX CRI- -- CRITERIA

1 IN TERMS OF A SHOW-UP. IS IT PROPER; DID IT OCCUR SHORTLY
2 AFTER THE CRIME; WAS IT NEAR THE SCENE OF THE CRIME; WAS THE
3 WITNESS'S MEMORY STILL FRESH; DID THE SUSPECT HAVE TIME TO
4 ALTER HIS LOOKS OR DISPOSE OF EVIDENCE; DOES IT EXPEDITE THE
5 RELEASE OF INNOCENT SUSPECTS; AND DID IT ENABLED THE POLICE
6 TO DETERMINE WHETHER TO CONTINUE TO SEARCH?

7 THE STATE IS - IS NOT PREPARED TO ADDRESS CROSS-RACIAL
8 IDENTIFICATION. IT WAS NOT BROUGHT UP ON CROSS-EXAM, AND I'M
9 HESITANT TO TRY AND THINK THAT HE HAS A PROBLEM IDENTIFYING
10 PEOPLE WITH DIFFERENT BACKGROUNDS.

11 THE COURT: ALL RIGHT. THANK YOU, SOLICITOR.
12 MS. JENKINSON?

13 MS. JENKINSON: YOUR HONOR, IF I COULD JUST ADD ONE
14 THING?

15 THE COURT: CERTAINLY.

16 MS. JENKINSON: I WOULD JUST POINT OUT THAT THE
17 DESCRIPTION IS VERY VAGUE IN THIS CASE. WE HAVE A
18 DESCRIPTION OF A BLACK MALE, GRAY TEE SHIRT, BLUE JEANS. WE
19 DON'T HAVE ANY HEIGHT, WE DON'T HAVE ANY WEIGHT. WE DON'T
20 HAVE ANY CHARACTERISTICS THAT WOULD NARROW THE FIELD DOWN -
21 SUCH AS SCARS, EARRINGS, TATTOOS.

22 UM - WE HAVE A VAGUE DESCRIPTION THAT COULD FIT MANY
23 PEOPLE IN CHARLESTON COUNTY, IN THE STATE, AND IN - IN
24 ANYWHERE, YOUR HONOR. THANK YOU.

25 THE COURT: THANK YOU, MS. JENKINSON. ALL RIGHT, UM...

1 ALL RIGHT, LOOKING AT STATE VERSUS MOORE, 343 S.E. -
2 EXCUSE ME. 343 S.C. 282, ALTHOUGH ONE-ON-ONE SHOW-UPS HAVE
3 BEEN SHARPLY CRITICIZED AND ARE INHERENTLY SUGGESTIVE, THE
4 IDENTIFICATION MAY NOT BE EXCLUDED AS LONG AS UNDER ALL THE
5 CIRCUMSTANCES THE IDENTIFICATION WAS RELIABLE, NOT
6 WITHSTANDING ANY SUGGESTIVE PROCEDURES.

7 IN THIS CASE, I UNDERSTAND THE VICTIM - MR. MILLER - WAS
8 IN HIS HOME, HEARD NOISES DOWNSTAIRS, WENT DOWNSTAIRS,
9 CONFRONTED AN INDIVIDUAL IN THE DOWNTOWN (SIC) AREA -
10 DOWNSTAIRS AREA OF HIS HOME FROM A FEW FEET AWAY - OR,
11 AT LEAST RIGHT OUTSIDE OF HIS HOME FROM A FEW FEET
12 AWAY, DURING THE DAYTIME. AND ADDITIONALLY, ENGAGED THAT
13 INDIVIDUAL IN A CONVERSATION. WHICH IS MORE, PERHAPS, THAN
14 THE, UH, TYPICAL EYEWITNESS IDENTIFICATION.

15 HIS TESTIMONY WAS A - A MINUTE OR TWO. THERE WAS A
16 QUESTIONING BY MR. MILLER AND THERE - THERE WERE ANSWERS BY
17 THIS, UH, INDIVIDUAL. AND THEN THERE WAS ADDITIONAL
18 QUESTIONS DURING THIS CONVERSATION.

19 MR. MILLER THEN CALLED THE POLICE AND WAS, UM, PICKED UP
20 WITHIN MINUTES BY A POLICE OFFICER AND WAS SHOWN A, UH - A
21 BLACK MALE, AS I UNDERSTAND IT, WITH CLOTHING DIFFERENT THAN
22 THE CLOTHING THAT, UH, THE SUSPECT HAD ON. AND THE FIRST
23 PERSON THAT HE WAS SHOWN WAS, UH, MUCH LARGER, HAD ON SHORTS
24 AND A, UH - AND A SWEATSHIRT.

25 SO, I THINK AS FAR AS CROSS-RACIAL IDENTIFICATION, IT IS

1 CLEAR THAT MR. MILLER DID NOT PICK OUT - SO TO SPEAK - THE
2 AFRICAN-AMERICAN MALE THAT HAPPEN TO BE IN THE PRESENCE OF
3 THE, UM, OFFICER.

4 UM, HE THEN IS DRIVEN TO THIS LOCATION AT LOGAN AND
5 MAGAZINE, WHICH I TAKE IT IS IN CLOSE PROXIMITY TO, UH, THE
6 QUEEN STREET OR THE TRAPMAN STREET RESIDENCE. AT THE MOST,
7 WITHIN TEN MINUTES - IF NOT FIVE MINUTES.

8 SHOWN AN INDIVIDUAL, UM, WHO HE SAYS HAS THE SAME
9 CLOTHING - BOTH THE BLUE JEANS AND A LARGE GRAY TEE SHIRT.
10 THE SAME PHYSICAL CONDITIONS, THE SAME FACIAL FEATURES, UM,
11 THAT HE, UH - ALTHOUGH HE DOESN'T USE THE TERM 'FAIRLY
12 CERTAIN' AT THAT POINT. I'M NOT SURE HOW HIS TERMINOLOGY
13 WAS. HE GOES ON FURTHER TO SAY, WHEN THE DOO-RAG IS PUT ON
14 HIM, HE IS A HUNDRED PERCENT CERTAIN.

15 AND AS I UNDERSTAND SERGEANT RIVERS' TESTIMONY, IS THAT
16 MR. HAMILTON HAD THE, UM, DOO-RAG IN HIS POCKET.

17 THE OPPORTUNITIES OF THE WITNESS THAT THE WITNESS HAD TO
18 VIEW THE CRIMINAL AT THE TIME OF THE CRIME AND THE WITNESS'S
19 DEGREE OF ATTENTION - I DIDN'T GET FROM THE TESTIMONY THAT HE
20 SAID HE WAS EXCITED OR NERVOUS. HE DID SAY HE WAS STARTLED.
21 BUT, HE WASN'T SO STARTLED THAT HE COULDN'T GET HIS CELL
22 PHONE AND CALL 911 AND GET THE POLICE TO RESPOND IMMEDIATELY.

23 HIS TESTIMONY IS THAT HIS DESCRIPTION WAS ACCURATE AS
24 FAR AS THE DEFENDANT'S DESCRIPTION. AND, HE HAS NOW
25 DEMONSTRATED A HUNDRED PERCENT LEVEL OF CERTAINTY.

1 AND, THE, UH, SMALL AMOUNT OF TIME BETWEEN THE CRIME AND
2 THE CONFRONTATION.

3 SO I THINK, WEIGHING ALL THESE FACTORS, UM, AND LOOKING
4 AT THEM IN TOTALITY, THAT IT IS NOT SUCH THAT, UH, THE
5 IDENTIFICATION PROCEDURE IS UNNECESSARILY SUGGESTIVE AND
6 CONDUCTIVE TO IRREP- -- IRREPARABLE MISTAKEN IDENTIFICATION,
7 AND I WILL ALLOW THAT TESTIMONY.

8 ANYTHING FURTHER, MS. JENKINSON?

9 **MS. JENKINSON:** YOUR HONOR, I HAVE ONE UNRELATED - WELL,
10 IT - IT IS RELATED TO THE TESTIMONY OF MR. MILLER.

11 UM - I WOULD ASK THAT HE NOT BE ABLE TO TESTIFY ON HOW
12 SURE HE IS - GIVE A PERCENTAGE OF HOW SURE HE IS. UM -
13 BECAUSE THAT IS AN EX- -- EXPRESSION OF HIS BELIEF AND HE IS
14 ALLOWED TO COMMENT ON HIS CREDIBILITY AS A WITNESS.

15 UM - I WOULD ASK THE COURT TO CONSIDER ALLOWING HIM TO
16 TESTIFY THAT, WHEN HE SAW MR. HAMILTON BEING DETAINED, THAT
17 HE, UH, TOLD THE OFFICERS THAT THAT'S, UM, THE GUY THAT HE
18 SAW IN HIS HOME. I WOULD JUST ASK TO LIMIT HIS TESTIMONY AS
19 TO, UH, HOW SURE HE IS OR A CERTAIN PERCENTAGE OF - OF HOW
20 SURE HE IS.

21 BY ALLOWING HIM TO TESTIFY TO THAT, UM, HE IS ALLOWED TO
22 COMMENT ON HIS OWN COMPETENCE AND CREDIBILITY.

23 THANK YOU.

24 **THE COURT:** WELL - WELL, MS. JENKINSON, LET ME ASK YOU
25 NOW, IF HE WAS TWENTY PERCENT SURE, WOULD YOU WANT ME TO

1 ALLOW HIM TO TESTIFY?

2 MS. JENKINSON: THAT MAY BE ANOTHER ISSUE, YOUR HONOR,
3 BUT...

4 THE COURT: YES, MA'AM.

5 MS. JENKINSON: UH - I - I DO - DO THINK THAT IT IS - IT
6 IS A CONFLICT.

7 THE COURT: WELL, I THINK, YOU KNOW, WE ALLOW PEOPLE TO
8 GIVE OPINION TESTIMONY SUCH LIKE THIS. AND HE IS A FACT
9 WITNESS. AND I - I THINK THAT WOULD GO TO THE WEIGHT AND NOT
10 THE ADMISSIBILITY OF THE TESTIMONY. IT'D BE UP TO THE JURY
11 TO DETERMINE. YOU KNOW, SOME PEOPLE MAY SAY, OH, ABSOLUTELY,
12 OR COMPLETELY, OR, YOU KNOW, I'M PRETTY SURE. I MEAN, IT'S
13 JUST A MATTER OF SEMANTICS.

14 I CERTAINLY WILL NOT ALLOW LEADING QUESTIONS IN THAT
15 REGARD. BUT, UM, I THINK THE WITNESS CAN TESTIFY AS TO HIS
16 DEGREE OF - OF ACCURACY IN HIS OPINION.

17 ALL RIGHT, ANYTHING FURTHER?

18 MS. JENKINSON: THANK YOU. NO, YOUR HONOR.

19 THE COURT: SOLICITOR?

20 MR. STACK: NOTHING FROM THE STATE, YOUR HONOR.

21 THE COURT: ALL RIGHT, THEN WE'LL BE IN RECESS UNTIL,
22 UH - AS FAR AS THIS CASE IS CONCERNED - UNTIL TWO P.M. I
23 BELIEVE I HAVE MR. DANIELS (SIC) AND MR. MARTCHINK ON ANOTHER
24 MATTER?

25 MR. STACK: YES, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. THANK YOU-ALL VERY MUCH. SEE
2 YOU AT TWO P.M.

3 **MR. STACK:** THANK YOU, YOUR HONOR.

4 (WHEREUPON, COURT RECESSED AT 1:10 P.M.)

5 (WHEREUPON, COURT RESUMED AT 2:00 P.M.)

6 **THE COURT:** ALL RIGHT, ANYTHING FROM THE STATE PRIOR TO
7 THE, UM, JURY?

8 **MR. STACK:** NO, YOUR HONOR.

9 **THE COURT:** MS. JENKINSON?

10 **MS. JENKINSON:** NO, YOUR HONOR. ONLY THAT I - I - I
11 DON'T THINK THIS IS AN - AN ISSUE YET, BUT WHEN WE PLAY THE
12 TAPE - I'VE STIPULATED TO THE TAPE SO THAT WE DON'T HAVE TO
13 CALL THE OFFICER. BUT, I WOULD JUST ASK THAT IT BE PLAYED IN
14 FULL.

15 **THE COURT:** ALL RIGHT. I - I ASSUME, WHEN YOU SAY IN
16 FULL, IT'S JUST THIS CALL?

17 **MR. STACK:** IT'S THE CALL FROM THE VICTIM WHICH I WAS
18 GOING TO PRESENT THROUGH THE VICTIM. AND THEN IT'S A SERIES
19 OF COMMUNICATIONS BACK AND FORTH BETWEEN THESE - DIFFERENT
20 POLICE OFFICERS AND THE OPERATOR.

21 **THE COURT:** ABOUT THIS---

22 **MR. STACK:** ABOUT THIS---

23 **THE COURT:** ---BURGLARY IN PROGRESS?

24 **MR. STACK:** YES, YOUR HONOR.

25 **THE COURT:** ALL RIGHT. YES, I WOULD ALLOW THAT

1 UNDER 106. IS THERE - THERE'S NO ISSUE WITH THAT, CORRECT?

2 MR. STACK: NO, YOUR HONOR, I HAVE NO ISSUE WITH IT.

3 THE COURT: ALL RIGHT. ALL RIGHT---

4 BAILIFF: WE'RE STILL WAITING - WE'RE STILL WAITING ON
5 ONE.

6 CLERK (MR. WILSON): WE'RE STILL WAITING ON ONE JUROR.

7 THE COURT: ONE JUROR CAN'T TELL TIME? FIND OUT WHICH
8 ONE IT IS.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE, OFF THE RECORD.)

11 (WHEREUPON, COURT RESUMED.)

12 (WHEREUPON, COURT RECESSED.)

13 (WHEREUPON, COURT RESUMED.)

14 THE COURT: ALL RIGHT, YOU CAN BRING US OUR JURY.

15 BAILIFF: BRING 'EM IN?

16 THE COURT: YES, SIR.

17 (WHEREUPON, JURY ENTERED THE COURTROOM AT 2:10 P.M.)

18 BAILIFF: THE JURY'S ALL PRESENT, YOUR HONOR.

19 THE COURT: THANK YOU, MR. BAILIFF. MADAME FORELADY,
20 LADIES AND GENTLEMEN OF THE JURY, I HOPE YOU HAD A PLEASANT
21 LUNCH. WE ARE NOW BEGINNING WITH THE PRESENTATION OF
22 TESTIMONY IN THIS TRIAL BY THE STATE.

23 SOLICITOR, YOU MAY CALL YOUR FIRST WITNESS.

24 MR. STACK: THANK YOU, YOUR HONOR. THE STATE CALLS
25 MR. WILLIAM S. MILLER.

1 (WITNESS FORWARD.)

2 CLERK (MR. WILSON): WOULD YOU PLEASE WALK AROUND TO BE
3 SWORN?

4 SIR, IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE
5 BIBLE AND RAISE YOUR RIGHT HAND.

6 (WHEREUPON, WILLIAM SHRYOCK MILLER WAS DULY SWORN AND
7 TESTIFIED AS FOLLOWS:)

8 CLERK (MR. WILSON): PLEASE BE SEATED. PLEASE STATE
9 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

10 MR. MILLER: WILLIAM SHRYOCK MILLER - M-I-L-L-E-R.

11 COURT REPORTER: MIDDLE NAME, PLEASE?

12 MR. MILLER: SHRYOCK - S-H-R-Y-O-C-K.

13 WILLIAM SHRYOCK MILLER, DIRECT EXAMINATION BY MR. STACK:

14 Q GOOD AFTERNOON, WILLIAM. WILLIAM, WHERE DO YOU
15 PRESENTLY LIVE?

16 A UM - I'M LIVING IN NEGRIL, JAMAICA. I'M WORKING THERE,
17 BUT I'M MAINTAINING A RESIDENCE HERE IN CHARLESTON.

18 Q WELL, WHAT DO YOU DO IN JAMAICA?

19 A UH - MY FAMILY HAS A RESTAURANT THERE. I'M A MANAGER.

20 Q AND HOW LONG HAVE YOU LIVED IN JAMAICA?

21 A UM - SINCE DECEMBER.

22 Q OKAY. BACK ON AUGUST 3RD OF 2004, WHERE DID YOU LIVE?

23 A UH - 20 TRAPMAN STREET.

24 Q IN WHAT TOWN OR CITY?

25 A UH - IN CHARLESTON, SOUTH CAROLINA - DOWNTOWN.

1 Q WERE YOU EMPLOYED, OR WERE YOU A STUDENT, OR WHAT?

2 A UM - I WAS A STUDENT AT THE COLLEGE OF CHARLESTON AND I
3 WAS WORKING PART-TIME.

4 Q DO YOU RECALL THE EVENTS THAT OCCURRED ON AUGUST 3RD
5 OF 2004?

6 A UH - YES, I DO.

7 Q ALL RIGHT. WOULD YOU PLEASE DESCRIBE TO THE JURY - IN
8 DETAIL - WHAT HAPPENED THAT DAY? AND TAKE YOUR TIME.

9 A SURE. UM - MID-AFTERNOON/EARLY AFTERNOON, UM, I WAS
10 UPSTAIRS - UH, IT WAS A TWO-BEDROOM TOWNHOUSE APARTMENT - UH,
11 LISTENING TO MUSIC ON MY COMPUTER. UH, ONE OF MY FRIENDS WAS
12 OVER, HE WAS, UH, TAKING A SHOWER.

13 UH - I HEARD A NOISE COME FROM THE DOWNTOWN (SIC) - OR,
14 DOWNSTAIRS AREA. UH - I WAS LIVING WITH MY SISTER AT THE
15 TIME. UH - I ASSUMED IT WAS - IT WAS HER. UH - I CALLED HER
16 NAME OUT; I DIDN'T GET A RESPONSE.

17 UM - I HEARD ANOTHER NOISE, SO I WAS - I WAS SURE THAT
18 IT WAS COMING FROM INSIDE.

19 I WENT DOWNSTAIRS - AND, YOU COULD SEE CLEAR TO THE BACK
20 OF MY HOUSE. UM, I SAW THE REAR DOOR BEING PULLED CLOSED.

21 UM - I RUSHED TO THE DOOR, PULLED IT OPEN, AND, UM, THE
22 DEFENDANT WAS STANDING THERE WITH MY, UH, PLAY STATION TWO,
23 AND A BOOM BOX/STEREO/C-D PLAYER IN HIS HAND.

24 UM - I WAS STANDING IN THE DOORWAY, HE WAS A FEW FEET
25 AWAY FROM ME. UH - I ASKED HIM WHAT HE WAS DOING. HE SAID

1 HE WAS LOOKING FOR JERRY. HE SAID, THIS IS JERRY'S STUFF,
2 RIGHT?

3 AND I SAID, NO, MAN, IT'S - YOU KNOW, IT'S MY STUFF.
4 WHAT ARE YOU DOING HERE?

5 I WAS BEING PRETTY AGGRESSIVE AND, UM, AT THAT POINT HE
6 PUT THE - THE - MY STUFF DOWN IN FRONT OF ME AND, UM, WAS
7 LIKE, UH, I'M SO SORRY - I'M SO SORRY. AND I - I WAS LIKE,
8 WELL, I'M CALLING THE COPS, MAN, YOU BROKE INTO MY HOUSE.
9 AND HE SAID, NO, DON'T DO THAT.

10 AND I PULLED MY CELL PHONE OUT OF MY POCKET AND, UM,
11 CALLED 911.

12 AT THAT POINT, THE DEFENDANT RAN OUT OF MY COURTYARD AND
13 EXITED RIGHT ON THE, UH - QUEEN STREET.

14 Q AND THEN WHAT HAPPENED?

15 A WITHIN, UM - OKAY, LESS THAN FIVE MINUTES, A PATROL CAR
16 PULLED UP. I JUMPED IN THE CAR WITH A - THE POLICE OFFICER.
17 WE PROCEEDED DOWN, UH, QUEEN STREET TOWARDS LOGAN STREET.

18 ABOUT A HALF-BLOCK FROM MY PLACE, UM, ONE OF THE
19 OFFICERS HAD STOPPED A GENTLEMAN. ASKED ME IF IT WAS HIM.
20 UM - I SAID, NO, IT WASN'T.

21 HE PROCEEDED FURTHER DOWN QUEEN, TOOK A LEFT ONTO LOGAN
22 STREET, WHERE A - ANOTHER GROUP OF OFFICERS HAD APPREHENDED
23 THE DEFENDANT, AND I IDENTIFIED HIM AT THAT POINT.

24 Q OKAY. WELL, HOW MUCH TIME ELAPSED FROM WHEN YOU CALLED
25 911 UNTIL YOU MADE THE IDENTIFICATION OF THE DEFENDANT?

- 1 A UM - IT WAS LESS THAN TEN MINUTES.
- 2 Q OKAY. YOU SAID YOU WERE UPSTAIRS AND YOU HEARD A NOISE
- 3 DOWNSTAIRS, IS THAT CORRECT?
- 4 A YES.
- 5 Q WAS - WOULD YOU TELL US WHAT TYPE OF NOISE? WAS IT
- 6 VOICES, OR WAS IT FURNITURE, OR---
- 7 A UM - I - I COULD HEAR THE DOOR. THE DOOR MADE A BIG
- 8 SUCTION NOISE WHENEVER IT OPENED. AND THEN I HEARD ANOTHER,
- 9 UM, RATTLE DOWN THERE. IT SOUNDED LIKE, YOU KNOW, PULLING ON
- 10 FURNITURE OR SOMETHING.
- 11 Q OKAY. WHEN YOU OPENED THE BACK DOOR, WAS ANYBODY ELSE
- 12 IN THE BACKYARD OR BACK COURTYARD OTHER THAN THE DEFENDANT?
- 13 A NO.
- 14 Q OKAY. WAS YOUR PROPERTY - THE BOOM BOX AND THE PLAY
- 15 STATION - WAS THAT INITIALLY INSIDE YOUR APARTMENT?
- 16 A YES, IT WAS.
- 17 Q OKAY. WHERE DO YOU KEEP IT INSIDE YOUR APARTMENT?
- 18 A UM - I HAD AN ENTERTAINMENT CENTER WHERE I KEPT THE PLAY
- 19 STATION. IT WAS HOOKED UP. IT WAS ACTUALLY PLUGGED INTO MY
- 20 TV AT THE TIME.
- 21 UM - AND THEN THE STEREO WAS A PORTABLE BOOM BOX THAT I
- 22 KEPT, UM, ON A LITTLE CART IN THE - IN OUR ROOM - AND IT WAS
- 23 ORGANIZED IN - IN ANOTHER ROOM IN THERE ALSO.
- 24 Q OKAY. WAS THE BURGLAR HOLDING YOUR PROPERTY OUTSIDE THE
- 25 APARTMENT WHEN YOU CONFRONTED HIM?

- 1 A YES.
- 2 Q HE HAD IT IN HIS HANDS?
- 3 A YES.
- 4 Q OKAY. DID YOU OR ANYBODY ELSE GIVE PERMISSION FOR THE
- 5 DEFENDANT TO COME INTO YOUR APARTMENT?
- 6 A NO.
- 7 Q ARE YOU SURE OF THAT?
- 8 A I'M POSITIVE.
- 9 Q IS 20 TRAPMAN STREET AN APARTMENT?
- 10 A YES.
- 11 Q OKAY. IT'S NOT A GARAGE?
- 12 A NO.
- 13 Q IT'S NOT A COMMERCIAL BUILDING?
- 14 A NO. IT WAS MY RESIDENCE FOR TWO YEARS.
- 15 Q OKAY. HOW LONG AFTER YOU SAW THE DOOR CLOSE DID YOU
- 16 MOVE TO THE DOOR AND CONFRONT THE BURGLAR?
- 17 A UH - AS FAST AS I COULD GET THERE. JUST A MATTER OF
- 18 SECONDS.
- 19 Q HOW FAR IS IT FROM THE BOTTOM OF THE STAIRS TO THE BACK
- 20 DOOR?
- 21 A UM - MAYBE TWENTY-FIVE FEET.
- 22 Q OKAY. AND WAS ANYBODY ELSE IN THE BACKYARD OTHER THAN
- 23 THE DEFENDANT?
- 24 A NO.
- 25 Q AND HE WAS HOLDING YOUR PROPERTY?

- 1 A YES.
- 2 Q OKAY. HOW FAR AWAY FROM THE BURGLAR WERE YOU WHEN YOU
- 3 CONFRONTED HIM?
- 4 A UM - ABOUT FIVE FEET. ONLY - ALMOST ARM'S REACH.
- 5 Q OKAY. AND HOW LONG DID YOU SPEAK TO EACH OTHER?
- 6 A UM - ABOUT A MINUTE OR TWO. OVER A MINUTE.
- 7 Q AND WHAT WERE YOU SAYING OR DISCUSSING?
- 8 A UM - WHY HE HAD MY PROPERTY IN HIS HANDS.
- 9 Q DID YOU TELL HIM YOU WANTED IT BACK?
- 10 A I - UH, I TOLD HIM THAT IT DID NOT BELONG TO JERRY, THAT
- 11 IT BELONGED TO ME AND THAT IT WASN'T GOING ANYWHERE.
- 12 Q WHEN YOU CONFRONTED HIM IN YOUR BACKYARD OR BACK
- 13 COURTYARD, WAS IT DAYLIGHT?
- 14 A YES.
- 15 Q WAS IT ABOUT TWO OR TWO-FIFTEEN IN THE AFTERNOON?
- 16 A YES.
- 17 Q WAS THERE ANYTHING THAT WOULD IMPEDE YOUR VISION OR VIEW
- 18 OF HIM?
- 19 A NO.
- 20 Q WAS IT FOGGY?
- 21 A NO.
- 22 Q WAS THERE SMOKE IN THE AIR?
- 23 A NO.
- 24 Q WAS THERE ANY OBJECT BETWEEN YOU AND THE DEFENDANT?
- 25 A NO.

1 Q ALL RIGHT. DID YOU HAVE - SO YOU HAD A CLEAR LOOK AT
2 HIM FROM ABOUT THREE OR FOUR FEET?

3 A YES.

4 Q ALL RIGHT. FOR APPROXIMATELY ONE MINUTE OR MORE?

5 A YES.

6 Q ALL RIGHT. IS THE PERSON YOU CONFRONTED IN THE
7 COURTROOM TODAY?

8 A YES.

9 Q WOULD YOU PLEASE POINT TO THAT PERSON AND DESCRIBE WHAT
10 HE OR SHE IS WEARING?

11 A HE'S OVER THERE WEARING A WHITE SHIRT AND, UH, GRAY
12 PANTS - BLACK SHOES.

13 MR. STACK: YOUR HONOR, THE STATE ASKS THAT THE RECORD
14 INDICATE THAT THE WITNESS HAS IDENTIFIED THE DEFENDANT,
15 MR. THOMAS CURTIS HAMILTON.

16 THE COURT: YES, SIR - SO ORDERED.

17 Q AFTER YOU CONFRONTED THE DEFENDANT, WHAT DID HE DO?

18 A UM - I - HE - I ASKED HIM WHAT HE WAS DOING WITH MY
19 STUFF. HE SAID, OH, I'M LOOKING FOR JERRY'S - EXCUSE ME.
20 THIS IS JERRY'S STUFF. I SAID, NO IT'S NOT, AND JERRY
21 DOESN'T LIVE HERE. I LIVE HERE; IT'S MY STUFF.

22 UM - I SAID, YOU'RE BREAKING INTO MY HOUSE. HE SAID,
23 NO - NO, I'M NOT DOING THAT. I SAID, YOU KNOW, YES, YOU ARE.
24 I'M CALLING THE POLICE.

25 AND HE SAID - HE WAS LIKE, OH - ACTUALLY APOLOGIZED. HE

1 WAS, OH, I'M SO SORRY. HE PUT - PUT THE STUFF DOWN, AND THEN
2 WHEN I PULLED OUT MY PHONE HE RAN OUT OF THE COURTYARD.

3 Q IN WHICH DIRECTION DID HE DEPART?

4 A UM - HE TOOK A RIGHT ON QUEEN STREET.

5 Q AND RIGHT IS EAST OR WEST OR?

6 A THAT WOULD BE EAST, TOWARDS THE COURTHOUSE.

7 Q OKAY. ARE YOU FAMILIAR WITH THIS MAP?

8 A YES.

9 Q OKAY. ARE YOU ABLE TO IDENTIFY WHERE YOU LIVE ON THIS
10 MAP?

11 A YES.

12 Q IS IT A FAIRLY ACCURATE - OR, IS IT AN ACCURATE - IS IT
13 A TRUE AND ACCURATE DEPICTION OF THE NEIGHBORHOOD IN WHICH
14 YOU LIVED IN DOWNTOWN CHARLESTON?

15 A YES.

16 Q ALL RIGHT. CAN YOU IDENTIFY WHERE 20 TRAPMAN STREET IS?

17 A YES.

18 MR. STACK: YOUR HONOR, THE STATE ASKS IF THE WITNESS
19 COULD STEP DOWN FOR A FEW MOMENTS? TO POINT OUT A FEW THINGS
20 ON THE MAP?

21 THE COURT: ALL RIGHT. ARE YOU OFFERING THAT INTO
22 EVIDENCE?

23 MR. STACK: I'M USING IT FOR DEMONSTRATION PURPOSES.
24 I'M NOT GOING TO OFFER IT FOR EVIDENCE.

25 THE COURT: ALL RIGHT. YES, SIR, YOU MAY STEP DOWN,

1 MR. MILLER.

2 (WHEREUPON, WITNESS STEPPED DOWN FROM THE WITNESS STAND
3 AND AROUND TO THE FRONT OF THE WITNESS STAND.)

4 Q USING THIS MAGIC MARKER, WOULD YOU PLEASE CIRCLE
5 20 TRAPMAN STREET?

6 A THERE'S THREE TOWNHOUSES RIGHT HERE. IT WOULD BE THE
7 ONE IN THE MIDDLE.

8 COURT REPORTER: I'M SORRY, YOU'LL NEED TO SPEAK UP.

9 A IT'S RIGHT HERE ON THE CORNER OF QUEEN AND TRAPMAN.

10 Q OKAY. YOU'RE TALKING TO THE JURY. TO ORIENT THE JURY,
11 WILL YOU PLEASE POINT OUT WHERE COLONIAL LAKE IS ON THE MAP?

12 A (WITNESS POINTING ON MAP.)

13 Q AND WILL YOU POINT OUT WHERE BROAD STREET IS ON THE MAP?

14 A (WITNESS POINTING ON MAP.)

15 Q AND WILL YOU POINT OUT WHERE QUEEN STREET IS ON THE MAP?

16 A (WITNESS POINTING ON MAP.)

17 Q DOES TRAPMAN RUN NORTH/SOUTH BETWEEN QUEEN AND
18 BROAD STREETS?

19 A YES, IT DOES.

20 Q AND IS 20 TRAPMAN STREET NEAR THE INTERSECTION OF QUEEN
21 AND TRAPMAN?

22 A YES.

23 Q IN WHICH - ON WHICH STREET DID THE BURGLAR DEPART?

24 A ONTO QUEEN STREET.

25 Q TOWARDS, YOU SAY, TO THE RIGHT?

1 A TO THE RIGHT.

2 Q WOULD YOU PLEASE DRAW AN ARROW INDICATING THE DIRECTION
3 FROM YOUR HOUSE IN WHICH HE LEFT?

4 A (WITNESS DRAWING ON MAP.)

5 Q OKAY. WILL YOU PLEASE RETAKE THE STAND?

6 (WHEREUPON, WITNESS RETURNED TO WITNESS STAND.)

7 Q OKAY, AFTER THE BURGLAR DEPARTED, WHAT DID YOU DO?

8 A UM - I - I YELLED UPSTAIRS TO MY FRIEND WHO WAS THERE
9 TAKING A SHOWER, AND I CALLED 911.

10 Q DID YOU CALL 911 IMMEDIATELY OR DID YOU WAIT A PERIOD OF
11 TIME?

12 A UH - IMMEDIATELY.

13 Q HOW SOON AFTER YOU DIALED 9- -- 911 DID THE POLICE
14 ARRIVE?

15 A UH - LESS THAN FIVE MINUTES.

16 Q AND WHAT HAPPENED THEN?

17 A I, UM, JUMPED IN THE SQUAD CAR WITH THE OFFICER, UM,
18 WENT DOWN TO QUEEN STREET IN THE DIRECTION THAT I SAW THE
19 DEFENDANT FLEE.

20 UM - WE STOPPED, UM - THE FIRST INDIVIDUAL WAS JUST PAST
21 FRANKLIN STREET. UM - I SAID THAT THAT WASN'T HIM.

22 WE PROCEEDED DOWN QUEEN, TOOK A LEFT ONTO LOGAN STREET,
23 AND ABOUT A HALF-BLOCK UP, THEY HAD THE DEFENDANT APPREHENDED
24 AND IN HANDCUFFS, I BELIEVE.

25 Q OKAY. DID - THE OFFICER THAT DROVE YOU IN THE SQUAD

1 CAR, DID HE DRIVE YOU TO THE LOCATION OF MORE THAN ONE
2 SUSPECT?

3 A YES.

4 Q UH - WHEN HE DROVE YOU TO THE FIRST SUSPECT, WAS
5 OFFICER CONNOLLY - SERGEANT HOLLY CONNOLLY AT THAT LOCATION?

6 A UH - YES, SHE WAS.

7 Q WAS THE FIRST PERSON WHO SHOWED UP - CORRECTION. WAS
8 THE FIRST PERSON SHOWN TO YOU THE MAN WHO BURGLARIZED YOUR
9 HOUSE?

10 A UH - NO.

11 Q HOW COULD YOU TELL?

12 A UM - HE WAS MUCH LARGER. UH - HE WAS WEARING A
13 LONG-SLEEVE SWEATSHIRT AND SHORTS. UM - JUST A TOTAL
14 DIFFERENT BODY SHAPE AND DIFFERENT CLOTHING.

15 Q WHEN THE OFFICER WHO WAS DRIVING YOU IN THE VEHICLE
16 DROVE YOU TO THE SECOND PERSON THAT WAS STOPPED, WAS
17 OFFICER RIVERS THERE?

18 A UH - YES.

19 Q OKAY. WAS THE SECOND PERSON SHOWN TO YOU THE MAN WHO
20 BURGLARIZED YOUR HOME?

21 A YES.

22 Q HOW COULD YOU TELL?

23 A UM - HE WAS WEARING THE EXACT SAME CLOTHES, WITH THE
24 EXCEPTION OF, UH, THE DOO-RAG. AND, UH, SAME FACIAL
25 FEATURES, SAME HEIGHT, SAME EVERYTHING.

- 1 Q SAME BODY TYPE?
- 2 A SAME BODY TYPE.
- 3 Q SAME FACIAL STRUCTURE?
- 4 A YES.
- 5 Q GRAY SHIRT?
- 6 A YES.
- 7 Q LONG BLUE JEANS?
- 8 **MS. JENKINSON:** OBJECTION, YOUR HONOR.
- 9 **THE COURT:** YES. PLEASE DON'T LEAD, SOLICITOR.
- 10 **MR. STACK:** THANK YOU, YOUR HONOR.
- 11 **THE COURT:** OBJECTION SUSTAINED.
- 12 Q IS THERE ANY DOUBT IN YOUR MIND THAT THE SECOND SUSPECT
- 13 SHOWN TO YOU WAS THE MAN WHO BURGLARIZED YOUR HOUSE?
- 14 A NO.
- 15 Q AT THIS TIME I HAND YOU STATE'S EXHIBITS THAT HAVE BEEN
- 16 MARKED ONE THROUGH EIGHTEEN FOR IDENTIFICATION.
- 17 **MR. STACK:** APPROACH THE WITNESS, YOUR HONOR?
- 18 **THE COURT:** YES, SIR.
- 19 Q WOULD YOU PLEASE REVIEW THESE PHOTOGRAPHS?
- 20 (WITNESS REVIEWING PHOTOGRAPHS.)
- 21 Q DO YOU RECOGNIZE WHAT EACH OF THESE PHOTOS DEPICT?
- 22 A YES.
- 23 Q DO THEY DEPICT THE INTERIOR, THE EXTERIOR OF YOUR
- 24 APARTMENT, AND THE PROPERTY THAT WAS STOLEN?
- 25 A YES, THEY DO.

1 Q ARE THEY ACCURATE DEPICTIONS OF YOUR PROPERTY AND YOUR
2 APARTMENT?

3 A YES, THEY ARE.

4 MR. STACK: YOUR HONOR, AT THIS TIME THE STATE ASKS
5 EXHIBITS - STATE EXHIBITS ONE THROUGH EIGHTEEN BE ENTERED
6 INTO EVIDENCE.

7 THE COURT: MS. JENKINSON?

8 MS. JENKINSON: WITHOUT OBJECTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. STATE'S ONE THROUGH EIGHTEEN,
10 INTRODUCED INTO EVIDENCE WITHOUT OBJECTION.

11 MR. STACK: THANK YOU, YOUR HONOR.

12 (WHEREUPON, STATE'S EXHIBIT NOS. 1 THROUGH 18 WERE
13 ADMITTED INTO EVIDENCE.)

14 Q NOW, WILLIAM, BEHIND YOU - SHORTLY - IS GOING TO BE A
15 PHOTOGRAPH. THE STATE'S NUMBER ONE.

16 WOULD YOU PLEASE TURN AROUND? CAN YOU SEE IT FROM YOUR
17 ANGLE OR DO YOU NEED TO STEP DOWN?

18 A I CAN SEE IT.

19 Q OKAY. WHAT DOES THIS PHOTO DEPICT?

20 A UM - THAT'S THE OUT- -- FRONT, OUTSIDE OF MY, UH,
21 APARTMENT, WHICH WOULD BE IN THE MIDDLE.

22 Q WHEN YOU SAY IN THE MIDDLE, DO YOU MEAN THIS APARTMENT
23 HERE?

24 A YES. THAT'S THE, UH, TRAPMAN STREET SIDE.

25 Q ON THE TRAPMAN STREET SIDE. THAT'S 20 TRAPMAN STREET?

- 1 A YES, THAT'S CORRECT.
- 2 Q AND IS THIS YOUR NEIGHBOR TO THE LEFT?
- 3 A YES.
- 4 Q AND THIS IS YOUR NEIGHBOR TO THE RIGHT?
- 5 A CORRECT.
- 6 Q WHAT DOES THIS PHOTO DEPICT?
- 7 A UM - WELL, THROUGH THAT GATE WOULD BE MY PATIO.
- 8 Q YOU MEAN THROUGH THIS---
- 9 A ON THE REAR OF MY HOUSE.
- 10 Q SO THIS IS NOT YOUR PATIO HERE---
- 11 A NO, IT'S NOT.
- 12 Q ---IS THAT CORRECT?
- 13 A THAT'S - NO, IT'S NOT.
- 14 Q IS YOUR PAT- -- IS YOUR PATIO BEHIND THIS WALL?
- 15 A YES.
- 16 Q AND YOU COULD ENTER THROUGH THAT GATE THERE?
- 17 A RIGHT. THAT'S THE ONLY ENTRY AND EXIT INTO THE PATIO.
- 18 Q AND WHAT DOES THIS PHOTO DEPICT?
- 19 A THAT'S A CLOSER PICTURE OF - OF THE GATE LEADING INTO
- 20 THE PATIO.
- 21 Q YOUR PATIO WAS INSIDE THIS GATE HERE?
- 22 A YES.
- 23 Q WHAT DOES THIS PHOTO DEPICT?
- 24 A THAT'S THE, UM - THAT'S FROM THE INSIDE OF MY PATIO,
- 25 LOOKING OUT TOWARDS THE QUEEN STREET SIDE.

1 Q ARE YOU SAYING IT'S AN OPPOSITE ANGLE FROM THE EARLIER
2 PHOTO?

3 A YES.

4 Q SO THE CAMERA IS INSIDE YOUR PATIO AREA?

5 A YES, THAT'S CORRECT.

6 Q WHAT DOES THIS PHOTO DEPICT?

7 A UM - THAT'S A PICTURE LOOKING OUT OF THE GATE TO
8 QUEEN STREET IN THE BACKGROUND.

9 Q IS THIS QUEEN STREET?

10 A YES.

11 Q AND IN WHICH DIRECTION DID THE - DID THE - THE, UH,
12 DEFENDANT FLEE?

13 A UM - TO THE RIGHT ON QUEEN STREET.

14 Q TO THE RIGHT. WHAT DOES THIS PHOTO DEPICT?

15 A UH - THAT'S MY BACK DOOR.

16 Q AND WHERE DOES YOUR BACK DOOR LEAD TO WHEN YOU GO OUT OF
17 IT?

18 A UH - INTO THE PATIO AREA.

19 Q OKAY. AND ON THE INSIDE, WHAT IS INSIDE - IMMEDIATELY
20 INSIDE YOUR BACK DOOR?

21 A UM - A COUCH AND ENTERTAINMENT CENTER TO THE LEFT.
22 DINING ROOM TABLE TO THE RIGHT.

23 Q WHAT DOES THIS PHOTO DEPICT?

24 A UH, THAT'S A PICTURE OF THE BOOM BOX THAT WAS, UH,
25 STOLEN.

- 1 Q THIS IS YOUR PROPERTY HERE?
- 2 A YES - YES.
- 3 Q AND ON TOP OF IT, WHAT IS THAT?
- 4 A A LOT OF DUST.
- 5 Q A LOT OF DUST?
- 6 A YEAH.
- 7 Q YOU'RE NOT MUCH FOR DUSTING?
- 8 A UH - NO.
- 9 Q WHAT DOES THIS PHOTO DEPICT?
- 10 A MY DUSTY BOOM BOX.
- 11 Q ANOTHER PICTURE OF THE SAME OBJECT?
- 12 A YES.
- 13 Q THIS PICTURE HERE, WHAT DOES THAT DEPICT?
- 14 A THAT IS, UH - THE PLAY STATION TWO THAT WAS ALSO TAKEN
- 15 FROM THE HOUSE.
- 16 Q IS THAT YOUR PROPERTY?
- 17 A YES.
- 18 Q WAS IT INITIALLY INSIDE THE APARTMENT?
- 19 A YES, IT WAS.
- 20 Q AND WAS IT OUTSIDE THE APARTMENT, IN - IN THE POSSESSION
- 21 OF THE DEFENDANT?
- 22 A YES.
- 23 Q ALONG WITH THE BOOM BOX?
- 24 A YES, THAT'S CORRECT.
- 25 Q WHAT DOES THIS PHOTO DEPICT?

1 A UH - THAT IS THE BOOM BOX AND THE PLAY STATION, UH,
2 IMMEDIATELY INSIDE MY HOUSE.

3 Q IS THAT THE BOOM BOX?

4 A YES.

5 Q IS THAT THE PLAY STATION?

6 A YES, IT IS.

7 Q WHY ARE THEY INSIDE NOW AND ON THE FLOOR?

8 A UM - WHEN I LEFT TO GET IN THE SQUAD CAR WITH THE POLICE
9 OFFICER, I PUT 'EM INSIDE.

10 Q WHAT DOES THIS PHOTO DEPICT?

11 A UH - THAT'S A PICTURE OF THE SERIAL NUMBER ON THE BACK
12 OF MY PLAY STATION TWO.

13 Q IS IT YOUR PLAY STATION?

14 A YES.

15 Q OKAY. WHAT DOES THIS PHOTO DEPICT?

16 A UM - THAT'S ALSO THE BACK OF THE PLAY STATION - INSIDE
17 MY HOUSE.

18 Q OKAY. NOW, TAKING YOUR TIME, WHAT DOES THIS PHOTO
19 DE- -- DEPICT?

20 A UM - THAT'S MY LIVING ROOM ENTERTAINMENT CENTER IN THE
21 BACKGROUND.

22 Q WOULD THE - DID YOU STORE ANY OF THE TWO, UH, PROPERTY
23 THAT WAS STOLEN IN THIS PHOTO?

24 A YES. THE PLAY STATION WAS IN THERE, CONNECTED TO
25 THE TV.

1 Q WAS - CONNECTED TO ABOVE, BELOW - BELOW, WHAT?

2 A UM - ABOVE THE D-V-D'S THERE WAS A SHELF ALONG - ALONG
3 THE BOTTOM THERE.

4 Q OKAY. IS IT ABOVE OR BELOW THE TV?

5 A UH, BELOW THE TV.

6 Q SO WE'RE DOWN HERE?

7 A CORRECT.

8 Q THAT'S WHERE THE PLAY STATION USED TO BE? THAT'S WHERE
9 YOU STORED IT?

10 A YES.

11 Q WHAT DOES THIS PHOTO DEPICT?

12 A UM - THAT'S THE - THE SHELF THAT THE PLAY STATION RESTED
13 ON. UM, IT WAS PULLED OUT WHEN THE PLAY STATION WAS TAKEN.

14 Q DID YOU PULL IT OUT OR WAS IT PULLED OUT BY SOMEONE
15 ELSE?

16 A UH - IT WAS PULLED OUT BY SOMEONE ELSE.

17 Q NOW, THIS SHELF, IS IT NORMALLY LIKE UP HERE ABOVE THOSE
18 D-V-D'S?

19 A YES, THAT'S CORRECT.

20 Q AND - AND WHAT WOULD BE STORED ON TOP OF IT?

21 A UH - JUST THE PLAY STATION.

22 Q AND IT WOULD BE HOOKED UP TO THE TV SET?

23 A YES.

24 Q OKAY. NOW, IS THERE A LOT OF DUST ON THAT, UH, SHELF
25 TOO?

1 A UM - I WOULD IMAGINE SO.

2 Q WHAT DOES THIS PHOTO DEPICT?

3 A UM - THAT'S, UH, THE CART THAT HAD THE BOOM BOX ON IT,
4 ON THE BOTTOM RACK.

5 Q WHEN YOU SAY THE BOTTOM RACK, DO YOU MEAN THIS THING
6 RIGHT HERE?

7 A YES.

8 Q WHAT DOES THAT PHOTO DEPICT?

9 A UH - THAT'S A CLOSE-UP OF THE BOTTOM RACK WHERE THE
10 BOOM BOX WAS TAKEN FROM.

11 Q AND WHEN YOU SAY - DO YOU MEAN IT WAS STORED IN THAT
12 AREA THERE?

13 A UH - YES. IT - IT MAY HAVE BEEN RESTING ON - ON THE
14 STUFF THAT'S KNOCKED OVER THERE.

15 Q WHAT DOES THIS PHOTO DEPICT?

16 A UH - THAT'S THE ENTIRE LIVING ROOM, WITH THE, UH,
17 BREAKFAST CART ON THE LEFT AND THE ENTERTAINMENT CENTER IN -
18 UP IN THE FAR RIGHT CORNER.

19 Q NOW, DID YOU SAY EARLIER THE BREAKFAST CART IS WHERE YOU
20 STORED THE BOOM BOX?

21 A YES, THAT'S CORRECT.

22 Q AND IS THAT IN THIS AREA OF THE PHOTOGRAPH?

23 A UM - IN THE ME- -- IN THE CORNER. THE BOTTOM CORNER
24 HERE.

25 Q RIGHT HERE?

- 1 A YES.
- 2 Q THAT'S WHERE THE BOOM BOX WAS STORED?
- 3 A YES.
- 4 Q AND WHERE WAS THE - THE SONY PLAY STATION STORED?
- 5 A UH - IN THE TOP RIGHT CORNER YOU CAN SEE - KIND OF SEE
- 6 THE ENTERTAINMENT CENTER THERE.
- 7 Q THAT'S THE ENTERTAINMENT CENTER?
- 8 A YES.
- 9 Q AND WHERE IS THE BACK DOOR TO YOUR APARTMENT?
- 10 A UH - MIDDLE TOP OF THE PICTURE.
- 11 Q RIGHT HERE?
- 12 A YES.
- 13 Q IS THAT THE DOOR THAT YOU OBSERVED BEING PULLED CLOSED
- 14 FROM THE OUTSIDE?
- 15 A UH - YES.
- 16 Q WHAT DOES THAT PHOTO DEPICT?
- 17 A UH - THAT'S MY LIVING ROOM AND THE ENTERTAINMENT CENTER.
- 18 Q PRETTY MUCH MORE - SIMILAR TO THE LAST PHOTO?
- 19 A YEAH, I GUESS IT IS.
- 20 Q OKAY. HOW FAR IS IT FROM THE BACK DOOR TO THE LOCATION
- 21 OF THE STEREO AND TO THE LOCATION OF THE PLAY STATION?
- 22 A UH - TO THE STEREO IT'S PROBABLY ABOUT FIFTEEN FEET.
- 23 AND TO THE PLAY STATION IT WAS PROBABLY LESS THAN TEN FEET
- 24 THERE.
- 25 Q DO YOU BELIEVE WHOEVER TOOK THESE ITEMS FROM THAT

1 LOCATION HAD TO ENTER YOUR APARTMENT?

2 A ABSOLUTELY.

3 Q AND YOU DID NOT GIVE PERMISSION FOR ANYONE TO ENTER?

4 A NO, I DIDN'T.

5 Q OKAY. DID YOU SEE MR. HAMILTON HOLDING YOUR PROPERTY
6 OUTSIDE THE APARTMENT?

7 A YES.

8 Q IN THE COURTYARD?

9 A YES.

10 Q NOW, YOU SAY YOU CALLED 911? IS THAT CORRECT?

11 A YES, I DID.

12 MR. STACK: AND, UH, YOUR HONOR, BOTH DEFENSE AND THE
13 STATE HAS STIPULATED TO THE 911 TAPE. AND I'LL PRESENT IT
14 TO - TO THE, UH - TO THE WITNESS AT THIS TIME.

15 THE COURT: ALL RIGHT. IS THAT CORRECT, MS. -
16 MS. JENKINSON?

17 MS. JENKINSON: YES, SIR, THAT IS CORRECT. WE'D JUST
18 ASK FOR THE WHOLE TAPE TO BE PLAYED.

19 THE COURT: ALL RIGHT.

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
21 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
22 HEARING OF THE JURY, OFF THE RECORD.)

23 (WHEREUPON, COURT RESUMED.)

24 MR. STACK: AND WE MOVE IT INTO EVIDENCE AS, UH, STATE'S
25 EXHIBIT NINETEEN.

1 THE COURT: ALL RIGHT. UH - STATE'S NINETEEN IS IN
2 EVIDENCE WITHOUT OBJECTION.

3 (WHEREUPON, STATE'S EXHIBIT NO. 19 WAS ADMITTED INTO
4 EVIDENCE.)

5 Q WILLIAM, I'D LIKE FOR YOU TO LISTEN TO THIS TAPE - YOUR
6 911 CALL - AND TELL ME IF IT'S AN ACCURATE DEPICTION OF YOUR,
7 UH - OF YOUR CALL.

8 (WHEREUPON 911 TAPE WAS PLAYED, IN THE PRESENCE OF THE
9 JURY.)

10 Q ALL RIGHT, WIL, I KNOW YOU WERE ONLY INVOLVED IN THE
11 FIRST PART OF THAT - THAT 911 CALL. THE PART THAT YOU WERE
12 INVOLVED IN, IS THAT AN ACCURATE AND TRUE DEPICTION OF YOUR
13 PHONE CALL TO THE 911 OPERATOR?

14 A YES.

15 Q WOULD YOU PLEASE DESCRIBE THE SHOW-UP WHEN YOU WERE
16 PRESENTED THE SECOND PERSON THAT WAS STOPPED BY THE POLICE?
17 THE ONE YOU IDENTIFIED AS THE DEFENDANT. WOULD YOU PLEASE
18 DESCRIBED THAT?

19 A UM - WE WERE - I WAS IN THE SQUAD CAR. HE WAS ON THE,
20 UH - THE LEFT SIDE ON - OF THE STREET. UM - WE CREPT BY
21 SLOWLY. UM - THERE WERE TWO OFFICERS ON - ON EACH SIDE OF
22 HIM.

23 UM - I RODE BY AND SAID - I SAID, THAT'S THE GUY. HE
24 SAID, ARE YOU SURE? DO YOU WANT TO MAKE ANOTHER PASS?

25 WE - WE NEVER STOPPED TO - TO - TO MAKE A POSITIVE I-D.

1 WE JUST KIND OF ROLLED BY THE FIRST TIME. HE SAID, DO YOU
2 WANT TO GO BACK AROUND ONE MORE TIME? WE WENT AROUND ONE
3 MORE TIME AND I MADE POSITIVE IDENTIFICATIONS.

4 Q AND THE FIRST TIME YOU SAW HIM, WAS HE WEARING ANY HEAD
5 GEAR?

6 A UM - IN MY BACKYARD HE WAS. BUT WHEN THE POLICE HAD HIM
7 THE FIRST TIME, HE WAS NOT.

8 Q AND THE SECOND TIME YOU SAW HIM AT THE SHOW-UP - AFTER
9 THE SECOND PASS - DID HE HAVE ANYTHING ON HIS HEAD?

10 A UH - YES. THEY HAD PUT A DOO-RAG ON HIM.

11 Q A BLUE - WHAT COLOR WAS THE DOO-RAG?

12 A THE - IT WAS A BLUE DOO-RAG.

13 Q THANK YOU, WIL. WILL YOU PLEASE ANSWER ANY QUESTIONS
14 THE DEFENSE COUNSEL WOULD HAVE?

15 A SURE.

16 THE COURT: THANK YOU, SOLICITOR. MS. JENKINSON?

17 MS. JENKINSON: THANK YOU, YOUR HONOR.

18 WILLIAM SHRYOCK MILLER, CROSS-EXAMINATION BY MS. JENKINSON:

19 Q MR. MILLER, WHEN YOU CAME DOWNSTAIRS AT YOUR HOUSE, THIS
20 ALL TOOK YOU BY SURPRISE, DIDN'T IT?

21 A YES, IT DID.

22 Q AND THIS HAPPENED IN 2004 - ALMOST TWO YEARS AGO?

23 A UH - YES, THAT'S CORRECT.

24 Q AND WHEN YOU CALLED THE POLICE TO DESCRIBE TO THEM WHAT
25 THE GUY THAT CAME IN YOUR HOUSE LOOKED LIKE, YOU SAID THAT HE

- 1 HAD, UM - A SCRAGGLY BEARD?
- 2 A YES.
- 3 Q A BLACK MALE?
- 4 A YES.
- 5 Q BLUE JEANS AND A GRAY TEE SHIRT?
- 6 A YES.
- 7 Q YOU DIDN'T TELL THEM AN ESTIMATED HEIGHT, DID YOU?
- 8 A I DON'T BELIEVE I DID.
- 9 Q AND YOU DIDN'T GIVE AN ESTIMATED WEIGHT?
- 10 A UH - NO.
- 11 Q AND YOU DIDN'T TELL THEM ANY SPECIAL CHARACTERISTICS?
- 12 A UM - OTHER THAN - EXCUSE ME. OTHER THAN THE FACIAL -
- 13 UH, THE FACIAL HAIR, NO.
- 14 Q NO SCARS OR TATTOOS - MARKINGS?
- 15 A NO.
- 16 Q EARRINGS?
- 17 A NO.
- 18 Q WHEN YOU SAW MR. HAMILTON BEING DETAINED BY
- 19 OFFICER RIVERS, WAS HE HANDCUFFED?
- 20 A UH - YES, I BELIEVE HE WAS.
- 21 Q AND HE HAD TWO OFFICERS ON EACH SIDE OF HIM?
- 22 A YES - OR, ONE - ONE ON EACH SIDE.
- 23 Q AND - AND YOU WENT BACK AGAIN TO TAKE A LOOK AT HIM
- 24 AGAIN?
- 25 A UH - YES, THAT'S CORRECT.

1 Q BECAUSE HE DIDN'T HAVE A HAT ON?

2 A UM - WELL, LIKE I SAID, WE WERE ROLLING BY. I GOT A
3 BRIEF LOOK AT HIM, AND THEY SAID, ARE YOU SURE? I SAID,
4 I'M - I'M SURE. AND HE SAID, WELL, LET'S GO BACK AROUND.
5 AND THE - THE OFFICER SUGGESTED THAT WE GO BACK AROUND.

6 Q THE OFFICERS PLACED THE DOO-RAG ON HIM?

7 A YES.

8 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
11 HEARING OF THE JURY, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 Q JUST ONE MORE QUESTION, MR. MILLER.

14 A OKAY.

15 Q THE FIRST TIME YOU SAW, UH, THE MAN BEING DETAINED BY
16 OFFICER RIVERS, YOU WEREN'T SURE 'TIL YOU WENT AGAIN - YOU
17 WENT BY AGAIN?

18 A I WAS - I WAS SURE. UM - AND THEN THE OFFICER SUGGESTED
19 THAT WE GO BACK AROUND.

20 Q HE TOOK YOU BY AGAIN?

21 A YES.

22 Q THAT'S ALL I HAVE.

23 MS. JENKINSON: THANK YOU, YOUR HONOR.

24 THE COURT: ANYTHING ON REDIRECT, SOLICITOR?

25 MR. STACK: JUST BRIEFLY, YOUR HONOR.

1 WILLIAM SHRYOCK MILLER, REDIRECT EXAMINATION BY MR. STACK:

2 Q WILLIAM, UH - JUST TO COVER A FEW POINTS. UH -
3 20 TRAPMAN STREET IS IN THE CITY OF CHARLESTON, IS THAT
4 CORRECT?

5 A YES, IT IS.

6 Q ALL RIGHT. AND THAT IS IN CHARLESTON COUNTY?

7 A YES.

8 Q OKAY. THE FIRST MAN WHO WAS PRESENTED TO YOU - THE ONE
9 YOU SAID WAS NOT THE MAN WHO BROKE INTO YOUR HOUSE - WAS THAT
10 PERSON OF AFRICAN DECENT ALSO?

11 A UH - YES, HE WAS.

12 Q BUT HE - YOU DETERMINED HE WAS NOT THE - THE BURGLAR?

13 A YEAH, THAT'S CORRECT.

14 Q OKAY. WHEN YOU WERE LOOKING AT HIM IN - AT---

15 MS. JENKINSON: OBJECTION, YOUR HONOR.

16 THE COURT: UM - LET ME HEAR THE QUESTION. WHAT - I'M
17 NOT SURE I KNOW WHAT---

18 Q WHEN YOU WERE LOOKING AT THE DEFENDANT IN YOUR BACK
19 COURTYARD, WERE YOU PAYING ATTENTION TO HIS FEATURES?

20 A YES.

21 MS. JENKINSON: I'M SORRY, I THOUGHT THAT---

22 THE COURT: ALL RIGHT.

23 MS. JENKINSON: ---THAT HE WAS GONNA ASK SOMETHING
24 DIFFERENT.

25 THE COURT: THANK YOU.

1 **MS. JENKINSON:** I APOLOGIZE.

2 **MR. STACK:** NOTHING FURTHER, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. RE- -- RE-CROSS?

4 **MS. JENKINSON:** NOTHING, YOUR HONOR.

5 **THE COURT:** THANK YOU. MR. MILLER, YOU MAY STEP DOWN.

6 **(WITNESS STEPPED DOWN.)**

7 **THE COURT:** SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

8 **MR. STACK:** THE STATE CALLS OFFICER THOMAS RIVERS.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
11 HEARING OF THE JURY, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 **MR. DURANT:** YOUR HONOR, MAY - MAY MR. MILLER BE EXCUSED
14 FROM THIS CASE? IS THERE ANY - ANY OBJECTION?

15 **MS. JENKINSON:** NO OBJECTION.

16 **(WITNESS EXCUSED.)**

17 **(WITNESS FORWARD.)**

18 **CLERK (MR. WILSON):** SIR, IF YOU WOULD, PLEASE WALK
19 AROUND AND BE SWORN.

20 SIR, IS YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE
21 BIBLE AND RAISE YOUR RIGHT HAND.

22 (WHEREUPON, THOMAS RIVERS WAS DULY SWORN AND TESTIFIED
23 AS FOLLOWS:)

24 **CLERK (MR. WILSON):** PLEASE BE SEATED. PLEASE STATE
25 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

1 MR. RIVERS: THOMAS RIVERS - R-I-V-E-R-S.

2 THOMAS RIVERS, DIRECT EXAMINATION BY MR. STACK:

3 Q GOOD AFTERNOON, OFFICER RIVERS. SIR, WHAT DO YOU DO FOR

4 A LIVING?

5 A I'M A, UH, INVESTIGATOR WITH THE CHARLESTON POLICE
6 DEPARTMENT, WARRANTS DIVISION.

7 Q AND HOW LONG HAVE YOU WORKED FOR THE CHARLESTON POLICE
8 DEPARTMENT?

9 A EIGHT YEARS, SIR.

10 Q BACK ON AUGUST 3RD OF 2004, WAS THIS THE JOB YOU HAD WITH
11 THE CHARLESTON POLICE DEPARTMENT---

12 A NO, SIR.

13 Q ---OR DID YOU HAVE ANOTHER EARLIER JOB?

14 A I WAS, UH, ASSIGNED TO TEAM ONE PATROL DIVISION AT THE
15 TIME.

16 Q CAN YOU PLEASE DESCRIBE TO THE JURY YOUR DUTIES AND
17 RESPONSIBILITIES IN THAT JOB?

18 A UM - I WAS A UNIFORMED POLICE OFFICER IN A MARKED UNIT,
19 UH, ANSWERING CALLS FOR SERVICE.

20 Q UH - DO YOU RECALL THE EVENTS OF AUGUST 3RD---

21 A YES---

22 Q ---2004?

23 A ---YES, SIR, I DO.

24 Q WOULD YOU PLEASE DESCRIBE TO THE JURY - IN DETAIL - YOUR
25 INVOLVEMENT IN THAT DAY?

1 A UH - ON THE DATE IN QUESTION, I WAS, UH, WORKING IN TEAM
2 ONE, WHICH IS, UH, PENINSULA CHARLESTON, NORTH OF CANNON
3 STREET. UM - A CALL WAS DISPATCHED TO 20 TRAPMAN STREET FOR
4 A BURGLARY IN PROGRESS.

5 UM - THE DESCRIPTION OF THE SUSPECT WAS A BLACK MALE,
6 UH, IN HIS LATE THIRTIES, WITH A SCRAGGLY BEARD, WEARING BLUE
7 JEANS, A GRAY SHIRT, BLUE HAT.

8 UH - I RESPONDED TO THE AREA, ALONG WITH A COUPLE OTHER
9 OFFICERS.

10 UM - BY THE TIME - I CAME DOWN RUTLEDGE AVENUE, TURNED
11 ONTO QUEEN STREET. UH - BY THE TIME I GOT TO QUEEN STREET,
12 UM, SERGEANT CONNOLLY, UH - A CO-WORKER OF MINE - HAD STOPPED
13 A - AN INDIVIDUAL, UH, NEAR QUEEN AND LOGAN.

14 UM - THERE WAS ANOTHER OFFICER OUT WITH HER, SO I
15 STOPPED BRIEFLY WITH HER. CONTINUED UP - UH, NORTH - ON
16 LOGAN STREET. AND AS I GOT IN FRONT OF NUMBER 91 - WHICH IS
17 JUST SOUTH OF MAGAZINE STREET - UH, I ENCOUNTERED THE
18 DEFENDANT, UM, MATCHING THE DESCRIPTION, UM, ALL SAVE FOR THE
19 BLUE HAT. HE HAD A BLUE DOO-RAG.

20 UM - GOT OUT WITH THE PARTY. UM, DETAINED HIM, AND, UH,
21 THE, UH, RESPONDING OFFICER THAT RESPONDED TO THE RES- --
22 RESIDENCE - OFFICER HARGROVE - BROUGHT THE WITNESS OVER. AND
23 THE, UH, WITNESS POSITIVELY IDENTIFIED HIM AS THE SAME
24 SUBJECT THAT WAS IN HIS HOUSE MAYBE TEN MINUTES EARLIER.

25 Q HOW LONG AFTER THE 911 CALL DID YOU SPOT THIS PARTICULAR

1 DEFENDANT?

2 A PROBABLY SEVEN OR EIGHT MINUTES AFTER, UH, THE CALL.
3 SEVEN OR EIGHT MINUTES TOPS, BECAUSE I BELIEVE I WAS ON SCENE
4 WITHIN FOUR MINUTES OF THE - OF BEING DISPATCHED.

5 Q WHEN YOU STOPPED THE DEFENDANT, DID YOU HAVE TO WAIT FOR
6 THE VICTIM TO BE BROUGHT TO YOUR LOCATION?

7 A I DID, SIR.

8 Q AND HOW LONG DID YOU HAVE TO WAIT?

9 A TWO TO THREE MINUTES.

10 Q WHY DID YOU START - STOP THIS PARTICULAR PERSON?

11 A UH - HE MATCHED THE DESCRIPTION AND HE WAS WITHIN THREE
12 BLOCKS OF THE CRIME SCENE.

13 Q AND WHAT WAS THE DEFENDANT WEARING AT THAT TIME?

14 A UH - BLUE JEANS, GRAY SHIRT, UM - AND, UH, HE HAD A BLUE
15 DOO-RAG. A DARK BLUE AND LIGHT BLUE - SORT OF A ROYAL BLUE
16 AND DARK BLUE.

17 Q AND WHERE DID THE IDENTIFICATION TAKE PLACE?

18 A RIGHT IN FRONT OF NUMBER 91 LOGAN.

19 Q 91 LOGAN STREET?

20 A YES, SIR.

21 MR. STACK: UH - WITH YOUR HONOR'S PERMISSION, I'D LIKE
22 THE, UH, WITNESS TO STEP DOWN. AND IF YOU WOULD, PLEASE
23 CIRCLE 91 LOGAN STREET.

24 THE COURT: YES, SIR, YOU MAY STEP DOWN.

25 (WHEREUPON, WITNESS STEPPED DOWN FROM THE WITNESS STAND

1 AND AROUND TO THE FRONT OF THE WITNESS STAND. WITNESS
2 APPROACHED THE BOARD AND CIRCLED 91 LOGAN STREET.)

3 A THIS IS, UH, MAGAZINE STREET - JUST SOUTH OF MAGAZINE.

4 Q THANK YOU, SIR.

5 (WHEREUPON, WITNESS RETURNED TO THE WITNESS STAND.

6 Q IS THE PERSON THAT THE DEFENDANT - CORRECTION. IS THE
7 PERSON THAT THE VICTIM IDENTIFIED IN THE COURTROOM TODAY?

8 A YES, YOUR HONOR - YEAH - YES, SIR.

9 Q WOULD YOU PLEASE POINT TO THAT PERSON AND DESCRIBED WHAT
10 HE OR SHE IS WEARING?

11 A UH - THE DEFENDANT SEATED AT THE TABLE. HE'S WEARING A
12 WHITE OXFORD SHIRT AND, UH - IT LOOKS LIKE GRAY SLACKS.

13 MR. STACK: YOUR HONOR, AT THIS TIME THE STATE ASKS THE
14 RECORD INDICATE THAT THE WITNESS HAS IDENTIFIED THE
15 DEFENDANT, MR. THOMAS CURTIS HAMILTON.

16 THE COURT: SO - SO IDENTIFIED.

17 Q DID ANYONE TRY TO INFLUENCE OR SUGGEST TO THE VICTIM
18 THEY SHOULD PICK OUT THIS DEFENDANT?

19 A I'M NOT AWARE OF THAT, SIR.

20 Q AFTER THE VICTIM IDENTIFIED THE DEFENDANT, WHAT DID
21 YOU DO.

22 A UH - PLACED HIM UNDER ARREST AND TRANSPORTED HIM TO, UH,
23 THE JAIL - OUR JAIL AT 180 LOCKWOOD. AND, UH, FILLED OUT THE
24 BOOKING SHEET AND THEN TURNED THE PRISONER OVER TO, UH,
25 OFFICER HARGROVE WHO WAS THE RESPONDING OFFICER TO THE

1 RESIDENCE.

2 Q NOW, WHEN THE, UH, VICTIM WAS DRIVEN BY YOUR LOCATION,
3 WAS THE DEFENDANT IN HANDCUFFS?

4 A I BELIEVE HE WAS.

5 Q AND WHY - WHY WOULD THAT BE?

6 A HE WAS DETAINED, UH, PENDING INVESTIGATION.

7 Q THANK YOU.

8 MR. STACK: BEG THE COURT'S---

9 A STAND- -- STANDARD PROCEDURE.

10 MR. STACK: ---BEG THE COURT'S INDULGENCE FOR ONE
11 MOMENT.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
14 HEARING OF THE JURY, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 Q UH - WHO - WHICH OFFICER DROVE THE - THE, UH, VICTIM TO
17 THE SHOW-UPS?

18 A OFFICER HARGROVE, SIR.

19 Q AND DO YOU KNOW WHERE OFFICER HARGROVE IS TODAY?

20 A HE'S ON ANNUAL LEAVE - HE'S ON VACATION.

21 Q AND IS THAT WHY HE'S NOT HERE TESTIFYING TODAY?

22 A YES, SIR.

23 Q THANK YOU.

24 MR. STACK: NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: ALL RIGHT. MS. JENKINSON?

1 MS. JENKINSON: THANK YOU, YOUR HONOR.

2 THOMAS RIVERS, CROSS-EXAMINATION BY MS. JENKINSON:

3 Q OFFICER, WHEN YOU GOT THE DISPATCH TO LOOK FOR, UM, I
4 BELIEVE, A BLACK MALE, GRAY TEE SHIRT, BLUE JEANS---

5 A YES, MA'AM.

6 Q ---HAT - BLUE HAT?

7 A YES, MA'AM.

8 Q NO HEIGHT?

9 A NO, NOT THAT I RECALL. NO HEIGHT AND WEIGHT.

10 Q NO OTHER SPECIAL CHARACTERISTICS LIKE---

11 A OTHER THAN---

12 Q ---TATTOOS?

13 A ---A - A SCRAGGLY BEARD WAS ALL THEY SAID.

14 Q WHEN YOU SAW MR. HAMILTON ON LOGAN STREET, WAS HE
15 RUNNING?

16 A NO, MA'AM.

17 Q OUT OF BREATH?

18 A NO, MA'AM.

19 Q AND HE DIDN'T HAVE A HAT ON?

20 A NO, MA'AM.

21 Q DID HE TELL YOU THAT HE HAD BEEN PAINTING IN THE AREA?

22 A I BELIEVE HE TOLD ME THAT HE HAD BEEN VISITING SOMEBODY
23 ON SHORT STREET, BUT I - I HONESTLY DON'T RECALL WHAT HE
24 SAID.

25 Q AND YOU DIDN'T INVESTIGATE THAT ANY FURTHER?

1 A NOT ME PERSONALLY, NO, MA'AM.

2 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
4 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
5 HEARING OF THE JURY, OFF THE RECORD.)

6 (WHEREUPON, COURT RESUMED.)

7 Q DO YOU KNOW IF ANYBODY INVESTIGATED THAT ANY FURTHER?

8 A I DO NOT. NO, MA'AM, I DON'T KNOW THAT.

9 Q THAT'S ALL I HAVE. THANK YOU.

10 THE COURT: REDIRECT, SOLICITOR?

11 MR. STACK: YES, YOUR HONOR, BRIEFLY.

12 THOMAS RIVERS, REDIRECT EXAMINATION BY MR. STACK:

13 Q OFFICER RIVERS, TELL US AGAIN ABOUT THE BLUE DOO-RAG.
14 WAS THE DEFENDANT WEARING IT WHEN YOU STOPPED HIM?

15 A I DON'T - I - I DON'T RECALL WHETHER HE WAS WEARING IT
16 OR NOT. MY - MY GUT INSTINCT IS THAT HE WAS NOT. I BELIEVE
17 IT WAS IN HIS BACK POCKET, BY I - I CAN'T SAY FOR SURE.

18 Q BUT HE DID HAVE A BLUE DOO-RAG?

19 A HE DID HAVE A BLUE, TWO-TONE DOO-RAG WITH HIM.

20 Q WITH HIM IN SOME MANNER?

21 A YES, SIR.

22 Q EITHER IN HIS POCKET OR ON HIS HEAD?

23 A YES, SIR.

24 Q THANK YOU.

25 THE COURT: RE-CROSS, MS. JENKINSON?

1 MS. JENKINSON: NO, YOUR HONOR. THANK YOU.

2 THE COURT: THANK YOU. OFFICER RIVERS, YOU MAY STEP
3 DOWN.

4 MR. RIVERS: THANK YOU, YOUR HONOR.

5 THE COURT: THANK YOU, SIR.

6 MR. STACK: YOUR HONOR, THE STATE ASKS THAT THIS WITNESS
7 BE EXCUSED.

8 THE COURT: ANY OBJECTIONS?

9 MS. JENKINSON: NO OBJECTION.

10 THE COURT: HE MAY BE EXCUSED.

11 MR. STACK: THANK YOU.

12 (WITNESS EXCUSED.)

13 THE COURT: YOU MAY CALL YOUR NEXT WITNESS, SOLICITOR.

14 MR. STACK: THE STATE CALLS SERGEANT HOLLY CONNOLLY.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
16 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
17 HEARING OF THE JURY, OFF THE RECORD.)

18 (WHEREUPON, COURT RESUMED.)

19 (WITNESS FORWARD.)

20 CLERK (MR. WILSON): MA'AM, IF YOU WOULD, PLEASE WALK
21 AROUND AND BE SWORN.

22 IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE BIBLE
23 AND RAISE YOUR RIGHT HAND.

24 (WHEREUPON, HOLLY ANN CONNOLLY WAS DULY SWORN AND
25 TESTIFIED AS FOLLOWS:)

1 CLERK (MR. WILSON): PLEASE BE SEATED. PLEASE STATE
2 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

3 MS. CONNOLLY: HOLLY ANN CONNOLLY. IT'S C-O-N-N-O-L-L-Y.

4 HOLLY ANN CONNOLLY, DIRECT EXAMINATION BY MR. STACK:

5 Q GOOD AFTERNOON, SERGEANT CONNOLLY. MA'AM, WHAT DO YOU
6 DO FOR A LIVING?

7 A I'M A POLICE OFFICER AT THE CITY, UM, POLICE DEPARTMENT.

8 Q AND HOW LONG HAVE YOU WORKED FOR THE CHARLESTON POLICE
9 DEPARTMENT?

10 A TWENTY-TWO YEARS.

11 Q WOULD YOU PLEASE DESCRIBE TO THE JURY YOUR DUTIES AND
12 RESPONSIBILITIES?

13 A UM - I'M THE ADMINISTRATIVE SERGEANT FOR TEAM TWO, WHICH
14 IS GONNA BE, UM, SOUTH OF, UH, CANNON STREET.

15 Q DO YOU RECALL - DO YOU RECALL IF YOU WERE ON DUTY ON
16 AUGUST 3RD OF 2004?

17 A YES, SIR.

18 Q DID YOU RESPOND TO A CALL THAT DAY?

19 A I DID.

20 Q WOULD YOU PLEASE DESCRIBE TO THE JURY - IN DETAIL - THE
21 NATURE OF THAT CALL AND YOUR INVOLVEMENT WITH IT? AND PLEASE
22 TAKE YOUR TIME.

23 A UM - THIS OCCURRED ON, UH, AUGUST 3RD 2004. AND IT WAS
24 IN, UH, THE LATE AFTERNOON HOURS - ABOUT TWO-FOURTEEN.

25 AND A CALL WAS DISPATCHED TO, UH, 20 TRAPMAN STREET IN

1 REFERENCE TO A BURGLARY IN PROGRESS.

2 UM - MY OFFICE IS LOCATED AT 1-A WILSON STREET, WHICH
3 IS, UM, PROBABLY ABOUT A BLOCK, A BLOCK-AND-A-HALF FROM WHERE
4 THIS LOCATION WAS. SO WE GOT THERE FAIRLY QUICKLY.

5 UM - WHEN I ARRIVED, I HAD ANOTHER INVESTIGATOR WITH ME.
6 AND ONE OF MY DUTIES IS TO TEACH THESE INVESTIGATORS ON HOW
7 TO TAKE A STATEMENT AND WHAT TO DO WHEN YOU GET TO A CRIME
8 SCENE.

9 AND WHEN - WHEN WE ARRIVED, UM, OFFICER HARGROVE WAS
10 ALREADY PRESENT AND WAS TALKING TO, UM, THE VICTIM. THERE
11 WAS TWO INDIVIDUALS THERE - A VICTIM AND ANOTHER INDIVIDUAL.
12 AND, UM, I BEGAN TAKING HIS STATEMENT.

13 IN THE MEANTIME, UH, A BOLO WAS BROADCASTED ON WHAT THE
14 SUSPECT HAD LOOKED LIKE. AND, UM, WHEN WE WERE TAKING THE
15 STATEMENT, THE VICTIM WAS VERY PARTICULAR ON WHAT HE LOOKED
16 LIKE. UM - HE GAVE A FAIRLY GOOD, UH, DESCRIPTION OF HIM,
17 AND THAT WAS BROADCASTED.

18 HE ALSO INDICATED TO ME THAT, UM, HE CONFRONTED HIM
19 OUTSIDE HIS LITTLE COURTYARD AND, UM, THEY HAD A
20 CONVERSATION.

21 Q HOW LONG AFTER THE 911 CALL DID YOU LOCATE THE FIRST
22 POSSIBLE SUSPECT THAT WAS PRESENTED TO THE VICTIM?

23 A HOW LONG AFTER? UM - PROBABLY JUST A COUPLE OF MINUTES.
24 IT WASN'T - IT WASN'T VERY LONG.

25 Q AND WHERE DID YOU, UH, STOP THE FIRST MAN WHO WAS

1 PRESENTED FOR IDENTIFICATION?

2 A UM - THAT WAS, UM, RIGHT AT QUEEN STREET. RIGHT IN
3 FRONT OF THE QUEEN STREET AND, UH, LOGAN. WHICH IS A
4 LITTLE - IT'S CALLED THE, UH, QUEEN STREET GROCERY STORE.

5 Q AND IS - DID YOU SAY THAT'S AT THE CORNER OF
6 QUEEN STREET AND LOGAN?

7 A UH-HUH - YES, SIR.

8 Q WAS THE VIC- -- WAS THE VICTIM DRIVEN TO THIS SUSPECT,
9 OR WAS THE SUSPECT TAKEN TO THE, UH, VICTIM?

10 A NO, THE - THE VICTIM - THE VICTIM IS ALWAYS TAKEN TO
11 WHERE THE SUSPECT IS.

12 Q AND WHY IS THAT?

13 A WELL, BASICALLY SO, IF THE SUSPECT IS BACK AT THAT
14 PARTICULAR LOCATION - IS BROUGHT BACK TO THE SCENE, UM - YOU
15 KNOW, EVIDENCE COULD BE TAINTED. UM - IDENTIFICATION COULD
16 BE TAINTED. UM - IT'S BETTER TO ALWAYS TAKE THE VICTIM TO
17 THE SUSPECT WHERE HE IS.

18 Q SO YOU---

19 A SO YOU DON'T BRING THAT SUSPECT BACK TO THAT CRIME
20 SCENE.

21 Q OKAY. AND WHO DROVE THE VICTIM IN THIS CASE?

22 A UM - I BELIEVE IT WAS OFFICER HARGROVE.

23 Q AND IS HE ON ANNUAL LEAVE PRESENTLY?

24 A I BELIEVE SO, YES, SIR.

25 Q WHEN YOU STOPPED THE FIRST SUSPECT, DID YOU HAVE TO WAIT

1 WITH HIM FOR THE VICTIM TO BE BROUGHT OUT TO YOU?

2 A UM - YES. I BELIEVE - YES.

3 Q DID THE VICTIM EVER SAY THAT YOUR SUSPECT WAS THE
4 BURGLAR?

5 A NO - NO.

6 Q WHAT DID YOU DO THEN?

7 A I - I DID A FIELD, UH, INTERVIEW CARD AND - AND RELEASED
8 HIM.

9 Q DID OFFICER HARGROVE THEN DRIVE THE VICTIM OVER TO
10 OFFICER RIVERS ON LOGAN STREET?

11 A THAT'S CORRECT.

12 Q AND SO OFFICER RIVERS WAS ALSO WAITING FOR THE VICTIM TO
13 BE BROUGHT OUT TO HIM?

14 A THAT'S CORRECT. THERE WAS TWO PEOPLE THAT WE STOPPED
15 THAT - THAT AFTERNOON.

16 Q WHEN THE VICTIM - WILLIAM MILLER - SAID YOUR SUSPECT
17 THAT YOU STOPPED WAS NOT THE BURGLAR, DID HE SEEM HESITANT?
18 DID HE SEEM CONFIDENT?

19 A NO, HE WAS - HE WAS CONFIDENT.

20 Q HE WAS CONFIDENT THAT YOUR MAN WAS NOT THE BURGLAR?

21 A RIGHT.

22 Q OKAY. ON A DIFFERENT TOPIC---

23 A WHEN WE CAME - THEY TRANSMITTED OVER THE RADIO, NO, THAT
24 WASN'T HIM.

25 Q OKAY. UH - YOU SAY YOU STOPPED YOUR SUSPECT AT THE

1 CORNER OF WHERE?

2 A IT WAS QUEEN AND, UM - QUEEN AND LOGAN.

3 MR. STACK: IF I COULD ASK THE - THIS WITNESS TO STEP
4 DOWN BRIEFLY? WOULD YOU PLEASE INDICATE ON THE MAP WHERE?

5 THE COURT: YES, SIR, SHE MAY STEP DOWN.

6 (WHEREUPON, WITNESS STEPPED DOWN FROM THE WITNESS STAND
7 AND AROUND TO THE FRONT OF THE WITNESS STAND.)

8 Q PLEASE CIRCLE AND PLACE AN 'X' WHERE YOU STOPPED YOUR
9 PARTICULAR VICTIM - SUSPECT.

10 (WHEREUPON, WITNESS COMPLIED WITH REQUEST.)

11 Q GREAT. THANK YOU VERY MUCH.

12 (WHEREUPON, WITNESS RETURNED TO WITNESS STAND.)

13 Q SO IN TERMS OF THE SEQUENCE OF EVENTS, THE BURGLARY
14 OCCURRED AT TRAPMAN STREET?

15 A YES, SIR.

16 Q AND THEN THE VICTIM WAS BROUGHT TO YOUR LOCATION AT
17 QUEEN AND LOGAN STREET?

18 A THAT'S CORRECT.

19 Q AND THEN THE VICTIM WAS TAKEN - OR, WAS THE VICTIM TAKEN
20 NORTH, UP TO 91 LOGAN STREET TO WHERE OFFICER RIVERS---

21 A THAT'S CORRECT.

22 Q GOOD. THANK - UH, ON A DIFFERENT TOPIC...

23 MR. STACK: MAY I APPROACH THE WITNESS, YOUR HONOR?

24 THE COURT: YES, SIR.

25 Q I'D LIKE TO HAND YOU STATE'S EXHIBIT NUMBER TWENTY-THREE

1 AND ASK YOU TO REVIEW THAT DOCUMENT.

2 A YES, SIR.

3 Q WHAT IS THAT DOCUMENT?

4 A THIS IS A SEARCH WARRANT THAT I PREPARED FOR, UM, THE
5 SUSPECT'S CLOTHING.

6 Q AND HOW DID YOU GET INVOLVED IN ISSUING A SUBPOENA FOR
7 THE SUSPECT'S CLOTHING?

8 A WELL, WHEN WE, UM - WHAT HAPPENS IS, WHEN - WHEN WE HAVE
9 A - A CRIME OF THIS NATURE AND, UM, CLOTHING IS PART OF THE
10 IDENTIFICATION - WHICH THE CLOTHING WAS BROADCASTED OVER THE
11 RADIO - UM, WE LIKE TO SECURE THE CLOTHING.

12 THAT WAS NOT DONE AT OUR POLICE DEPARTMENT, AND USUALLY
13 IT - IT IS.

14 ONCE THEY ARE TRANSPORTED TO THE CHARLESTON COUNTY
15 DETENTION CENTER, THE DETECTIVE HAS TO GET A SEARCH WARRANT
16 TO OBTAIN THOSE CLOTHES, AND THAT'S WHAT THIS IS.

17 Q I'M NOW GOING TO PRESENT TO YOU STATE'S EXHIBITS
18 TWENTY - CORRECTION.

19 MR. STACK: AT THIS TIME, THE STATE MOVES FOR, UH,
20 STATE'S EXHIBIT TWENTY-THREE TO BE MOVED INTO EVIDENCE.

21 THE COURT: WHAT - WHAT IS TWENTY-THREE?

22 MR. STACK: TWENTY-THREE IS THE, UH, SEARCH WARRANT, UH,
23 THAT WAS ISSUED.

24 THE COURT: MAY I SEE IT, PLEASE?

25 MR. STACK: OF COURSE, YOUR HONOR.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER 23 WAS HANDED TO
2 THE COURT FOR REVIEW.)

3 THE COURT: THE STATE'S TWENTY-THREE, MS. JENKINSON?

4 MS. JENKINSON: YES, SIR.

5 THE COURT: DO YOU HAVE ANY OBJECTION?

6 MR. KENT-JENKINSON: I DID - I - I DO - I DON'T HAVE AN
7 OBJECTION. SORRY---

8 THE COURT: YOU DO NOT HAVE AN OBJECTION TO STATE'S
9 TWENTY-THREE?

10 MS. JENKINSON: ---NO, SIR.

11 THE COURT: ALL RIGHT. STATE'S TWENTY-THREE IS, UM, IN
12 EVIDENCE WITHOUT OBJECTION.

13 MR. STACK: THANK YOU, YOUR HONOR.

14 (WHEREUPON, STATE'S EXHIBIT NO. 23 WAS ADMITTED INTO
15 EVIDENCE.)

16 Q UH - SERGEANT CONNOLLY, WHEN DID YOU PICK UP THE
17 CLOTHES?

18 A THAT WOULD HAVE BEEN ON AUGUST 5TH.

19 Q IS THAT A DAY OR TWO AFTER---

20 A TWO DAYS.

21 Q ---THE INCIDENT?

22 A TWO DAYS AFTERWARDS, YES, SIR.

23 Q AND, AGAIN - IN CASE I MISSED IT - WHERE DID YOU PICK UP
24 THE CLOTHES FROM?

25 A THE CHARLESTON DETENTION CENTER.

1 Q OKAY. NOW, I'M NOW GONNA SHOW YOU STATE'S EXHIBITS
2 TWENTY, TWENTY-ONE, AND TWENTY-TWO, AND ASK IF YOU CAN
3 IDENTIFY THESE OBJECTS.

4 THIS IS STATE'S EXHIBIT TWENTY.

5 (WHEREUPON, STATE'S EXHIBIT TWENTY WAS PRESENTED TO THE
6 WITNESS.)

7 Q STATE'S EXHIBIT TWENTY-ONE.

8 (WHEREUPON, STATE'S EXHIBIT TWENTY-ONE WAS PRESENTED TO
9 THE WITNESS.)

10 Q AND STATE'S EXHIBIT TWENTY-TWO.

11 (WHEREUPON, STATE'S EXHIBIT TWENTY-TWO WAS PRESENTED TO
12 THE WITNESS.)

13 Q ARE YOU ABLE TO RECOGNIZE THESE OBJECTS?

14 A YES, SIR.

15 Q AND WHAT ARE THEY?

16 A THOSE ARE THE ITEMS THAT, UM, I RETRIEVED FROM THE, UH,
17 CHARLESTON DETENTION CENTER.

18 Q DOES THAT MEAN THOSE ARE THE CLOTHES THAT, UH,
19 MR. HAMILTON WAS WEARING WHEN HE WAS ARRESTED?

20 A THAT'S CORRECT.

21 Q FOR THE RECORD, IS THAT A GRAY SHIRT?

22 A YES, SIR, IT IS.

23 Q AND A PAIR OF BLUE JEAN?

24 A YES, SIR.

25 Q AND IS THAT A BLUE DOO-RAG?

1 A YES, SIR.

2 Q WHEN YOU WERE RESPONDING TO THE CALL ON AUGUST 3RD, DID
3 YOU HEAR A DESCRIPTION - THE DESCRIPTION GIVEN BY THE 911
4 OPERATOR?

5 A YES, SIR, I DID.

6 Q DO THOSE CLOTHES FIT THAT DESCRIPTION?

7 A YES, THEY DO.

8 MR. STACK: BEG THE COURT'S INDULGENCE FOR ONE MOMENT.

9 THE COURT: YES, SIR.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
12 HEARING OF THE JURY, OFF THE RECORD.)

13 (WHEREUPON, COURT RESUMED.)

14 Q ARE THEY IN SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU
15 COLLECTED THEM AT THE CHARLESTON COUNTY DETENTION CENTER?

16 A YES, SIR.

17 MR. STACK: AT THIS TIME THE STATE ASKS THAT, UH,
18 THE STATE'S EXHIBITS, MARKED FOR IDENTIFICATION - TWENTY,
19 TWENTY-ONE, AND TWENTY-TWO - BE MOVED INTO EVIDENCE.

20 THE COURT: MS. JENKINSON?

21 MS. JENKINSON: WITHOUT OBJECTION.

22 THE COURT: ALL RIGHT. STATE'S TWENTY, TWENTY-ONE, AND
23 TWENTY-TWO ARE IN EVIDENCE WITHOUT OBJECTION.

24 (WHEREUPON, STATE'S EXHIBIT NOS. 20, 21, AND 22 WERE
25 ADMITTED INTO EVIDENCE.)

1 **MR. STACK:** YOUR HONOR, I HAVE NOTHING FURTHER. PLEASE,
2 SERGEANT, IF YOU WOULD, ANSWER ANY QUESTIONS DEFENSE COUNSEL
3 MAY HAVE.

4 **THE COURT:** THANK YOU, SOLICITOR. MS. JENKINSON, YOU
5 MAY---

6 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

7 **THE COURT:** ---QUESTION THE WITNESS.

8 **HOLLY ANN CONNOLLY, CROSS-EXAMINATION BY MS. JENKINSON:**

9 Q GOOD AFTERNOON, SERGEANT CONNOLLY.

10 A GOOD AFTERNOON.

11 Q THIS SEARCH WARRANT HAS - IT CONTAINS A LIST OF
12 EVERYTHING THAT YOU PICKED UP FROM THE JAIL?

13 A (NO RESPONSE.)

14 Q IS THAT CORRECT?

15 A I BELIEVE SO.

16 Q AND SO THAT WOULD INCLUDE ANY AND ALL CLOTHES THAT HE
17 HAD ON WHEN HE WAS ARRESTED?

18 A UM - USUALLY I JUST SECURE THE CLOTHES ON THE OUTER.
19 HIS UNDERWEAR, IF THEY WEREN'T SHOWING, I PROBABLY WOULDN'T
20 HAVE TAKEN THOSE.

21 IT DEPENDS ON - WHEN I ASK THE DETECTIVE OR THE
22 DETENTION OFFICER THAT I NEED HIS CLOTHING - CLOTHING, THEY
23 USUALLY PUT IT IN A BAG AND THEY - THEY GIVE IT TO ME AND
24 THEN I GO THROUGH IT.

25 Q THOSE ITEMS THAT YOU HAVE IN FRONT OF YOU, THOSE AREN'T

1 ALL THE ITEMS THAT YOU PICKED UP FROM THE JAIL BELONGING TO
2 THOMAS HAMILTON, ARE THEY?

3 A UM - NO, I DON'T BELIEVE SO. I THINK THERE WERE SOME
4 SHOES.

5 Q DID YOU PICK UP A BAG OF - OF THINGS FROM MR. HAMILTON?

6 A FROM THE DETENTION CENTER?

7 Q YES.

8 A YES.

9 Q DID YOU PICK UP THESE SHOES?

10 A RIGHT.

11 Q AND DID YOU PICK UP THIS WHITE TEE SHIRT?

12 A THAT'S CORRECT.

13 Q AND YOU PICKED UP THESE SHORTS?

14 A THEY WERE - THEY WERE IN THE - IN THE BAG.

15 Q AS WELL AS A BELT, AND IT LOOKS LIKE SHOELACES?

16 A THAT'S CORRECT.

17 Q THAT'S ALL I HAVE. THANK YOU, SERGEANT CONNOLLY.

18 THE COURT: ANYTHING IN REDIRECT, SOLICITOR?

19 MR. STACK: NO, YOUR HONOR.

20 THE COURT: THANK YOU, SERGEANT, YOU MAY STEP DOWN.

21 MR. STACK: YOUR HONOR, THE STATE WOULD ASK THIS, UH,
22 WITNESS MAY BE EXCUSED?

23 THE COURT: ALL RIGHT. ANY OBJECTIONS, MS. JENKINSON?

24 MS. JENKINSON: NO OBJECTION, YOUR HONOR.

25 THE COURT: THANK YOU, SERGEANT. YOU MAY BE EXCUSED.

1 (WITNESS EXCUSED.)

2 THE COURT: SOLICITOR, CALL YOUR NEXT WITNESS.

3 MR. STACK: THE STATE CALLS MS. ANITA MAESTAS.

4 (WITNESS FORWARD.)

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
6 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
7 HEARING OF THE JURY, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 CLERK (MR. WILSON): MA'AM, IF YOU WOULD, PLEASE PLACE
10 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND.

11 (WHEREUPON, ANITA MARIE MAESTAS WAS DULY SWORN AND
12 TESTIFIED AS FOLLOWS:)

13 CLERK (MR. WILSON): PLEASE BE SEATED. IF YOU WOULD,
14 PLEASE STATE YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

15 MS. MAESTAS: ANITA MARIE MAESTAS - M-A-E-S-T-A-S.

16 ANITA MARIE MAESTAS, DIRECT EXAMINATION BY MR. STACK:

17 Q GOOD AFTERNOON, MA'AM. MA'AM, WHAT DO YOU DO FOR A
18 LIVING?

19 A I'M A CRIME SCENE TECHNICIAN WITH THE CHARLESTON POLICE
20 DEPARTMENT.

21 Q AND HOW LONG HAVE YOU WORKED FOR THE CHARLESTON POLICE
22 DEPARTMENT?

23 A I'VE WORKED FOR THE DEPARTMENT FOR OVER FIVE YEARS.
24 TWO-AND-A-HALF YEARS IN THE CRIME SCENE UNIT.

25 Q OKAY. WILL YOU PLEASE DESCRIBE TO THE JURY - IN

1 DETAIL - YOUR DUTIES AND RESPONSIBILITIES IN THAT PARTICULAR
2 JOB?

3 A AS A CRIME SCENE TECHNICIAN, IT'S OUR DUTY TO ARRIVE
4 AT A---

5 COURT REPORTER: LEAN BACK, PLEASE.

6 A I'M SORRY. TO ARRIVE AT A POSSIBLE SCENE, TO ANALYZE
7 WHAT'S HAPPENED, TO COLLECT, PRESERVE EVIDENCE THAT IS THERE,
8 AND MOSTLY DO FINGERPRINT ANALYSIS OR DUST FOR FINGERPRINTS
9 AND TAKE PHOTOGRAPHS AND COLLECT ANY EVIDENCE THAT'S THERE.

10 Q DO YOU RECALL IF YOU WERE ON DUTY ON AUGUST 3RD 2004?

11 A YES, I WAS.

12 Q DID YOU RESPONSE TO A CALL THAT DAY?

13 A YES, SIR.

14 Q WOULD YOU PLEASE DESCRIBE - IN DETAIL - YOUR INVOLVEMENT
15 IN THAT CALL?

16 A I WAS CALLED TO THAT LOCATION IN REFERENCE TO A BURGLARY
17 THAT HAD JUST OCCURRED. I RECEIVED - I CAME ON SCENE, THEY
18 STATED THAT THEY HAD MADE AN ARREST. THEY NEEDED PHOTOGRAPHS
19 OF THE AREA, THE ITEMS THAT WERE HANDLED, AND PROCEEDED TO DO
20 THOSE THINGS. AND THAT WAS THE EXTENT OF THE CALL.

21 Q THANK YOU. MA'AM, IF YOU'LL LOOK BEHIND YOU, THIS IS
22 STATE'S EXHIBIT NUMBER SEVEN, WHICH IS ALREADY ENTERED INTO
23 EVIDENCE. DID YOU TAKE THIS PHOTOGRAPH?

24 A YES, SIR, I DID.

25 Q AND, MA'AM, WHAT DOES IT DEPICT?

1 A IT IS, UH, SHOWING A BOOM BOX THAT WAS HANDLED BY THE
2 SUSPECT.

3 Q AND WHAT IS THIS ON TOP OF THE BOOM BOX?

4 A UM - THAT IS QUITE A LAYER OF DUST.

5 Q DOES THAT IMPACT - DOES DUST ON TOP OF A - AN OBJECT
6 IMPACT YOUR ABILITY TO INVESTIGATE?

7 A IT DOES. THE SURFACES ON ITEMS - UH, THE ROUGH SURFACE,
8 ALONG WITH THE ADDITION OF THE LAYER OF DUST THAT IS ON THE
9 ITEM, PROHIBITS US FROM TRYING TO GET FINGERPRINTS.

10 Q HOW SO? WHY?

11 A WHEN YOU HAVE FINGERPRINTS, WHAT YOU'RE DOING IS, YOU'RE
12 TAKING THE OILS THAT YOU HAVE ACCUMULATED ON YOUR HANDS AND
13 WHEN YOU TOUCH THE ITEM. YOU'RE ACTUALLY LEAVING A PICTURE,
14 BASICALLY, OF YOUR FINGERPRINTS. THE RIDGE DETAILS OFF YOUR
15 HANDS.

16 WHEN YOU HAVE A LAYER OF DUST, WHAT THAT - ALL YOU'RE
17 DOING IS YOU'RE BRING THAT DUST BACK UP. YOU'RE NOT LEAVING
18 A DEPOSIT OF YOUR FINGERPRINTS BEHIND, YOU'RE JUST REMOVING
19 THE DUST THAT'S THERE.

20 Q BASED ON THE DUST ON THAT OBJECT, DID YOU DECIDE TO TAKE
21 FINGERPRINTS OR NOT TO TAKE FINGERPRINTS?

22 A WE DID NOT AT THAT TIME.

23 Q OKAY. AND WHY IS THAT?

24 A BECAUSE OF THE SURFACE OF THE - THE ITEM ITSELF. IT WAS
25 A ROUGH SURFACE. AND, THE EXTENT OF THE DUST THAT WAS ON THE

1 ITEMS.

2 Q NOW, HOW DOES A ROUGH SURFACE IMPACT THE ABILITY TO TAKE
3 A FINGERPRINT?

4 A THE PERFECT OR THE IDEAL SURFACE FOR PRINT - A
5 FINGERPRINT IS A CLEAN, SMOOTH, NONPOROUS SURFACE LIKE A
6 PIECE OF GLASS.

7 IF YOU HAVE A ROUGH SURFACE, THE OILS ARE GONNA GO INTO
8 THE SURFACE AND YOU'RE NOT GONNA LEAVE A PRINT BEHIND.

9 Q IF THAT OBJECT IN THAT PICTURE WAS CLEAN AND SMOOTH,
10 WOULD YOU HAVE TAKEN FINGERPRINTS?

11 A IF IT WAS CLEAN, I MIGHT HAVE ATTEMPTED IT. BUT, THE
12 CHANCES OF RECEIVING A PRINT OFF OF THE ITEM - JUST FROM THE
13 EXPERIENCE OF PROCESSING ITEMS TO THAT NATURE - THE
14 LIKELIHOOD WOULD HAVE BEEN VERY SMALL, IF ANY AT ALL.

15 Q OKAY. WOULD YOU PLEASE - THAT - IS THIS ANOTHER PHOTO
16 THAT YOU TOOK AT THE CRIME SCENE?

17 A YES, SIR, IT IS. WE USUALLY TRY TO TAKE SEVERAL ANGLES
18 OF THE ITEMS.

19 Q AND WHAT DOES THAT DEPICT?

20 A IT'S THE SAME ITEM, IT'S JUST SHOWING THE FRONT OF IT.
21 AND YOU CAN SEE WHERE THE LAYER OF DUST HAS BEEN DISTURBED,
22 AND THE DUST HAS ACTUALLY BEEN REMOVED.

23 Q AND WHAT DOES THIS PHOTO DEPICT?

24 A THAT WAS THE PLAY STATION - THE PORTABLE PLAY STATION
25 ITEM - GAME BOX THAT WAS TAKEN.

1 Q AND DID YOU ACTUALLY TAKE THAT, UH, PHOTOGRAPH?

2 A YES, I DID.

3 Q AND DID - WAS THERE DUST ON THAT OBJECT?

4 A THERE WAS AS WELL.

5 Q AND WAS THE SURFACE SMOOTH OR ROUGH?

6 A IT WAS A ROUGH SURFACE AS WELL.

7 Q DID - BASED ON THAT, DID YOU DECIDE TO TAKE FINGERPRINTS
8 OR NOT?

9 A NO, WE DID NOT.

10 MR. STACK: BEG THE COURT'S INDULGENCE FOR ONE MOMENT.

11 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
12 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
13 HEARING OF THE JURY, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 MR. STACK: THANK YOU, YOUR HONOR. WE HAVE NO FURTHER
16 QUESTIONS.

17 IF YOU WOULD, PLEASE ANSWER ANY QUESTIONS DEFENSE
18 COUNSEL MAY HAVE.

19 MS. MAESTAS: YES, SIR.

20 THE COURT: THANK YOU, SOLICITOR. MS. JENKINSON?

21 MS. JENKINSON: THANK YOU, YOUR HONOR.

22 ANITA MARIE MAESTAS, CROSS-EXAMINATION BY MS. JENKINSON:

23 Q GOOD AFTERNOON.

24 A HELLO.

25 Q YOU'VE BEEN WITH C-P-D FOR FIVE YEARS?

1 A A LITTLE OVER FIVE YEARS, YES, MA'AM.

2 Q AND TWO-AND-A-HALF OF THOSE ARE WITH CRIME SCENE?

3 A YES, MA'AM.

4 Q AND YOU HAVE SPECIAL TRAINING FOR THAT, DON'T YOU?

5 A YES, MA'AM, I HAVE.

6 Q PLEASE TELL THE JURY WHAT THAT SPECIAL TRAINING IS.

7 A I HAVE A BACHELOR OF SCIENCE IN CHEMISTRY. I HAVE ALSO
8 RECEIVED AN EXTENSIVE IN-HOUSE TRAINING. I'VE ALSO ATTENDED
9 THE NATIONAL FORENSIC ACADEMY, AND I'VE ALSO RECEIVED A
10 CERTIFICATION THROUGH THE INTERNATIONAL IDENTIFICATION -
11 ASSOCIATION OF IDENTIFICATION AS A CRIME SCENE SPECIALIST.

12 Q AND YOU HAVE TO BE RE-CERTIFIED IN THOSE AREAS AS WELL?

13 A UM - FOR THE I-I CERTIFICATION, EVERY FIVE YEARS. AND
14 WE ALSO DO PERIODIC IN-HOUSE TRAINING AS WELL.

15 Q AND YOUR WORK IS VERY IMPORTANT IN SOLVING CASES?

16 A YES, MA'AM.

17 Q AND I BELIEVE YOU TESTIFIED EARLIER THAT IT IS YOUR JOB
18 TO COLLECT AND PRESERVE A CRIME SCENE?

19 A YES, MA'AM.

20 Q AND IT MAY BE THE CASE THAT YOUR WORK CAN SOLIDIFY A
21 CERTAIN CASE?

22 A IT CAN, YES, MA'AM.

23 Q MEANING THAT YOU CAN MAKE - YOUR SCIENTIFIC EVIDENCE
24 THAT YOU FIND CAN MAKE A CASE STRONGER?

25 A IN SOME INSTANCES IT CAN. UM - WE'RE THERE TO COLLECT

1 THE FACTS THAT'S THERE, NOT TO PROVE ONE WAY OR THE OTHER.
2 BUT, JUST TO COLLECT THE EVIDENCE.

3 Q SURE. BUT IT MAY CONFIRM, UM, WHAT OTHER INVESTIGATORS
4 AND OFFICERS HAVE - HAVE FOUND OUT?

5 A IT CAN, YES..

6 Q AND THEN, YOUR JOB IS TO REPORT THESE FINDINGS?

7 A YES, MA'AM.

8 Q YOU WRITE A REPORT?

9 A YES, MA'AM.

10 Q UM - AND THAT REPORT GOES TO OTHER OFFICERS INVOLVED IN
11 THE CASE?

12 A UM - IT'S A STANDARD REPORT, AND IT GOES TO THE
13 DEPARTMENT AND IT GOES INTO THE RECORDS.

14 Q SO IT GOES TO, UM, THE SOLICITOR'S OFFICE---

15 A I---

16 Q ---AS WELL AS THE DEFENSE LAWYERS?

17 A ---I BELIEVE, IF THEY REQUEST IT, IT IS AVAILABLE.

18 Q SO IF YOU, FOR - FOR EXAMPLE, FOUND FINGERPRINTS, THAT
19 MAY CONFIRM THAT THE OFFICERS ARRESTED THE CORRECT GUY?

20 A YOU'D JUST HAVE THE PRINTS THAT ARE ON THERE. IF THERE
21 WAS ANYTHING COLLECTED, IT CAN PROVE OR DISPROVE. THERE'S -
22 I MEAN, IT'S JUST SHOWING WHO'S TOUCH IT. IT COULD BE THE
23 VICTIM'S, IT COULD BY ANYBODY'S PRINTS.

24 Q SURE - SURE. BUT IF, UM, SOME FINGERPRINTS THAT BELONG
25 TO SOMEBODY IN CUSTODY WERE FOUND ON SOME ITEMS WHERE HE

1 WASN'T ALLOWED, THAT WOULD SOLIDIFIED A CASE FOR A
2 PROSECUTOR, WOULDN'T IT?

3 A YES, MA'AM.

4 Q AND YOU DIDN'T DO ANY FINGERPRINTS IN THIS CASE?

5 A NO. DUE TO THE CIRCUMSTANCES, WE DID NOT.

6 Q AND THAT'S BECAUSE IT WAS DUSTY?

7 A YES, MA'AM. DUE TO THE SURFACES AND THE - THE DUST THAT
8 WAS ACCUMULATED ON THE ITEMS, IT WASN'T PRUDENT TO
9 FINGERPRINT.

10 Q DID YOU TRY?

11 A NO, MA'AM, WE DID NOT. THERE'S NO - THE EXPERIENCE THAT
12 I HAVE IN PROCESSING ITEMS TO THIS NATURE BEFORE, THERE WAS
13 NO REASONABLE EXPLANATION TO PRINT.

14 Q ARE SMOOTH SURFACES THAT YOU NEED AS TO TAKE
15 FINGERPRINTS FROM? (SIC)

16 A YES, MA'AM.

17 Q OKAY. DID YOU CHECK ANYWHERE ELSE IN THE HOUSE FOR
18 FINGERPRINTS?

19 A THE SURFACES THAT WERE THERE - WE HAD THE TWO ITEMS THAT
20 WERE PHOTOGRAPHED. WHERE THEY WERE - THE TV STAND - WAS ALSO
21 COVERED IN A LAYER OF DUST. UM - THOSE WERE - THE ITEMS AT
22 THE TABLE, THEY WERE ALL UNSUITABLE FOR DUSTING FOR
23 FINGERPRINTS.

24 Q SO THE FURNITURE WAS TOO DUSTY. HOW ABOUT THE DOORS OR
25 THE DOOR HANDLES?

1 A DOOR HANDLES ARE NOT NECESSARILY, UM, SOMETHING WE WOULD
2 NORMALLY PROCESS. WHEN YOU OPEN A DOOR, YOU'RE NOT JUST
3 TOUCHING IT, YOU'RE ACTUALLY TURNING IT AND YOU'RE SMEARING.
4 SO, THAT'S NOT SOMETHING I WOULD NORMALLY PROCESS.

5 Q HOW ABOUT ANY OTHER ITEMS AROUND THE HOUSE?

6 A NO. FROM WHAT OUR UNDERSTANDING AND THE WAY THE
7 SITUATION WAS EXPLAINED TO ME, THERE WAS NO REASON TO DUST
8 ANYTHING ELSE.

9 Q AND WHO DID YOU RECEIVE THAT INFORMATION FROM?

10 A THE OFFICERS ON SCENE. THEY - WHEN I ARRIVE, THEY
11 USUALLY INFORM ME THE SITUATION THAT'S OCCURRED, AND WE GO
12 FROM THERE.

13 Q DID YOU LOOK FOR ANYTHING THAT COULD HAVE BEEN LEFT
14 BEHIND?

15 A AS IN? I'M SORRY, I'M NOT EXACTLY SURE WHAT YOU'RE
16 ASKING.

17 Q DID YOU LOOK AROUND THE ROOM - AROUND THE HOUSE AND
18 THE BACKYARD TO MAKE SURE THAT ANY EVIDENCE WAS LEFT
19 BEHIND? (SIC)

20 A WE - WHEN WE GO TO A CRIME SCENE, WE NORMALLY DO. I
21 MEAN, WE LOOK AT THE AREA TO SEE WHAT WAS TOUCHED, MOVED, IF
22 THERE WAS, YOU KNOW, ANY OTHER ITEMS THAT WERE LEFT BEHIND.

23 I'M NOT SURE EXACTLY WHAT YOU'RE - YOU'RE LOOKING FOR,
24 BUT WE DID GO OUTSIDE. UM - THE BACK DOOR WAS OPEN, THE WOOD
25 DOOR THAT WAS OUTSIDE WAS OPEN, AND WE TOOK PHOTOGRAPHS OF

1 THAT AREA.

2 SO, WE DID LOOK AROUND. WE ALWAYS INVESTIGATE WHEN WE
3 GO TO A SCENE.

4 Q AND TOOK PICTURES. DID YOU TRY TO TAKE ANY FINGERPRINTS
5 FROM THE GATE IN THE BACKYARD?

6 A IT'S A WOOD, ROUGH SURFACE. IT'S AN UNFINISHED SURFACE,
7 SO NO.

8 Q SO IT WOULD HAVE BEEN EASIER TO GET FINGERPRINTS FROM
9 SOMETHING LIKE THAT PLAY STATION VERSUS A WOODEN DOOR?

10 A UH - ACTUALLY, THIS PLAY STATION IS NOT AN IDEAL SURFACE
11 AS WELL. EVEN THOUGH IT APPEARS TO HAVE A SMOOTH SURFACE, IT
12 IS ACTUALLY A TEXTURED SURFACE AND PRINTS - SIMILAR TO THOSE
13 KIND OF SURFACES - TO NOT ADHERE.

14 A - A NICE SURFACE WOULD BE A PIECE OF GLASS. SOMETHING
15 SMOOTH, NONPOROUS IS AN IDEAL SURFACE.

16 Q SOMETIMES WHEN YOU TAKE FINGERPRINTS, YOU DON'T GET AN
17 EN- -- AN ENTIRE FINGERPRINT, YOU MAY GET A PORTION OF IT?

18 A THAT'S CORRECT.

19 Q AND YOU CAN TRY TO MATCH THAT TO WHOLE ROLLED
20 FINGERPRINTS---

21 A YES, MA'AM.

22 Q ---IF YOU HAVE IT?

23 A YES, MA'AM.

24 Q AND THAT'S DONE - FOR EXAMPLE, IF YOU COLLECTED A PIECE
25 OF A FINGERPRINT OFF OF AN ITEM IN A HOUSE, YOU COULD MATCH

1 THAT TO FINGERPRINTS TAKEN FROM A DEFENDANT TO SEE IF THEY
2 MATCH UP?

3 A YES, MA'AM, THERE ARE INSTANCES WHERE WE DON'T GET
4 FULL - AN IDEAL PRINT WHERE YOU JUST LAID YOUR HAND DOWN. WE
5 GET PARTIAL PRINTS. AND THOSE ARE - AND CAN BE ENTERED INTO
6 THE SYSTEM AND THEY CAN MATCH THEM.

7 Q AND YOU DIDN'T TRY TO GET ANY PARTIAL PRINTS?

8 A DUE TO THE SURFACES ON THE ITEMS, DUE TO THE ACTUAL
9 CONTENT OF THE MATERIAL OF THE ITEMS, AND THE LAYER OF DUST,
10 THERE WAS NO REASON FOR ME TO DUST FOR PRINTS.

11 MS. JENKINSON: BEG THE COURT'S INDULGENCE.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
14 HEARING OF THE JURY, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 Q THAT'S ALL I HAVE. THANK YOU, MS. MAESTAS.

17 A THANK YOU.

18 THE COURT: ANYTHING IN REDIRECT, SOLICITOR?

19 MR. STACK: NO, YOUR HONOR.

20 THE COURT: THANK YOU. YOU MAY STEP DOWN, MA'AM.

21 MS. MAESTAS: THANK YOU.

22 MR. STACK: YOUR HONOR, THE STATE ASKS THAT THIS WITNESS
23 BE EXCUSED.

24 THE COURT: ANY OBJECTION, MS. JENKINSON?

25 MS. JENKINSON: NO, YOUR HONOR.

1 THE COURT: SHE MAY BE EXCUSED.

2 (WITNESS EXCUSED.)

3 THE COURT: ALL RIGHT. MADAME FORELADY AND LADIES AND
4 GENTLEMEN OF THE JURY, WE'RE NOW GOING TO TAKE OUR AFTERNOON
5 BREAK. I REMIND YOU THAT DURING THE BREAK YOU ARE NOT TO
6 DISCUSS THIS CASE WITH ANYONE, INCLUDING YOUR FELLOW JURORS.
7 AND REMEMBER TO KEEP AN OPEN MIND ABOUT THIS CASE UNTIL I
8 INSTRUCT YOU TO BEGIN YOUR DELIBERATIONS.

9 MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY, IF
10 YOU'LL NOW GO WITH OUR BAILIFFS?

11 (WHEREUPON, JURY LEFT THE COURTROOM AT 3:20 P.M.)

12 THE COURT: ALL RIGHT, ANYTHING FROM THE STATE PRIOR TO
13 OUR BREAK?

14 MR. STACK: NO, YOUR HONOR.

15 THE COURT: MS. JENKINSON?

16 MS. JENKINSON: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT, LET'S TAKE ABOUT FIFTEEN MINUTES.
18 THANK YOU.

19 (WHEREUPON, COURT RECESSED.)

20 (WHEREUPON, COURT RESUMED.)

21 MR. STACK: YOUR HONOR, MAY WE APPROACH?

22 THE COURT: YES, SIR - CERTAINLY.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 THE COURT: ALL RIGHT, ARE WE READY, MR. SOLICITOR?

1 MR. STACK: YES, SIR, YOUR HONOR.

2 THE COURT: ARE YOU READY MS. JENKINSON?

3 MS. JENKINSON: YES, SIR.

4 THE COURT: ALL RIGHT, WOULD YOU BRING US OUR JURY,
5 MR. BAILIFF?

6 (WHEREUPON, JURY ENTERED THE COURTROOM AT 3:43 P.M.)

7 BAILIFF: JURORS ARE ALL PRESENT, YOUR HONOR.

8 THE COURT: THANK YOU, MR. BAILIFF. ALL RIGHT, MADAME
9 FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE ARE NOW
10 PROCEEDING WITH THE STATE'S CASE AND PRESENTATION OF THE
11 EVIDENCE.

12 SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

13 MR. STACK: THE STATE CALLS MS. REINA GASCON.

14 (WITNESS FORWARD.)

15 CLERK (MR. WILSON): MA'AM, IF YOU WOULD, PLEASE WALK
16 AROUND AND BE SWORN.

17 AND IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE
18 BIBLE AND RAISE YOUR RIGHT HAND.

19 (WHEREUPON, REINA GASCON WAS DULY SWORN AND TESTIFIED AS
20 FOLLOWS:)

21 CLERK (MR. WILSON): PLEASE BE SEATED. WILL YOU PLEASE
22 STATE YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST?

23 MS. GASCON: REINA GASCON - G-A-S-C-O-N.

24 REINA GASCON, DIRECT EXAMINATION BY MR. STACK:

25 Q GOOD AFTERNOON, REINA.

1 A HOW YOU DOING?

2 Q GOOD, THANK YOU. MA'AM, WOULD YOU PLEASE TELL THE JURY
3 WHAT IS YOUR OCCUPATION?

4 A UM - I WORK WITH THE CLERK OF COURTS' OFFICE, UH, WITH
5 THE GENERAL SESSIONS DEPARTMENT. AND, WE'RE CUSTODIANS OF
6 RECORDS.

7 Q AND HOW LONG, UH, HAVE YOU WORKED WITH THE CHARLESTON
8 COUNTY CLERK OF COURTS?

9 A UH - FOURTEEN YEARS.

10 Q AND WOULD YOU PLEASE DESCRIBE YOUR DUTIES AT - AT THE
11 CLERK OF COURTS' OFFICE?

12 A BASICALLY, ATTESTING TRUE COPIES OF RECORDS AND, UM,
13 DATA ENTRY AND SO FORTH.

14 Q OKAY. IS THE CLERK OF COURTS' OFFICE THE CUSTODIAN OF
15 ALL CRIMINAL RECORDS FOR CHARLESTON COUNTY?

16 A YES, SIR.

17 Q IS THAT BY LAW?

18 A YES, SIR.

19 Q OKAY. WHAT CRIMINAL RECORDS ARE MAINTAINED THERE?

20 A CASES THAT ARE INDICTED AND - AND WARRANTS AS WELL.
21 ARREST - AND ARREST RECORDS AS WELL.

22 Q AND DO THOSE INCLUDE INDICTMENTS?

23 A YES, SIR, IT DOES.

24 Q OKAY.

25 MR. STACK: MAY I - YOUR HONOR, IF I COULD APPROACH THE

1 WITNESS?

2 THE COURT: YES, SIR - CERTAINLY.

3 Q REINA, I HAND YOU STATE'S EXHIBIT TWENTY-FOUR,
4 MARKED FOR IDENTIFICATION PURPOSES. AND ALSO, STATE'S
5 EXHIBIT TWENTY-FIVE, MARKED FOR IDENTIFICATION PURPOSES.

6 WOULD YOU PLEASE REVIEW THOSE TWO COPIES - OR, THOSE TWO
7 DOCUMENTS?

8 A OKAY, I HAVE ATTESTED COPIES OF RECORD OF THE SENTENCE
9 SHEET AND INDICTMENT AND INFORMATION OF OUR DOCKETS.

10 Q OKAY. STATE'S EXHIBIT TWENTY-FOUR, CAN YOU IDENTIFY
11 THAT? MORE CLEARLY, WHAT IS THAT DOCUMENT - STATE'S
12 TWENTY-FOUR?

13 A OKAY. THE FIRST PAGE IS JUST A COPY OF OUR MICROFILM,
14 WHICH GIVES US THE INFORMATION OF THE INDICTMENT AND THE
15 CASE. AND I ALSO HAVE A SENTENCE ATTACHED TO IT AND
16 INDICTMENT AS WELL.

17 Q OKAY. ARE THE ORIGINALS OF THOSE DOCUMENTS MAINTAINED
18 BY THE CLERK OF COURTS' OFFICE IN THE ORDINARY COURSE OF
19 BUSINESS?

20 A YES, SIR, WE DO.

21 Q OKAY. DO BOTH OF THESE DOCUMENTS BEAR A CERTIFICATION
22 AND SEAL FROM THE CLERK'S OFFICE INDICATING THEY ARE TRUE AND
23 CORRECT COPIES?

24 A THAT'S CORRECT.

25 Q OKAY. SO, IS IT - IT IS PROPER TO CONCLUDE THAT IT -

1 STATE'S EXHIBIT TWENTY-FOUR AND TWENTY-FIVE ARE EXACT COPIES
2 OF THE ORIGINALS?

3 A YES, SIR, THEY ARE.

4 MR. STACK: YOUR HONOR, AT THIS TIME THE STATE OFF- --
5 OFFERS TO MOVE INTO EVIDENCE STATE'S EXHIBIT TWENTY-FOUR AND
6 TWENTY-FIVE.

7 THE COURT: MS. JENKINSON?

8 MS. JENKINSON: WITHOUT OBJECTION, YOUR HONOR.

9 THE COURT: ALL RIGHT. STATE'S TWENTY-FOUR AND
10 TWENTY-FIVE IN EVIDENCE WITHOUT OBJECTION.

11 Q OKAY, MS. GASCON, STATE'S EXHIBIT TWENTY-FOUR, DOES THAT
12 EXHIBIT INDICATE THAT THOMAS HAMILTON PLEAD GUILTY TO
13 BURGLARY IN THE SECOND DEGREE ON AUGUST 15TH 1989?

14 A YES, IT DOES.

15 Q DOES STATE'S EXHIBIT TWENTY-FIVE INDICATE THAT
16 MR. THOMAS CURTIS HAMILTON WAS CONVICTED OF BURGLARY IN
17 THE FIRST DEGREE ON MAY 25TH 1995?

18 A THAT IS CORRECT.

19 Q THANK YOU.

20 MR. STACK: BEG THE COURT'S INDULGENCE.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
22 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
23 HEARING OF THE JURY, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 MR. STACK: WE HAVE NO FURTHER QUESTIONS. MA'AM IF YOU

1 WOULD, PLEASE ANSWER ANY QUESTIONS DEFENSE COUNSEL MIGHT
2 HAVE.

3 THE COURT: ALL RIGHT THEN, PRIOR TO QUESTIONING,
4 MS. JENKINSON, LET ME ADDRESS THE JURY MOMENTARILY.

5 MADAME FORELADY AND LADIES AND GENTLEMEN OF THE JURY,
6 THE EVIDENCE THAT HAS BEEN PRESENTED AT THIS TIME, YOU CANNOT
7 CONSIDER THAT EVIDENCE THAT MR. HAMILTON COMMITTED THE
8 BURGLARY ON THIS OCCASION. BUT, ONLY FOR THE PURPOSE OF
9 DETERMINING WHETHER OR NOT IT SATISFIES THE ELEMENT OF THE
10 OFFENSE THAT MAKES IT BURGLARY FIRST - IF YOU ENTER A
11 DWELLING WITHOUT CONSENT, TO COMMIT A CRIME THEREIN, AND YOU
12 HAVE TWO PRIOR CONVICTIONS FOR BURGLARY.

13 SO, IT IS NOT EVIDENCE THAT HE COMMITTED THIS PARTICULAR
14 BURGLARY. IT - IT CAN BE CONSIDERED AS EVIDENCE OF AN
15 ELEMENT OF THIS BURGLARY, THAT HE HAS TWO PRIOR CONVICTIONS
16 FOR BURGLARY.

17 THANK YOU MADAME FORELADY AND LADIES AND GENTLEMEN OF
18 THE JURY.

19 MS. JENKINSON, YOU MAY PROCEED.

20 MS. JENKINSON: THANK YOU, YOUR HONOR.

21 REINA GASCON, CROSS-EXAMINATION BY MS. JENKINSON:

22 Q GOOD AFTERNOON.

23 A GOOD AFTERNOON.

24 Q MS. GASCON, YOUR - YOU UNDERSTAND, THROUGH YOUR WORK AT
25 THE SOLICITOR'S (SIC) OFFICE, THAT PEOPLE CAN GIVE A-K-A'S,

1 CAN'T THEY?

2 COURT REPORTER: I'M SORRY?

3 A I'M SORRY, WHAT WAS THAT?

4 Q A-K-A'S.

5 A THEY CAN GIVE AN---

6 Q ANOTHER NAME.

7 A ---A-K - YES, A-K-A'S AS WELL. SOME OF OUR RECORDS DO
8 SHOW UP THAT THEY HAVE A-K-A'S.

9 Q AND SOME PEOPLE HAVE GIVEN FALSE NAMES?

10 A ACCORDING TO THE RECORD.

11 Q AND PEOPLE CAN GIVE OTHER PEOPLE'S SOCIAL SECURITY
12 NUMBERS AND DATE OF BIRTH?

13 A WE'VE HAD THAT SITUATION BEFORE, YES, MA'AM.

14 Q OKAY, THANK YOU. THAT'S ALL I HAVE.

15 A YOU'RE WELCOME.

16 THE COURT: THANK YOU. ANYTHING IN REDIRECT, SOLICITOR?

17 MR. STACK: NO, YOUR HONOR.

18 THE COURT: THANK YOU - THANK YOU, MS. GASCON.

19 MS. GASCON: YOU'RE WELCOME.

20 THE COURT: YOU MAY BE EXCUSED, YOU MAY STEP DOWN.

21 (WITNESS EXCUSED.)

22 MR. STACK: THE STATE CALLS LAURIE CICCARELLI.

23 (WITNESS FORWARD.)

24 CLERK (MR. WILSON): IF YOU WOULD, PLEASE WALK AROUND
25 AND BE SWORN.

1 IF YOU WOULD, PLEASE PLACE YOUR LEFT HAND ON THE BIBLE
2 AND RAISE YOUR RIGHT HAND.

3 (WHEREUPON, LAURIE CICCARELLI WAS DULY SWORN AND
4 TESTIFIED AS FOLLOWS:)

5 CLERK (MR. WILSON): PLEASE BE SEATED. PLEASE STATE
6 YOUR FULL NAME TO THE COURT AND SPELL YOUR LAST.

7 MS. CICCARELLI: LAURIE CICCARELLI. LAST NAME,
8 C-I-C-C-A-R-E-L-L-I.

9 LAURIE CICCARELLI, DIRECT EXAMINATION BY MR. STACK:

10 Q GOOD AFTERNOON, MA'AM. MA'AM, WHERE ARE YOU CURRENTLY
11 EMPLOYED?

12 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION. I AM IN THE
13 CRIME INFORMATION CENTER DEPARTMENT.

14 Q THANK YOU. HOW LONG HAVE YOU WORKED FOR SLED?

15 A TWENTY-SIX YEARS.

16 Q AND WHAT IS YOUR CURRENT TITLE OR POSITION?

17 A I AM THE AFIS MANAGER, FINGERPRINT EXAMINER.

18 Q AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

19 A TWENTY-ONE YEARS.

20 Q AND WOULD YOU PLEASE DESCRIBE TO THE - TO THE JURY YOUR
21 DUTIES AND RESPONSIBILITIES AT THE CRIME INFORMATION CENTER?
22 WHAT DO YOU DO IN THE COURSE OF YOUR JOB?

23 A UM - IN THE COURSE OF MY JOB, I MAINTAIN THE AFIS
24 DATABASE SYSTEM, I TROUBLESHOOT, AND I VERIFY FINGERPRINT
25 CARDS.

1 Q AND WHAT RECORDS ARE MAINTAINED AT THE CRI- -- CRIME
2 INFORMATION CENTER?

3 A ALL CRIMINAL CARDS IN THE STATE OF SOUTH CAROLINA. ANY
4 ARRESTING AGENCY SENDS IN THE CRIMINAL CARDS.

5 Q OKAY. AND WHEN YOU SAY 'CARDS', ARE YOU MEANING -
6 REFERRING TO THE FINGERPRINT CARDS?

7 A YES, SIR.

8 Q DO PEOPLE IN YOUR PROFESSION ROUTINELY RELY ON THESE
9 FINGERPRINT CARDS TO ESTABLISH IDENTITY?

10 A YES, SIR. FINGERPRINTS IS THE ONLY MEANS RIGHT
11 NOW IN THE UNITED STATES FOR A HUNDRED YEARS OF POSITIVE
12 IDENTIFICATION.

13 Q OKAY. AND WHEN ARE YOU REQUIRED TO OBTAIN A FINGERPRINT
14 CARD?

15 A YOU'RE REQUIRED TO TAKE A FINGERPRINT CARD AT, UM - WHEN
16 YOU ARREST A SUBJECT AND BRING THEM IN TO BE HELD, THEY HAVE
17 TO BE FINGERPRINTED.

18 Q DID YOU SAY EARLIER THAT ALL LAW ENFORCEMENT IN
19 SOUTH CAROLINA SEND THEIR FINGERPRINT CARDS TO YOUR
20 ORGANIZATION?

21 A YES, SIR.

22 Q AND ARE YOU REQUIRED BY LAW TO ACQUIRE AND MAINTAIN
23 THESE RECORDS?

24 A YES, SIR.

25 Q IS YOUR OFFICE THE CUSTODIAN OF THESE RECORDS FOR THE

1 STATE OF SOUTH CAROLINA?

2 A YES, SIR.

3 Q OKAY. WHAT TYPE OF FINGERPRINT CARDS DO YOU MAINTAIN?

4 A WE MAINTAIN ALL CRIMINAL ARRESTS, WHETHER IT BE A
5 FELONY, MISDEMEANOR, UM - OR JUST LIKE PUBLIC DRUNK.
6 ANYTHING THAT THEY'RE ARRESTED FOR.

7 Q OKAY. COULD YOU TELL ME, PLEASE, WHAT IS A TEN-PRINT
8 CARD?

9 A A TEN-PRINT CARD IS A, UM, CARD THAT - THE FBI HAS
10 ESTABLISHED THAT YOU ROLL THE - EACH FINGER. AND THEN YOU
11 HAVE A PLACE ON THE BOTTOM WHICH WE CALL THE SLAP PRINTS, AND
12 YOU PUT ALL TEN PRINTS - SLAP PRINTS ON THE BOTTOM, AND THAT
13 WILL ENSURE THAT THE ROLLED IMPRESSIONS ARE IN THE CORRECT
14 ORDER.

15 Q OKAY. AND HOW LONG HAVE YOU BEEN PERFORMING
16 IDENTIFICATIONS WITH TEN-PRINT CARDS?

17 A TWENTY-ONE YEARS.

18 Q AND MA'AM, WOULD YOU PLEASE TELL THE JURY WHAT TRAINING
19 YOU HAVE IN THIS AREA?

20 A I HAD, UM, SIX WEEKS OF TRAINING AT SLED WITH A
21 FINGERPRINT EXAMINER THAT CAME FROM THE FBI THAT HAD
22 EXTENSIVE SIX MONTHS TRAINING.

23 Q OKAY. DID YOU TRAIN FOR SIX WEEKS?

24 A YOU TRAIN FOR SIX WEEKS, UM, DAY IN AND DAY OUT. WE -
25 WE HAD IT, UM, MORE LIKE A FORTY-HOUR-A-WEEK COURSE.

1 Q OKAY. AND WHAT FORMAL EDUCATION HAVE YOU HAD IN THIS
2 AREA?

3 A I'VE ALSO HAD TRAINING OUTSIDE OF - I WENT TO COURT
4 TESTIMONY CASES, WE'VE DONE, UM, EXTRA WORK ON FINGERPRINT
5 CLASSES, AND I AM NOW TRAINING IN THE AFIS - FOR THE AFIS
6 MACHINE. I GO AROUND THE STATE TRAINING OFFICERS TO
7 FINGERPRINT.

8 Q EXCELLENT. AND WHAT PRACTICAL EXPERIENCES HAVE YOU HAD
9 IN THIS AREA?

10 A JUST THE TRAINING THAT I'VE GOTTEN FROM SLED.

11 Q AND DOES THAT INCLUDE THE COURSE OF WORK EVERY DAY FOR
12 TWENTY---

13 A OH, YES.

14 Q ---SOME-ODD YEARS?

15 A OH, YES - YES.

16 Q OKAY.

17 MR. STACK: YOUR HONOR, AT THIS TIME, THE STATE OFFERS
18 THIS WITNESS AS AN EXPERT IN THE FIELD OF FINGERPRINT
19 IDENTIFICATION.

20 THE COURT: ALL RIGHT. ANY VOIR DIRE AS TO THAT ISSUE,
21 MS. JENKINSON?

22 MS. JENKINSON: NO, YOUR HONOR.

23 Q MA'AM, AT THE REQUEST OF THE SOLICITOR'S OFFICE, DID YOU
24 PULL THE FINGERPRINT CARDS FOR THOMAS CURTIS HAMILTON FOR
25 BURGLARY CONVICTIONS IN 1989 AND 1995?

1 A I DID.

2 Q I'M GONNA HAND YOU STATE'S EXHIBIT TWENTY-FOUR AND
3 TWENTY-FIVE THAT HAVE BEEN PREVIOUSLY ADMITTED, AND ASK IF
4 THOSE CONVICTIONS APPEAR TO CORRESPOND TO THE TEN-PRINT CARDS
5 THAT YOU HAD PULLED PREVIOUSLY.

6 THIS IS TWENTY-FOUR AND THIS IS TWENTY-FIVE.

7 A YES, THEY DO.

8 Q I'M SORRY, DO THOSE CERTIFIED CONVICTIONS APPEAR TO BE
9 THE SAME AS THE CARDS THAT YOU PULLED?

10 A UH-HUH.

11 Q DID YOU COMPARE THE FINGERPRINT CARDS FROM THE ARREST
12 AND CONVICTION IN '89 AND THE ARREST AND CONVICTION IN '95
13 WITH THE FINGERPRINT CARDS THAT CAME FROM THE DEFENDANT FOR
14 HIS CURRENT ARREST ON AUGUST 3RD OF 2004?

15 A YES, I DID.

16 Q DID YOU COMPARE THOSE?

17 A YES, I DID.

18 Q WERE YOU ABLE TO REACH A CONCLUSION?

19 A YES, I WAS. UM - I USED A METHOD CALLED THE ACE-B
20 METHOD THAT MOST FINGERPRINT EXAMINERS USE TO MAKE AN
21 IDENTIFICATION.

22 I ANALYZED ALL THREE FINGERPRINT CARDS. THEN I EXAMINED
23 THE, UM, PRESENT ARREST CARD WITH THE FILE CARDS. I ALSO
24 COMPARED THE THREE CARDS FINGER BY FINGER TO ENSURE THAT THE
25 PATTERNS WERE THE SAME, THE CORE AND DELTA DISTANCE WERE THE

1 SAME, AND THEY HAD, UM, SIGNIFICANT RIDGE DETAIL.

2 I THEN PICKED OUT POINTS OF INTEREST ON FINGER NUMBER
3 ONE, WHICH HAD A LOT OF DETAIL POINTS. I WAS ABLE TO MAKE MY
4 EVALUATION THAT ALL THREE FINGERPRINT CARDS DO BELONG TO THE
5 SAME PERSON.

6 AND, UM, TO CONCLUDE THIS PROCESS, I ALSO HAD A
7 SUPERVISOR AT SLED TO LOOK AT THE PRINTS AND COME UP WITH
8 THE, UM, CONCLUSION THAT I DID.

9 Q DOES THAT MEAN THAT THE PERSON WHO WAS ARRESTED AND
10 CONVICTED OF BURGLARY IN THE SECOND DEGREE IN 1989 IS THE
11 SAME PERSON WHO WAS CONVICTED OF BURGLARY IN THE FIRST DEGREE
12 IN 1995?

13 A YES, SIR.

14 Q AND IS THAT PERSON THE SAME PERSON WHO WAS ARRESTED AND
15 CHARGED WITH BURGLARY IN THE FIRST DEGREE ON AUGUST 3RD
16 OF 2004?

17 A YES, SIR---

18 Q THANK YOU.

19 A ---THEY ALL ARE THE SAME.

20 MR. STACK: BEG THE COURT'S INDULGENCE FOR ONE MOMENT.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
22 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
23 HEARING OF THE JURY, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 Q AND, MA'AM, WHO IS THAT PERSON?

1 A THAT PERSON IS THOMAS CURTIS HAMILTON.

2 Q THANK YOU VERY MUCH.

3 MR. STACK: NOTHING FURTHER, YOUR HONOR.

4 THE COURT: THANK YOU, SOLICITOR. MS. JENKINSON?

5 MS. JENKINSON: THANK YOU, YOUR HONOR.

6 LAURIE CICCARELLI, CROSS-EXAMINATION BY MS. JENKINSON:

7 Q GOOD AFTERNOON.

8 A GOOD AFTERNOON.

9 Q YOU DID NOT ACTUALLY TAKE THESE FINGERPRINTS, DID YOU?

10 A NO, MA'AM.

11 Q AND WHEN YOU ANALYZE AND COMPARE FINGERPRINTS, YOU ARE
12 FORMING A - FORMING AN OPINION OF IDENTIFICATION, CORRECT?

13 A NO. I'M IDENTIFYING THAT THESE PRINTS ARE THE SAME,
14 WITH, UM, SPECIFIC POINTS IN EACH FINGER.

15 Q CORRECT. YOU LINE UP THE THREE---

16 A UH-HUH.

17 Q ---MATCH CERTAIN CHARACTERISTICS---

18 A EXACTLY.

19 Q ---AND COME TO A CONCLUSION?

20 A THAT THIS IS THE SAME PRINT. YES, MA'AM.

21 Q AND THERE WERE A CERTAIN NUMBER OF MATCHES ON THESE
22 THREE FINGERPRINT CARDS?

23 A UH-HUH.

24 Q HOW MANY, UH, MATCHES DID YOU FIND?

25 A WELL, UM, I TOOK NUMBER ONE FINGER, AND I HAD POINTED

1 OUT ABOUT TEN TO TWELVE DIFFERENT POINTS OF INTEREST. BUT,
2 THERE'S MANY, MANY MORE. I JUST STOPPED AT THAT. I WAS
3 CONFIDENT THEN THAT I - YOU KNOW, I HAD MADE MY DECISION.

4 Q DOES SLED REQUIRE A CERTAIN NUMBER OF MATCHES?

5 A NOT NECESSARILY.

6 Q ARE YOU AWARE THAT THERE ARE SOME AGENCIES THAT REQUIRE
7 A CERTAIN NUMBER OF MATCHES WHEN MATCHING UP FINGERPRINTS?

8 A NO, NOT - UM---

9 Q I GUESS WHAT I'M ASKING YOU IS---

10 A ---I'M NOT UNDERSTANDING YOU.

11 Q ---ONCE YOU SEE ENOUGH CHARACTERISTICS THAT ARE THE
12 SAME, THAT'S WHEN YOU STOP?

13 A OH, YES - YES.

14 Q AND YOU DON'T GO ANY FURTHER?

15 A YEAH. YOU CAN - YOU CAN MAKE, UH, A MATCH WITH JUST
16 VERY FEW CHARACTERISTICS IF YOU WANT. BUT, YOU KNOW, I
17 DECIDED TO STOP AT TWELVE, BUT I COULD GO TO A LOT MORE THAN
18 THAT.

19 Q AND SO, THERE'S NO SCIENTIFIC FORMULA TO DETERMINE HOW
20 MANY POINTS OF INTEREST OR TO ASSURE ACCURACY?

21 A NO.

22 Q AND IT - IT USUALLY DEPENDS ON THE EXAMINER?

23 A YES, IT DEPENDS ON THE EXAMINER AND THE QUALITY OF THE
24 PRINT.

25 Q THANK YOU.

1 MS. JENKINSON: THAT'S ALL I HAVE, YOUR HONOR.

2 THE COURT: ANYTHING IN REDIRECT?

3 MR. STACK: YES, YOUR HONOR - BRIEFLY.

4 LAURIE CICCARELLI, REDIRECT EXAMINATION BY MR. STACK:

5 Q MA'AM, THE ANALYSIS THAT YOU DID ON THE TEN-POINT, UH -
6 TEN-PRINT CARDS, WAS THAT, UH, IN ACCORDANCE WITH THE
7 STANDARDS ESTABLISHED BY SLED?

8 A YES, SIR.

9 Q AND WAS THAT - THOSE STANDARDS, UH, THE SAME AS - THAT
10 YOU WERE TAUGHT BY THE FBI IN THAT SIX-WEEK CLASS?

11 A YES.

12 Q ALL RIGHT. NOW, WHEN WE TALK ABOUT LATENT PRINTS OFF AN
13 OBJECT, IS THAT DIFFERED FROM WHAT THE CARDS? (SIC)

14 A YES. A LATENT PRINT IS A CHANCE PRINT THAT YOU COULD
15 GET OFF A SMOOTH OR ROUGH SURFACE. AND IT COULD BE A PARTIAL
16 PRINT.

17 THESE PRINTS ARE ROLLED NAIL-TO-NAIL, A HUNDRED AND
18 EIGHTY DEGREES, SO YOU HAVE A LOT MORE DETAIL IN THESE ROLLED
19 PRINTS THAN YOU WOULD A LATENT.

20 Q SO THE PRINT CARDS THAT YOU WERE EXAMINING WERE MORE
21 DETAILED THAN A - A LATENT PRINT WOULD BE?

22 A YES.

23 Q AND THEY'RE NOT LATENT PRINTS THAT - TAKEN FROM A CRIME
24 SCENE, THEY'RE TAKEN FROM A PERSON AFTER ARREST?

25 A AFTER ARREST, YES, SIR.

1 Q OKAY. ALL TEN FINGERS?

2 A ALL TEN FINGERS.

3 Q THANK YOU, MA'AM.

4 A UH-HUH.

5 THE COURT: ANYTHING ON RE-CROSS, MS. JENKINSON?

6 MS. JENKINSON: BRIEFLY, YOUR HONOR.

7 THE COURT: YES, MA'AM.

8 LAURIE CICCARELLI, RE-CROSS-EXAMINATION BY MS. JENKINSON:

9 Q YOU'RE AN EXPERT IN FINGERPRINTS?

10 A UH-HUH.

11 Q IS IT EASIEST TO GET A FINGERPRINT OFF OF A SMOOTH
12 SURFACE?

13 A UM - I'M NOT A LATENT EXAMINER, SO I DO NOT PULL PRINTS
14 FROM SURFACES. UH - I JUST DO THE TEN-PRINT. SO, I WOULDN'T
15 BE APT TO ANSWER THAT.

16 Q ONLY CARDS?

17 A RIGHT.

18 Q THANK YOU.

19 A YOU'RE WELCOME

20 MR. STACK: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: THANK YOU. YOU MAY STEP DOWN. DO YOU WANT
22 THIS WITNESS EXCUSED?

23 MR. STACK: YES, YOUR HONOR.

24 THE COURT: ALL RIGHT. DO YOU HAVE ANY OBJECTION?

25 MS. JENKINSON: NO OBJECTION.

1 THE COURT: THE WITNESS MAY BE EXCUSED.

2 (WITNESS EXCUSED.)

3 THE COURT: MR. STACK, WOULD YOU MOVE THAT MAP AND THAT
4 TRIPOD FOR ME A MOMENT?

5 MR. STACK: YES, YOUR HONOR. MY APOLOGY.

6 THE COURT: WELL, I FEEL LIKE I'M LEAVING OUT THIS YOUNG
7 LADY TO MY FAR LEFT OVER HERE. THIS IS PUTTING THE CART A
8 LITTLE BIT BEFORE THE HORSE OR THE DONKEY, SO TO SPEAK -
9 WHATEVER.

10 NORMALLY, I WOULD CHARGE YOU THIS AT THE TIME THE
11 SOLICITOR OFFERED A WITNESS AS AN EXPERT. HOWEVER, THE - IT
12 WAS FLOWING TO SUCH AN EXTENT, I DIDN'T STOP THE SOLICITOR OR
13 MS. JENKINSON.

14 BUT, NORMALLY A PERSON CANNOT GIVE OPINION TESTIMONY.
15 NORMALLY, WHEN A PERSON TESTIFIES, THEY MUST TESTIFY AS TO
16 WHAT THEY EITHER SAW, HEARD, OR SENSED BY SMELL OR SOMETHING
17 OF THAT NATURE.

18 HOWEVER, THERE IS AN EXCEPTION WHEN SOMEONE IS QUALIFIED
19 BECAUSE OF EDUCATION OR EXPERIENCE. THEY ARE PERMITTED TO
20 GIVE THEIR OPINION IN CERTAIN AREAS IF THE COURT QUALIFIES
21 THEM THAT WAY.

22 THIS WITNESS THAT JUST TESTIFIED WILL BE QUALIFIED IN
23 THE AREA OF FINGERPRINT IDENTIFICATION TO GIVE AN OPINION
24 TESTIMONY IN THAT AREA.

25 THAT DOES NOT MEAN THAT YOU MUST ACCEPT THE OPINION, BUT

1 IT IS EVIDENCE FOR YOU TO USE IN ANY WAY YOU SEE FIT.

2 ALL RIGHT. THANK YOU, SOLICITOR, YOU - OR,
3 MS. JENKINSON.

4 YOU MAY CALL YOUR NEXT WITNESS, SOLICITOR.

5 **MR. STACK:** YOUR HONOR, THE STATE RESTS AT THIS TIME.

6 **THE COURT:** ALL RIGHT, SIR. ALL RIGHT. LADIES AND
7 GENTLEMEN, THERE ARE SOME MATTERS OF LAW THAT I MUST TAKE UP
8 AT THIS POINT IN THE TRIAL. THEY CAN TAKE ANYWHERE FROM A
9 FEW MINUTES TO MORE THAN A FEW MINUTES.

10 SO, RATHER THAN HAVE YOU COOPED UP, SO TO SPEAK, IN
11 YOUR JURY ROOM FOR THE AFTERNOON OR FOR ANOTHER HOUR OR
12 HOUR-AND-A-HALF, I THINK WHAT I'M GOING TO DO IS, WE'RE GOING
13 TO TAKE OUR EVENING RECESS.

14 AGAIN - AND YOU WILL BE ABLE TO REPEAT THIS BACK TO ME
15 BEFORE THIS CASE IS OUT - I REMIND YOU THAT DURING THIS
16 EVENING BREAK YOU ARE NOT TO DISCUSS THIS CASE WITH ANYONE.
17 THIS INCLUDES YOUR FELLOW JURORS, YOUR FRIENDS, AND YOUR
18 FAMILY. PEOPLE INVOLVED IN THE TRIAL, OR ANYONE ELSE.

19 IF ANYONE TRIES TO TALK TO YOU ABOUT THE CASE, PLEASE
20 LET ME KNOW. REMEMBER TO KEEP AN OPEN MIND ABOUT THIS CASE
21 UNTIL I INSTRUCT YOU TO BEGIN YOUR DELIBERATION.

22 I'M GOING TO EXCUSE YOU NOW AND ASK YOU TO BE BACK IN
23 YOUR JURY ROOM AT 0-9-1-5 - AT NINE-FIFTEEN A.M. IN THE
24 MORNING. PLEASE BE BACK IN YOUR NEW HOME - YOUR JURY ROOM -
25 IN THE MORNING. AND I HOPE YOU ALL HAVE A PLEASANT EVENING.

1 YOU ARE NOW EXCUSED.

2 (WHEREUPON, JURY LEFT THE COURTROOM AT 4:05 P.M.)

3 THE COURT: ALL RIGHT, MS. JENKINSON, DO YOU HAVE ANY
4 MOTIONS?

5 MS. JENKINSON: YES, SIR.

6 THE COURT: ALL RIGHT.

7 MS. JENKINSON: AT THIS TIME, THE DEFENSE WOULD MAKE A
8 MOTION FOR A DIRECTED VERDICT.

9 THE STATE HAS FAILED TO PRODUCE COMPETENT EVIDENCE TO
10 PROVE THESE CHARGES AGAINST MR. THOMAS HAMILTON. WE HAVE AN
11 UNRELIABLE IDENTIFICATION BY THE VICTIM, WHO WAS TAKEN TO THE
12 SCENE WHERE MR. HAMILTON WAS DETAINED. HE WAS HANDCUFFED AND
13 SURROUNDED BY POLICE OFFICERS IN FRONT OF A POLICE CAR.

14 WE DON'T HAVE ANY FINGERPRINTS AT THE SCENE OF
15 20 TRAPMAN, AND NO EVIDENCE TO SUPPORT THE CHARGES IN THE
16 INDICTMENT, YOUR HONOR.

17 THANK YOU.

18 THE COURT: ALL RIGHT. AND THAT IS AS TO BOTH
19 INDICTMENTS?

20 MS. JENKINSON: YES, SIR, THAT IS TO BOTH INDICTMENTS.

21 THE COURT: ALL RIGHT. I WOULD RESPECTFULLY DENY YOUR
22 MOTION. DO YOU HAVE ANY OTHER MOTIONS?

23 MS. JENKINSON: YOUR HONOR, I WOULD JUST RENEW MY MOTION
24 FOR A MISTRIAL FROM THE STATE'S OPENING THAT THEY MENTIONED A
25 PROPERTY OFFENCE ENHANCEMENT.

1 YOUR HONOR HAS ASKED IF I WOULD LIKE A CURATIVE
2 INSTRUCTION, AND I HAVE MADE THE TACTICAL DECISION NOT TO ASK
3 FOR THE CURATIVE IN- -- INSTRUCTION IN THIS CASE.

4 **THE COURT:** ALL RIGHT. AND AGAIN, I WOULD DENY YOUR
5 MOTION FOR MISTRIAL.

6 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

7 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

8 **MR. STACK:** NO, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. NOW, MS. - MS. JENKINSON, AS WE
10 SPOKE - ME AND YOU AND THE SOLICITOR AT THE BENCH - I HAD
11 MENTIONED TWO THINGS.

12 YOU-ALL HAD REQUESTED TO CLOSE AND CHARGE IN THE
13 MORNING, WHICH I HAVE CERTAINLY NO OBJECTIONS TO - NUMBER
14 ONE.

15 NUMBER TWO, DO YOU WANT ME TO QUESTION THE WITNESS AS
16 TO, UM - EXCUSE ME. DO YOU WANT ME TO QUESTION THE DEFENDANT
17 AS TO WHETHER OR NOT HE INTENDS TO TESTIFY, OR HAS HE MADE
18 THAT DECISION, OR?

19 **MS. JENKINSON:** YES, SIR, I - I DO WISH THE COURT TO
20 QUESTION HIM, BUT I - IF I COULD HAVE ONE MINUTE WITH HIM?

21 **THE COURT:** YES, MA'AM - CERTAINLY.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
23 CONFERENCE, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. MR. - MR. CLERK, WOULD YOU PLACE
2 THE DEFENDANT UNDER OATH, PLEASE?

3 **CLERK (MR. WILSON):** YES, YOUR HONOR. SIR, WOULD YOU
4 RAISE YOUR RIGHT HAND?

5 (WHEREUPON, **THOMAS CURTIS HAMILTON** WAS DULY SWORN AND
6 TESTIFIED AS FOLLOWS:)

7 **CLERK (MR. WILSON):** THANK YOU. PUT YOUR HAND DOWN.

8 **THOMAS CURTIS HAMILTON, EXAMINATION BY THE COURT:**

9 Q YOU ARE THOMAS CURTIS HAMILTON?

10 A YES, SIR.

11 Q NOW, MR. HAMILTON, YOU UNDERSTAND WE ARE AT THE POINT OF
12 THE - AT THE POINT IN THE TRIAL WHERE THE STATE HAS PRESENTED
13 ITS EVIDENCE AGAINST YOU, AND YOU WILL BE AUTHORIZED AND
14 ALLOWED TO PRESENT A DEFENSE IF YOU SO CHOOSE? DO YOU
15 UNDERSTAND THAT?

16 A YES, SIR.

17 Q DO UNDERSTAND THAT YOU HAVE AN ABSOLUTE RIGHT TO TESTIFY
18 IN YOUR OWN BEHALF?

19 A YES, SIR.

20 Q DO YOU UNDERSTAND THAT?

21 A SIR, YES.

22 Q AND, OF COURSE, IF YOU WERE TO TESTIFY, THE SOLICITOR
23 WOULD BE ALLOWED TO CROSS-EXAMINE YOU CONCERNING YOUR
24 TESTIMONY OR CONCERNING ANY RELEVANT EVIDENCE. DO YOU
25 UNDERSTAND THAT?

1 A YES, SIR - YES, YOUR HONOR.

2 Q AND ADDITIONALLY, YOU MAY HAVE, BESIDES THE, UM, TWO
3 PRIOR BURGLARY CONVICTIONS THAT ARE NOTED - OR, ALLEGEDLY
4 NOTED IN STATE'S TWENTY-FOUR AND TWENTY-FIVE, THERE MAY BE
5 OTHER CONVICTIONS ON YOUR RECORD WHICH THE SOLICITOR COULD
6 USE TO ATTACK YOUR CREDIBILITY SHOULD YOU CHOOSE TO TAKE THE
7 WITNESS STAND?

8 A YES, SIR.

9 Q DO YOU UNDERSTAND THAT, SIR?

10 A YES, SIR, YOUR HONOR.

11 Q HAVE YOU HAD THE OPPORTUNITY TO DISCUSS YOUR RIGHT TO
12 TESTIFY WITH YOUR ATTORNEYS - BOTH MS. JENKINSON AND
13 MR. SMITH?

14 A YES, SIR.

15 Q AND DO YOU FEEL LIKE YOU'VE HAD THE ADEQUATE TIME TO
16 DISCUSS YOUR - YOUR DECISION AS TO WHETHER OR NOT YOU WANT TO
17 TESTIFY IN THIS CASE?

18 A YES, SIR.

19 Q DO YOU FEEL LIKE YOU NEED ANY ADDITIONAL TIME TO TALK TO
20 MS. JENKINSON OR MR. SMITH CONCERNING YOUR DECISION AS TO
21 WHETHER OR NOT YOU WISH TO TESTIFY IN THIS TRIAL?

22 A NO, SIR.

23 Q DO YOU FEEL LIKE YOU NEED ANY ADDITIONAL TIME---

24 A NO, SIR.

25 Q ---TO MAKE YOUR DECISION?

1 A (NO RESPONSE.)

2 Q DO YOU FEEL LIKE YOU NEED TO TALK WITH YOUR ATTORNEY ANY
3 FURTHER CONCERNING WHETHER OR NOT YOU WANT TO TESTIFY ON YOUR
4 OWN BEHALF IN THIS TRIAL?

5 A NO, SIR.

6 Q ALL RIGHT, SIR. NOW, I'M NOT GOING TO MAKE YOU MAKE
7 THAT DECISION TONIGHT. THERE'S ANOTHER SEVENTEEN HOURS, SO
8 TO SPEAK - AND A FEW MINUTES - BEFORE 0-9-1-5 IN THE MORNING,
9 SO I'M STILL GONNA ALLOW YOU TO SLEEP ON IT, SO TO SPEAK,
10 MR. HAMILTON, TO MAKE THAT DECISION. I'M NOT GONNA REQUIRE
11 YOU TO DO THAT.

12 BUT, I WANT YOU TO UNDERSTAND THIS. IF YOU CHOOSE NOT
13 TO TESTIFY, I WILL INSTRUCT THIS TRIAL JURY THAT THAT IS NOT
14 A FACTOR TO BE CONSIDERED BY THE JURY IN ANY WAY IN THEIR
15 DELIBERATIONS AND IN CONSIDERATION ON THE QUESTION OF WHETHER
16 YOU ARE GUILTY OR INNOCENT OF THESE CHARGES.

17 I WILL FURTHER INSTRUCT THE JURY THAT THE FACT THAT YOU
18 FAILED TO - THE FACT THAT YOU FAILED TO TESTIFY MUST NOT BE
19 CONSIDERED BY THE JURY IN ANY MANNER WHATSOEVER. DO YOU
20 UNDERSTAND THAT?

21 A YES, SIR.

22 Q AND YOU UNDERSTAND YOU HAVE THE RIGHT TO REMAIN SILENT?

23 A YES, SIR.

24 Q AND I WILL TELL THAT JURY THAT IF YOU ASSERT THAT RIGHT,
25 THAT THAT CANNOT BE CONSIDERED BY THE JURY IN THEIR

1 DELIBERATIONS. DO YOU UNDERSTAND THAT---

2 A YES, SIR.

3 Q ---MR. HAMILTON? I WILL FURTHER INSTRUCT THE JURY THAT
4 YOU ARE NOT REQUIRED - THAT YOU ARE NOT REQUIRED TO PROVE
5 YOUR INNOCENCE, AND THE BURDEN OF PROOF REMAINS ON THE STATE
6 TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT. DO YOU
7 UNDERSTAND THAT?

8 A YES, SIR.

9 Q HAVE YOU UNDERSTOOD MY QUESTIONINGS TO YOU TODAY?

10 A YES, SIR.

11 Q DO YOU HAVE ANY QUESTIONS FOR ME CONCERNING WHAT WE'VE
12 JUST BEEN OVER, MR. HAMILTON?

13 A NO, SIR, I HAVEN'T.

14 Q ALL RIGHT, SIR. YOU MAY BE SEATED. AND JUST, PLEASE,
15 LET ME KNOW YOUR DECISION - THROUGH YOUR ATTORNEY - BY
16 NINE-FIFTEEN IN THE MORNING.

17 A YES, SIR.

18 THE COURT: ALL RIGHT, ANYTHING FURTHER SOLICITOR,
19 MS. JENKINSON?

20 MR. STACK: NO, YOUR HONOR.

21 MS. JENKINSON: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. I WOULD PREFER YOU-ALL BE HERE
23 AT 0-900, AND IF WE HAVE ANY OTHER MATTERS, WE STILL MAY BE
24 ABLE TO GET THE JURY IN BY NINE-FIFTEEN.

25 THANK YOU, COURT IS IN RECESS. HAVE A PLEASANT EVENING.

1 MY POSITION ON THAT IS THAT IS A SENTENCING ENHANCEMENT AND
2 NOT AN ELEMENT OF THE OFFENSE CHARGED AS FAR AS THE LARCENY
3 ITSELF. SO, I WOULD DECLINE TO CHARGE, UH - I - I WILL
4 CHARGE LARCENY, OF COURSE---

5 MR. STACK: YES, YOUR HONOR.

6 THE COURT: ---BUT I DECLINE TO CHARGE THE, UH, PROPERTY
7 OFFENCE ENHANCEMENT.

8 MR. STACK: YES, SIR. I BELIEVE YOU'RE CORRECT,
9 YOUR HONOR.

10 THE COURT: ALL RIGHT, SIR. MS. JENKINSON, DO YOU HAVE
11 ANY CHARGES?

12 MS. JENKINSON: YES, YOUR HONOR. UM - I HAD ASKED THE
13 COURT YESTERDAY ABOUT A TELFAIRE CHARGE---

14 COURT REPORTER: I'M SORRY? ABOUT A?

15 MS. JENKINSON: TELFAIRE CHARGE, AND I HAD PULLED -
16 T-E-L-F-A-I-R-E - I HAD PULLED A CHARGE FROM IRVIN'S, AND IT
17 IS A LONGER ONE. BUT, THE CHARLESTON COUNTY BAR HAS A
18 SHORTER IDENTIFICATION CHARGE. I - I THINK IT, UM, COVERS
19 EVERYTHING, AND I HAVE SHOWN IT TO MR. DURANT BUT NOT TO
20 MR. STACK YET.

21 THE COURT: ALL RIGHT, SIR. (SIC)

22 MS. JENKINSON: AND I THINK THAT HE IS OKAY WITH THAT.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 **MR. STACK:** WE DON'T OBJECT TO THE CHARGE, YOUR HONOR.

2 **THE COURT:** ALL RIGHT. COULD I SEE A COPY OF IT,
3 PLEASE?

4 **MS. JENKINSON:** YES, YOUR HONOR.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
6 CONFERENCE/DOCUMENT REVIEW, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 **THE COURT:** ALL RIGHT, I WILL CHARGE THIS
9 IDENTIFICATION. ANY OTHER REQUEST, MS. JENKINSON?

10 **MS. JENKINSON:** YES, YOUR HONOR. UH - THE DEFENSE WOULD
11 REQUEST THE CHARGE OF BURG SECOND.

12 **THE COURT:** ALL RIGHT. SOLICITOR?

13 **MR. STACK:** ONE MOMENT, YOUR HONOR.

14 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
15 CONFERENCE, OFF THE RECORD.)

16 (WHEREUPON, COURT RESUMED.)

17 **MR. STACK:** YOUR HONOR, THE STATE RESPECTFULLY OPPOSES
18 THAT, AND ASKS FOR SIMPLY THE BURG FIRST CHARGE.

19 **THE COURT:** ALL RIGHT. UM - I THINK I AM GOING TO
20 CHARGE BURGLARY SECOND.

21 AS I UNDERSTAND THE TESTIMONY FROM THE, UM - FROM THE
22 LAST TWO WITNESSES AND THE, UH, CROSS-EXAMINATION - FROM
23 MS. GASCON AND MS. SICKORELLI (PHONETIC/SIC) - OR,
24 CICCARELLI, I'M NOT SURE WHICH - THAT THE CROSS-EXAMINATION
25 WAS SUCH THAT...

1 I THINK THERE'S AN ISSUE OF FACT FOR THE JURY OF WHETHER
2 OR NOT THEY BELIEVE OR DISBELIEVE THE ESSENTIAL ELEMENT OF
3 THE OFFENSE THAT MR. HAMILTON, AS HE SITS HERE TODAY, IS NOT
4 ONLY, 'A', THE PERSON THAT COMMITTED THE BURGLARY, BUT 'B',
5 IS A PERSON WITH A, UM, RECORD FOR TWO PRIOR CONVICTIONS.

6 MR. STACK: THANK YOU, YOUR HONOR.

7 THE COURT: SO I AM GONNA CHARGE BURGLARY SECOND. ANY -
8 ANY FURTHER, MR. JENKINSON?

9 MS. JENKINSON: NO, YOUR HONOR. THANK YOU.

10 THE COURT: ALL RIGHT. ARE YOU GONNA OFFER - DO YOU
11 INTEND OF OFFER ANY TESTIMONY?

12 MS. JENKINSON: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. SO, IF WE BRING, UH - IF WE
14 BRING OUR JURY OUT, THEN - THEN I TAKE IT YOU WOULD, UH,
15 FORMALLY REST?

16 MS. JENKINSON: (NO RESPONSE.)

17 THE COURT: CORRECT?

18 MS. JENKINSON: YES, YOUR HONOR.

19 THE COURT: UM - THEN WE - YOU WOULD RENEW YOUR MOTIONS?

20 MS. JENKINSON: YES, YOUR HONOR.

21 THE COURT: CAN YOU, UM, RENEW THOSE MOTIONS NOW FOR THE
22 RECORD?

23 MS. JENKINSON: I CAN, YOUR HONOR.

24 THE COURT: ALL RIGHT. AND THEN WE WON'T HAVE TO SEND
25 THE JURY BACK OUT AND ME REHEAR THE MOTION IF THAT'S

1 APPROPRIATE.

2 MS. JENKINSON: YES, YOUR HONOR. AT THIS TIME THE
3 DEFENSE WOULD RENEW ITS MOTION FOR A DIRECTED VERDICT.

4 THE STATE HAS FAILED TO PRODUCE COMPETENT EVIDENCE TO
5 PROVE THE CHARGES IN EACH INDICTMENT - THE BURGLARY FIRST
6 INDICTMENT, AS WELL AS THE - THE PROPERTY CRIME ENHANCEMENT
7 INDICTMENT FOR LARCENY.

8 WE HAVE A CASE OF AN UNRELIABLE IDENTIFICATION BY THE
9 VICTIM IN THIS CASE. MR. HAMILTON WAS HANDCUFFED, SURROUNDED
10 BY POLICE OFFICERS, A POLICE CAR WHEN THE VICTIM WAS DRIVEN
11 BY HIM ON LOGAN STREET.

12 AND, WE HAVE NO FINGERPRINTS AT THE SCENE THAT LINK
13 MR. HAMILTON TO THE OFFENSES CHARGED.

14 THE COURT: ALL RIGHT. THANK YOU, MS. JENKINSON. AND I
15 WOULD RESPECTFULLY RENEW MY, UM - MY DECISION AND MY
16 FINDINGS, AND DENY THOSE MOTIONS.

17 MS. JENKINSON: THANK YOU, YOUR HONOR.

18 THE COURT: YOU'RE WELCOME.

19 MS. JENKINSON: I WOULD ALSO RENEW MY MOTION FOR A
20 MISTRIAL. THE STATE, IN THEIR OPENING, TOLD THE JURY THAT
21 MR. HAMILTON WAS CHARGED WITH A PROPERTY CRIME ENHANCEMENT.

22 WE FEEL THAT THAT'S VERY PREJUDICIAL. THAT THEY WERE
23 HEARING HIS PRIOR RECORD. WE DO FEEL THAT THAT'S A MATTER
24 FOR SENTENCING, AND NOT FOR THE JURY.

25 THE COURT: ALL RIGHT. AND AGAIN, I WOULD RESPECTFULLY

1 DENY THAT MOTION.

2 AND AGAIN WILL OFFER THAT I WILL GIVE WHENEVER CURATIVE
3 INSTRUCTIONS OR INSTRUCTION YOU MAY REQUEST IN THAT REGARD.

4 MS. JENKINSON: THANK YOU, YOUR HONOR.

5 THE COURT: YES, MA'AM.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 THE COURT: ANYTHING FURTHER, SOLICITOR?

10 MR. STACK: NO, YOUR HONOR.

11 THE COURT: ALL RIGHT. IF YOU'D JUST GIVE ME A MINUTE
12 TO LOOK AT MY CHARGE BEFORE WE BRING THE JURY IN?

13 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
14 CONFERENCE/REVIEW CHARGE, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 THE COURT: MR. CLERK, CAN YOU SEE IF WE HAVE OUR
17 JURORS? I ASSUMED THE BAILIFF WOULD COME TELL ME. IS THAT -
18 IS THAT A GOOD ASSUMPTION, OR...

19 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
20 CONFERENCE, OFF THE RECORD.)

21 (WHEREUPON, COURT RESUMED.)

22 CLERK (MR. WILSON): JUDGE, WE'RE WAITING ON ONE.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 **THE COURT:** WE, UH - WE ARE STILL MISSING ONE JUROR -
2 NUMBER 149. WE DO NOT HAVE A PHONE NUMBER FOR HER OR ANY
3 CONTACT INFORMATION. I UNDERSTAND SHE HAS A FIVE-YEAR-OLD
4 CHILD AND A ONE-YEAR-OLD CHILD, AND HAD SOME CHILDCARE
5 CONCERNS YESTERDAY. IS THAT RIGHT, MR. BAILIFF?

6 **BAILIFF:** THAT'S CORRECT.

7 **THE COURT:** SHE'S NOW TWENTY-FIVE MINUTES LATE. MY
8 PREFERENCE IS TO, UH, REPLACE HER WITH THE, UH, ALTERNATE AND
9 PROCEED.

10 **MR. STACK:** WE WOULD AGREE, YOUR HONOR.

11 **THE COURT:** MS. JENKINSON?

12 **MS. JENKINSON:** WE DON'T HAVE AN OBJECTION, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. MR. BAILIFF, IF YOU WOULD BRING
14 US OUR JURY, PLEASE? AND PLACE THE ALTERNATE IN THE
15 APPROPRIATE SEAT TO BE ON THE PRIMARY JURY.

16 AND, SHOULD 149 APPEAR, JUST, UM - HAVE HER REMAINED
17 SO I CAN SEE WHAT HER - HER PROBLEMS WERE THIS MORNING.
18 THANK YOU.

19 DID YOU-ALL SEE THE FORM OF VERDICT?

20 **MS. JENKINSON:** YES, SIR.

21 **MR. STACK:** YES WE HAVE, YOUR HONOR. WE HAVE NO
22 OBJECTION.

23 **THE COURT:** BESIDES THE ISSUES ON THE BURGLARY SECOND
24 DEGREE, YOU HAVE NO OBJECTIONS?

25 **MR. STACK:** I HAVE NO OBJECTION AT ALL, YOUR HONOR.

1 **THE COURT:** ALL RIGHT, THANK YOU. THANK YOU,
2 MS. JENKINSON.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
4 CONFERENCE/WAIT FOR JURY TO ENTER, OFF THE RECORD.)

5 (WHEREUPON, COURT RESUMED.)

6 **BAILIFF:** YOUR HONOR, SHE'S - SHE'S HERE NOW.

7 **THE COURT:** OH, GREAT - GOOD. ALL RIGHT. WELL,
8 MS. MEGGETT HAS NOW ARRIVED.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE/WAIT FOR JURY TO ENTER, OFF THE RECORD.)

11 (WHEREUPON, COURT RESUMED.)

12 (WHEREUPON, JURY ENTERED THE COURTROOM AT 9:42 A.M.)

13 **BAILIFF:** JURORS ARE ALL PRESENT, YOUR HONOR.

14 **THE COURT:** THANK YOU, MR. BAILIFF. MADAME FORELADY AND
15 LADIES AND GENTLEMEN OF THE JURY, GOOD MORNING.

16 WE ARE NOW CONTINUING WITH THE TRIAL OF THE CASE.
17 MS. JENKINSON?

18 **MS. JENKINSON:** THE DEFENSE RESTS, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. THANK YOU - THANK YOU,
20 MS. JENKINSON. AND, UH - YOUR - YOUR MOTIONS ARE NOTED, AND,
21 UH, MY RULINGS ARE REAFFIRMED.

22 MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY, YOU
23 HAVE NOW HEARD ALL THE TESTIMONY THAT IS GONNA BE PRESENTED
24 BY BOTH OF THE PARTIES IN THE TRIAL OF THIS CASE.

25 IT IS NOW THE POINT IN THE TRIAL WHERE THE ATTORNEYS

1 WILL HAVE THE OPPORTUNITY TO PRESENT THEIR CLOSING ARGUMENTS
2 TO YOU CONCERNING THEIR PERCEPTIONS OF THE ISSUES IN THE
3 CASE.

4 THE SOLICITOR WILL PRESENT HIS CLOSING ARGUMENT TO YOU
5 FIRST, AND THAT WILL THEN BE FOLLOWED BY THE ATTORNEY FOR THE
6 DEFENDANT, MS. JENKINSON.

7 I REMIND YOU THAT THE CLOSING ARGUMENTS ARE NOT
8 EVIDENCE. HOWEVER, THERE ARE VERY LIMITED NUMBERS OF TIMES -
9 AS YOU SEE, THE OPENING STATEMENT AND THE CLOSING ARGUMENTS
10 ARE THE ONLY TIME THE ATTORNEYS FOR EACH OF THE RESPECTIVE
11 PARTIES HAVE THE OPPORTUNITY TO ADDRESS YOU AS A JURY.

12 SO, I WOULD ASK YOU TO PLEASE GIVE THEIR - YOUR
13 INDIVIDUAL AND UNDIVIDED ATTENTION TO THESE ATTORNEYS, UM,
14 DURING - DURING THEIR CLOSING ARGUMENTS.

15 FURTHER, I WOULD REMIND THOSE OTHER INDIVIDUALS IN THE
16 GALLERY IN THE COURTROOM THAT I DO NOT ALLOW ANYONE TO, UH,
17 EXIT THE COURTROOM WHILE THE ATTORNEYS ARE ADDRESSING THE,
18 UH - THE JURY. I CAN'T REALLY CONTROL WHO COMES IN, BUT I
19 CAN CONTROL WHO GOES OUT.

20 SO, IF YOU WANT TO LEAVE BEFORE THE CLOSINGS, YOU'RE
21 WELCOME TO. YOU'RE WELCOME TO LEAVE BETWEEN THE CLOSING OF
22 THE SOLICITOR AND THE CLOSING OF MS. JENKINSON. YOU ARE THEN
23 WELCOME TO LEAVE PRIOR TO MY CHARGE TO THE JURY. BUT, YOU
24 ARE NOT ALLOWED TO LEAVE WHILE THE ATTORNEYS ARE ADDRESSING
25 THE JURY OR WHILE I'M CHARGING THE JURY.

1 THAT BEING SAID, SOLICITOR, YOU MAY ADDRESS THE JURY.

2 **MR. STACK:** THANK YOU, YOUR HONOR. ALL RIGHT, GOOD
3 MORNING, LADIES AND GENTLEMEN. IT'S GOOD TO SEE YOU AGAIN.
4 MY NAME IS JIM STACK, AND YESTERDAY YOU WERE PRESENTED A LOT
5 OF INFORMATION IN A SHORT PERIOD OF TIME. FROM ABOUT TWO
6 O'CLOCK IN THE AFTERNOON UNTIL ABOUT FOUR O'CLOCK YESTERDAY
7 YOU HAD SIX WITNESSES PRESENTED TO YOU AND TWENTY-FIVE PIECES
8 OF EVIDENCE MOVED INTO EVIDENCE.

9 TODAY I'M GONNA SUMMARIZE THAT EVIDENCE FOR YOU, AND I'M
10 GONNA MOVE A LITTLE BIT MORE SLOWLY. IT WON'T TAKE A LONG
11 TIME, BUT I AM GOING TO MOVE AT A SLOWER PACE THIS MORNING
12 THAN WE MOVED YESTERDAY AFTERNOON.

13 YOU HAVE A LOT OF INFORMATION TO ABSORB AND TO CONSIDER
14 IN THE DECISION THAT YOU'RE GONNA HAVE TO MAKE SHORTLY ABOUT
15 THE INNOCENCE OR THE GUILT OF MR. THOMAS CURTIS HAMILTON.
16 AND YOU MAY, IF YOU WISH, ORGANIZE YOUR THOUGHTS IN THAT
17 MATTER ACCORDING TO THE LAW - THE ELEMENTS OF THE LAW - EACH
18 OF WHICH I AM REQUIRED TO PROVE TO YOU BEYOND A REASONABLE
19 DOUBT. AND THERE'S FOUR ELEMENTS TO THE LAW IN THIS
20 PARTICULAR CASE.

21 FIRST, DID THOMAS HAM- -- HAMILTON ENTER THE APARTMENT?
22 DID HE ENTER THE APARTMENT WITHOUT PERMISSION? AND, DID HE
23 ENTER THE APARTMENT WITHOUT PERMISSION WITH THE INTENT TO
24 COMMIT A CRIME THEREIN - TO COMMIT A CRIME INSIDE THE
25 APARTMENT? AND THE FOURTH ELEMENT IS, DOES MR. HAMILTON HAVE

1 TWO PRIOR CONVICTIONS FOR BURGLARY ON HIS RECORD?

2 WITH THAT STRUCTURE, LET'S REVIEW THE EVIDENCE THAT HAS
3 BEEN PRESENTED TO YOU.

4 FIRST OF ALL, DID HE ENTER THE DWELLING, AND WHAT
5 INFORMATION DO WE HAVE ON THAT? WELL, BASICALLY, WE HAVE
6 MR. WILLIAM MILLER - THE VICTIM - WHO TESTIFIED TO WHAT HE
7 OBSERVED WITH HIS FIVE SENSES. DIRECT EVIDENCE IS WHAT YOU
8 OBSERVE WITH YOUR EYES OR YOUR EARS OR YOUR NOSE - LIKE THAT.

9 WHAT HAPPENED? HE SAID HE HEARD A NOISE DOWNSTAIRS.
10 WHEN ASKED TO BE MORE SPECIFIC, HE SAID HE WAS UPSTAIRS AND I
11 HEARD THIS SWISH - THAT'S THE WORD HE USED - THE SWISH OF
12 THE - THE STORE (SIC) - BACK DOOR MAKES WHEN SOMEONE OPENS
13 IT. HE HEARD THE SWISH, AND THEN HE HEARD OTHER NOISES
14 DOWNSTAIRS WITH HIS EARS.

15 AND I ASK HIM, WERE THESE NOISES LIKE PEOPLE SPEAKING TO
16 EACH OTHER? AND HE SAID, NO, IT WAS LIKE STUFF CLANKING
17 AROUND DOWNSTAIRS.

18 HE HEARD THE SWISH, HE HEARD THE NOISE. AND THEN WHAT
19 HAPPENED? HE IMMEDIATELY - IN HIS WORDS - RUSHED DOWN THE
20 STAIRS TO THE BOTTOM OF THE STAIRS AND FROM THERE HE SAW -
21 WITH HIS EYES - THE BACK DOOR BEING CLOSED. BEING PULLED
22 CLOSED FROM THE OUTSIDE.

23 THEN WHAT DID HE DO? HIS STATEMENT IS, HE RUSHED -
24 AGAIN HIS WORD - FROM THE BOTTOM OF THIS STAIRWELL - ABOUT
25 TWENTY FEET - TO THE BACK DOOR AND IMMEDIATELY OPENED THAT

1 BACK DOOR.

2 AND WHAT DID HE SEE WITH HIS EYES? HE SAW THE
3 DEFENDANT, MR. THOMAS CURTIS HAMILTON. AND WHAT WAS HE
4 HOLDING? HE WAS HOLDING THE PORTABLE C-D PLAYER - THE
5 BOOM BOX TYPE THING - AND THE SONY PLAY STATION TWO IN HIS
6 HANDS.

7 WHAT ELSE DID HE TESTIFY TO? DOES HE LEAVE THAT STUFF
8 IN THE BACKYARD? NO, HE STORES THAT STUFF INSIDE THE
9 APARTMENT. THE PLAY STATION TWO IS PLUGGED INTO THE WALL.
10 IT SITS ON THAT SHELF THAT WAS DISTURBED, UNDERNEATH THE
11 TELEVISION SET.

12 WHERE DOES THE BOOM BOX RESIDE? WELL, HE KEEPS IT
13 UNDERNEATH THAT PORTABLE TABLE ON WHEELS THAT HE PUSHES
14 AROUND, ON THE BOTTOM SHELF THERE. THAT IS WHERE HE STORES
15 IT. IT WAS INSIDE THE APARTMENT AND THEN IT WHEN OUTSIDE THE
16 APARTMENT.

17 WHAT DOES THAT INDICATE? THAT HE WENT INTO THE
18 APARTMENT, PULLED THE PLUGS OUT, GRABBED THE STUFF, LEFT THE
19 APARTMENT, AND WAS CONFRONTED SHORTLY AFTER THAT.

20 NOW THESE EVENTS - THE SWISH, THE NOISE, SEEING THE DOOR
21 CLOSE, SEEING MR. HAMILTON, HOW ARE THEY RELATED IN TIME?
22 THEY'RE RELATED IN TIME IN A SHORT, RAPID SEQUENCE.

23 HE HEARD - AND WHAT DID HE SAY? HE IMMEDIATELY WENT
24 DOWNSTAIRS - HE RUSHED DOWN THE STAIRS. HE SAW THE DOOR
25 CLOSE, AND HE IMMEDIATELY OPENED THAT DOOR AND SAW THE

1 DEFENDANT.

2 EVENT 'A', EVENT 'B', EVENT 'C', EVENT 'D' HAPPENED IN A
3 SHORT PERIOD OF TIME - A SHORT PERIOD OF TIME.

4 AND, THE STUFF WAS SUPPOSED TO BE INSIDE THE APARTMENT,
5 AND NOW IT'S OUTSIDE THE APARTMENT IN THE HANDS - IN THE
6 GRASP OF MR. HAMILTON.

7 WHAT'S THE NEXT ELEMENT? DID HE HAVE PERMISSION TO
8 ENTER THE DWELLING? IF HE HAD PERMISSION, WE WOULDN'T BE
9 HERE. IT WOULD BE A DIFFERENT CHARGE OR SOMETHING LIKE THAT.

10 AND I ASKED MR. MILLER, DID YOU GIVE MR. HAMILTON
11 PERMISSION TO COME INTO YOUR APARTMENT? WHAT WAS HIS
12 ANSWER? NO.

13 DID ANYONE GIVE MR. HAMILTON PERMISSION TO COME INTO
14 YOUR APARTMENT? AND WHAT WAS THE ANSWER? AGAIN, NO.

15 NEXT, DID HE HAVE ANY INTENT, WHEN HE CAME IN, TO COMMIT
16 THE CRIME? NOW, SOMETIMES YOU WOULD THINK THAT IT'S HARD TO
17 DETERMINE SOMEONE'S INTENT. BECAUSE, OBVIOUSLY, NO ONE CAN
18 READ ANOTHER PERSON'S MIND.

19 BUT OFTENTIMES - OFTENTIMES, YOU CAN DETERMINE A
20 PERSON'S INTENT BY OBSERVING THAT PERSON'S ACTIONS.

21 WHAT HAPPENED HERE? THE DEFENDANT OPENED THE DOOR -
22 SWISH. HE PULLED THE STUFF OUT THAT WAS PLUGGED IN UNDER THE
23 EQUIPMENT - THE RATTLING NOISE DOWNSTAIRS. HE PULLED THE
24 DOOR CLOSED, AND THEN HE WAS CONFRONTED FIVE FEET OUTSIDE THE
25 BACK DOOR.

1 CAN YOU DO THIS BY ACCIDENT? AND THE ANSWER IS, NO.

2 I COULD, BY ACCIDENT, WITHOUT INTENT, BUMP INTO YOU IN
3 THE HALLWAY. I DID NOT MEAN TO DISTURB YOU OR JOSTLE YOU IN
4 ANY WAY.

5 I COULD, BY ACCIDENT, TAP YOUR CAR WHEN I'M TRYING TO
6 PARK NEXT TO YOU. BY ACCIDENT, AND NOT HAVE ANY INTENT TO DO
7 THAT.

8 BUT THESE ACTIONS REQUIRE INTENT. YOU DON'T
9 ACCIDENTALLY GO INTO ANOTHER PERSON'S HOUSE. YOU
10 DON'T ACCIDENTALLY UNPLUG THEIR EQUIPMENT. YOU DON'T
11 ACCIDENTALLY CARRY IT OUT THE BACK DOOR, CLOSING THE
12 BACK DOOR BEHIND YOU.

13 IF YOU DO THIS STUFF, YOU MUST INTEND TO DO THAT STUFF.
14 AND THE STUFF I DESCRIBED IS A CRIME. THE INTENT EXISTS TO
15 DO THAT CRIME.

16 FINALLY, THE FOURTH ELEMENT. DOES THE DEFENDANT HAVE
17 TWO OR MORE PRIOR CONVICTIONS? AND WHO - LET'S ASK - WHO DID
18 WE HEAR IN THAT REGARD?

19 MS. REINA GASCON, THE SECOND LADY - SECOND TO THE LAST
20 LADY THAT TESTIFIED FROM THE CLERK OF COURTS' OFFICE
21 DOWNSTAIRS. THEY MAINTAIN ALL CRIMINAL RECORDS IN CHARLESTON
22 COUNTY. THEY'RE REQUIRED TO BY LAW.

23 AND I PRESENTED HER WITH STATE'S TWENTY-FOUR AND STATE'S
24 TWENTY-FIVE THAT YOU'LL HAVE A CHANCE TO REVIEW BACK IN THE
25 JURY ROOM.

1 AND I ASKED HER, WHAT IS THIS? AND SHE SAID, IT'S A
2 CERTIFIED COPY OF A PLEA IN 1989, WHERE THE DEFENDANT PLED -
3 UNDER OATH - TO COMMITTING BURGLARY IN THE SECOND DEGREE IN
4 1989.

5 AND THEN I ASKED, WHAT DOES THE STATE'S TWENTY-FIVE
6 REPRESENT? AND SHE SAID, IT'S A CERTIFIED COPY OF A
7 CONVICTION AT TRIAL FOR BURGLARY IN THE FIRST DEGREE.

8 THOMAS HAMILTON, AND THOMAS CURTIS HAMILTON - 1989,
9 1995.

10 THEN, WHO FOLLOWED MS. GASCON? THE LADY FROM SLED,
11 MS. LAURIE CICCARELLI, CAME DOWN FROM COLUMBIA AND DID THE
12 FINGERPRINT COMPARISON BETWEEN THE PERSON WHO WAS ARRESTED
13 AND CONVICTED IN 1989, AND THE PERSON WHO WAS ARRESTED AND
14 CONVICTED IN 1995, AND THE PERSON WHO WAS ARRESTED ON
15 AUGUST 3RD OF 2004 AND CHARGED WITH BURGLARY IN THE FIRST
16 DEGREE.

17 AND I ASKED HER - I ASKED, DID YOU MAKE A COMPARISON?
18 YES, I DID. AND WHAT WERE THE RESULTS? ALL THREE OF THOSE
19 FINGERPRINT CARDS WERE THE SAME.

20 AND I ASKED HER, WHAT DOES THAT INDICATE? DOES THAT
21 MEAN THE PERSON WHO PLEAD GUILTY IN '89 TO BURGLARY SECOND,
22 IS THAT THE SAME PERSON WHO WAS CONVICTED AT TRIAL FOR
23 BURGLARY FIRST IN THE - ON - IN 1995? HER ANSWER WAS YES,
24 IT'S THE SAME PERSON.

25 AND THEN I ASKED HER, IS THAT THE SAME PERSON - THE SAME

1 PERSON WHO WAS ARRESTED ON AUGUST 3RD OF 2005? AND WHAT WAS
2 HER ANSWER? YES.

3 AND THEN I ASKED HER, WITH SOME PROMPTING FROM MY -
4 MR. DURANT - WHO IS THAT PERSON? AND WHAT WAS HER ANSWER?
5 THOMAS CURTIS HAMILTON.

6 CONVICTED - PLED GUILTY IN '89, WAS CONVICTED AT TRIAL
7 IN '95, AND STANDS HERE AT TRIAL FOR BURGLARY IN THE FIRST
8 DEGREE.

9 WELL, LET'S MOVE BEYOND THE ELEMENTS. THOSE ELEMENTS
10 MIGHT PROVIDE YOU SOME STRUCTURE IN WHAT YOU - AS YOU
11 ASSEMBLE AND CONSIDER ALL THE INFORMATION GIVEN YOU.

12 LET'S TALK ABOUT SOME OTHER THINGS BRIEFLY. FIRST, YOU
13 TALK ABOUT TIME/DISTANCE IN THE APARTMENT. HE HEARS A SWISH,
14 HE HEARS A NOISE. HE GOES DOWNSTAIRS AND HE SEES THE DOOR
15 BEING PULLED CLOSED. THEN HE SEES THE DEFENDANT WITH HIS
16 PROPERTY IN HIS HAND. ALL RELATED IN A CLOSE PERIOD OF TIME.

17 WELL, LET'S TALK ABOUT TIME/DISTANCE IN TERMS OF
18 20 TRAPMAN STREET AND 91 LOGAN STREET WHERE OFFICER RIVERS
19 STOPPED AND EVENTUALLY ARRESTED THE DEFENDANT.

20 HOW FAR IS THAT? DEFENSE HAS ASKED, AND I'VE AGREED TO
21 STIPULATE, THAT THE DRIVING DISTANCE - IF YOU GO EAST ON
22 QUEEN STREET AND THEN TURN LEFT ON LOGAN STREET - IS
23 APPROXIMATELY THREE-TENTHS OF ONE MILE. THAT CONVERTS TO
24 FIVE HUNDRED AND TWENTY-EIGHT YARDS.

25 WHAT I CANNOT PRESENT TO YOU - BECAUSE WE CAN'T FIGURE

1 OUT - WAS WHAT ROUTE DID THE DEFENDANT TAKE WHEN HE LEFT
2 20 TRAPMAN STREET? DID HE GO DIRECTLY DOWN QUEEN STREET AND
3 THEN TURN LEFT UP LOGAN STREET? I DON'T KNOW, AND WE CAN'T
4 FIGURE THAT OUT.

5 DID HE TAKE A MORE CIRCUITOUS ROUTE? A MORE ROUNDABOUT
6 ROUTE TO GET OFF THE MAIN DRAG OF QUEEN STREET AND PERHAPS
7 AVOID DETECTION? I DON'T KNOW.

8 DID HE STOP AND TRY TO HIDE BEHIND A BUILDING OR IN A
9 GARAGE OR IN AN ALLEYWAY? I DON'T KNOW.

10 BUT, I KNOW IT STARTED AT 20 TRAPMAN STREET WHERE
11 MR. MILLER SAW HIM AND IT ENDED AT 91 LOGAN STREET WHERE
12 MR. MILLER IDENTIFIED HIM.

13 NOW, HOW MUCH TIME ELAPSED? I CAN'T TELL YOU THAT
14 WITH - WITH POSITION (SIC) - PRECISION.

15 I ASKED MR. MILLER, HOW LONG DID IT TAKE FOR THE POLICE
16 OFFICERS TO ARRIVE AFTER HE CALLED 911? AND HIS ANSWER WAS,
17 A FEW MINUTES.

18 POLICE CAR COMES UP, OFFICER HARGROVE IS DRIVING IT. HE
19 GETS INTO THE VEHICLE, AND WHERE DOES HE GO? HE GOES DOWN TO
20 SERGEANT CONNALLY, THE FEMALE WHO TESTIFIED WHO STOPPED THE
21 FIRST PERSON THAT FIT THE DESCRIPTION.

22 AND I ASKED SERGEANT CONNOLLY, AFTER YOU - HOW LONG
23 AFTER THE 911 CALL DID YOU STOP THE FIRST SUSPECT? A FEW
24 MINUTES. DID YOU HAVE TO WAIT FOR THE VICTIM TO BE DRIVEN
25 OUT TO YOU? YES. HOW LONG DID YOU WAIT? A FEW MINUTES.

1 SHE'S NOT CERTAIN.

2 AND THEN I ASKED SERGEANT CONNOLLY, WHEN THE DEFENDANT
3 SAID, YOUR MAN IS NOT THE GUY WHO BURGLARIZED MY HOUSE, WAS
4 HE CERTAIN OF THAT? SHE SAID, YES, HE WAS - IN NO UNCERTAIN
5 TERMS. THAT MAN - THE FIRST MAN PRESENTED - IS NOT THE MAN
6 WHO BURGLARIZED THE HOUSE.

7 WHEN SERGEANT RIVERS - THE TALL MAN WHO TESTIFIED - THE
8 MAN WHO'D ACTUALLY ARRESTED THE DEFENDANT - I ASKED HIM, HOW
9 LONG AFTER YOU HEARD THE 911 CALL DID YOU STOP THE DEFENDANT?
10 I DON'T KNOW, A FEW MINUTES. DID YOU HAVE TO WAIT THERE WITH
11 THE DEFENDANT FOR THE VICTIM TO BE DRAWN (SIC) - BROUGHT OUT
12 TO YOU? YES. HOW LONG DID YOU HAVE TO WAIT? I DON'T KNOW,
13 A FEW MINUTES.

14 I CANNOT GIVE YOU A TIME/DISTANCE ANALYSIS FROM
15 20 TRAPMAN STREET TO 91 LOGAN STREET BECAUSE, ONE, I DO NOT
16 KNOW THE ROUTE HE TOOK. AND I CANNOT TELL YOU WITH PRECISION
17 HOW MUCH TIME ELAPSED.

18 THE KID CALLED 911 IMMEDIATELY. COPS ARRIVED IN A FEW
19 MINUTES. TWO MEN WERE STOPPED SHORTLY AFTER THAT. THE KID
20 EVENTUALLY WAS BROUGHT OUT. LIKE THAT.

21 I CAN TELL YOU IT WASN'T A DAY LATER. I CAN TELL YOU IT
22 WASN'T AN HOUR LATER. IT WASN'T THIRTY MINUTES LATER. IT
23 WASN'T EVEN FIFTEEN MINUTES LATER.

24 THE 911 TAPE, FROM START TO FINISH, IS ABOUT
25 TEN-AND-A-HALF MINUTES. THAT'S NOT WHEN POLICE ARREST THE

1 GUY, 'CAUSE OFFICER RIVERS CALLS IN THE MIDDLE OF THAT
2 AND SAYS, I HAVE A SUSPECT, PLEASE BRING THE VICTIM OUT.
3 THEN IT GOES ON, THEN THEY TALK TO THE CRIME SCENE ANALYSIS.
4 LIKE THAT.

5 THAT MAN WAS STOPPED LESS THAN TEN MINUTES - LESS THAN -
6 OR, APPROXIMATELY TWO-AND-A-HALF BLOCKS FROM 20 TRAPMAN
7 STREET, IN THE CORRECT DIRECTION. HE WAS HEADING EAST LAST
8 TIME I SAW HIM. THEY FOUND HIM EAST WHEN HE WAS PICKED UP.

9 ALL RIGHT. THE MOST IMPORTANT ELEMENT IS THE
10 IDENTIFICATION. MR. WILLIAM MILLER HAS IDENTIFIED THE
11 DEFENDANT. WHAT OPPORTUNITY DID HE HAVE TO OBSERVE THE
12 DEFENDANT? HOW FAR FROM HIM WAS HE WHEN HE LOOKED AT THE
13 DEFENDANT?

14 HIS STATEMENT WAS WHAT? THREE TO FOUR FEET. I COME OUT
15 MY BACK DOOR, AND IN THE BACK COURTYARD IS THE DEFENDANT,
16 MR. HAMILTON, WITH MY STUFF IN HIS HANDS. THREE OR FOUR FEET
17 IS APPROXIMATELY THE DISTANCE FROM ME TO THE FRONT ROW HERE.

18 AND I ASKED HIM, HOW LONG DID YOU OBSERVE HIM? HOW LONG
19 DID YOU HAVE THIS CONFRONTATION WHEN YOU ARGUED BACK AND
20 FORTH ABOUT YOUR PROPERTY? AND WHAT WAS HIS ANSWER? MORE
21 THAN A MINUTE.

22 IF I TOOK YOUR WALLET OR I TOOK YOUR PURSE, AND YOU
23 WANTED IT BACK, AND WE FACED EACH OTHER FOR OVER A MINUTE,
24 WOULD YOU BE ABLE TO REMEMBER MY FACE, MY FEATURES, MY
25 CLOTHES LESS THAN TEN MINUTES LATER WHEN I WAS PRESENTED TO

1 YOU BY A POLICE OFFICER? I BELIEVE YOU COULD. IT'S NOT THAT
2 MUCH OF A TIME LAPSE. THE DISTANCE, THREE OR FOUR FEET.
3 DURATION IS MORE THAN A MINUTE.

4 WHAT WERE THE LIGHTING CONDITIONS? WAS IT MIDNIGHT,
5 INSIDE A DARK ROOM WITH THE LIGHTS OFF? NO. IT WAS OUTSIDE,
6 IN AUGUST, IN THE AFTERNOON. TWO O'CLOCK/TWO-FIFTEEN IN THE
7 AFTERNOON.

8 AND I ASKED HIM, DID ANYTHING OBSCURE YOUR VISION?
9 SMOKE, FOG, ANY OBJECT BETWEEN YOU AND HIM? AND THE ANSWER
10 WAS ALWAYS NO. I EVEN ASKED HIM, DID YOU HAVE ANY VISION
11 IMPAIRMENTS? ARE YOU LEGALLY BLIND OR ANYTHING LIKE THAT?
12 AND THE ANSWER WAS NO.

13 HE HAD THE OPPORTUNITY TO OBSERVE HIM FOR OVER A MINUTE
14 AT CLOSE RANGE ABOUT AN IMPORTANT TOPIC.

15 IF I DON'T KNOW YOU AND I WALK BY YOU ON THE STREET, I
16 MIGHT NOT REMEMBER YOUR FACE BECAUSE I'M THINKING OF OTHER
17 THINGS PRESSING ON MY MIND. BUT, IF YOU HAVE MY WALLET, I
18 WILL REMEMBER YOUR FACE BECAUSE I WANT IT BACK. ESPECIALLY
19 IF WE ARGUE ABOUT IT FOR OVER A MINUTE.

20 LET'S TALK ABOUT THE CONFIDENCE IN THE I-D. WAS THIS
21 THE FIRST MAN WHO VAGUELY MEETS THE DESCRIPTION? NO. A MAN
22 WAS PULLED OVER BY OFFICER CONNOLLY AND PRESENTED. AND HE
23 SAID, NO, HE IS A MAN OF AFRICAN DESCENT, BUT THAT'S NOT THE
24 GUY THAT WAS THERE IN MY - IN MY APARTMENT. THAT IS
25 DEFINITELY NOT HIM.

1 OKAY, LET'S TRY AND FIND SOMEBODY ELSE. IS THIS GUY
2 THE MAN? AND WHAT DID THE VICTIM SAY, AND WHAT DID
3 OFFICER RIVERS SAY?

4 ON THE FIRST PASS, HE SAID YES. AND THEN THE OFFICER
5 SUGGESTED, LET'S GO AROUND THE BLOCK AGAIN. ARE YOU SURE?
6 AND THE ANSWER WAS, YES.

7 AND WHAT DID HE SAY? HOW DID HE ANSWER THAT QUESTION?
8 HE SAID, I'M A HUNDRED PERCENT SURE. I'M A HUNDRED PERCENT
9 SURE THAT THE MAN I SAW A FEW MINUTES AGO IN MY BACKYARD WITH
10 MY PROPERTY THAT I WHAT BACK - THAT I GOT BACK - IS THE MAN
11 THAT YOU HAVE RIGHT THERE.

12 ALL RIGHT. FINALLY - ALMOST FINALLY - ALMOST FINALLY, I
13 WANT TO TALK ABOUT AN IMPORTANT DISTINCTION. AND THAT IS,
14 YOUR ABILITY TO DESCRIBE A HUMAN BEING AND YOUR ABILITY TO
15 RECOGNIZE A HUMAN BEING. THOSE ARE VASTLY, VASTLY DIFFERENT
16 THINGS.

17 YOUR ABILITY TO DESCRIBE ANOTHER PERSON IS A
18 COMMUNICATIONS EXERCISE. THAT THE PICTURE YOU HAVE IN YOUR
19 BRAIN, YOU COMMUNICATE IN VARIOUS WAYS TO THE OTHER PERSON TO
20 HOPEFULLY ACCURATELY CREATE THAT SAME PICTURE IN THE OTHER
21 PERSON'S BRAIN.

22 TO BE ABLE TO DESCRIBE SOMEONE IS COMMUNICATION. TO BE
23 ABLE TO RECOGNIZE SOMEONE IS MEMORY BASED.

24 WHAT WAS THE OPPORTUNITY FOR HIM TO SEE HIM? WHAT WAS
25 THE ELAPSED TIME? AND, HOW ATTENTIVE WAS HE? WAS HE JUST

1 WALKING BY SOMEONE ON THE STREET? OR, YOU'VE GOT MY WALLET
2 AND I WANT IT BACK. THAT IS THE EXERCISE.

3 AND LET ME GIVE YOU AN EXAMPLE. MOST OF YOU - OR, MANY
4 OF YOU, I BET, HAVE CHILDREN. AND IF YOU WERE TO DESCRIBE
5 YOUR CHILD TO ME, I WOULD HAVE A VAGUE IDEA OF WHAT YOUR
6 CHILD LOOKS LIKE. A PRETTY GIRL WITH BROWN EYES, BLACK HAIR,
7 BIG SMILE, TEN-YEARS-OLD, KIND-A SKINNY, LIKES TO PLAY
8 SOFTBALL.

9 OKAY. YOU KNOW, I MIGHT BE ABLE TO PICK YOUR CHILD OUT.
10 BUT, I MIGHT NOT BE. BECAUSE, THAT FITS A LOT OF PEOPLE.

11 BUT, IF I ASKED YOU NOT TO DESCRIBE YOUR CHILD BUT TO
12 RECOGNIZE YOUR CHILD - BAM, YOU COULD DO THAT JUST LIKE THAT.
13 YOU CAN RECOGNIZE YOUR CHILD IN DAYLIGHT OR DARK, WHEN SHE'S
14 SITTING ON YOUR LAP OR WHEN SHE'S ACROSS AN ATHLETIC FIELD
15 WITH A BUNCH OF OTHER GIRLS THE SAME AGE, IN THE SAME MAKEUP,
16 SAME HAIR, SAME EYES. YOU CAN RECOGNIZE YOUR CHILD BECAUSE
17 IT'S MEMORY BASED.

18 IF YOU WERE TO DESCRIBE HER TO ME, I MIGHT NOT BE ABLE
19 TO FIGURE IT OUT. BUT WHEN YOU HAVE TO RECOGNIZE 'EM, THAT'S
20 MEMORY BASED.

21 AND THAT WAS WHAT MR. MILLER WAS REQUIRED TO DO -
22 DESCRIBE 'EM.

23 IF I HAD TO DRAW A PICTURE OF SOMEBODY, YOU'RE JUST
24 GONNA GET A STICK FIGURE WITH A HAPPY FACE 'CAUSE I CANNOT
25 COMMUNICATE WHAT'S IN MY MIND THAT WELL AND CREATE THAT SAME

1 PICTURE. BUT, I CAN RECOGNIZE PEOPLE. AND THAT'S WHAT
2 MR. WILLIAM MILLER DID.

3 DO YOU SEE THE PERSON THAT WAS AT 20 TRAPMAN STREET TWO
4 YEARS AGO? AND WHAT WAS HIS ANSWER? YES, I DO. COULD YOU
5 PLEASE POINT TO THAT PERSON AND DESCRIBE WHAT HE WAS WEARING?
6 AND AT THAT TIME - JUST LIKE TODAY - THE DEFENDANT'S WEARING
7 A WHITE SHIRT AND WEARING TAN COLORED PANTS.

8 AND I ASKED HIM, ARE YOU SURE? BECAUSE THIS IS IMPORT.
9 THIS IS AN IMPORTANT ISSUE, AND WE HAVE TO GET THIS RIGHT.
10 ARE YOU SURE? AND WHAT WAS HIS ANSWER? YES. BECAUSE, HE
11 RECOGNIZED HIM BASED ON MEMORY.

12 THE INTENSITY, THE DURATION, THE RANGE, AND THEN THE
13 IDENTIFICATION TEN MINUTES OR LESS LATER.

14 FINALLY, LET'S TALK ABOUT DIRECT EVIDENCE AND
15 CIRCUMSTANTIAL EVIDENCE.

16 DIRECT EVIDENCE IS WHAT YOU SEE WITH YOUR FIVE SENSES.
17 WHAT YOU SEE WITH YOUR EYES, TASTE WITH YOU MOUTH, SMELL,
18 HEAR, AND YOU CAN FEEL. THAT'S DIRECT EVIDENCE.

19 INDIRECT EVIDENCE, OR CIRCUMSTANTIAL EVIDENCE, IS WHAT
20 YOU DERIVE BASED ON THOSE OBSERVATIONS. AND LET ME GIVE YOU
21 AN EXAMPLE.

22 UP NORTH, IN THE WINTERTIME IT SNOWS A LOT. NOW LET'S
23 SAY AT NINE O'CLOCK YOU'RE UP THERE VISITING SOMEBODY IN
24 DECEMBER AND YOU GO TO BED AT NINE O'CLOCK. AND YOU LOOK OUT
25 THE WINDOW AND IT'S NOT A SNOWFLAKE TO BE SEEN. IT'S ALL

1 BARE GRASS, BARE ROAD, BARE SIDEWALK, NO SNOW ON THE GROUND.

2 YOU GO TO BED AND YOU SLEEP LIKE A LOG. AND AT FIVE
3 MINUTES 'TIL SIX, THE ALARM GOES OFF AND YOU GET OUT OF BED.
4 YOU OPEN THE CURTAIN, AND WHAT DO YOU SEE? YOU SEE TWO FEET
5 OF SNOW SITTING ON THE GROUND.

6 DID YOU SEE IT SNOW? NO. DID YOU HEAR IT SNOW? NO,
7 OBVIOUSLY YOU DIDN'T. YOU HAVE NO DIRECT KNOWLEDGE OF IT,
8 BUT YOU CAN DERIVE THAT SOME TIME BETWEEN NINE O'CLOCK AND
9 FIVE MINUTES 'TIL SIX IN THE MORNING, IT SNOWED A BOAT LOAD.
10 AND, YOU CAN RELY UPON THAT.

11 NOW, WHEN THE PROPERTY - AND THAT APPLIES TO THIS CASE.
12 WHEN THE PROPERTY IS INSIDE THE APARTMENT AND YOU HEAR THE
13 DOOR - THE DIRECT EVIDENCE - YOU HEAR THE DOOR OPEN - THE
14 SWISH.

15 ON DIRECT EVIDENCE YOU HEAR THE NOISE DOWNSTAIRS OF THE
16 EQUIPMENT BEING MOVED AROUND.

17 YOU SEE WITH YOUR EYES - MOMENTS LATER - THE DOOR BEING
18 CLOSED. AND YOU SEE WITH YOUR EYES - MOMENTS AFTER THAT -
19 THE DEFENDANT, FIVE FEET FROM THE BACK DOOR, HOLDING YOUR
20 STUFF THAT USED TO BE INSIDE THE APARTMENT.

21 WHAT CAN YOU DERIVE FROM THAT DIRECT EVIDENCE? YOU CAN
22 DERIVE THAT MR. HAMILTON ENTERED THAT APARTMENT WITHOUT
23 PERMISSION, UNPLUGGED THE PLAY STATION, DISLODGED THE SHELF
24 UNDERNEATH THE TV SET, TOOK THE PLAY STATION, TOOK THE
25 PORTABLE C-D PLAYER - THE BOOM BOX - LEFT THE APARTMENT,

1 PULLED IT CLOSED, AND WAS CHALLENGED SHORTLY THEREAFTER, FIVE
2 FEET FROM THE BACK DOOR.

3 THOSE ARE THE ELEMENTS OF BURGLARY IN THE FIRST DEGREE.

4 THANK YOU.

5 **THE COURT:** THANK YOU, SOLICITOR. MS. JENKINSON, YOU
6 MAY NOW ADDRESS THE JURY.

7 **MS. JENKINSON:** THANK YOU, YOUR HONOR.

8 THE COPS HAD ALREADY DECIDED THAT THEY HAD THE RIGHT
9 GUY, SO THEY DIDN'T HAVE TO LOOK INTO ANYTHING ELSE. THEY
10 DIDN'T HAVE TO CONFIRM THAT THEY HAD, IN FACT, GOTTEN THE
11 RIGHT GUY.

12 **COURT REPORTER:** I'M SORRY? THAT WHAT?

13 **MS. JENKINSON:** THEY HADN'T HAD TO CONFIRM THAT THEY
14 HAD, IN FACT, GOTTEN THE RIGHT GUY. THEY DIDN'T EVEN TRY.

15 THEY GET A CALL THAT A BURGLARY HAD OCCURRED. THE
16 DESCRIPTION IS BROADCAST OVER THE RADIO - A VERY VAGUE
17 DESCRIPTION. BLACK MALE, BLUE JEANS, GRAY SHIRT, SCRUFFY
18 BEARD.

19 HOW MANY PEOPLE COULD FIT THIS DESCRIPTION? HOW MANY
20 PEOPLE IN THIS TOWN COULD FIT THE DESCRIPTION OF A BLACK
21 MALE, GRAY TEE SHIRT, BLUE JEANS AND A SCRUFFY BEARD? NO
22 HEIGHT WAS GIVEN, NO WEIGHT. NO OTHER CHARACTERISTICS.
23 NOTHING ABOUT A SCAR, A TATTOO, ANY OTHER KIND OF CLOTHING,
24 EARRING, NOTHING.

25 WHEN OFFICERS SEE THOMAS HAMILTON IN THE AREA, THEY

1 AUTOMATICALLY ASSUME THAT THEY HAVE THE GUY THEY'RE LOOKING
2 FOR.

3 YOU SAW HIS CLOTHES THAT WERE TAKEN FROM THE JAIL, AND
4 WHAT THOMAS HAMILTON WAS WEARING THAT DAY - THE DAY HE WAS
5 ARRESTED ON LOGAN STREET. A GRAY TEE SHIRT AND A WHITE TEE
6 SHIRT WERE IN THE BAG.

7 THE SOLICITOR DIDN'T WANT YOU TO SEE ALL OF THE CLOTHES.
8 HE SHOWED YOU THE ONES HE WANTED YOU TO SEE. THE GRAY TEE
9 SHIRT, BLUE JEANS, BUT NOT EVERYTHING.

10 THOMAS HAMILTON WAS NOT WEARING A BLUE HAT. HE WAS
11 CARRYING A DOO-RAG IN HIS POCKET.

12 WILLIAM MILLER TOLD YOU THAT HE WAS VERY CLOSE TO THE
13 MAN WHO CAME INTO HIS HOUSE. I THINK HE SAID ABOUT FIVE
14 FEET. I THINK THE SOLICITOR SAID IT WAS THREE TO FOUR.
15 THREE TO FIVE FEET. SAW HIM MORE THAN A MINUTE, AND HE HAD A
16 CONVERSATION WITH HIM. HE WAS LOOKING AT HIS FACE.

17 BUT, HE SAID THAT HE HAD ON A BLUE HAT. HE TOLD THE 911
18 DISPATCHER THAT THE BURGLAR HAD ON A BLUE HAT, AND HE WAS
19 PRETTY SURE OF THAT.

20 I THINK THEY ASKED HIM AGAIN - AND YOU CAN HEAR IT ON
21 THE TAPE - I WAS PRETTY SURE THAT IT WAS A HAT.

22 AND THIS IS WHAT WAS TOLD TO THE OFFICER THAT RECEIVED
23 THE MESSAGE OVER THE RADIO. RECEIVED BY OFFICER RIVERS WHO
24 STOPPED THOMAS HAMILTON.

25 WILLIAM MILLER WAS SURE THAT HE HAD ON A BLUE HAT. AND

1 HE TOLD YOU TODAY THAT HE WAS - OR, TOLD YOU YESTERDAY, THAT
2 HE WAS PRETTY SURE THAT THEY HAD THE RIGHT GUY. WELL, HE WAS
3 WRONG ABOUT THE BLUE HAT.

4 WILLIAM MILLER COULD NOT HAVE BEEN THAT SURE OF HIS
5 IDENTIFICATION. IF HE HAD BEEN SO SURE, WOULD THEY HAVE
6 SUGGESTED THAT THEY RIDE BACK BY? RIDE BACK BY SO HE COULD
7 GET ANOTHER LOOK AT HIM?

8 WHEN THEY RIDE BY THE SECOND TIME, OFFICER RIVERS PUTS
9 THE DOO-RAG ON THOMAS HAMILTON. HE'S HOLDING HIM THERE
10 HANDCUFFED, SURROUNDED BY TWO OFFICERS AND A POLICE CAR.

11 WILLIAM MILLER HAS JUST FOUND SOMEBODY IN THIS HOUSE.
12 OF COURSE HE'S RATTLED. OF COURSE HE'S GOING TO SAY, YEAH,
13 I'M SURE THAT'S THE GUY.

14 THOMAS HAMILTON IS A BLACK MAN. WILLIAM MILLER IS A
15 WHITE MAN. AND, IT'S HARDER FOR PEOPLE OF DIFFERENT RACES TO
16 IDENTIFY PEOPLE OF OTHER RACES. HE RIDES BY QUICKLY IN A CAR
17 AND HE SAYS, YEAH, THAT'S THE GUY. KEEP IN MIND THAT
18 CONFIDENCE IS NOT ALWAYS ACCURACY.

19 THOMAS HAMILTON IS STOPPED ON - AT 91 LOGAN. THE
20 SOLICITOR TOLD YOU THAT'S THREE-TENTHS OF A MILE FROM
21 20 TRAPMAN, A BLOCK-AND-A-HALF AWAY FROM WHERE THE BURGLARY
22 OCCURRED.

23 IF THOMAS HAMILTON HAD GONE INTO WILLIAM MILLER'S HOUSE,
24 DON'T YOU THINK HE WOULD BE RUNNING AS FAST AS HE COULD TO
25 GET AWAY FROM THERE? AS FAR AWAY FROM WHERE HE HAD JUST

1 COMMITTED A BURGLARY IF HE HAD DONE THAT?

2 DON'T YOU THINK HE'D BE SWEATING? OFFICERS - OFFICER
3 RIVERS TOLD YOU HE WASN'T RUNNING, HE WAS JUST WALKING DOWN
4 THE STREET WHEN HE STOPPED HIM.

5 YOU CAN LISTEN ON THE TAPE HOW LONG IT WAS BEFORE
6 OFFICER RIVERS STOPPED MR. HAMILTON. HE TOLD YOU HE THINKS
7 IT WAS ABOUT SEVEN TO EIGHT MINUTES. HE CAN'T BE SURE, BUT
8 APPROXIMATELY SEVENTY-EIGHT (SIC) - SEVEN TO EIGHT MINUTES
9 FROM THE TIME OF THE 911 CALL THAT HE DETAINED MR. HAMILTON.

10 A BLOCK-AND-A-HALF AWAY - THREE-TENTHS OF A MILE. YOU
11 CAN CERTAINLY RUN FURTHER THAN THAT IN SEVEN TO EIGHT
12 MINUTES. ESPECIALLY IF YOU'VE JUST COMMITTED A BURGLARY IN
13 THE AREA. DON'T YOU THINK HE'D BE RUNNING, SWEATY, AND OUT
14 OF BREATH?

15 SERGEANT CONNALLY SERVED THE SEARCH WARRANT ON THE
16 DETENTION CENTER FOR THE CLOTHES. YOU'LL BE ABLE TO LOOK AT
17 THAT SEARCH WARRANT IN THE JURY ROOM. IT DOESN'T LIST WHAT
18 HIS OUTER CLOTHES WERE, IT LISTS ALL THE CLOTHES HE WAS
19 WEARING. A BAG OF CLOTHES, WHICH ALSO INCLUDES A WHITE
20 TEE SHIRT.

21 MOST IMPORTANTLY, OFFICERS IN THIS CASE ASSUMED THAT
22 THEY HAD THE RIGHT GUY. SO YOU KNOW WHAT THEY DID NEXT?
23 NOTHING. WE HAVE THE RIGHT GUY, WE DON'T NEED TO CHECK ON
24 ANYTHING ELSE. WE DON'T HAVE TO WORRY ABOUT FINGERPRINTS.

25 YOU HEARD FROM THE CRIME SCENE TECH - OFFICER MAESTAS -

1 SHE TOLD YOU IT'S HER JOB TO COLLECT EVIDENCE AND PRESERVE
2 THE CRIME SCENE. ESPECIALLY, FINGERPRINTS AND PHOTOS.

3 ROUGH SURFACES LIKE THE GATE DOOR - A WOODEN DOOR - ARE
4 HARDER TO REMOVE PRINTS FROM. A SMOOTH SURFACE, IT'S MUCH
5 EASIER TO GET PRINTS FROM.

6 BUT, THE ITEMS AND THE FURNITURE IN WILLIAM MILLER'S
7 HOME WERE NOT CHECKED FOR FINGERPRINTS. THE PLAY STATION WAS
8 NOT CHECKED FOR FINGERPRINTS, AND THE BOOM BOX WAS NOT
9 CHECKED FOR FINGERPRINTS. THEY SAID THEY WERE TOO DUSTY.
10 BUT WHY NOT TRY? THEY DIDN'T BECAUSE THEY ASSUMED THEY HAD
11 THE RIGHT GUY.

12 WHY IN THE WORLD WOULD YOU NOT TRY TO ENSURE THAT YOU
13 HAD NOT JUST ARRESTED AN INNOCENT PERSON?

14 SHE TOLD YOU IT'S HER JOB - IT'S HER JOB TO MAKE SURE
15 THAT SHE SOLIDIFIES THE CASE FOR THE OTHER OFFICERS THAT ARE
16 WORKING IT. SOLIDIFY IT FOR THE SOLICITOR WHO PROSECUTES THE
17 CASE. BUT, THEY DIDN'T DO THAT.

18 THERE WERE MANY ITEMS IN THE HOUSE THAT COULD HAVE BEEN
19 CHECKED. NOBODY SAW WHERE THE GUY WENT WHEN HE WAS IN THE
20 HOUSE. NOBODY SAW WHAT HE TOUCHED. WHY NOT DUST FOR
21 FINGERPRINTS AND HOPE THAT YOU FIND ONE? THAT YOU FIND A
22 MATCH FOR THE MAN WHO HAD BEEN ARRESTED. HE HAD TO HAVE
23 TOUCHED SOMETHING.

24 THEY SAID HE UNHOOKED THE PLAY STATION FROM THE TV AND
25 TOOK IT FROM THE CABINET.

1 OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW
2 ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE.

3 THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE.
4 AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE
5 VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED
6 DURING THIS TRIAL.

7 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
8 PRESENTED DURING A TRIAL. DIRECT EVIDENCE AND CIRCUMSTANTIAL
9 EVIDENCE.

10 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS
11 TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.
12 IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO
13 BE PROVED.

14 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
15 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS
16 EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS, FROM
17 WHICH THE MAIN FACT MAY BE INFERRED.

18 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
19 PERSONAL KNOWLEDGE OR OBSERVATION.

20 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
21 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
22 CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF
23 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT
24 EVIDENCE.

25 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE.

1 AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED
2 OF THE - OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
3 DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

4 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF
5 WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

6 CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR
7 DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND TO
8 DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

9 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
10 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER
11 SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU
12 MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT
13 THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS.
14 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR
15 REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY
16 CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY
17 INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU
18 MAY ALSO CONSIDER THE APPEARANCE AND THE MANNER OR THE
19 DEMEANOR OF A WITNESS WHILE ON THE WITNESS STAND.

20 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES
21 TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS
22 RULE EXISTS FOR WITNESSES WE CALL EXPERT WITNESSES.

23 A WITNESS WHO, BY EDUCATION AND EXPERIENCE HAS BECOME AN
24 EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING, MAY
25 STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS IN WHICH

1 THE WITNESS CLAIMS TO BE AN EXPERT. AND, MAY ALSO STATE THE
2 REASONS FOR THE OPINION.

3 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
4 EVIDENCE IN THIS CASE. AND, LIKE ANY OTHER EVIDENCE, GIVE IT
5 THE WEIGHT YOU THINK IT DESERVES.

6 IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS
7 NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU
8 CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE
9 NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER
10 EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

11 AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO GREATER
12 WEIGHT THAN THAT OF ANY OTHER WITNESSES SIMPLY BECAUSE THE
13 WITNESS IS AN EXPERT.

14 FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S
15 OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

16 I INSTRUCT YOU - AND EMPHASIZE - THAT THE FACT THE
17 DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY
18 YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION
19 ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE
20 DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
21 WHATSOEVER.

22 A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
23 SILENT. AND, THE ASSERTION OF THIS RIGHT MUST NOT BE
24 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

25 I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO

1 CONCLUSIONS WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN
2 THIS CASE DID NOT TESTIFY.

3 THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT
4 EVEN BE DISCUSSED IN THE JURY ROOM.

5 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE
6 STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE.
7 THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT
8 BEYOND A REASONABLE DOUBT.

9 NOW, AS TO THE FIRST CHARGE OF BURGLARY - FIRST-DEGREE
10 BURGLARY - IT IS CODE SECTION 16-11-311.

11 THE DEFENDANT IS CHARGED WITH FIRST-DEGREE BURGLARY.
12 THE STATE MUST FIRST PROVE, BEYOND A REASONABLE DOUBT, THAT
13 THE DEFENDANT ENTERED A DWELLING WITHOUT CONSENT.

14 A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN
15 WHICH A PERSON ORDINARILY SLEEPS.

16 A BUILDING CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN
17 OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF
18 BURGLARY.

19 BUT, A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE
20 TEMPORARILY ABSENT FROM THE BUILDING.

21 IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE
22 DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE
23 DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING. THE SMALLEST
24 ENTRY IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY, SUCH AS
25 A HAND, OR FOOT, OR EVEN AN INSTRUMENT SUCH AS A HOOK OR

1 OTHER INSTRUMENT.

2 IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT FORCE
3 WAS USED TO GAIN ENTRY.

4 IF A PERSON ENTERS A BUILDING BY USING DECEPTION,
5 ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO
6 ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

7 NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
8 THAT THE DEFENDANT INTENDED TO COMMIT A CRIME. EITHER A
9 FELONY OR A MISDEMEANOR AT THE TIME OF THE ENTRY.

10 THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT
11 BURGLARY.

12 IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE
13 ENTRY, IT IS NOT A BURGLARY.

14 ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT A
15 CRIME AT THE TIME OF THE ENTRY, IT IS A BURGLARY EVEN IF THE
16 INTENT WAS ABANDONED AFTER THE ENTRY.

17 IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT
18 COMPLETED.

19 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE DEFENDANT
20 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND
21 REASONABLY INFER INTENT.

22 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
23 THAT THE DEFENDANT HAS A PRIOR RECORD OF TWO OR MORE
24 CONVICTIONS FOR BURGLARY AND/OR HOUSEBREAKING.

25 EVIDENCE OF PRIOR OFFENSES COMMITTED BY THE DEFENDANT

1 WAS NOT OFFERED TO PROVE THE DEFENDANT HAS A BAD CHARACTER OR
2 TO PROVE THAT THE DEFENDANT COMMITTED THE BURGLARY ON THIS
3 OCCASION.

4 THE PRIOR CONVICTIONS MAY BE CONSIDERED BY YOU ONLY FOR
5 THE PURPOSE OF DETERMINING WHETHER OR NOT IT SATISFIES THAT
6 ELEMENT OF THE OFFENSE THAT MAKES IT FIRST-DEGREE BURGLARY -
7 IF YOU ENTER A DWELLING WITHOUT CONSENT TO COMMIT A CRIME,
8 AND YOU HAVE TWO PRIOR CONVICTIONS FOR BURGLARY AND/OR
9 HOUSEBREAKING.

10 BEFORE YOU CAN EVEN CONSIDER THE EVIDENCE OF THE
11 DEFENDANT'S PRIOR BURGLARY AND/OR HOUSEBREAKING CONVICTIONS,
12 YOU MUST FIRST FIND THAT THE STATE HAS PROVED, BEYOND A
13 REASONABLE DOUBT, THAT A BURGLARY WAS COMMITTED BY THE
14 DEFENDANT.

15 IF YOU FIND, BEYOND A REASONABLE DOUBT, THAT THE
16 BURGLARY WAS COMMITTED, THEN YOU MAY CONSIDER THE EVIDENCE OF
17 THE PRIOR CONVICTIONS AS EVIDENCE OF THE CIRCUMSTANCE WHICH
18 WOULD MAKE THE BURGLARY FIRST-DEGREE BURGLARY.

19 IF YOU DO NOT FIND, BEYOND A REASONABLE DOUBT, THAT THE
20 DEFENDANT COMMITTED THESE ALLEGED PRIOR OFFENSES, THEN YOU
21 CANNOT RETURN A VERDICT OF BURGLARY IN THE FIRST DEGREE.

22 INCLUDED WITHIN THE OFFENSE OF FIRST-DEGREE BURGLARY IS
23 THE LESSER OFFENSE OF SECOND-DEGREE BURGLARY.

24 SECOND-DEGREE BURGLARY INCLUDES ALL OF THE ELEMENTS OF
25 FIRST-DEGREE BURGLARY, EXCEPT THE CIRCUMSTANCE OF

1 AGGRAVATION.

2 THAT IS, THAT THE PERSON THAT COMMITTED THE BURGLARY DID
3 NOT HAVE A PRIOR RECORD OF TWO OR MORE PRIOR CONVICTIONS FOR
4 BURGLARY AND/OR HOUSEBREAKING.

5 AS TO THE SECOND INDICTMENT - LARCENY - THE DEFENDANT IS
6 CHARGED WITH PETTY LARCENY.

7 THE STATE MUST PROVE, BEYOND A REASONABLE DOUBT, THAT
8 THE DEFENDANT TOOK AND CARRIED AWAY THE PROPERTY OF ANOTHER
9 AGAINST THE WILL OR WITHOUT THE CONSENT OF THE OTHER PERSON.

10 THE SLIGHTEST REMOVAL OF THE PROPERTY OR THE COMPLETE
11 POSSESSION OF THE PROPERTY - EVEN FOR AN INSTANCE - BY THE
12 DEFENDANT IS ENOUGH TO SHOW A TAKING AND CARRYING AWAY OF THE
13 PROPERTY.

14 THE STATE MUST ALSO PROVE, BEYOND A REASONABLE DOUBT,
15 THAT THE DEFENDANT INTENDED TO PERMANENTLY DEPRIVE THE OWNER
16 OF THE PROPERTY.

17 INTENT. IN ORDER TO ESTABLISH CRIMINAL LIABILITY,
18 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE
19 REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME
20 MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR
21 CRIMINAL NEGLIGENCE.

22 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A
23 REASONABLE DOUBT.

24 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
25 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE

1 SITUATION.

2 THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL
3 CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A
4 PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND.

5 SO, THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED
6 FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW
7 YOU MAKE YOUR DETERMINATION OF WHETHER OR NOT THE ELEMENT
8 REQUIRING INTENT WAS PRESENT.

9 IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND
10 POSITIVE EVIDENCE. BUT, INTENT MAY BE ESTABLISHED BY
11 INFERENCE IN THE SAME WAY AS ANY OTHER FACT - BY TAKING INTO
12 CONSIDERATION THE ACTS OF THE PARTIES AND ALL OF THE FACTS
13 AND CIRCUMSTANCES OF THE CASE.

14 CRIMINAL INTENT IS A MENTAL STATE. A CONSCIOUS
15 WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT
16 INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE
17 EXISTED.

18 CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO
19 ACT. IT MAY ARISE FROM RECKLESSNESS OR INDIFFERENCE TO A
20 DUTY OR TO CONSEQUENCES THAT IS CONSIDERED BY THE LAW TO BE
21 THE EQUIVALENT OF CRIMINAL INTENT.

22 MADAME FORELADY, LADIES AND GENTLEMEN, AN ISSUE IN THIS
23 CASE IS THE IDENTIFICATION OF THE DEFENDANT AS THE PERSON WHO
24 COMMITTED THE CRIME CHARGED.

25 THE STATE HAS THE BURDEN OF PROVING IDENTITY BEYOND A

1 AND THEN, GO TO THE LARCENY. YOU - YOU COULD START WITH
2 THE LARCENY, MADAME FORELADY.

3 AGAIN, I HAVE LISTED THERE ONLY TWO POSSIBLE FORMS OF
4 VERDICT UNDER THE LARCENY. EITHER GUILTY OR NOT GUILTY. I
5 HAVE LISTED THEM IN NO PARTICULAR ORDER. TAKE NO INFERENCE
6 FROM THAT WHATSOEVER.

7 IF, AFTER YOUR CONSIDERATION OF THE EVIDENCE YOU
8 UNANIMOUSLY FIND THAT THE DEFENDANT IS GUILTY OF THE LARCENY,
9 YOU WOULD CIRCLE GUILTY.

10 IF, AFTER YOUR CONSIDERATION OF THE EVIDENCE, YOU
11 UNANIMOUSLY FIND THE DEFENDANT IS NOT GUILTY, YOU WOULD
12 CIRCLE NOT GUILTY.

13 ONCE YOU HAVE REACHED UNANIMOUS VERDICTS AS TO BOTH
14 CHARGES, MADAME FORELADY, IF YOU WOULD SIGN YOUR NAME AND -
15 AND DATE IT. AND THEN, NOTIFY THE BAILIFF.

16 AGAIN, THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER
17 IN WHICH I HAVE STATED THESE POSSIBLE VERDICTS. IT IS SIMPLY
18 THAT ONE MUST BE STATED FIRST.

19 MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY, YOUR
20 VERDICT MUST BE A UNANIMOUS ONE.

21 YOUR VERDICT MUST NOT BE BASED ON BIAS OR PREJUDICE OR
22 SPECULATION OR ANY OTHER TYPE OF CONSIDERATION.

23 MADAME FORELADY, WHEN THE JURY AGREES ON THE VERDICTS,
24 YOU WILL, AGAIN, CIRCLE THE VERDICT AND SIGN YOUR NAME AND
25 DATE IT AS THE FOREPERSON OF OUR JURY. THEN, KNOCK ON THE

1 JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A
2 UNANIMOUS VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK
3 INTO THE COURTROOM.

4 MOMENTARILY I'M GOING TO ASK YOU TO RETURN TO YOUR JURY
5 ROOM AND TO LEAVE THAT FORM OF THE VERDICT ON THE RAIL AT
6 THIS TIME.

7 DO NOT BEGIN YOUR DELIBERATIONS UNTIL YOU ARE TOLD BY
8 THE CLERK OR THE BAILIFF TO DO SO. THERE MAY BE SOME MATTERS
9 WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU MAY
10 BEGIN YOUR DELIBERATIONS.

11 SO, IF YOU WOULD LEAVE THAT FORM THERE, MADAME FORELADY,
12 AND IF YOU-ALL WOULD GO WITH OUR BAILIFFS, PLEASE, TO YOUR
13 JURY ROOM.

14 (WHEREUPON, JURY LEFT THE COURTROOM AT 10:42 A.M.)

15 **THE COURT:** ANY ADDITIONS OR EXCEPTIONS BY THE STATE?

16 **MR. STACK:** NO, YOUR HONOR.

17 **THE COURT:** THANK YOU, MR. SOLICITOR. MS. JENKINSON?

18 **MS. JENKINSON:** NO, YOUR HONOR.

19 **THE COURT:** THANK YOU, MS. JENKINSON. IF YOU-ALL WOULD
20 CHECK THE EVIDENCE - THE EXHIBITS?

21 (WHEREUPON, EXHIBITS WERE REVIEWED AND VERIFIED BY
22 ATTORNEYS.)

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 **COURT REPORTER:** ALL RIGHT, JUDGE, ALL THE EXHIBITS ARE
2 ACCOUNTED FOR.

3 **THE COURT:** ALL RIGHT. MR. BAILIFF, IF YOU WOULD PLEASE
4 GET THE EXHIBITS TO THE JURY, GIVE 'EM THE FORM OF VERDICT,
5 AND TELL THEM TO BEGIN THEIR DELIBERATIONS?

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 CONFERENCE, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 (WHEREUPON, EXHIBITS AND VERDICT FORMS WERE PRESENTED TO
10 THE JURY FOR DELIBERATIONS TO BEGIN AT 10:46 A.M.)

11 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
12 CONFERENCE, OFF THE RECORD.)

13 (WHEREUPON, COURT RESUMED.)

14 (WHEREUPON, ALFRED CLARKSON, JUROR NUMBER 49 - THE JURY
15 ALTERNATE - WAS GREETED BY THE COURT, THANKED FOR SERVICE,
16 AND RELEASED FROM FURTHER SERVICE IN THIS CASE AT 10:47 A.M.,
17 OUTSIDE THE COURTROOM, OFF THE RECORD.)

18 (WHEREUPON, COURT RECESSED.)

19 (WHEREUPON, COURT RESUMED.)

20 (WHEREUPON, THE COURT WAS NOTIFIED THE JURY HAD REACHED
21 A VERDICT AT 12:53 P.M.)

22 **THE COURT:** CAN YOU GET ME THE LAWYERS IN THE OTHER
23 CASE? THE CASE THAT WAS TRIED?

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE, OFF THE RECORD.)

1 (WHEREUPON, COURT RESUMED.)

2 BAILIFF: I CAN'T FIND THEM YOUR HONOR.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED TO LOCATE
4 ATTORNEYS.)

5 THE COURT: ALL RIGHT, SOLICITOR, ANYTHING BEFORE WE
6 RECEIVE OUR VERDICT?

7 MR. STACK: NOTHING FOR THE STATE, YOUR HONOR.

8 THE COURT: MS. JENKINSON?

9 MS. JENKINSON: NO, YOUR HONOR.

10 THE COURT: MR. - MR. BAILIFF, WOULD YOU BRING US OUR
11 JURY, PLEASE?

12 (WHEREUPON, JURY ENTERED THE COURTROOM AT 1:00 P.M.)

13 BAILIFF: THE JURORS ARE ALL PRESENT, YOUR HONOR.

14 THE COURT: THANK YOU, MR. BAILIFF. MADAME FORELADY, I
15 UNDERSTAND THE JURY HAS REACHED A VERDICT. IS THAT CORRECT?

16 JURY FORELADY (MS. CRABTREE): YES, SIR.

17 THE COURT: AND IS THAT VERDICT UNANIMOUS AS TO EACH
18 CHARGE?

19 JURY FORELADY (MS. CRABTREE): YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. WOULD YOU PLEASE PASS IT TO THE
21 BAILIFF, MADAME FORELADY?

22 (WHEREUPON, VERDICT HANDED TO THE COURT.)

23 THE COURT: THANK YOU, MR. BAILIFF. ALL RIGHT,
24 MR. CLERK, THE VERDICT APPEARS TO BE IN THE PROPER FORM. IF
25 YOU WOULD PUBLISH THE VERDICT FOR US, PLEASE?

1 CLERK (MR. WILSON): YES, SIR, YOUR HONOR. THE
2 DEFENDANT WILL PLEASE STAND.

3 THE STATE OF SOUTH CAROLINA VERSUS THOMAS CURTIS
4 HAMILTON. AS TO THE CHARGE OF BURGLARY, WE THE JURY
5 UNANIMOUSLY FIND THE DEFENDANT GUILTY OF BURGLARY IN THE
6 FIRST DEGREE.

7 AS TO THE CHARGE OF LARCENY, WE THE JURY UNANIMOUSLY
8 FIND THE DEFENDANT GUILTY.

9 SIGNED BY SHANTEISHA CRABTREE, DATED JUNE 6, 2006.

10 LADIES AND GENTLEMEN OF THE JURY, IF THESE ARE YOUR
11 VERDICTS, PLEASE REPLY BY RAISING YOUR RIGHT HAND.

12 (ALL HANDS RAISED.)

13 CLERK (MR. WILSON): THANK YOU, YOU MAY PUT THEM DOWN.

14 THE COURT: ALL RIGHT, YOU MAY BE SEATED.

15 MR. SOLICITOR, ANYTHING FOR THE JURY?

16 MR. STACK: NO, YOUR HONOR, WE HAVE NOTHING FOR THE
17 JURY.

18 THE COURT: MS. JENKINSON, ANYTHING FOR THE JURY?

19 MS. JENKINSON: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT, UH---

21 MS. JENKINSON: EXCUSE ME, YOUR HONOR. COULD I HAVE ONE
22 MINUTE?

23 THE COURT: CERTAINLY - YES, MA'AM.

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE

1 HEARING OF THE JURY, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 MS. JENKINSON: YOUR HONOR, I - I'D ASK THE COURT TO
4 PLEASE POLL THE JURY.

5 THE COURT: ALL RIGHT. MR. CLERK?

6 CLERK (MR. WILSON): YES, YOUR HONOR. LADIES AND
7 GENTLEMEN OF THE JURY, I WILL BE ASKING YOU TWO QUESTIONS:
8 ARE THESE YOUR VERDICTS? AND, ARE THEY STILL YOUR VERDICTS?

9 AS I CALL YOUR NAME AND JUROR NUMBER, WOULD YOU PLEASE
10 RAISE YOUR RIGHT HAND.

11 JUROR NUMBER 259, SHANTEISHA CRABTREE. ARE THESE YOUR
12 VERDICTS?

13 MS. CRABTREE: YES.

14 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?

15 MS. CRABTREE: YES.

16 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 124, ROGER
17 KIRBY, JUNIOR. ARE THESE YOUR VERDICTS?

18 MR. KIRBY: YES, SIR.

19 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?

20 MR. KIRBY: YES, SIR.

21 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 134, KEVIN
22 LOWRY. ARE THESE YOUR VERDICTS?

23 MR. LOWRY: YES.

24 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?

25 MR. LOWRY: YES.

1 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 138,
2 DUNCAN MACKAY. ARE THESE YOUR VERDICTS?
3 MR. MACKAY: YES.
4 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
5 MR. MACKAY: YES.
6 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 38, GAIL
7 CARROLL. ARE THESE YOUR VERDICTS?
8 MS. CARROLL: YES.
9 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
10 MS. CARROLL: YES.
11 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 169, LAURA
12 PARKER. ARE THESE YOUR VERDICTS?
13 MS. PARKER: YES.
14 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
15 MS. PARKER: YES.
16 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 284, JULIE
17 RICHBURG. ARE THESE YOUR VERDICTS?
18 MS. RICHBURG: YES.
19 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
20 MS. RICHBURG: YES.
21 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 258, CRAIG
22 CLARK. ARE THESE YOUR VERDICTS?
23 MR. CLARK: YES, SIR.
24 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
25 MR. CLARK: YES, SIR.

1 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 188,
2 MARGARET RIGGINS. ARE THESE YOUR VERDICTS?
3 MS. RIGGINS: YES.
4 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
5 MS. RIGGINS: YES.
6 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 59, SCOTT
7 CURRY. ARE THESE YOUR VERDICTS?
8 MR. CURRY: YES.
9 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
10 MR. CURRY: YES, SIR.
11 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 58,
12 ELIZABETH CROWLEY. ARE THESE YOUR VERDICTS?
13 MS. CROWLEY: YES.
14 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
15 MS. CROWLEY: YES.
16 CLERK (MR. WILSON): THANK YOU. JUROR NUMBER 149,
17 SHANEKA MEGGETT. ARE THESE YOUR VERDICTS?
18 MS. MEGGETT: YES.
19 CLERK (MR. WILSON): ARE THEY STILL YOUR VERDICTS?
20 MS. MEGGETT: YES.
21 CLERK (MR. WILSON): THANK YOU. IS THERE ANYONE'S NAME
22 I HAVE MISSED?
23 (NO RESPONSE.)
24 CLERK (MR. WILSON): YOUR HONOR, THE VERDICT STANDS.
25 THE COURT: THANK YOU, MR. CLERK. ANYTHING FURTHER FOR

1 THE JURY, MS. JENKINSON?

2 MS. JENKINSON: NO, YOUR HONOR. THANK YOU.

3 THE COURT: ALL RIGHT. MADAME FORELADY AND LADIES AND
4 GENTLEMEN OF THE JURY, IT'LL BE KIND-A LIKE YOUR CHECKS AT
5 THE END OF THE WEEK. I UNDERSTAND YOUR LUNCH IS ON THE WAY.
6 IS THAT CORRECT MR. - MR. CLERK?

7 CLERK (MR. WILSON): IT IS, YOUR HONOR.

8 THE COURT: ALL RIGHT. AND MOMENTARILY I AM GONNA
9 EXCUSE YOU BACK TO YOUR JURY ROOM.

10 ACTUALLY, IF YOU WASN'T WAITING ON YOUR LUNCH, YOU WOULD
11 BE EXCUSED - WITH THE DIRECTIONS TO GO BACK IN THE JURY
12 ASSEMBLY ROOM?

13 CLERK (MR. WILSON): THAT IS CORRECT, YOUR HONOR.

14 THE COURT: TO BE BACK IN THE JURY ASSEMBLY ROOM AT
15 TWO-THIRTY TODAY.

16 PERHAPS YOU-ALL COULD BE AMONG THOSE INDIVIDUALS THAT
17 COULD BE SELECTED ON ANOTHER TRIAL THIS WEEK.

18 HOWEVER, I WILL EXCUSE YOU-ALL THOUGH - MOMENTARILY - TO
19 YOUR JURY ROOM AWAITING YOUR LUNCH.

20 AFTER LUNCH, PLEASE BE BACK IN THE JURY ASSEMBLY ROOM ON
21 THE SECOND FLOOR AT TWO-THIRTY TODAY FOR FURTHER DIRECTIONS
22 CONCERNING YOUR JURY SERVICE THIS WEEK.

23 I WILL SAY ONE FURTHER THING. I - I NEVER TELL THE
24 JURY, UM - I NEVER COMMENT ON THE VERDICT THAT ANY JURY
25 RENDERS. HOWEVER, I WILL SAY THAT YOU-ALL HAVE BEEN VERY

1 FOCUSED AND YOUR ATTENTION WAS VERY FOCUSED AND UNDIVIDED TO
2 ALL THE PARTIES IN THIS CASE. AND YOU HAVE PERFORMED YOUR
3 DUTIES AND FUNCTIONS WELL UNDER YOUR OATH, AND I APPRECIATE
4 THAT PERSONALLY VERY MUCH. AND I KNOW YOUR COMMUNITY
5 APPRECIATES IT VERY MUCH.

6 SO, IF I DON'T GET TO SERVE WITH YOU-ALL ANY FURTHER
7 THIS WEEK OR AFTER JURY SERVICE, PLEASE NOTE THAT YOU HAVE
8 HELPED THE SYSTEM. BECAUSE, WITHOUT YOU-ALL'S PARTICIPATION,
9 WE WOULD NOT BE ABLE TO GET THESE CASES THROUGH THE SYSTEM.

10 SO - AND WITH THAT BEING SAID, MADAME FORELADY, LADIES
11 AND GENTLEMEN OF THE JURY, YOU MAY RETURN TO YOUR JURY ROOM
12 AWAITING YOUR LUNCH. THANK YOU.

13 (WHEREUPON, JURY LEFT THE COURTROOM AT 1:07 P.M.)

14 THE COURT: ALL RIGHT, MS. JENKINSON, DO YOU HAVE ANY
15 MATTERS PRIOR TO SENTENCING?

16 MS. JENKINSON: NO, YOUR HONOR.

17 THE COURT: MA'AM?

18 MS. JENKINSON: NO, YOUR HONOR. YOUR HONOR, AT THIS
19 TIME, I WOULD MAKE A MOTION FOR - FOR A NEW TRIAL.

20 THE COURT: ALL RIGHT. ANY - ANY OTHER MOTIONS?

21 MS. JENKINSON: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. I WOULD RESPECTFULLY DENY YOUR
23 MOTION.

24 IS THERE ANY REASON YOU KNOW OF, MS. JENKINSON, THAT THE
25 SENTENCE SHOULD NOT BE IMPOSED AT THIS TIME?

1 MS. JENKINSON: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. SOLICITOR---

3 MS. JENKINSON: I---

4 THE COURT: ---DO YOU HAVE... I'M SORRY, DID I
5 INTERRUPT YOU?

6 MS. JENKINSON: NO - NO, YOUR HONOR. I WOULD JUST MAKE
7 THE MOTION TO THE COURT THAT THE LIFE WITHOUT PAROLE STATUTE
8 IS CRUEL AND UNUSUAL PUNISHMENT, AND WE ASK THE COURT TO TAKE
9 THAT INTO CONSIDERATION.

10 THE COURT: ALL RIGHT. WAS THAT - WAS THAT ISSUE
11 ADDRESSED IN BURDETT?

12 MR. STACK: I'M SORRY, YOUR HONOR?

13 THE COURT: WAS THAT ISSUE ADDRESSED IN BURDETT? I KNOW
14 SEPARATION OF POWERS AND SUCH LIKE THAT WAS ADDRESSED IN
15 STATE VERSUS BURDETT. I WAS JUST, UH...

16 MR. STACK: I'M SORRY, YOUR HONOR, I'M NOT FAMILIAR WITH
17 THAT. I DON'T KNOW ANYTHING THAT WOULD SAY THAT THE L-WOP
18 STATUTE HAS BEEN FOUND TO BE UNCONSTITUTIONAL.

19 THE COURT: NO, I DON'T EITHER. BUT ACTUALLY, I THOUGHT
20 THAT ISSUE WAS ADDRESSED IN THAT PRIOR CASE. BUT, I KNOW ALL
21 THE CONSTITUTIONAL ISSUES WERE - HAVE BEEN ADDRESSED BY OUR
22 SUPREME COURT.

23 HOWEVER, I WOULD FIND THAT - THAT THE LIFE WITHOUT
24 PAROLE SENTENCE IS NOT UNCONSTITUTIONAL AND DOES NOT - DOES
25 NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT.

1 ANYTHING FURTHER, MS. JENKINSON?

2 MS. JENKINSON: NO, YOUR HONOR.

3 THE COURT: SOLICITOR, ANYTHING FURTHER?

4 MR. STACK: NO, YOUR HONOR. YOUR HONOR'S AWARE OF THE
5 FACTS, AND IT'S A MANDATORY LIFE SENTENCE.

6 THE COURT: ALL RIGHT. AND WHAT ABOUT THE PROPERTY
7 OFFENSE ENHANCEMENT ON THE LARCENY?

8 MR. STACK: YOUR HONOR, THE SENTENCE RANGE IS ZERO TO
9 TEN YEARS, AND THE STATE HAS NO RECOMMENDATION.

10 THE COURT: AND - AND TELL ME---

11 MR. DURANT: HIS PRIOR CONVICTIONS WERE RECEIVING---

12 THE COURT: RIGHT.

13 MR. DURANT: ---STOLEN GOODS IN '87, YOUR HONOR; GRAND
14 LARCENY IN 1989; AND RECEIVING STOLEN GOODS AGAIN IN 1995;
15 AND LARCENY IN 1995.

16 THE COURT: AND THEN, HIS PRIOR BURGLARY CONVICTIONS ARE
17 THE 1989 CONVICTION THAT - THE STATE'S EXHIBIT NUMBER
18 TWENTY-FOUR, AND THE 1995 CONVICTION, STATE'S EXHIBIT NUMBER
19 TWENTY-FIVE?

20 MR. STACK: THAT'S CORRECT, YOUR HONOR. AND THERE'S
21 ANOTHER ONE IN 1987 - BURG FIRST - THAT WE DID NOT PUT INTO
22 EVIDENCE. I DO HAVE A CERTIFIED COPY OF THAT THOUGH.

23 THE COURT: ALL RIGHT. NOW, ON - WHAT ABOUT THE NOTICE
24 OF LIFE WITHOUT PAROLE?

25 MR. DURANT: IT'S BEEN FILED, YOUR HONOR, BUT WE WILL

1 HAND UP A COPY - A FILED COPY SHOWING THAT THE DEFENDANT WAS
2 NOTIFIED, AS WELL AS HIS ATTORNEY.

3 (WHEREUPON, DOCUMENTS HANDED UP TO THE COURT.)

4 THE COURT: ALL RIGHT. I WOULD NOTE FOR THE RECORD THAT
5 I NOTICE MY DAUGHTER SIGNED THIS NOTICE OF INTENT TO SEEK
6 LIFE WITHOUT PAROLE. I HAD NO INDICATION THAT - THAT SHE HAD
7 SIGNED THIS NOTICE.

8 I DID NOT, AND HAVE NOT RECEIVED OR LOOKED AT THIS
9 NOTICE PRIOR TO THIS TIME.

10 I DO NOT FIND THAT IT IS A CONFLICT SINCE THE SENTENCING
11 IS A MANDATORY TYPE OF SENTENCE.

12 HOWEVER, IF MS. JENKINSON WOULD CARE TO PUT ANYTHING ON
13 THE RECORD IN THAT REGARD, I WILL ALLOW HER TO DO SO.

14 MS. JENKINSON: NO, YOUR HONOR.

15 THE COURT: ALL RIGHT - THANK YOU. DO YOU HAVE ANYTHING
16 PRIOR TO IMPOSITION OF THE SENTENCING, MS. JENKINSON?

17 MS. JENKINSON: I'M SORRY?

18 THE COURT: DO YOU HAVE ANYTHING YOU WOULD LIKE TO SAY
19 PRIOR TO THE SENTENCING?

20 MS. JENKINSON: NO, YOUR HONOR. I - IN FACT MY CLIENT,
21 UM - DOES NOT WISH TO ADDRESS THE COURT.

22 THE COURT: ALL RIGHT - THANK YOU.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 **THE COURT:** ALL RIGHT. ON INDICTMENT 2004-GS-10-8212,
2 STATE VERSUS THOMAS CURTIS HAMILTON FOR BURGLARY, FIRST
3 DEGREE, THE JURY, HAVING RETURNED A VERDICT OF GUILTY OF
4 BURGLARY IN THE FIRST DEGREE, PROPER NOTICE HAVING BEEN
5 SERVED ON MR. HAMILTON AND HIS ATTORNEY, FILED NOVEMBER 2ND OF
6 2005 OF THE STATE'S INTENTION TO SEEK LIFE WITHOUT PAROLE
7 BASED ON HIS PRIOR CONVICTION OF BURGLARY IN MAY OF 1995 -
8 AND I WILL MAKE THIS A COURT'S EXHIBIT - THE DEFENDANT IS
9 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
10 DETERMINATE TERM OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

11 ON INDICTMENT 2004-GS-10-8213, THE STATE VERSUS THOMAS
12 CURTIS HAMILTON, HAVING BEEN CONVICTED BY THE JURY TODAY OF
13 LARCENY AND PROPERTY OFFENSE ENHANCEMENT, THE DEFENDANT IS
14 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
15 DETERMINATE TERM OF FIVE YEARS.

16 THAT SENTENCE IS TO RUN CONCURRENT WITH THE BURGLARY
17 SENTENCE AND ALL SENTENCES IMPOSED THIS DATE.

18 GOOD LUCK TO YOU, MR. HAMILTON.

19 (WHEREUPON, THOMAS CURTIS HAMILTON WAS ESCORTED FROM THE
20 COURTROOM AT 1:14 P.M.)

21 **THE COURT:** I THANK YOU ALL VERY MUCH. COURT - I'M
22 GOING TO HAVE THIS MARKED AS A COURT'S EXHIBIT.

23 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS ADMITTED INTO
24 EVIDENCE.)

25 (WHEREUPON, COURT'S EXHIBIT NO. 2 WAS ADMITTED INTO

1 EVIDENCE.)

2 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
3 CONFERENCE, OFF THE RECORD.)

4 (WHEREUPON, COURT RESUMED.)

5 THE COURT: THE COURT WILL BE IN RECESS UNTIL
6 TWO-THIRTY.

7 (WHEREUPON, COURT ADJOURNED.)

8 *****END OF REQUESTED TRANSCRIPT*****
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 5TH AND 6TH DAYS OF JUNE 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 17, 2006


VIVIAN H. CROSS
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

228
INDICTMENT FOR
PETTY LARCENY
(PROPERTY CRIME ENHANCEMENT)

At a Court of General Sessions, convened on November 8, 2004 the Grand Jurors of Charleston County present upon their oath:

That Thomas Curtis Hamilton did in Charleston County on or about August 3, 2004 at 20 Trapman Street, having previously been convicted of at least two (2) offenses for which the term of imprisonment is contingent upon the value of the property involved, take and carry away the personal property of William S. Miller, to wit: an Aiwa portable stereo and a Sony Playstation II game system, with the intent to permanently deprive the owner thereof and to convert same to his own use. This is in violation of Sections 16-13-30 and 16-1-57 of the South Carolina Code of Laws, 1976, as amended.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY *Andrew W. Smith*
DEPUTY CLERK

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
ASSISTANT SOLICITOR

WITNESSES

JOHN BURNETT AND/OR

MATT CASEY

T. RIVERS, CPD

OCA# 2004-17036

ARREST WARRANT NUMBER

H-765771

DOA AUGUST 4, 2004

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

NOV 0 8 2004

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

VS.

THOMAS CURTIS HAMILTON

Indictment for

PETTY LARCENY
(PROPERTY CRIME ENHANCEMENT)

BY

JULIE J. HARRIS
CLERK OF COURT

2004 NOV 22 PM 12:59

FILED

229

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

230
INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on November 8, 2004 the Grand Jurors of Charleston County present upon their oath:

That Thomas Curtis Hamilton did in Charleston County on or about August 3, 2004 enter the dwelling of William S. Miller located at 20 Trapman Street, without consent and with the intent to commit a crime therein. That, in addition, the defendant has a prior record with two or more convictions for burglary, housebreaking or a combination of both, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY [Signature]
DEPUTY CLERK

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
ASSISTANT SOLICITOR

WITNESSES

JOHN BURNETT AND/OR

MATT CASEY

T. RIVERS, CPD

OCA# 2004-17036

ARREST WARRANT NUMBER

H-765770

DOA AUGUST 4, 2004

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

THOMAS CURTIS HAMILTON

Indictment for

BURGLARY FIRST DEGREE

BY

JULIE J. ARMSTRONG
CLERK OF COURT

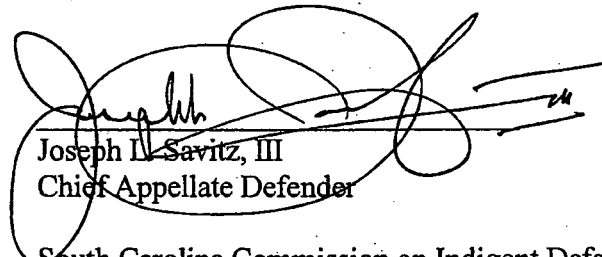
2004 NOV 22 PM 12:59

231 223

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 5th, 2007

A handwritten signature in black ink, appearing to read "Joseph L. Savitz, III", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Joseph L. Savitz, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

FORM 5

STATE OF SOUTH CAROLINA

County of CHARLESTON

#141339

THOMAS CURTIS HAMSLANE

Full name and prison number (if any) of Applicant

v.

State of South Carolina

10-CP-10-7619

IN THE COURT OF COMMON PLEAS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 SEP 17 PM 2:32

FILED

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 LIEBER CORRECTIONAL INSTITUTION, P.O. Box 205 RIDGEVILLE, S.C. 29472
2. Name and location of Court which imposed sentence CHARLESTON COUNTY COURT OF GENERAL SESSIONS, CHARLESTON, S.C. 29401
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-GS-10-8212

(b) 2004-GS-10-8213

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) JUNE 5-6, 2006(b) LIFE W/OUT PAROLE

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. DISMISSED

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted September 1, 2009ii. Filed October 7, 2009

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL(b) INEFFECTIVE ASSISTANCE OF COUNSEL(c) DUE PROCESS VIOLATION

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) TRIAL COUNSEL WAS INEFFECTIVE by failing to move for a(b) continuance, her failure violated Appellant's right to the Sixth Amendment(c) CONFRONTATION CLAUSE, TRIAL COUNSEL WAS INEFFECTIVE by Refusing and failing to request

12.

Prior to this application have you filed with respect to this conviction:

(a)

any petition in a State Court under South Carolina Law? NO

(b)

any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c)

any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d)

any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a)

the specific nature thereof:

i.

ii.

iii.

iv.

(b)

the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Post-conviction CLAIMS
 (b) Post-conviction CLAIMS
 (c) Post-conviction CLAIMS

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. MARTHA KENT JENKINSON, Esq, Charleston, S.C.
W. TED SMITH, Esq, Charleston, S.C.

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. M. K. JENKINSON,
W. TED SMITH,

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE AND CONVICTION VACATED / NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, THOMAS CURTIS HAMILTON #161339, 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.

Thomas Hamilton

SWORN to and subscribed before me this 10th
day of September, 2010.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, THOMAS CURTIS HAMILL/HOR #161339, 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.

Thomas Hamill
Applicant

SWORN or affirmed to and subscribed before me this
10th day of September, 2010.

Luduan Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2010-CP-10-7619
	)	
Thomas Curtis Hamilton #161339	)	
	)	
Applicant	)	
	)	
v.	)	RETURN
	)	
State of South Carolina	)	
	)	
Respondent	)	

The Respondent, making its Return to the Application for post-conviction relief filed September 17, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the November 2004 term of the Charleston County Grand Jury for burglary - 1st degree (2004-GS-10-8212) and petty larceny (property offense enhancement) (2004-GS-10-8213). Martha Kent Runey, Esquire, and W. Ted Smith, Esquire, represented the Applicant. The Applicant proceeded to trial on June 5-6, 2006, after which a jury found him guilty as indicted. The Honorable R. Knox McMahon sentenced the Applicant to confinement for life without parole (LWOP) for burglary and five (5) years concurrent for petty larceny.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals subsequently

dismissed the appeal. State v. Hamilton, Op. No. 2009-UP-448 (S.C. Ct. App. filed October 7, 2009). The Remittitur was issued on October 23, 2009.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated October 23, 2009.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel

- a. Failed to move for a continuance.
- b. Failed to request a curative instruction when prosecutor commented before the jury that Applicant had two prior convictions for burglary and did not take the stand.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 145, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

The Respondent submits that the Applicant cannot satisfy either 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, the 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.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

February 15, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2010-CP-10-7619

THOMAS CURTIS HAMILTON, #161339

Applicant,

vs

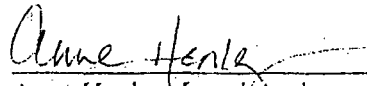
AFFIDAVIT OF SERVICE BY MAIL

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

DATED this 15th day of February, 2011


 Anne Henley, Legal Assistant
 For Respondent

Warren T. Ferguson

From: Caroline Morris [CMorris@pritchard-elliott.com]
Sent: Thursday, May 03, 2012 2:52 PM
To: Warren T. Ferguson
Subject: Thomas Hamilton Appeal

Hi Todd – attached are the Return and Motion to Alter or Amend. If you need anything else, please let me know. Good luck with the appeal. Have a nice afternoon.

Sincerely,
Caroline C. Morris, Legal Assistant

X: pe_logo

Pritchard & Elliott, Attorneys And Counselors At Law, LLC
129 Broad Street, Charleston, SC 29401

Phone: (843) 722-3300; Fax: (843) 722-3379
Email: cmorris@pritchard-elliott.com

NOTICE: While Pritchard & Elliott, Attorneys and Counselors at Law, LLC, does not render tax advice, it nevertheless advises the following, pursuant to IRS Circular 230 Disclosure: To comply with certain U.S. Treasury Regulations, please be advised that, unless expressly stated otherwise, any U.S. federal tax advice contained in this communication, including attachments, was not and is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer by the Internal Revenue Service. In addition, if any such tax advice is used or referred to by any other parties in promoting, marketing or recommending any partnership or other entity, investment plan or arrangement, then (i) the advice should be construed as written in connection with the promotion or marketing by others of the transaction(s) or matter(s) addressed in this communication, and (ii) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor. **CONFIDENTIAL:** This communication originates from Pritchard & Elliott, Attorneys and Counselors at Law, LLC. This message and any file transmitted with it contain confidential information which may be subject to the attorney-client privilege, or otherwise protected against unauthorized use. The information contained in this message and any file transmitted with it is transmitted in this form based on a reasonable expectation of privacy consistent with ABA Formal Opinion No. 99-413. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, disclosure, distribution, copying or use of the information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. All attachments are believed to be free of viruses, but any attachment should be checked for viruses before being opened. If you have received this message in error, please notify the sender immediately by telephone at (843) 722-3300 or by electronic mail, and delete this message and all copies and backups thereof. Personal messages express views solely of the sender and are not attributable to Pritchard & Elliott, Attorneys and Counselors at Law, LLC. For technical reasons, Pritchard & Elliott, Attorneys and Counselors at Law, LLC, is unable to screen your e-mail immediately upon receipt for time sensitivity, including meeting deadlines. Please be advised that Pritchard & Elliott, Attorneys and Counselors at Law, LLC, must decline responsibility for the reading of e-mails in time to take measures to meet deadlines or to comply with their time sensitivity and denies any liability in connection therewith. Kindly re-transmit by fax any documents containing deadlines. Thank you.

STATE OF SOUTH CAROLINA
County OF CHARLESTON

COURT OF COMMON PLEAS
2010-CP-10-07619

THOMAS CURTIS HAMILTON,
Plaintiff

v.

STATE OF SOUTH CAROLINA,
Defendant.

TRANSCRIPT OF RECORD

September 14, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

Mr. Matthew Friedman, Asst. Attorney General
Representing the State

Mr. Edward Pritchard, III, Esquire
Representing the Applicant

Anne Bouley Meyer, RPR
Circuit Court Reporter

I N D E X
WITNESSES

ALL WITNESSES:

PAGE:

MS. MARTHA KENT RUNEY for Petitioner:	
Direct Examination by MR. PRITCHARD	5:5
Cross-Examination by MR. FRIEDMAN	20:11
Redirect Examination by MR. PRITCHARD	22:12
Recross-Examination by MR. FRIEDMAN	23:6
MR. THOMAS CURTIS HAMILTON for Petitioner:	
Direct Examination by MR. PRITCHARD	23:25
Cross-Examination by MR. FRIEDMAN	32:4

EXHIBITS

None

1 THE COURT: Thomas Curtis Hamilton versus the
2 state of South Carolina, 2010-CP-10-7619. It's before
3 the Court on an application for post-conviction relief
4 which was filed on September 17th, 2010.

5 The applicant is represented by Edward
6 Pritchard, III. And the State is represented by
7 Matthew Friedman.

8 The application alleges ineffective assistance
9 of counsel and a due process violation. As well as
10 various other grounds, including confrontation clause,
11 not asking for a continuance, failing to ask for a
12 curative instruction when the solicitor commented
13 before the jury. He had two priors for burglary and
14 didn't take the stand.

15 He was represented by Martha Kent Jenkinson and
16 W. Ted Smith at his trial. And is seeking a new trial.
17 The return -- the return was filed on February 16th of
18 2011. The appellate decision was unpublished, and that
19 is 2009 UP 448.

20 Sentenced by Judge McMahon on June 6, 2006 to
21 life without patrol. It's from a 2004 indictment. He
22 was also sentenced to five years on property crime
23 enhancement on the same date, and that was run
24 concurrent. And that is from indictment
25 2004-GS-10-8213.

1 Appellate counsel filed an Anders brief with the
2 Court of Appeals. The case was tried June 5th through
3 6th, 2006. The State was represented by James Stack
4 and Bruce Durant.

5 Mr. Pritchard, are you ready to proceed?

6 MR. PRITCHARD: Yes, Your Honor, I am.

7 THE COURT: Have you explained to your client
8 that the only relief the Court can grant is a new
9 trial?

10 MR. PRITCHARD: Yes, he knows that.

11 THE COURT: Do you know that, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay.

14 MR. PRITCHARD: He has been sentenced to life in
15 prison, so.

16 THE COURT: I still always want to make sure
17 because sometimes people -- you know, lots of times
18 people get on the stand and say, I want my old deal
19 back, or I want to be re-sentenced. And I just wanted
20 to make sure he understood.

21 MR. PRITCHARD: Yeah. We have no choice but to
22 play the game again.

23 We would call Martha Kent Runey to the stand.

24 MARTHA KENT RUNEY,
25 after having first been duly sworn to state the truth,

1 the whole truth and nothing but the truth, testified on
2 her oath as follows:

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. PRITCHARD:

6 Q Ms. Runey, where are you employed?

7 A Charleston County Public Defender's Office.

8 Q What is your position with the Charleston County
9 Public Defender's Office?

10 A I'm a staff attorney there.

11 Q So you are a licensed attorney?

12 A I am.

13 Q To practice in the state of South Carolina?

14 A I am.

15 Q And how long have you been licensed to practice
16 in the state of South Carolina?

17 A Since 2001.

18 Q Where did you attend law school?

19 A University of South Carolina.

20 Q And you graduated in 2001?

21 A I did.

22 Q Where did you go to undergraduate school?

23 A College of Charleston.

24 Q All right. What did you do upon graduation from
25 law school and passing the bar?

1 A I clerked for a little over a year for Judge
2 Victor Rawl. Then I went to work at the Charleston
3 County Public Defender's Office.

4 Q You started there in roughly 2002?

5 A November of 2002.

6 Q Okay. So you have been practicing with them
7 almost nine years now?

8 A That's correct.

9 Q What do you do at the Charleston County Public
10 Defender's Office?

11 A I represent clients that are charged with
12 various crimes in general sessions court.

13 Q Okay.

14 MR. PRITCHARD: I assume the Court knows what
15 general sessions court is, so I will skip some of that
16 if you don't mind.

17 THE COURT: Yes. You can cut to the chase. You
18 don't have to spoon-feed me. You can get to the heart
19 of the matter.

20 MR. PRITCHARD: All right.

21 Q (By Mr. Pritchard) Approximately what is your
22 case load at any given time? How many cases are you
23 assigned?

24 A Generally about 175 clients.

25 Q That's on average you have got that kind of

1 load?

2 A Yes, sir.

3 Q Roughly how many of these cases go to trial?

4 A That's hard to say. A lot of them are prepared
5 for trial, and are ended up -- end up working out while
6 they're on the trial docket. Several a year.

7 Q Several a year?

8 A Uh-hum.

9 Q But approximately how many of them do you
10 actually prepare for trial?

11 A I couldn't tell you.

12 Q More than half? Less than half?

13 A Less than half.

14 Q More than a quarter? Less than a quarter?

15 A I'd say less than a quarter.

16 Q 20 percent? 10 percent?

17 A 20 percent.

18 Q 20 percent. So if you've got 175 cases roughly,
19 out of those 175 cases, 30, 35?

20 A Don't ask me math. That's why I went to law
21 school.

22 Q 35?

23 A Sure.

24 Q 35 getting ready for trial. That's a lot of
25 work to get them ready for trial, isn't it?

1 A It is.

2 Q And you've got a fair amount of workload on a
3 day-in and day-out basis, don't you?

4 A We do.

5 Q Do you know Thomas C. Hamilton?

6 A I do.

7 Q How do you know him?

8 A I represented him while at the Charleston County
9 Public Defender's Office.

10 Q And when were you first assigned -- you are
11 typically assigned to represent him, correct?

12 A We are.

13 Q You make an application to the Public Defender's
14 office and then they assign a staff attorney; is that
15 how it works?

16 A That's correct.

17 Q When were you -- when did you receive that
18 assignment?

19 A Mr. Hamilton was assigned to Danny Prenner,
20 another public defender. And when he left our office,
21 the case was reassigned to me on September 8th, 2005.

22 Q All right. When was the case first assigned at
23 the PD's office?

24 A A file was opened for Mr. Hamilton in our office
25 on August 16th of 2004.

1 Q All right. And so roughly a year elapsed before
2 you picked it up?

3 A That's correct.

4 Q Did you do the bulk of the work on his case?
5 Mr. Hamilton's case?

6 A Well I tried the case. When I received it, it
7 had actually been placed on a trial docket for several
8 weeks out. And I spoke to the solicitor saying that it
9 had been reassigned to me and I would not be able to
10 try it then.

11 And then there was another almost a year before
12 it was actually tried.

13 Q Okay. And so you had roughly a year, a year's
14 time to prepare the case?

15 A September '05. Then it was tried June 6th.

16 Q Nine months?

17 A Yeah.

18 Q The math again. What was he charged with when
19 you first got the file?

20 A He was charged with burglary first and one
21 property crime enhancement when I received the file.
22 Then he later received another charge.

23 Q What was that other charge?

24 A Another property crime enhancement.

25 Q Okay. In -- summarize exactly what he was

1 accused of doing. Don't give us legal niceties.

2 Factually, what was it that allegedly occurred?

3 A There was a burglary at a house on Trapman
4 street. I believe there were college students that
5 lived there.

6 One of the college students was at home and he
7 came down to see a man in his house exit the backdoor I
8 believe with a Play Station.

9 Q A Play Station being like a video game?

10 A Yes.

11 Q Okay.

12 A Mr. Hamilton was arrested near the Trapman
13 street location. Subsequently one of the victims
14 identified Mr. Hamilton.

15 And that's what we contested at trial, that this
16 was not Mr. Hamilton that was in his house.

17 Q All right. Who arrested Mr. Hamilton?

18 A Officer Thomas Rivers with the Charleston Police
19 Department.

20 Q Okay. And when and where and how did one of the
21 victims identify Mr. Hamilton?

22 A I believe that Mr. Hamilton was stopped by Mr.
23 Rivers on Logan Street. And the victim was brought in
24 a police car by another officer for identification
25 purposes.

1 Q Who was that other officer?

2 A I don't remember who that officer would have
3 been.

4 Q What happened during that identification?

5 A The victim did identify Mr. Hamilton as being
6 the person that was in his house that day.

7 Q Okay. Did he give Officer Rivers a different
8 description of the victim?

9 A I don't know that he, that the victim ever gave
10 Officer Rivers a description. He may have given it to
11 another patrol officer. I don't know.

12 Q Okay. Was there ever a circumstance under which
13 the victim gave inconsistent descriptions or
14 identification of Mr. Hamilton?

15 A I do remember we did do a Neel versus Biggers
16 hearing about the identification. Certainly that it
17 was suggestive, that the victim was brought to Mr.
18 Hamilton.

19 I remember that there was a discrepancy on
20 whether the person in the home had on a hat. I believe
21 the victim gave a description that the man in the house
22 was wearing a hat.

23 Q And at the time of the identification, was Mr.
24 Hamilton wearing a hat?

25 A He was not.

1 Q At the time of the arrest, was he wearing a hat?

2 A He was not.

3 Q All right. And who was the officer at the time
4 of the identification?

5 A The officer with Mr. Hamilton was Thomas Rivers.

6 Q All right. And were there any complicating
7 factors with regard to this case? I mean were there
8 any prior records or other thing that might complicate
9 the sentencing in the crime?

10 A Well the allegations of Mr. Hamil -- for Mr.
11 Hamilton rose to the level of a burglary second. But
12 based on his prior record the charges were upgraded to
13 a burglary first.

14 Q What was that prior record?

15 A I don't remember exactly how many, but he did
16 have two prior burglaries.

17 Q Okay. And was that an issue in dealing with
18 this case?

19 A It is. It always is when you are dealing with a
20 burglary first.

21 Q And what does a burg first carry?

22 A 15 to life.

23 Q 15 to life. And did there ever come a time when
24 there was a plea deal offered to Mr. Hamilton?

25 A There was.

1 Q What was initially offered?

2 A When I received the file there had already been
3 an offer made of 15 years.

4 Q And Mr. Hamilton accepted that 15 years?

5 A He did not.

6 Q Okay. Now did the plea deal ever charge?

7 A It did.

8 Q All right. And tell me how it charged. Or tell
9 the Court actually.

10 A In my case log I have where I met with Mr.
11 Hamilton on May the 17th of 2006. He was actually
12 transported from the department of correction. He was
13 serving a probation violation sentence.

14 At that point the solicitor was willing to
15 dismiss the burglary first charge if Mr. Hamilton pled
16 to his other pending charges, which would have been
17 property crime enhancements.

18 Q What would property crime enhancement carry?

19 A They carry zero to 10.

20 Q In your professional opinion, what would he have
21 likely gotten?

22 A I certainly don't think that he would have
23 gotten 10 years. I would have asked for something to
24 run concurrent with the three year probation violation.
25 But, other than that.

1 Q So the worst he could have gotten was 10 years?

2 A Yes.

3 Q And the best he could have gotten was that 3
4 year concurrent probation violation?

5 A Yes.

6 Q How quickly would he have been released if he
7 had gotten the 3 years, in your view?

8 A Generally on a 3 year sentence I would say you
9 would do approximately 18 months.

10 Q Okay. So there was a possibility that had he
11 pled to that he would have ended up out -- no longer
12 incarcerated after 18 months?

13 A About that, yes.

14 Q Now did you discuss with him this plea?

15 A I did.

16 Q Did there seem to be, from your perspective, any
17 confusion with regard to what was going on?

18 A I did note that he didn't want to plead to any
19 of them, and that he thought that he had already been
20 to court on shoplifting charges in municipal court.

21 Q So he thought that he had already pled, or that
22 those charges had already been disposed of that the
23 solicitor was now asking him to plead guilty to?

24 A Yes.

25 Q So he didn't want to plead to something that he

1 thought had already been addressed and dealt with?

2 A That's correct.

3 Q Now did you go and find out anything about those
4 charges?

5 A Yes, I did.

6 Q Had they been disposed of?

7 A No, they had not. I called the city court on
8 Lockwood and he had only gone to court for a simple
9 assault, but not the shoplifting.

10 Q So those charges were still pending?

11 A They were.

12 Q Did you meet with him again?

13 A I don't know. I don't think that I met with him
14 again that day. I do note in my file that I had the
15 solicitor bring him back to the courthouse the next day
16 and I met with him again.

17 Q Do you recall specifically what you discussed
18 with him at that time?

19 A No, I do not.

20 Q Do you recall any of the details of that
21 meeting?

22 A I do not.

23 Q So as you sit here today you don't know whether
24 you discussed that plea deal, or you might have or
25 might not have, you don't know?

1 A The only note I have is that I met with him
2 again and he still did not want to plead.

3 Q Okay. But you don't recall any of the details
4 about the discussion?

5 A No, I do not.

6 Q But the day before he seemed to have some
7 confusion about the whole thing?

8 A He did.

9 Q So the case ultimately went to trial?

10 A It did.

11 Q And what sentence was imposed on Mr. Hamilton?

12 A Life without parole.

13 Q And what was he convicted of?

14 A He was convicted of burglary first and a
15 property crime enhancement.

16 Q And did he also receive five years?

17 A He did.

18 Q To run concurrent with the life sentence?

19 A Yes.

20 Q Without parole?

21 A Yes.

22 Q Sort of meaningless?

23 A Correct.

24 Q Did you, based on this confusion over the
25 initial -- well, let me backup. With -- strike that.

1 With regard to the identification there was, at
2 least from your perspective, was there some confusion
3 with the victim with regard to the different, the
4 description of Mr. Hamilton?

5 A I thought that that was our best issue at trial
6 was the identification of Mr. Hamilton. I thought
7 there were certainly discrepancies.

8 Q Okay. And the officer, there was an officer
9 involved in one of those identifications, wasn't there?

10 A That's correct.

11 Q What was that officer's name?

12 A Officer Rivers had Mr. Hamilton. I don't
13 remember who the officer was that brought the victim to
14 make the identification.

15 Q Would it have been -- does Officer Hargrove
16 sound correct?

17 A I believe that was the responding officer, so
18 that could certainly be correct.

19 Q Okay. And did you place that officer under
20 subpoena?

21 A I did.

22 Q And the officer was subpoenaed to be at trial?

23 A He was.

24 Q And what was the purpose of calling Officer
25 Hargrove, or grave as the case may be?

1 A Well generally I subpoena every officer that's
2 involved in the case.

3 Q Was that for the purpose of discussing this
4 identification process at trial?

5 A I don't think that he was called during the
6 Biggers hearing, I think the victim was called. But it
7 could possibly have been if he had been the one that
8 had responded to the scene.

9 Q Okay. And did he show up at trial?

10 A I do not think he did.

11 Q Do you know why?

12 A I believe he was out of state.

13 Q But he was validly subpoenaed while he was in
14 the state?

15 A He was.

16 Q Okay. Did you move for a continuance?

17 A I did not.

18 Q Why not?

19 A I didn't think that we needed Officer Hargrove.

20 Q But did that deprive the opportunity to examine
21 him regarding the identification?

22 A Yes. Officer Hargrove, yes.

23 Q So the opportunity to cross-examine him based on
24 that was lost by virtue of not asking for the
25 continuance?

1 A Because he was not there, yes.

2 Q Because he was not there.

3 During the trial were Mr. Hamilton's prior
4 convictions mentioned in front of the jury?

5 A They were.

6 Q Was that proper?

7 A Unfortunately, yes.

8 Q Why do you think they were proper?

9 A There is South Carolina case law that says when
10 the State is prosecuting someone for burglary first
11 based solely on their prior record, that two of those
12 convictions can be introduced in the State's case in
13 chief so they were against Mr. Hamilton.

14 Q But was there some confusion as to whether or
15 not they were actually his convictions?

16 A I cross-examined I think an employee of this
17 clerk's office on whether or not somebody could use an
18 alias.

19 Q There was a conviction of a Thomas Hamilton?

20 A That's correct.

21 Q But was there ever any positive identification
22 that it was this Thomas Hamilton?

23 A I believe that the State called a witness to
24 match the fingerprints of Mr. Hamilton.

25 Q Okay. Were there any fingerprints found at the

1 scene?

2 A There were not.

3 Q So no fingerprints at the scene to match Mr.
4 Hamilton to this crime?

5 A No, there were not.

6 MR. PRITCHARD: Answer any questions the State
7 may have

8 THE COURT: You may proceed.

9 MR. FRIEDMAN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FRIEDMAN:

12 Q Good morning, Ms. Runey.

13 A Good morning.

14 Q You were appointed in this case; is that right?

15 A I was.

16 Q Do you recall about how many times you met with
17 the applicant?

18 A For a while Mr. Hamilton was out of jail and
19 then he was in the department of corrections. I met
20 with him -- it's hard to tell from my notes because he
21 wasn't in jail for most of the time before that. But I
22 have noted on here at least three.

23 Q Do you think you had enough time to meet with
24 him?

25 A I do.

1 Q Do you recall if you discussed the elements of
2 the charges and what the State was required to prove?

3 A I did.

4 Q Did you discuss potential defenses with him?

5 A I did.

6 Q What was his defense at trial?

7 A That it wasn't him.

8 Q Do you recall if there was any dispute about
9 whether or not he had two prior burglary convictions?

10 A We certainly disputed that at trial in that we
11 cross-examined the member of the clerk's office as well
12 as the employee from SLED regarding fingerprints.

13 Q Do you recall if there was a jury charge on
14 burglary second?

15 A There was.

16 Q Did you contest the showup lineup at trial?

17 A I did.

18 Q Was that the Biggers hearing that you
19 referenced?

20 A Yes.

21 Q I believe you testified that the first plea
22 offer was for 15 years?

23 A It was.

24 Q Was that -- that was before your representation?

25 A Yes.

1 Q And the second offer was to drop the burglary
2 first charge; is that correct?

3 A That's correct.

4 Q Did you communicate that offer to the applicant?

5 A I did.

6 Q Who's decision was it to reject that offer?

7 A Mr. Hamilton's.

8 MR. FRIEDMAN: I have nothing further, Your
9 Honor.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY MR.. PRITCHARD:

13 Q In your meeting of I think it was May 16th; is
14 that correct?

15 A May the 17th.

16 Q May 17th. You met with him twice. Was it 16th
17 and 17th or 17th and 18th?

18 A 17th and 18th.

19 Q Okay, I'm sorry. I misunderstood.

20 There was clearly, at least from your
21 perspective, there was some confusion as to whether or
22 not he really understood what was being presented?

23 A That's correct.

24 Q And you don't know whether that confusion was
25 ever really cleared up, do you?

1 A I do not.

2 MR. PRITCHARD: No further questions.

3 THE COURT: Any further questions?

4 MR. FRIEDMAN: Just one, Your Honor.

5 RE CROSS-EXAMINATION

6 BY MR. FRIEDMAN:

7 Q Was his confusion related to the burglary or to
8 the property crime enhancement charges?

9 A I have noted in my file that he thought that he
10 had already pled to the property crime enhancements.

11 MR. FRIEDMAN: I have nothing further, Your
12 Honor.

13 THE COURT: Any further questions?

14 MR. PRITCHARD: None, Your Honor.

15 THE COURT: You may step down.

16 Anything further?

17 MR. PRITCHARD: I need to call Thomas Hamilton.

18 THE COURT: Sir, if would you stand to be sworn.

19 MR. THOMAS CURTIS HAMILTON,
20 after having first been duly sworn to state the truth,
21 the whole truth and nothing but the truth, testified on
22 his oath as follows:

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MR. PRITCHARD:

1 Q Mr. Hamilton, are you currently incarcerated?

2 A Yes.

3 Q Where are you incarcerated?

4 A Leiber Correctional Institution.

5 Q What were you incarcerated for?

6 A Burglary first and property enhancement.

7 Q And what type of sentence did you receive?

8 A Life sentence without parole.

9 Q Okay. So in the absence of a return, you will
10 spend the rest of your life in the state penitentiary
11 system as you understand it; is that correct?

12 A That's correct.

13 Q All right. Now, Mr. Hamilton, do you recall the
14 events surrounding this whole trial for which you were
15 ultimately incarcerated for the crime alleged against
16 you?

17 A Yes.

18 Q And it's still your position that you were not
19 involved in the burglary?

20 A Exactly. That's correct.

21 Q Okay. And you understand that if your
22 post-conviction relief application is granted, that you
23 are simply going to get a new trial?

24 A Yes, sir.

25 Q All right. Now who -- when you were initially

1 charged with this crime, who was appointed to represent
2 you?

3 A I had a private lawyer, his name was Elwood Kent
4 -- I mean, excuse me, Your Honor -- Kenneth Edward.

5 Q But at some point you got a public defender,
6 correct?

7 A Yes.

8 Q And when did that occur; do you remember?

9 A I believe that occurred '04, something like
10 that.

11 Q Shortly after you were charged with the crime?

12 A Yes.

13 Q Ms. Runey wasn't originally your lawyer, was
14 she?

15 A No, she wasn't.

16 Q And you had another lawyer for about a year?

17 A Approximately, yes.

18 Q Ms. Runey took over when he left the PD's
19 office?

20 A Yes, sir.

21 Q Okay. How many time did you -- you heard her
22 testify just now, is three about an accurate count of
23 how many times you met with her?

24 A I'm not really sure. I think it was like --
25 before I went to court I saw her one time, that was it.

1 Q Okay. But you met with her also to prepare?

2 A To prepare. She said she was going to come but
3 -- she stated that she was going to come see me, but I
4 never seen her.

5 Q All right. And you've heard Ms. Runey testify
6 here today. Do you recall Ms. Runey coming -- let me
7 backup, let me strike that.

8 It's your understanding that the plea bargain
9 was originally 15 years?

10 A Yes, sir.

11 Q And you recall that plea bargain?

12 A Yes.

13 Q And you rejected that?

14 A Yes, sir. Yes, I did.

15 Q Because you weren't willing to plead to
16 something for 15 years?

17 A That was my understanding.

18 Q Okay, but that was your understanding, you
19 weren't willing to plead to it?

20 A No. No.

21 Q But now do you recall her coming in and talking
22 to you about possibly dropping the burg first and
23 pleading to property enhancement?

24 A Yeah, back then I didn't really understand what
25 she was talking about.

1 Q Okay. But you thought you had already pled to
2 this, correct?

3 A Yes.

4 Q And you didn't want to plead to something that
5 you had already dealt with?

6 A Exactly.

7 Q Okay. And so to your mind did you understand
8 that by pleading to that that you were pleading to a
9 crime that would have given you a maximum of 10 years?

10 A No, sir.

11 Q And with the possibility of being out, with the
12 possibility of a 3 year sentence, being out in 18
13 months. Did you understand any of that?

14 A No, sir.

15 Q Do you recall meeting with her the next day?

16 A Yes. Yes, sir.

17 Q And do you recall her discussing with you the
18 plea bargain during that second meeting?

19 A Somewhat to it. I didn't really understand what
20 she was talking about really.

21 Q Had you known and understood that you were going
22 to get a 3 year sentence, you would probably only spend
23 18 months, would you have taken that deal?

24 A Yes, I would have.

25 Q And why didn't you accept that deal?

1 A Due to the fact that I was misinformed. I was
2 misinformed.

3 Q You didn't understand that that was the deal?

4 A No, sir. I didn't understand that.

5 Q What did you think you were going to get if you
6 pled to that?

7 A To my knowledge it was like 10 years. That's
8 what my mind was on -- I mean 15 years.

9 Q So you thought that the deal was still 15 years?

10 A Yes, sir.

11 Q And you never understood that there was a
12 maximum of 10 and a possibility of 3 with 18 months
13 parole?

14 A No, sir.

15 Q Would you have taken that deal had you
16 understood that?

17 A Yes, I would have.

18 Q All right. Now at trial officer Hargrove, he
19 did not appear, correct?

20 A Correct.

21 Q Did you ask your attorney to move for a
22 continuance?

23 A I asked her where was the officer. And she was
24 saying -- well she was telling me, just hold up, I got
25 it. That was her statement.

1 Q I got it?

2 A Yeah.

3 Q But he never showed up?

4 A He never showed up.

5 Q Did they ever move for a continuance?

6 A No, they didn't.

7 Q Now Let me ask you, the day of the crime what
8 were you doing when Officer Rivers came up?

9 A I'd just left 17 Franklin Street by -- I mean
10 asking Mr. Michele, the owner of the house, for a job
11 because the job that we had is like exterior and when
12 it rains we don't work.

13 So I usually go by there and he usually give me
14 a little project to do, give me some interior work just
15 to support my family, you know. If it rains I can't
16 work so I always go there and take a little job for
17 him. He told me he was going to let me -- he told me
18 he was going to call me back in a few days.

19 After I left his house it wasn't even much like
20 five minutes the police car just rode up in front of
21 me. So I walked around the police car. So they said,
22 hold up, sir. I was like, for what. They was like,
23 well a burglary had occurred like three blocks down.

24 I said, what does that have to do with me. And
25 I was begging them to set me in the backseat of the

1 cruiser. They said, this isn't even but a block and a
2 half. I said please set me in the backseat. I just
3 came from this house, it was like five minutes.

4 And they was like, well, don't worry about it.
5 If you didn't did it, you will be okay. You know, to
6 my knowledge nobody from the department, of the police
7 department never checked my alibi. Nobody ever
8 investigated. There was a prosecution, there was never
9 an investigation.

10 Q So what did they do with you once they got you
11 in the police car?

12 A Once they got me in the police car they took me
13 to the police station. Once the guy identify me. They
14 said he identified

15 Q They said he identified you?

16 A Yes, after I gave my name. And I asked him -- I
17 was like, well, did you -- didn't you say, well, the
18 person that was still fleeing the scene when you had me
19 detained. I said, how can I be fleeing the scene if
20 you got me detained.

21 Then I said, furthermore, I said, well we heard
22 it came over the radio how the suspect had looked,
23 blue hat, gray sweat shirt, blue jeans. I'm sitting
24 there with a gray T-shirt, blue jeans. I said, the
25 closest thing to a blue hat that I have is a do-rag in

1 my pocket. He says, don't go in your back pocket.

2 So I left my hat on. I said, well you can put
3 it -- it's my do-rag, I keep my hair braided. So he
4 was like, well, just be patient. So I was being
5 patient. So he was like, well, they told me to detain
6 you. They told me to handcuff you.

7 I said, well, I'm pleading with him to take me,
8 it's not even like a block and a half where I just came
9 from. So it's impossible for me to be at two places at
10 one time. No one never checked on my alibi, never
11 investigated it.

12 Q And was he called at trial?

13 A Yes. Officer Hargrove was called at trial.

14 Q The man at 17 Franklin?

15 A Excuse me?

16 Q The man at 17 Franklin, did you --

17 A No, he was the one that died. He didn't die,
18 but it was -- but his son he gave a little statement
19 that he saw me that day, but he didn't know what time
20 it was when he saw me.

21 Q Okay.

22 MR. PRITCHARD: I don't have any further
23 questions for this witness. Answer any questions the
24 State May have.

25 THE COURT: Any questions for the witness?

1 MR. FRIEDMAN: Just briefly. Thank you, Your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Mr. Hamilton, you testified that the first plea
6 offer was for 15 years?

7 A Yes.

8 Q Whose decision was it to reject that offer?

9 A My decision.

10 Q Okay. At the second plea offer was to dismiss
11 the burglary first charge and just proceed on the two
12 property enhancement crimes; is that right?

13 A I don't understand. Can you repeat the
14 question?

15 Q Was the second plea offer that the State would
16 dismiss the burglary charge and go forward on the two
17 property offence charges?

18 A Yes. It was a plea offer, but it wasn't a
19 statement of how much the plea worked.

20 Q There was no set time for the plea?

21 A No.

22 Q Whose decision was it to reject that offer?

23 A It was me.

24 MR. FRIEDMAN: I have nothing further, Your
25 Honor.

1 THE COURT: Any further questions for the
2 witness?

3 MR. PRITCHARD: None, Your Honor.

4 THE COURT: Any further witnesses?

5 MR. PRITCHARD: No, Your Honor.

6 THE COURT: State have any witnesses?

7 MR. FRIEDMAN: No, Your Honor.

8 THE COURT: Is there any argument?

9 MR. PRITCHARD: Your Honor, I think it's
10 perfectly -- it's pretty clear here that Mr. Hamilton
11 really didn't understand the deal. You can't reject
12 something if you don't really fully understand what the
13 ramifications are, and how they are operated.

14 I don't think it was adequately or correctly
15 explained to him. Ms. Runey admitted she couldn't
16 really recall what they talked about at the second
17 meeting. And, you know, nobody in their right mind
18 would reject, if they're staring at life in prison --

19 THE COURT: They do it every day. I see it
20 every day. For the life of me, I haven't tried to
21 figure it out. As a matter of fact, more than three or
22 four times a term.

23 MR. PRITCHARD: Okay. Well I think if he had
24 understood it, he would have jumped all over it. But I
25 just don't think he adequately understood it. I don't

1 think -- I think that is the argument for ineffective
2 assistance of counsel position.

3 The other one is is we have got this whole
4 confusion over the identification. We had a critical
5 witness, Officer Hargrove, who was under subpoena and
6 didn't show up. And I think a continuance should have
7 been asked for.

8 I think when you are missing an important
9 witness like that, you've got to have him in it. I
10 think he lost his right to confront the witness under
11 the Sixth Amendment. I think he lost adequate
12 assistance of counsel. And I think the conviction
13 should be overturned and a new trial granted.

14 THE COURT: You may proceed, Mr. Friedman.

15 MR. FRIEDMAN: Thank you, Your Honor. Justify
16 briefly.

17 The State would submit that the applicant has
18 failed to meet his burden. The identification issue
19 was contested at trial. We believe that's a direct
20 appeal issue, and in fact it was the issue that was
21 raised on appeal in the Anders brief.

22 Counsel testified that she didn't think she
23 needed a continuance. She didn't think she needed that
24 officer for the Biggers hearing. And that's why she
25 did not request a continuance.

1 As for the plea offers, counsel testified that
2 she communicated those offers to the applicant.
3 Although there was some confusion about the second
4 offer, the applicant has indicated it was his decision
5 not to plead guilty.

6 Counsel testified that she looked into the
7 municipal court charges and found out that he had only
8 pled guilty to simple assault and not shoplifting. For
9 those reasons, we would ask the Court to deny and
10 dismiss the application.

11 THE COURT: The applicant bears the burden of
12 proving his allegations on post-conviction relief. And
13 his allegation is that of ineffective assistance of
14 counsel. Of course those cases and our guidance being
15 Strickland versus Washington, and Butler versus State.

16 The proper measure is whether the attorney
17 provided representation within the range of competence
18 required in criminal cases. The courts presume that
19 counsel provided and rendered adequate assistance and
20 made all significant decisions in the exercise of their
21 professional judgment.

22 In order to overcome this presumption, in order
23 to receive relief, the applicant must overcome that
24 presumption. And that is pursuant to Cherry versus
25 State. There is two-prong test that we look at in

1 evaluating that assistance, and one was where the court
2 measures the attorney's performance by a reasonableness
3 under professional norms.

4 And then the court looks at was counsel's
5 deficient performance such that it prejudiced the
6 applicant such that there is a reasonable probability
7 that but for counsel's unprofessional errors, the
8 result of the proceeding would have been different.

9 The Court finds that the application has failed
10 by a preponderance of the evidence to meet either of
11 those prongs of the Strickland test. And I probably
12 will take these in opposite order.

13 There has been testimony both from trial counsel
14 and from the applicant regarding the issue of the
15 mentioning of the two prior burglaries.

16 The funny thing about a post-conviction relief
17 application is that hindsight is always 20/20. So what
18 is most convincing and compelling to this Court is the
19 record, which is the contemporaneous record of what
20 happened at the actual time of the events.

21 I have reviewed his application. He indicated
22 that Ms. Runey failed to make an objection when the
23 State made reference to his prior convictions. It's a
24 little muddled in the application because it seems to
25 imply that the solicitor made some comment about him

1 not testifying, but I can discern none of that in the
2 record.

3 So I can only assume that he meant that he made
4 reference to the two prior burglaries and the defendant
5 did not testify. Of course the defendant has no burden
6 of proof.

7 However, under our state law, under statute, one
8 of the elements of a burglary in the first degree is
9 that the defendant has a prior record of two or more
10 convictions for burglary, and/or housebreaking. So
11 those are admissible under our state's statutory and
12 case law schematic because they are an actual element
13 of the offense.

14 And the solicitor makes reference in his closing
15 to that. He makes reference to Ms. Rena, who at the
16 time was the deputy clerk who maintained the criminal
17 records who would have had evidence of the convictions
18 and would have been called to testify regarding those
19 certified convictions.

20 And at that time she testified that there was a
21 certified copy of a plea in 1989 where the defendant
22 pled under oath to committing burglary in the second
23 degree. And then there was testimony from a SLED agent
24 regarding the comparison of fingerprints, which also
25 are made reference to to eliminate any contention by

1 the defense that the defendant was not the person who
2 pled guilty at that time.

3 which just as an aside, just having done this
4 for many years, it is unlikely that someone who is not
5 who they say they are would plead guilty. There are
6 too many stopgaps. One being checking a person's age,
7 their birth date, identity.

8 There are just a lot of stopgaps that go into
9 that process. So as a practical matter it's really not
10 convincing to me that somebody would come into this
11 court under oath and plead to something when they were
12 not in fact that person, and that the court system
13 would not have caught it at some point during that
14 continuum.

15 But nevertheless, the solicitor makes reference
16 to that testimony, as well as the fact that the
17 defendant pled guilty in 1989. And then he had trial
18 in 1995 for another burglary in the -- for another
19 burglary charge.

20 In any event, all of the comments made by the
21 solicitor were within the context of the elements of
22 the offence, and they were not inappropriate. He is
23 entitled to -- if it's an element of the offense, he
24 was entitled to argue those things. And that's at page
25 180 to 182 of the transcript.

1 There would have been no basis for Ms. Runey to
2 have objected on that basis, or to have requested a
3 curative instruction because of the boilerplate of the
4 Court's instructions, the jury is instructed that two
5 prior burglaries are an element.

6 And that they are no evidence of the guilt for
7 which the person is -- evidence of guilt of the charge
8 for which the person is currently on trial. So built
9 in within our instruction is a curative instruction.
10 So there really would have been no basis for her to
11 have requested that.

12 It appears that Judge McMahon gave our standard
13 instruction, which is at Page 206. And he indicates:
14 Finally the State must prove beyond a reasonable doubt
15 that the defendant has a prior record of two or more
16 convictions for burglary, and/or housebreaking.
17 Evidence of prior offenses committed by the defendant
18 was not offered to prove the defendant has a bad
19 character, or to prove that the defendant committed the
20 burglary on this case.

21 The prior convictions may be considered by you
22 only for the purpose of determining whether or not it
23 satisfies the element of the offence that makes it
24 first degree burglary.

25 And he further goes on to instruct: Before you

1 can even consider the evidence of the defendant's prior
2 burglary and/or housebreaking convictions, you must
3 first find that the State has proved beyond a
4 reasonable doubt that a burglary was committed by the
5 defendant.

6 And if they were to find that beyond a
7 reasonable doubt, then they may consider the evidence
8 of the prior convictions as evidence of circumstance to
9 meet the elements of burglary in the first degree.

10 Then he goes on further to instruct them:
11 However, if you do not find beyond a reasonable doubt
12 that he committed these alleged prior offences, then
13 you cannot return a verdict of burglary in the first
14 degree.

15 So a curative instruction is built into our
16 instructions, and certainly the Court gave an
17 appropriate recitation of the law to the jury. So
18 there would have been no basis for a curative
19 instruction on that basis.

20 I found the testimony of Ms. Runey to be
21 compelling and convincing. Their strongest, strategic
22 issue in this case was the ID, and the suggestibility
23 of the ID.

24 And Mr. Pritchard argued -- and I will tell you
25 what my mentor says, you cannot apply logic to most of

1 the things we do because you would be chasing yourself
2 all day long because it just would never add up. So I
3 have stopped trying to be logical because there really
4 is no logic or rationale lots of times to decisions
5 that are made because they're not the decisions we
6 would make.

7 But then we are equipped, I think, with a better
8 decision making capacity. Not to be pejorative in any
9 way, just because of age, experience, and we know the
10 law. So we are in a different position.

11 So it's very difficult for us sometimes to
12 understand why people make the decisions that they
13 make. But again having had extensive experience,
14 people do it every day. Even when counseled by Court.
15 And for this reason, I have added as a colloquy in
16 trials. I make sure the defendant understands the deal
17 just for this very reason.

18 And there are some lawyers who don't like it.
19 Most lawyers appreciate it because five years from now
20 you are not going to remember what happened. But you
21 need a contemporaneous record of what actually took
22 place, what actually was explained.

23 And I even go a little further sometimes now.
24 If somebody tells me they don't understand, I will ask
25 the solicitor to give people more time to make sure

1 that it was understood.

2 But nevertheless, I think that -- and this is
3 again based on experience, which tends to be a valid
4 sort of strategic process for most defendants which is,
5 I have this valid issue, it's the suggestibility of the
6 lineup or the showup, and I think I can beat this based
7 on that.

8 And that strategy is employed. It is followed
9 through. And then when it doesn't come out with a not
10 guilty verdict, then of course that strategy is always
11 questioned which again we come back to hindsight.

12 But based on Ms. Runey's testimony it is clear,
13 as well as on the Anders brief that was filed later
14 with the Court, in my review of the record it appears
15 that the real strategy in this case was the showup
16 identification, the discrepancy in terms of any
17 descriptions of the defendant, that being the critical
18 point of whether he had a hat on or not, where he was
19 located at the time of the arrest.

20 And that was a valid strategy that was employed.
21 And also in terms of whether -- and I'm getting a
22 little ahead of myself -- whether Detective Hargrove's
23 testimony was needed became a strategic decision as
24 well. And I find credible Ms. Runey's testimony that
25 she didn't feel that she needed Detective Hargrove.

1 And based on my review of the record, I'm
2 inclined to agree with her. But what she indicated in
3 her testimony was that that was the strategy that they
4 employed. And as a practical matter, in general she
5 subpoenas all officers who were involved in the case.

6 Again it appears that the gravamen of the
7 applicant's testimony is that he felt Detective
8 Hargrove could in some way exculpate him because they
9 could have questioned whether in fact the police had in
10 fact pursued this alibi that he felt he would have had.

11 But his own testimony is contrary to that
12 because the person that could have validated any alibi
13 was deceased. And the person who was next close in
14 line to that circumstance couldn't identify what time
15 he saw him, except that he may have seen him at some
16 point during the course of that day.

17 And that being the son of the deceased
18 individual. And that being the person that he did work
19 for being the deceased gentleman. He said that the son
20 said he could ID him, saw him at some time, but he
21 certainly could not have provided any real alibi for
22 him.

23 So certainly Ms. Runey would not have been
24 deficient in that regard because she has an ethical
25 obligation as well only to put forth things in good

1 faith that can be validated. And certainly an alibi in
2 this case could not have been validated, especially
3 with the person who you would have relied on having
4 been deceased and there being no way to have preserved
5 his testimony in advance of trial.

6 So I don't see any basis in the record for
7 having needed Detective Hargrove. And in addition to
8 that, based on my review of the record he wasn't
9 critical.

10 There were other witnesses more critical and
11 instrumental to the identification process, that being
12 the issue and the showup, that were present and were
13 subject to cross-examination. And that issue was fully
14 explored in terms of credibility of the showup.

15 And of course the Court only determines it by a
16 preponderance of the evidence whether the ID comes in.
17 It's up to the jury to determine whether beyond a
18 reasonable doubt the State has proven the ID, and of
19 course there are a list of factors that the jury
20 considers. And it all comes down to a credibility
21 issue as to who the jury believed.

22 And so it appears from the record that the issue
23 of the lack of hat was fully explored, and it just came
24 down to a credibility determination which the jury did
25 not believe that theory.

1 So it was a proper strategic decision. It
2 didn't pan out; sometime they do, sometimes they don't.
3 But it certainly is not the basis for an ineffective
4 assistance of counsel point.

5 Now as it regards him understanding or not
6 understanding the deal, I find absolutely no evidence
7 in this record that he did not understand what was
8 discussed with him. The record supports that the
9 elements of the offence were discussed with him,
10 potential defenses, that in fact he disputed these two
11 prior convictions, that that was fully explored with
12 the witnesses.

13 And again, it's still for the jury to determine
14 whether in fact the State has met their burden of proof
15 on that element; that being the establishment of the
16 two additional burglaries as an element of burglary in
17 the first degree.

18 There has been some sort of a play on words as
19 to whether he understood what was being offered to him.
20 It is clear that he knew he was being offered 15 years.
21 Ms. Runey indicated that while she did not remember the
22 exact details of their conversation, that they met on
23 the 17th, she investigated whether in fact he pled
24 guilty to these other magistrate level offences and
25 they met on the 18th.

1 And while she doesn't have any specific
2 recollection of what they discussed, her notes indicate
3 that he rejected the plea. It really sort of begs the
4 question of why would they have met unless they would
5 have discussed that.

6 It wouldn't make sense, what else would they
7 have been discussing? And why would her notes be that
8 he rejected it other than the fact that they had gone
9 over it and he rejected it.

10 Again, hindsight being 20/20, I think that at
11 that time they thought they had a really valid issue on
12 the identification issue and thought it would have
13 exculpated the defendant and resulted in a not guilty
14 verdict. And it just as a matter of strategy did not
15 pan out that way.

16 There is no indication in the record that he was
17 not fully advised of the offers that were made to him.
18 And that he did not freely and voluntarily reject those
19 offers.

20 And again, if I were to apply logic to it,
21 three-quarters of what I do for a living would not make
22 sense. So I have stopped using that as my barometer,
23 as sad as that might be. But there is no indication in
24 the record that she did not meet the professional
25 obligation of fully explaining to him what the deal

1 was, what the offer was, and that he freely and
2 voluntarily rejected those offers.

3 Therefore, the Court is denying the application
4 for post-conviction relieve.

5 Mr. Friedman will do an order within 20 days
6 which he will submit to me by e-mail as well. If you
7 will give him your e-mail address, if you have anything
8 you want to add to the order or otherwise, please let
9 him know or let my clerk know. And that will be
10 submitted in 20 days. It is rarely the way he submits
11 it to me though.

12 MR. PRITCHARD: May I add one thing? In the
13 middle of it you said it was clear that he understood
14 that the deal was 15 years. But the deal was actually
15 less than that.

16 THE COURT: It was. I just glossed over it in
17 the interest of time on the property crime enhancement.
18 But the gravamen of it is he says he didn't understand.
19 He did understand.

20 Why else would you have researched it and fully
21 explained it to him? I think the whole crux of it is
22 he thought he had a viable issue on the ID and it just
23 didn't pan out, and it ended up in a verdict of guilty.
24 But there is no indication in the record that the offer
25 were not fully explained to him. I do not find him

1 credible on that issue.

2 MR. PRITCHARD: Thank you, Your Honor.

3 THE COURT: You're welcome. I have done a Form
4 indicating that it's denied, and that the order is to
5 be submitted in 20 days.

6 Thank you very much.

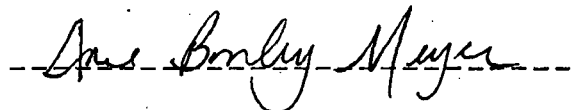
7 (Whereupon, the proceedings in this matter
8 before the court were adjourned.)

9 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.



Anne Bouley Meyer, RPR
Circuit Court Reporter

CC
AG
AT
SOL
ES

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Thomas Curtis Hamilton, #161339,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-7619

ORDER OF DISMISSAL

FILED
2011 OCT 10 AM 10:01
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Deadra L. Jefferson
Edward K. Pritchard, III., Esq.
Matthew J. Friedman, Esq.
Martha Kent Runcy, Esq.
September 14, 2011
Aune Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 17, 2010. The Respondent made its Return on February 15, 2011 which was filed on March 16, 2011. An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Edward K. Pritchard III, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Martha Kent Runcy, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, the Remittitur dated October 23, 2009, the PCR application, and the State's Return thereto.

10/9
2011

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the November 2004 term of the Charleston County Grand Jury for burglary, first degree (2004-GS-10-8212) and petty larceny (property crime enhancement) (2004-GS-10-8213). Martha Kent Runey, Esquire, sitting first chair, and W. Ted Smith, Esquire, sitting second chair, represented the Applicant. The Applicant proceeded to trial on June 5-6, 2006, after which a jury found him guilty as indicted for both offenses. The Honorable R. Knox McMahon sentenced the Applicant to confinement for life without parole (LWOP) for burglary, first degree and five (5) years concurrent for petty larceny.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The Court of Appeals subsequently dismissed the appeal. State v. Hamilton, Op. No. 2009-UP-448 (S.C. Ct. App. filed October 7, 2009). The Remittitur was issued on October 23, 2009.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel
 - a. Failed to move for a continuance.
 - b. Failed to request a curative instruction when prosecutor commented before the jury that Applicant had two prior convictions for burglary and did not take the stand.
 - c. Failed to adequately communicate plea offers.
 - d. Failed to adequately challenge the identification.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

2
2009
[Signature]

testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he only met with counsel once before the trial. He testified he rejected the first plea offer for fifteen (15) years. He asserted the second offer was to dismiss the first degree burglary charge, but he did not understand what counsel was talking about in regards to the property crime enhancement. Applicant also rejected this plea offer. Applicant testified counsel did not investigate his alibi defense. He admitted it was his decision to reject both plea offers.

Trial counsel testified she met with Applicant at least three (3) times prior to trial. She testified she was appointed in September 2005, which was about nine (9) months prior to trial. Counsel testified she discussed with Applicant the elements of the offenses and potential defenses. She testified she challenged the victim's identification of Applicant at trial in a Neil v. Biggers hearing. Counsel testified Applicant's defense was that he did not do it. She asserted the charges were upgraded from burglary, second degree to burglary, first degree based on Applicant's two (2) prior burglary convictions.

Counsel testified Applicant rejected the first plea offer of fifteen (15) years. She asserted the solicitor subsequently offered to dismiss the burglary, first degree in exchange for Applicant's plea to both property crime enhancements, which each carried a maximum of ten (10) years. Counsel contended it was Applicant's decision to reject both offers. She testified Applicant thought he already pled guilty to property crime enhancement in municipal court, but she called the city court and learned he had only gone to court for simple assault. She also

³
~~3029~~
2019

learned Applicant had a charge for shoplifting pending in the municipal court. Counsel asserted she had the solicitor bring Applicant back the next day. She testified she did not recall all of the details, but her notes reflect Applicant still did not want to plead guilty.

Counsel asserted Applicant's best defense was identification because there were some discrepancies. She testified she subpoenaed Officer Hargrave, as was her general practice to subpoena all officers in a case, but he did not show up because he was out of state. She asserted she did not move for a continuance because she did not think she needed the officer, as his testimony was not dispositive on the issue. Counsel testified she disputed the two (2) prior burglary convictions, and the State called an employee of the clerk of court's office and a fingerprint expert from SLED to verify the prior convictions. Counsel was able to cross-examine these witnesses. She testified that while the two (2) prior convictions were mentioned, it was not improper for the State to do so under state law, as it was an element of the offense. She also testified the trial court gave a jury charge on burglary, second degree.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

4
409
JPG

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel has been licensed since 2001 and began working with the Charleston County Public Defender's Office as a Staff Attorney in 2002. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, discovery, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel demonstrated the

5
5079
2019

normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds counsel properly communicated the plea offers to Applicant, and it was Applicant's decision to reject the plea offers. This Court finds Applicant understood the terms of the offers and knowingly chose to decline the offers. Counsel and Applicant testified Applicant rejected both plea offers. Counsel testified she investigated the Applicant's municipal court convictions and found he had not yet been convicted of shoplifting. She also learned he had gone before the municipal court on a simple assault charge but not for property crime enhancement. She then met with Applicant to discuss the second plea offer, and Applicant still did not want to plead guilty. This Court finds Applicant has considerable experience with the system, and finds no credibility to Applicant's claim he did not understand the plea offers or that counsel did not explain the offers to him.

This Court finds counsel made a valid strategic decision not to request a continuance when the officer under subpoena was out of state and did not appear at trial. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v.

6
leaf 9
2/1/9

State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Here, counsel testified she did not request a continuance because she did not think she needed the officer. This Court finds the officer was not critical to the identification issue and would not have corroborated an alibi. There were other witnesses who were more critical and instrumental to the identification issue. This court finds counsel's strategy was valid and reasonable.

This Court finds counsel properly challenged the identification. The identification issue was raised at trial and on appeal. Trial counsel requested a Neil v. Biggers hearing to challenge the show-up lineup, after which the trial court found the identification procedure was not unduly suggestive. (Tr. 55:16-19, 60:22-80:7.) The Court finds counsel fully explored the discrepancies in the descriptions of the Defendant, particularly the lack of a hat, which too was a valid strategy. However, the Court finds it came down to witness credibility and believability rather than inadequate representation by counsel.

This Court finds counsel properly challenged Applicant's two (2) prior burglary convictions. The State called Laurie Cicarelli, a SLED fingerprint expert, and Reina Gascon, an employee of the clerk of court's office, and counsel was able to cross-examine these witnesses. (Tr. 146:22-147:15, 154:7-156:1.) The State offered the two (2) prior burglary convictions as an element of burglary, first degree, rather than to prove Applicant committed this burglary. The State also mentioned the two (2) prior burglaries in its closing. (Tr. 180:16-182:8) The Court finds the State's comments were proper, and counsel had no basis to object or request a curative instruction, because S.C. Code Ann. § 16-11-311 requires as an element of burglary, first degree that the "the burglary is committed by a person with a prior record of two or more convictions

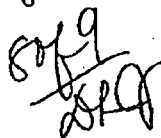
7
7069
2/19

for burglary or housebreaking or a combination of both." S.C. Code Ann. § 16-11-311(A)(2). This Court further finds the trial court gave the standard charge that the State must prove beyond a reasonable doubt the Applicant has a prior record of two (2) or more convictions for burglary. (Tr. 206:22-207:3.) The court further instructed the evidence of prior offenses was not offered to prove the Applicant's bad character or that he committed the burglary on this occasion, and such evidence may only be considered for the purpose of determining whether or not it satisfies the elements of first degree burglary. (Tr. 206:25-207:9.) The trial court also instructed the jury that before they could consider the evidence of Applicant's prior burglaries, they must first find the State has proven beyond a reasonable doubt that a burglary was committed, and only after they find a burglary was committed may they consider the evidence of the prior convictions. (Tr. 207:10-18.)

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant

A handwritten signature in black ink, appearing to be 'S. G. 2019', is written over the page number 8.

waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

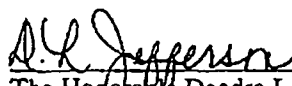
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

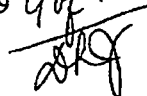
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7th day of October, 2011.


 The Honorable Deadra L. Jefferson
 Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

9 9 9 9


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-7619
	)	
Thomas Curtis Hamilton, #161339	)	
	)	
Applicant,	)	NOTICE OF MOTION AND MOTION
	)	OF APPLICANT TO ALTER OR AMEND
	)	JUDGMENT PURSUANT TO RULE 59(e),
	)	S.C.R.CIV.P.
	)	
v	)	
	)	
State of South Carolina.	)	
	)	

PLEASE TAKE NOTICE THAT pursuant to Rule 59(e), S.C.R.Civ.P., Applicant, Thomas Curtis Hamilton, by and through his undersigned counsel, shall move before this Honorable Court at the Charleston County Courthouse located at 85 Broad Street, Charleston, South Carolina, within ten (10) days after service hereof or within such time as this Court may allow, for an order altering or amending the Honorable Deadra L. Jefferson's *Order* filed October 10, 2011, in the above-captioned matter, and received by the undersigned on October 12, 2011.

This motion is made on the pleadings in this matter, on arguments of counsel and on such law as is appropriate, and is made on the grounds of misapprehension of evidence in that Thomas Curtis Hamilton clearly misunderstood or was not clearly offered the plea bargain, and on the grounds that the existing judgment will cause or result in manifest injustice.

Respectfully submitted,

PRITCHARD & ELLIOTT, ATTORNEYS &
COUNSELORS AT LAW, LLC

Edward K. Pritchard, III
Pritchard & Elliott, Attorneys
& Counselors at Law, LLC
129 Broad Street, Post Office Box 630
Charleston, SC 29402
(843) 723-3300

epritchard@pritchard-elliott.com
Counsel for Defendant

October 12, 2011
Charleston, South Carolina

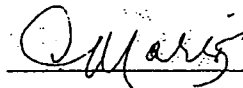
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the *Notice of Motion and Motion of Applicant to Alter or Amend Judgment Pursuant to Rule 59(e), S.C.R.Civ.P.*, was mailed on October 12, 2011, at Charleston, South Carolina, to all known counsel of record, as follows:

Matthew J. Friedman, Esq.
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Rembert C. Dennis Building
Post Office Box 11549
Columbia, SC 29211-1549

Martha Kent Runey, Esq.
Public Defender
Charleston County Public Defender's Office
O.T. Wallace Bldg, 5th Floor
101 Meeting Street, 5th Floor
Charleston, SC 29401

Pritchard & Elliott



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2010-CP-10-7619
Thomas C. Hamilton, #161339,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	PURSUANT TO 59(e) SCRCP
	)	
Respondent.	)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP, in which he asks the Court to alter or amend its Order dismissing his application for post-conviction relief (PCR). The Respondent would submit the following:

I.

This Court's Order of Dismissal filed on October 10, 2011, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Applicant asks the Court to amend its Order of Dismissal and find that Applicant misunderstood or was not offered the plea bargain. In addition, Applicant contends that the existing Order of Dismissal will cause or result in manifest injustice. Respondent submits that this Court properly ruled on this issue and Applicant's Motion to Alter or Amend should be denied. Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve

issues raised to but not ruled upon by the trial court). Applicant has failed to show that an allegation was properly raised but not ruled upon by the PCR Court.

III.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the motion be denied.

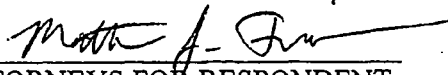
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

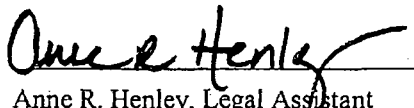
October 21, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2010-CP-10-7619
	)	
THOMAS C. HAMILTON	)	
#161339	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion To Dismiss Motion To Alter Or Amend Pursuant to 59(e) SCRCF** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Edward K. Pritchard, Esquire
 129 Broad Street
 Charleston, SC 29401

DATED this 21nd day of October, 2011


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Thomas Curtis Hamilton, #161339,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 OF THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-10-7619

ORDER DENYING MOTION TO
 ALTER OR AMEND JUDGMENT
 PURSUANT TO RULE 59(e), SCRCF

FILED
 2011 OCT 28 AM 9:40
 JULIE J. ARMSTRONG
 CLERK OF COURT

Presiding Judge:	Deadra L. Jefferson
Applicant's Attorney:	Edward K. Pritchard, III., Esq.
Respondent's Attorney:	Matthew J. Friedman, Esq.
Trial Counsel:	Martha Kent Runey, Esq.
Date of Hearing:	September 14, 2011
Court Reporter:	Anne Meyer

THIS MATTER comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, filed October 13, 2011 and received by the Court October 14, 2011, in which he asks the Court to alter or amend its Final Order dismissing his application for post-conviction relief (PCR). The Court's Final Order was filed October 10, 2010. The State submitted a Return and Motion to Dismiss Motion to Alter or Amend dated October 21, 2011 which was received by the Court on October 24, 2011.

STANDARD OF REVIEW

"The purpose of Rule 59, SCRCF, to alter or amend the judgment, is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (quoting Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). The Supreme Court recently clarified the two situations in which a Rule 59(e) motion is appropriate. "A party may wish to file such a motion when she believes the

1 of 3
 [Signature]

court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Additionally, "[a] party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Mem'l Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993)).

ANALYSIS

The Final Order of Dismissal, filed October 10, 2011, contains the required findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003) and Rule 52(a), SCRCPP. See McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). All matters raised in Applicant's Motion to Alter or Amend were raised and ruled upon at trial. The Court further notes the Applicant is not requesting an alteration or amendment to the Order, but rather is asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

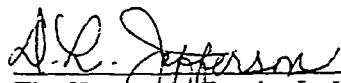
CONCLUSION

Having fully considered the Applicant's Motion to Alter or Amend, the State's Return and Motion to Dismiss, the full record and applicable law, as well as the various interests

balanced by the Court at the time of the ruling, the Applicant Thomas Curtis Hamilton's Motion to Alter or Amend is hereby **DENIED**.¹

IT IS SO ORDERED.

Oct. 25, 2011
Charleston, South Carolina


The Honorable Debra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

¹ This motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

mtg

cc
AG
AT
GS
SCL

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas Hamilton #161339,

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case # 2010-CP-10-7619

ORDER

2011 SEP 14 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT

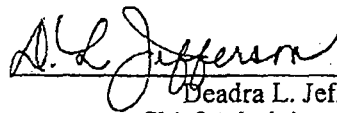
This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

- ☒ 1. The application for post-conviction relief is hereby: ☒ denied ☐ granted under advisement; a formal order will be filed (see below - No.6)
- ☐ 2. Motion(s) was/were heard in this case and the court orders:
☐ The motion to dismiss and/or for summary judgment is hereby ☐ granted ☐ denied ☐ under advisement based upon the ☐ statute of limitations and/or ☐ the successive nature of the application or ☐ other reason as follows:

- ☐ 3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:
☐ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.
☐ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or ☐ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
- ☐ 4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed ☐ with prejudice ☐ without prejudice.
- ☐ 5. Other:

- ☒ 6. The court further orders:
☒ The ☒ Attorney General ☐ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 20 days.
☐ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within ☐ days.
☐ The court does not request proposed orders.

IT IS SO ORDERED.



Deadra L. Jefferson
Chief Administrative Judge

Date: September 14, 2011

Charleston, S.C.

Court Reporter : Sharon Vizer-Hanks

Rev 08/08/01