

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Jean H. Toal, Circuit Court Judge

MARVIN XAVIER PORCHER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000734

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 18-19, 2013.....	1
FINAL BRIEF OF APPELLANT	319
FINAL BRIEF OF RESPONDENT	334
<u>STATE V. PORCHER</u> , 2015-UP-124 (S.C. Ct. App. filed Mar. 11, 2015).....	350
REMITTITUR	352
APPLICATION FOR POST-CONVICTION RELIEF	354
RETURN.....	428
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED SEPT. 15, 2016.....	434
COURT’S EXHIBIT #1 (COURT DOCUMENTS)	490
ORDER OF DISMISSAL.....	491
INDICTMENTS AND SENTENCE SHEETS.....	506

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2013-GS-10-4867
	)	2013-GS-10-0411
	)	2012-GS-10-1910
VS.	)	2012-GS-10-1111
	)	
	)	TRANSCRIPT OF RECORD
Marvin Xavier Porcher,	)	
	)	
DEFENDANT.	)	

Trial July 18 and July 19, 2013

Charleston, South Carolina

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

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

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Assistant Solicitor for the State

William Ted Smith, Esquire
for the Defendant

Jason King, Esquire
For the Defendant

I N D E X(SW = STATE WITNESSES)(July 15, 2013) Jury Qualification -- 06(July 18, 2013) -- 44

Jury Voir Dire -- 49

Motion -- 76

Jury Instruction -- 92

Voir Dire Forelady -- 106

Opening By Ms. Whitaker -- 113

Opening By Mr. Smith -- 118

(SW) Fernando Salgado:

Direct Examination by Ms. Shealy -- 123

Cross-Examination by Mr. Smith -- 142

Redirect Examination by Ms. Shealy -- 146

(SW) Detective Mark Evans:

Direct Examination by Ms. Shealy -- 148

Cross-Examination by Mr. Smith -- 162

Redirect Examination by Ms. Shealy -- 167

(SW) Nancy Wohlford:

Direct Examination by Ms. Shealy -- 167

Cross-Examination by Mr. Smith -- 194

Redirect Examination by Ms. Shealy -- 202

(SW) Deputy Gilbert Baldwin:

Direct Examination by Ms. Shealy -- 204

(SW) Deputy Gilbert Baldwin (continue):

Cross-Examination by Mr. Smith -- 216

Redirect Examination by Ms. Shealy -- 221

(SW) Kathy Kjellman:

Direct Examination by Ms. Shealy -- 222

Cross-Examination by Mr. Smith -- 230

Redirect Examination by Ms. Shealy -- 234

(SW) Sarah Lippe:

Direct Examination by Ms. Shealy -- 236

Cross-Examination by Mr. Smith -- 240

Motion for Directed Verdict -- 242

Defendant's Rights -- 245

Renew Motion for Directed Verdict -- 254

(July 19, 2013) -- 258

Closing by Ms. Shealy -- 260

Closing by Mr. Smith -- 266

Instruction to Jury -- 275

Poll Jury -- 292

Motion for New Trial -- 297

Defendant Plea on Other Charges -- 299

CERTIFICATION OF TRANSCRIPT -- 318

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E X H I B I T S

<u>STATE</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Color copy 8 x 10 photograph	84	85
2	Color copy 8 x 10 photograph	85	85
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8	Color copy 8 x 10 photograph	86	86
9	Color copy 8 x 10 photograph	86	86
10	Color copy 8 x 10 photograph	86	86
11	Color copy 8 x 10 photograph	86	86
12	Color copy 8 x 10 photograph	86	86
13	Color copy 8 x 10 photograph	86	86
14	Color copy 8 x 10 photograph	87	87
15	Color copy 8 x 10 photograph	87	87
16	Color copy 8 x 10 photograph	87	87
17	Color copy 8 x 10 photograph	87	87
18	Color copy 8 x 10 photograph	87	87
19	Color copy 8 x 10 photograph	87	87
20	Defendant's clothing & personal effects (box)	87	88

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
21	Stipulation Regarding Defendant's Clothing for Detention	88	88
22	Stipulation Regarding North Charleston Police	88	88
23	Stipulation - Advise Rights	88	88
24	Photograph	88	88
25	Sentencing Sheet Indictment 11/5-6-2005	88	238
26	ID - Indictment 11/27/2005	88	--
27	Sentencing Sheet Indictment 11/24-25/2006	89	238
28	ID - Jewelry in Envelope (Note: Substitute photo of jewelry and bag. Retained bag jewelry was in.)	89	--
29	ID - Computer. (Note: Substitute photo of computer. Retained bag computer was in.)	89	--
30	Envelope with receipts	89	89

1 (JURY QUALIFICATION, July 15, 2013, as follows:)

2 THE COURT: You may be seated. Good morning, ladies
3 and gentlemen.

4 POTENTIAL JURORS: Good morning (group response).

5 THE COURT: I am so happy to see everyone. I am Deadra
6 Jefferson. I am one of your resident circuit judges for the
7 Ninth Circuit.

8 The Ninth Circuit is made up of Charleston and Berkeley
9 counties. Our state is divided into judicial circuits. I
10 think there are 16 of them, although I might be wrong.

11 Our purpose this morning is to determine your general
12 eligibility to serve as jurors. Your jury service will
13 conclude on Friday.

14 We have two jury terms of civil court, one term of
15 civil nonjury court, as well as two terms of criminal court.
16 One is a jury term that I will be conducting, and one is a
17 nonjury that Judge McDonald will be handling. Judge Young
18 and Judge Hughston will be hearing -- actually it is -- who
19 has nonjury?

20 THE CLERK: Harrington.

21 THE COURT: Judge Harrington. And Judge Harrington
22 will be holding nonjury court this week. Your jury service
23 will conclude on Friday.

24 We have three sources from which we select jurors.
25 That is if you are a licensed driver, if you have an ID card

1 from the Highway Department or you are a registered voter
2 then you are subject to jury service. We understand the
3 inconvenience that jury service poses both to your personal
4 and your professional lives, and we thank you for being here
5 with us this morning.

6 We hope that jury service will prove to be educational
7 for you and enjoyable. It is my sincere desire that you
8 learn that real court is nothing like Judge Judy, Judge Joe
9 Brown, People's Court, Judge Mathis. There are so many.

10 I was watching TV. I was off recently. And Gloria
11 Alred must have had a gavel that was as big as this podium.
12 And I thought -- I almost thought it was like a caricature.
13 Because for security reasons none of us have gavels. People
14 would throw them and use them and hit people. So it is kind
15 of sad that you have to think in those terms.

16 But I find those shows, just like everyone else,
17 incredibly entertaining. But they are nothing like the
18 actual court process.

19 So that it is my sincere desire that each of you has
20 the ability to serve on a jury this week so that it will be
21 educational and informative to you as to how the actual
22 court process operates and in some small measure instill
23 your faith in the system. And that system works because of
24 your willingness to participate in it.

25 As you look around the room there are some people that

1 you should familiarize yourself with. The bailiffs are
2 seated throughout the courtroom. If you all would stand and
3 sort of waive your hands.

4 (WHEREUPON, bailiffs complied.)

5 We have about 15 bailiffs. There are only three of
6 them here with us this morning. But you will have contact
7 continually with them during this process.

8 They are incredibly helpful. They are all retired, and
9 as far as I'm concerned donate their time to the system.
10 If you have a question or concern, they can help you remedy
11 most situations, give you answers, assist you.

12 But if they can't, they can get to a deputy clerk or
13 one of the judges very quickly to get a resolution to your
14 situation. So please avail yourself of their assistance.
15 Also there are deputies seated throughout the courtroom
16 whose responsibility it is to maintain security and decorum.

17 And also there are lawyers seated about the courtroom
18 who are observing the jury selection process so that they
19 can more effectively select the jury during that process.

20 Also seated to my immediate right is my court reporter
21 for this week. Each judge has a court reporter for whose
22 responsibility it is to take down the proceedings. This
23 week I have a mask reporter. You will see other reporters
24 that are using transcription machines.

25 Also seated immediately to her right and to your left

1 is my law clerk, Jenna Keiser. State of South Carolina is
2 very generous. They provide each judge with a lawyer
3 licensed to practice who assists us in moving cases
4 throughout the system and attending to our responsibilities.

5 And also seated immediately to her right is my JOBE
6 participant for the week, a young lawyer from the law school
7 who is observing the process.

8 We allow through the summer months and throughout the
9 year young lawyers who are enrolled in law school to come
10 and observe the process intimately so they can learn more
11 about the system outside of book knowledge.

12 As you know I have always said law school shows you
13 where to find it, not how to do it. So they are here with
14 us to learn more about the process.

15 Jury qualification is done in several stages. At the
16 end of this process I will share with you some general
17 guidelines for your service this week in an effort to make
18 you feel more comfortable in what I am certain are
19 unfamiliar surroundings.

20 The first part of that process was roll call where you
21 gave us certain information. The second part of the process
22 requires that I administer an oath to you. If you would
23 stand for me please and raise your right hands.

24 (WHEREUPON, the panel was duly sworn.)

25 THE COURT: Thank you, ladies and gentlemen. You may

1 be seated. There are certain questions that I need to ask
2 you. State law mandates that I ask each and every one of
3 these questions.

4 If a question applies to you, I need for you to stand
5 and in a loud and clear voice give us your name, your juror
6 number, and an answer to the question and remain standing
7 until the court has completed questioning you. I know that
8 some of the questions may seem intensely personal. It is
9 not our intention to embarrass you.

10 There will be a part at the end of the process where
11 you will be able to speak with me privately if there is any
12 question you do not want to answer openly in the presence of
13 your fellow jurors.

14 So I would ask that if there is any question you do not
15 feel comfortable answering in the presence of your fellow
16 jurors that you would make a mental note of it, come and
17 speak with me privately when I invite you to do so.

18 Because it is absolutely essential, ladies and
19 gentlemen, that we have accurate information consistent with
20 the oath that you have just taken -- with the oath that you
21 have just taken.

22 Again, state law requires that I ask each and every one
23 of these questions. And here are the questions regarding
24 your general eligibility to serve:

25 Is there any member of the panel not a citizen of the

1 United States? If so, please stand at this time.

2 (There was no response.)

3 Is there any member of the panel not now a citizen and
4 resident of Charleston County, State of South Carolina? If
5 so, please stand.

6 (There was no response.)

7 Is there any member of the panel unable to read, write,
8 speak or understand the English language? If so, please
9 stand at this time.

10 (There was no response.)

11 Does any of the panel -- member of the panel have less
12 than a sixth grade education or its equivalent? If so,
13 please stand at this time.

14 (There was no response.)

15 Is there any member of the panel incapable by reason of
16 mental or physical infirmity to render efficient service?

17 And again I know that is an intensely personal
18 question. If you wish to stand at this time, I would invite
19 you to do so.

20 However, if you do not feel comfortable, please make a
21 mental note to speak with me privately at the end of this
22 process.

23 Is there anyone that wishes to stand at this time?

24 PANEL MEMBER: Would you repeat the question, please.

25 THE COURT: Is there any member of the panel incapable

1 by reason of mental or physical infirmity that you feel
2 prevents you from being able to serve on jury duty?

3 PANEL MEMBER: I do.

4 THE COURT: Okay. Tell me your juror number, sir.

5 PANEL MEMBER: I forgot. I'm sorry.

6 THE COURT: Tell me your name.

7 PANEL MEMBER: David Montgomery.

8 THE COURT: Number 183. Sir, do you want to speak with
9 me in private? With the panel, or do you want to speak with
10 me privately?

11 PANEL MEMBER: I will speak with you privately.

12 THE COURT: All right. There will be a part at the end
13 of the process. And if you would just come forward when the
14 bailiffs invite you to do so.

15 PANEL MEMBER: Okay. Thank you.

16 THE COURT: You are welcome. Has any of the panel been
17 convicted by guilty plea or trial in a state and or federal
18 court of record of a crime punishable by imprisonment for
19 more than one year and their civil rights have not been
20 restored by a pardon or amnesty?

21 When we say a court of record we mean the circuit court
22 or federal court, not magistrates' court, municipal court or
23 city court.

24 When I say punishable by imprisonment for more than one
25 year that means that the maximum penalty for the offense was

1 a year and a day or more even though you may have received
2 probation.

3 And by pardon or amnesty I mean if you have applied to
4 the governor or to the federal government for a pardon which
5 would expunge your record or for amnesty which would have
6 the same effect.

7 I know again this is an intensely personal question.
8 And if you do not wish to speak with me publicly you can
9 just make a mental note to speak with me privately.

10 However, is there any member of the panel that feels
11 comfortable standing at this time? If so, please stand.

12 (There was no response.)

13 Is there any member of the panel, clerk of court,
14 deputy clerk of court, constable, sheriff, other
15 commissioned law-enforcement officer, probate judge, county
16 commissioner, magistrate or other county officer or any
17 person employed within the walls of the courthouse? If so,
18 please stand at this time.

19 (There was no response.)

20 THE COURT: Is there any member of the panel that has
21 previously served on jury duty in a court of record? That
22 means circuit court, not city court, magistrates' court, or
23 municipal court, during this calendar year which is 2013.
24 If so, please stand at this time.

25 (There was no response.)

1 Has any member of the panel served on the Charleston
2 County Grand Jury during the past several years? If so,
3 please stand at this time.

4 (There was no response.)

5 We will now move to exemptions. An exemption does not
6 mean that you are not qualified to serve. It simply means
7 in some instances you have the right to say I choose not to
8 serve or it gives the court the ability to transfer your
9 service to another term of court that works a little better
10 for you.

11 For example, those who are 65 years of age or older may
12 be exempted from jury service. You are not required to be
13 exempted. We would encourage you to remain with us if you
14 are inclined to do so. Because you represent a tremendous
15 pool for talent for jury service.

16 However, if you are 65 years of age or older and you
17 wish to be exempted I would ask that you stand at this time.

18 (There was no response.)

19 Another exemption concerns prior jury service. No one
20 is required to serve more than once every three calendar
21 years.

22 Therefore, if any member of the panel has served on
23 jury duty during the previous two calendar years, which
24 would be 2012 or 2011, in a court of record, meaning the
25 circuit court, not city court, magistrates' court or

1 municipal court, you may be exempted from this term of court
2 if you choose to exercise that exemption. If any of you
3 feels this applies, I would ask that you stand at this time.

4 (There was no response.)

5 The next involves those who would have a small child or
6 small children. Please listen carefully. This exemption
7 has several parts all of which must apply in order for you
8 to be exempted on this basis.

9 This exemption is for stay-at-home parents who are not
10 employed outside of the home who have children under a
11 certain age. So again, please listen carefully. It has
12 several parts all of which must apply.

13 Is there any member of the panel who has a small child
14 or small children under the age of seven and you have legal
15 custody of your child or children and you have their
16 principal care, custody and control, and you are unable to
17 make arrangements for their adequate care while performing
18 jury duty?

19 If all of these requirements apply to you, then you may
20 be exempted on this basis but only if all of these
21 requirements are present. If you feel that this applies, I
22 would ask that you stand at this time.

23 (There was no response.)

24 The next involves those who are -- may be employed with
25 the school or are working in some capacity with the school.

1 Is there any member of the panel who is a full-time student,
2 school teacher, school crossing guard, school bus driver or
3 serves in any other school-related function who is unable to
4 serve on jury duty this week as a result of that school
5 involvement?

6 If this applies, we will transfer you to another term
7 of court which will not conflict with your school
8 responsibilities. If you feel this applies, I would ask
9 that you stand at this time.

10 (There was no response.)

11 The next involves those who perform services for a
12 business, commercial or agricultural enterprise. And this
13 is really for those who are self-employed who are seasonal
14 type workers whose workload is busier during certain times
15 of the year than others, such as commercial fishermen,
16 certain types of agricultural work, just to give you an
17 example.

18 Is there any member of the panel who performs services
19 for a business, commercial or agricultural enterprise, whose
20 services are so essential to the operation of the enterprise
21 that the enterprise must close or cease to function if you
22 are required to perform jury duty?

23 If this applies, we would transfer you to a term which
24 where your workload would be lighter. If you feel this
25 applies, I would ask that you stand at this time.

1 (There was no response.)

2 Is there any member of the panel who is employed as a
3 guard with the Department of Corrections at a penitentiary?
4 If so, I would ask that you stand because state law provides
5 that you shall be exempted on this basis.

6 (There was no response.)

7 Is there any member of the panel who is the primary
8 caretaker of a person age 65 years of age or older or a
9 disabled person either of whom are unable to care for
10 himself or herself, could not be left unattended and you
11 cannot make alternate arrangements for their care?

12 This is for individuals who are the primary caregivers
13 of a person age 65 years of age or older or a disabled
14 person who is not employed outside the home and this is your
15 primary responsibility and you cannot make alternate
16 arrangements for their care while serving on jury duty and
17 they cannot be left unattended.

18 If you feel this applies, please stand at this time.

19 (WHEREUPON, panel member stood.)

20 THE COURT: Yes, ma'am, do you want to speak with me
21 privately or in front of the panel?

22 PANEL MEMBER: Privately.

23 THE COURT: Okay, tell me your jury number.

24 PANEL MEMBER: One-fifty.

25 THE COURT: Okay. Just remember to come forward when I

1 invite you to do so.

2 (WHEREUPON, panel member stood.)

3 Yes, sir, tell me your name and your juror number.

4 PANEL MEMBER: Two-fifty-two.

5 THE COURT: Okay. Sir, if you would just come forward
6 and speak with me privately.

7 Ladies and gentlemen, that concludes the statutory list
8 of qualifications and exemptions for service.

9 It may be that you are qualified and that no exemption
10 applies to you but the jury service this week would
11 constitute an extreme hardship upon you for a particular
12 reason.

13 I cannot permanently excuse a qualified juror from jury
14 service. But under extreme and compelling circumstances I
15 may excuse a juror from this term of court and transfer the
16 juror to another term of court. But this applies only to
17 those who have not been previously transferred.

18 Please recognize that general inconvenience is not a
19 sufficient basis to transfer you to another term of court.
20 To justify a transfer, service must constitute extreme
21 hardship upon you for a particular reason.

22 I will say in advance that if you have any appointments
23 that you have made in advance of court, either for yourself
24 or a family member, please make me aware of it because I can
25 make alternate arrangements for you to meet that obligation.

1 Ladies and gentlemen, this is now the opportunity for
2 those who did not respond earlier to personal questions that
3 were asked or any other question that was asked including
4 those who have a compelling reason to request a transfer of
5 your jury service to another week.

6 If any of the qualifications concerns you or if you
7 have question of concern about any of the qualifications as
8 they apply to you in your particular situation or if you
9 wish to seek -- or if you have a question about an exemption
10 or if you wish to seek a transfer to another term of court I
11 would ask that you stand in the aisles with the bailiffs.

12 That includes the individuals that indicated they
13 needed to speak with me privately which is Number 183,
14 Number 150, and Number 252.

15 I also need to see Juror Number 202, Number one -- 147,
16 Number 98, Number 94, and Number 277. If you would line up
17 as well..

18 THE BAILIFF: Juror Number 1.

19 THE COURT: Okay. Yes, sir..

20 PANEL MEMBER: Your Honor, I had a prior obligation on
21 Friday.

22 THE COURT: Okay, what is that?

23 PANEL MEMBER: In Nashville, Tennessee. I am supposed
24 to be attending a wedding.

25 THE COURT: Okay. And what time do you have to leave

1 Charleston?

2 PANEL MEMBER: I need to be out of Charleston by
3 Thursday night.

4 THE COURT: Okay. I will protect you for Friday. And
5 tell me your name and your juror number

6 PANEL MEMBER: I am Dr. Abramczyk. A-B-R-A-M-C-Z-Y-K.

7 THE COURT: Okay.

8 PANEL MEMBER: And Juror Number 1.

9 THE COURT: Thank you, sir. You will be protected for
10 Friday.

11 PANEL MEMBER: I appreciate that.

12 THE COURT: You are welcome. Number 1 is protected for
13 Friday.

14 THE BAILIFF: Number 147.

15 THE COURT: Good morning, sir. How are you?

16 PANEL MEMBER: I'm fine.

17 THE COURT: Tell me your name and your juror number.

18 PANEL MEMBER: Daniel Kingsley, Number 147.

19 THE COURT: Bear with me one second. Let me make sure
20 you are not one of the people I was asking for. Yeah,
21 great. Okay. Sir, tell me -- Daniel Condon (ph) Kingsley?

22 PANEL MEMBER: Yes, ma'am.

23 THE COURT: Tell me your date of birth.

24 PANEL MEMBER: [REDACTED].

25 THE COURT: Seven twenty. Do you have a son that has

1 your same name?

2 PANEL MEMBER: No, ma'am. But I heard there is another
3 Daniel Kingsley. But our initials are different. His is a
4 "G" and mine is a "C".

5 THE COURT: Okay. What is your date of birth?

6 PANEL MEMBER: [REDACTED] Saturday.

7 THE COURT: That is your birth date. Let's see. And
8 you are Daniel Condon Kingsley?

9 PANEL MEMBER: Yes, ma'am.

10 THE COURT: Is that your Social Security number
11 (pointing)?

12 PANEL MEMBER: Yes.

13 THE COURT: Okay. Come up to the side for me. I just
14 don't want everybody ---

15 PANEL MEMBER: Oh, I'm sorry.

16 THE COURT: --- to hear what I am saying to you. But I
17 need the court reporter to hear. Were you convicted of DUI,
18 third offense?

19 PANEL MEMBER: Yes, I was.

20 THE COURT: Okay.

21 PANEL MEMBER: That was mid 80's.

22 THE COURT: Yeah, have you applied to the governor for
23 a pardon for amnesty to expunge you for this record?

24 PANEL MEMBER: It should.

25 THE COURT: Because it carries you more than a year.

1 PANEL MEMBER: It should be expunged.

2 THE COURT: Yeah, I think you would have to apply to do
3 that. So I would have to excuse you at this time and you
4 would be exempt. But you might want to check into it to get
5 it removed if you can.

6 PANEL MEMBER: Okay.

7 THE COURT: Okay. Thank you.

8 PANEL MEMBER: Come back? Call?

9 THE COURT: No, we will just send you another notice or
10 you can, just like I said, check into it. Okay, thank you,
11 sir.

12 THE COURT: Number 147 is exempt.

13 THE BAILIFF: Juror Number 269, Your Honor.

14 THE COURT: How are you today, sir?

15 PANEL MEMBER: Good morning. Fantastic.

16 THE COURT: Tell me your name and your juror number.

17 PANEL MEMBER: David Tice, 269.

18 THE COURT: Okay. And yes, sir?

19 PANEL MEMBER: I just needed a clarification. I have a
20 disorderly conduct 19 years ago, and I have no ---

21 THE COURT: Yes, ---

22 PANEL MEMBER: I have no idea what that ---

23 THE COURT: --- that is a magistrate's level. Thirty
24 days.

25 PANEL MEMBER: All right. Cool.

1 THE COURT: Thank you so much. Number 269 will remain
2 with us.

3 THE BAILIFF: Juror Number 150.

4 THE COURT: Yes, ma'am. Tell me your name and your
5 juror number.

6 PANEL MEMBER: Linda Knight, 150.

7 THE COURT: Yes, ma'am.

8 PANEL MEMBER: All right. My mother, I take care of.
9 And she broke her back, her spine. And we have to go
10 tomorrow -- not tomorrow, next week and get surgery done on
11 her spine in case and -- but she can't get up.

12 THE COURT: Are you employed outside of the home?

13 PANEL MEMBER: No.

14 THE COURT: Okay. So you stay at home with her
15 full-time?

16 PANEL MEMBER: I stay at home with her 24/7.

17 THE COURT: And how old is she?

18 PANEL MEMBER: My mom is 79.

19 THE COURT: Okay. What I will do is I can transfer
20 you. But what I need for you to do is just give an estimate
21 of, you know, if you think it is going to take a year for
22 your mom to get better or ---

23 PANEL MEMBER: It is probably going to take over ---

24 THE COURT: Yeah, just let us know that and we will
25 transfer you to the appropriate term of court. And I hope

1 she gets better.

2 PANEL MEMBER: Thank you. I appreciate it.

3 THE COURT: You are welcome. Number 150 is
4 transferred. Just see the people in the back where Mr.
5 Brown is standing and they will assist you.

6 THE BAILIFF: Juror Number 277.

7 THE COURT: Yes, sir, tell me your name and your juror
8 number.

9 PANEL MEMBER: Nicholas Wagner, 277.

10 THE COURT: Yes, sir. Let's see.

11 PANEL MEMBER: I am not sure why you needed to see me.

12 THE COURT: Yeah, tell me your birth date.

13 PANEL MEMBER: [REDACTED]

14 THE COURT: Okay. And your full name?

15 PANEL MEMBER: Nicholas Stephen (ph) Wagner.

16 THE COURT: So your middle initial is not "R",
17 correct?

18 PANEL MEMBER: No, it is not.

19 THE COURT: I wonder why they have -- y'all have the
20 same birth date. That is very interesting. Is that your
21 Social Security number (pointing)?

22 PANEL MEMBER: No ma'am.

23 THE COURT: Okay. You are not the same person. Thank
24 you ---

25 PANEL MEMBER: Okay.

1 THE COURT: --- so much. Number 277 will remain with
2 us.

3 THE BAILIFF: Juror Number 86.

4 THE COURT: Yes, ma'am, tell me your name and your
5 juror number.

6 PANEL MEMBER: Number 86. My name is Nolie Futch.

7 THE COURT: Yes, ma'am.

8 PANEL MEMBER: And I'm -- we have -- vacation is
9 Thursday and Friday of this week.

10 THE COURT: Okay.

11 PANEL MEMBER: And when I called they just told me to
12 let you know.

13 THE COURT: I can protect you for Thursday and Friday.

14 PANEL MEMBER: Thank you.

15 THE COURT: You are welcome. Number 86 is protected
16 for Thursday and Friday.

17 THE BAILIFF: Juror Number 253.

18 THE COURT: Yes, sir, tell me your name and your juror
19 number.

20 PANEL MEMBER: I am Michael A. Singleton, 253.

21 THE COURT: Yes, sir.

22 PANEL MEMBER: Okay. What happened is I am working out
23 of Sumter. I was in an accident about three weeks ago. And
24 I missed a week out of that job. And right now I just can't
25 afford to miss any more days.

1 THE COURT: Well, I will give you the option. Have you
2 been transferred before?

3 PANEL MEMBER: No, ma'am.

4 THE COURT: Okay. I can transfer you or you can stay
5 with us and take the chance -- if you are not selected for
6 jury service you will be able to go to work every day.

7 PANEL MEMBER: Okay.

8 THE COURT: But I will give you the option. Which do
9 you want; do you want to be transferred and come back, or do
10 you want to run ---

11 PANEL MEMBER: Well ---

12 THE COURT: --- or do you want to take the chance?

13 PANEL MEMBER: I will take the gauntlet. I will take
14 the chance.

15 THE COURT: Okay. And get it out of the way?

16 PANEL MEMBER: Correct.

17 THE COURT: Number 253 will remain with us.

18 THE BAILIFF: Juror Number 183.

19 THE COURT: Give me your name and juror number, sir.

20 PANEL MEMBER: David Montgomery, Number 183.

21 THE COURT: Okay, yes, sir.

22 PANEL MEMBER: I would basically -- I went to the
23 urologist last week and I was diagnosed with kidney stones.

24 THE COURT: Okay.

25 PANEL MEMBER: So he wanted me to come back as soon as

1 possible this week.

2 THE COURT: What day ---

3 PANEL MEMBER: I was trying to come back today.

4 THE COURT: Okay. So you need to go to him today?

5 PANEL MEMBER: Not today. It is a little too late ---

6 THE COURT: Okay.

7 PANEL MEMBER: --- to schedule.

8 THE COURT: Okay.

9 PANEL MEMBER: So I plan on doing it tomorrow.

10 THE COURT: Do you want me to just protect you for
11 tomorrow?

12 PANEL MEMBER: Yes, ma'am.

13 THE COURT: I will just protect you for tomorrow and
14 then you keep us posted on what is going on with you.

15 PANEL MEMBER: Okay.

16 THE COURT: Okay.

17 PANEL MEMBER: And I will just bring a note that you
18 need from me?

19 THE COURT: Your word is sufficient, yeah, for me.
20 Just once you meet with him tomorrow let us know what your
21 situation is.

22 PANEL MEMBER: And what number do I call?

23 THE COURT: They will give you a card. And when we
24 break. The card. That is the one you need to call
25 (pointing).

1 PANEL MEMBER: Yeah.

2 THE COURT: And just let them know. Okay. And then if
3 you have any difficulty, if you have any additional
4 appointments, just let us know and then we will go from
5 there on what we need to do with you this week.

6 But if you think you can serve and you will be okay we
7 will just go ahead and let you get it out of the way.

8 PANEL MEMBER: Yeah, once I get that situated I think I
9 will ---

10 THE COURT: Because it is incredibly painful. I --
11 years ago.

12 PANEL MEMBER: Yeah.

13 THE COURT: So I empathize. I don't just empathize. I
14 sympathize. I have had them before. So I know how you
15 feel.

16 PANEL MEMBER: Stay ---

17 THE COURT: Just stay right here right now. When I
18 excuse everybody you can leave and you will be protected for
19 Tuesday.

20 PANEL MEMBER: Okay. Thank you.

21 THE COURT: You are welcome. Number 183 is protected
22 Tuesday.

23 THE BAILIFF: Juror Number 97.

24 THE COURT: Good morning, ma'am.

25 PANEL MEMBER: Good morning.

1 THE COURT: Tell me your name and your juror number.

2 PANEL MEMBER: Kathryn Gill, 97.

3 THE COURT: Yes, ma'am.

4 PANEL MEMBER: I have a job interview tomorrow.

5 THE COURT: Okay. I will certainly let you go to do
6 that.

7 PANEL MEMBER: Thank you.

8 THE COURT: Every -- in this economy that is important.
9 And it is Tuesday?

10 PANEL MEMBER: Yes.

11 THE COURT: Okay. I will protect you for Tuesday.

12 PANEL MEMBER: Thank you

13 THE COURT: You are welcome. Number 97 is protected
14 for Tuesday.

15 THE BAILIFF: Juror Number 252.

16 THE COURT: How are you doing this morning, sir? Tell
17 me your name and your juror number.

18 PANEL MEMBER: Two-five-two. Corey Singleton.

19 THE COURT: Okay. Were you convicted of possession of
20 cocaine and failure to stop for a blue light?

21 PANEL MEMBER: Yes.

22 THE COURT: Have you had your civil rights restored by
23 pardon or amnesty?

24 PANEL MEMBER: I'm not sure.

25 THE COURT: Did you apply to the governor for a pardon?

1 PANEL MEMBER: No.

2 THE COURT: Then, sir, you would be exempt. You might
3 want to check into that though ---

4 PANEL MEMBER: Okay.

5 THE COURT: --- to get your record expunged or to get
6 it ---

7 PANEL MEMBER: Oh, so I can get it expunged?

8 THE COURT: Well, not expunge- -- I don't know if you
9 can get it expunged. You might want to look into it. I
10 don't know what the situation was on your possession. But
11 you certainly might want to look into a pardon as well.

12 PANEL MEMBER: Okay.

13 THE COURT: Okay. Thank you, sir. You have a great
14 day. Number 252 is exempt.

15 THE BAILIFF: Juror Number 152.

16 THE COURT: Sir, tell us your name and your juror
17 number.

18 PANEL MEMBER: De'andre Lamar, and my juror number is
19 152.

20 THE COURT: Yes, sir.

21 PANEL MEMBER: I have a braces appointment tomorrow.

22 And I ---

23 THE COURT: What kind of appointment tomorrow?

24 PANEL MEMBER: For my braces.

25 THE COURT: Oh, okay. Been there. Done that.

1 PANEL MEMBER: And I have an appointment with my eye
2 glasses.

3 THE COURT: What day?

4 PANEL MEMBER: At Pearle Vision.

5 THE COURT: I mean what day?

6 PANEL MEMBER: Tomorrow.

7 THE COURT: So both ---

8 PANEL MEMBER: The same.

9 THE COURT: --- of your appointments are Tuesday? I
10 can protect you for Tuesday. Thank you, sir. Number 152 is
11 protected Tuesday.

12 THE BAILIFF: Juror Number 108.

13 THE COURT: Yes, sir. Tell me your name and your juror
14 number.

15 PANEL MEMBER: Forrest Hammond, 108.

16 THE COURT: Yes, sir.

17 PANEL MEMBER: I just wanted -- I didn't know if it
18 applies or not. But I have a history of mental illness with
19 depression and anxiety, and I can't really predict ---

20 THE COURT: Are you employed outside the home?

21 PANEL MEMBER: Yeah, but ---

22 THE COURT: What do you do for a living?

23 PANEL MEMBER: I stock.

24 THE COURT: And where do you ---

25 PANEL MEMBER: It is mostly social ---

1 THE COURT: Where ---
2 PANEL MEMBER: --- stuff.
3 THE COURT: Where do you work?
4 PANEL MEMBER: Harris Teeter.
5 THE COURT: Okay. And how long have you been employed
6 with them?
7 PANEL MEMBER: A couple of months.
8 THE COURT: Okay. What -- that doesn't make --
9 disqualify you?
10 PANEL MEMBER: Yeah, I just ---
11 THE COURT: We have a lot of people with that.
12 PANEL MEMBER: Yeah.
13 THE COURT: If you just let us know though if you run
14 into any difficulty or the situation causes you any undue
15 stress and we can address it.
16 PANEL MEMBER: All right. I just wanted to make
17 sure ---
18 THE COURT: Yeah, we don't want you uncomfortable as
19 well. Thank you, sir. Number 108 will remain with us.
20 PANEL MEMBER: Juror Number 15.
21 THE COURT: Good morning, sir. Tell me your name and
22 your juror number.
23 PANEL MEMBER: Charles Bickerstaff, Number 15.
24 THE COURT: Yes, sir
25 PANEL MEMBER: I have two questions.

1 THE COURT: Yes, sir.

2 PANEL MEMBER: I am willing to serve. When -- I now go
3 to Kingstree every Wednesday for my -- because they don't
4 have a urologist.

5 THE COURT: Okay.

6 PANEL MEMBER: So that is it. And another thing ---

7 THE COURT: Do you want me to just protect you for
8 Wednesday?

9 PANEL MEMBER: Wednesday. But the other thing is I
10 also go to the hospital. They don't have a gastrologist.
11 Emergency call. I can never predict it. As long as I can
12 have someone who could come get ---

13 THE COURT: Yes, absolutely we will accommodate you.

14 PANEL MEMBER: Okay.

15 THE COURT: And then I will protect you for Wednesday.

16 PANEL MEMBER: Okay, great.

17 THE COURT: And if you have something come up, some
18 emergent ---

19 PANEL MEMBER: Okay.

20 THE COURT: --- situation, you just make us aware of it
21 and we will accommodate you.

22 PANEL MEMBER: Okay. All right. Thank you.

23 THE COURT: You are welcome. Number 15 is protected
24 for Wednesday.

25 THE BAILIFF: Juror Number 259.

1 THE COURT: Good morning, sir. Tell me your name and
2 your juror number.

3 PANEL MEMBER: It is Andrew Steever, 259.

4 THE COURT: Yes, sir.

5 PANEL MEMBER: I have a small design installation
6 business. This is basically my busy season.

7 THE COURT: Okay.

8 PANEL MEMBER: I have several projects slated for this
9 week. I was wondering if I could request a transfer.

10 THE COURT: I could. And you could just pick a week
11 that isn't as busy for you.

12 PANEL MEMBER: Okay.

13 THE COURT: But we can only transfer you one time.

14 PANEL MEMBER: Okay. That is fine.

15 THE COURT: Just see the individuals in the back and
16 pick a week and then they will send you another notice.

17 PANEL MEMBER: Thank you.

18 THE COURT: Thank you, sir. Number 259 is transferred.

19 THE BAILIFF: Juror Number 297.

20 THE COURT: Ma'am, tell us your name and your juror
21 number.

22 PANEL MEMBER: Erin Yaden, 297.

23 THE COURT: Yes, ma'am.

24 PANEL MEMBER: I just have a doctor's appointment
25 Thursday.

1 THE COURT: I can protect you for Thursday.

2 PANEL MEMBER: All right. Thank you.

3 THE COURT: You are welcome. Number 297 is protected
4 Thursday.

5 THE COURT: I need to see Juror 202, 98; and 94. You
6 might want to look at your card to see what your number is.
7 Number 202.

8 I can't tell who this is. It doesn't have a name on
9 here. What is the name for 202? Are they certain this is
10 the right number? Because this doesn't have anybody's name
11 on it.

12 THE CLERK: Terry Parker

13 THE COURT: Yes. Terry Parker.

14 PANEL MEMBER: Right here.

15 THE COURT: Yes, sir, I need to see you. Bear with me
16 one second.

17 Lakisha Gilliard, Number 98. Jesus Gentile.

18 Sir, tell me your name and your juror number.

19 PANEL MEMBER: My name is Terry Parker.

20 THE COURT: Okay.

21 PANEL MEMBER: I believe the number is 202.

22 THE COURT: Okay. Sir, tell me your date of birth.

23 PANEL MEMBER: [REDACTED]

24 THE COURT: Were you convicted of assault and battery
25 of a high and aggravated nature back in 1970?

1 PANEL MEMBER: Yes, ma'am.

2 THE COURT: Have you applied to the governor for a
3 pardon?

4 PANEL MEMBER: No, ma'am.

5 THE COURT: Okay. Sir, you will be exempt at this
6 time. But I would suggest you look into a pardon of your
7 record.

8 PANEL MEMBER: Okay.

9 THE COURT: Thank you so much. You have a great day.

10 PANEL MEMBER: Same to you.

11 THE COURT: Number 202 is exempt.

12 THE BAILIFF: Number 98.

13 THE COURT: How are you, ma'am?

14 PANEL MEMBER: I am well. How are you?

15 THE COURT: I'm doing good. Tell me your name and your
16 juror number.

17 PANEL MEMBER: Lekisha Gilliard, 98.

18 THE COURT: Okay. What is your date of birth?

19 PANEL MEMBER: [REDACTED]

20 THE COURT: Okay. Six three of seventy-five. Were you
21 convicted of financial identity fraud?

22 PANEL MEMBER: That was in -- yes, ma'am.

23 THE COURT: Yeah, have you had a pardon ---

24 PANEL MEMBER: Yes, ma'am.

25 THE COURT: --- or applied for amnesty?

1 PANEL MEMBER: Uh-huh.
2 THE COURT: You were pardoned by the governor?
3 PANEL MEMBER: Uh-huh.
4 THE COURT: When did you get that pardon?
5 PANEL MEMBER: I am not sure. I can't remember.
6 THE COURT: What I need to do is I will transfer you
7 until you can provide us with proof of that.
8 PANEL MEMBER: Okay.
9 THE COURT: And then you need to double check and make
10 sure they have removed it from your record.
11 PANEL MEMBER: Okay.
12 THE COURT: Okay?
13 PANEL MEMBER: Yes, ma'am.
14 THE COURT: Thank you. Number 98 will be transferred.
15 THE BAILIFF: Mr. Gentile.
16 THE COURT: How are you today, sir?
17 PANEL MEMBER: How are you, ma'am?
18 THE COURT: Tell me your name and your juror number.
19 PANEL MEMBER: Ninety-four, Jesus Gentile.
20 THE COURT: Okay. And what is your date of birth?
21 PANEL MEMBER: [REDACTED]
22 THE COURT: Have you ever lived in Miami, Florida?
23 PANEL MEMBER: Yes, ma'am.
24 THE COURT: Have you ever gone by another name?
25 PANEL MEMBER: I am a Senior. But I have never used --

1 or the Junior.

2 THE COURT: Is that your son (pointing) by any chance?

3 PANEL MEMBER: No, that is me.

4 THE COURT: Okay.

5 PANEL MEMBER: I changed my name from Su-wan-ee (ph) to
6 Gentile.

7 THE COURT: Okay. Well, I didn't even know how to
8 pronounce that. Thank you so much.

9 PANEL MEMBER: You are welcome.

10 THE COURT: Is either one of these (pointing) your
11 Social Security number?

12 PANEL MEMBER: The one, the bottom.

13 THE COURT: Okay. Bear with me one second. I
14 apologize.

15 PANEL MEMBER: It was back ---

16 THE COURT: How old were you?

17 PANEL MEMBER: Nineteen, twenty I think.

18 THE COURT: Was it for burglary?

19 PANEL MEMBER: My brother. I was in the car at the
20 time.

21 THE COURT: Yeah. You know it is like guilt by
22 association.

23 PANEL MEMBER: I am familiar.

24 THE COURT: Yeah. Have you applied for a pardon? Have
25 you applied ---

1 PANEL MEMBER: I had it expunged.

2 THE COURT: Did you really?

3 PANEL MEMBER: Yes, ma'am.

4 THE COURT: Through the State of Florida?

5 PANEL MEMBER: Here.

6 THE COURT: Through here. And do you have those papers
7 or did you send everything to law -- to all the law
8 enforcement agencies?

9 PANEL MEMBER: Yeah, it doesn't appear on my record.

10 THE COURT: Well, when we pulled it, it still shows.

11 PANEL MEMBER: Right.

12 THE COURT: It shows from 9/26/91 conviction and that
13 you received probation for two years.

14 PANEL MEMBER: Years. That was released off.

15 THE COURT: Okay. So what I need you to do is just
16 double check your record and make sure they have expunged
17 it. And I will just transfer you in the interim to give you
18 time to take care of that.

19 PANEL MEMBER: Okay.

20 THE COURT: Okay. Thank you so much.

21 PANEL MEMBER: Dismissed?

22 THE COURT: Yes, sir. Have a great day. Number 94 is
23 transferred.

24 Thank you, ladies and gentlemen. The panel is now
25 qualified. Please permit me to share with you some general

1 guidelines for your jury service.

2 By order of the Chief Justice there can be no pagers,
3 cell phones, or other electronic devices in the on position
4 while you are in jury duty. That includes smartphones,
5 pagers, tablet, laptops or otherwise.

6 One, they are disruptive and distracting. The other is
7 that on all these devices you can now get access to the
8 Internet, and as the fact finders it is essential that you
9 only have the information available that is presented during
10 the course of the trial.

11 It is essential that you have no interaction with any
12 litigants, lawyers, or other potential witnesses in or about
13 the courthouse. So please don't have any contact with
14 anyone that does not have on a juror sticker.

15 Almost every inch of this building is recorded. As you
16 can see, there are cameras there (pointing). There are
17 cameras in the back. There are cameras in the snack bar.
18 There are cameras in the elevator. There are cameras
19 everywhere. So there goes our fallacy that we live in
20 anonymity.

21 Although most of these don't pick up what you say,
22 which is really what creates a lot of the confusion for us,
23 people make assumptions about innocent conversations.

24 People also take pictures on their cell phones. They
25 record things without you knowing they are doing it. So the

1 best practice is for you to just talk to folk that you know
2 have on a juror sticker. It just eliminates any other
3 confusion.

4 People tend to have a heightened sense of sensitivity
5 during litigation. They tend to assume the worst instead of
6 the best. So it is a better course if you follow that
7 action.

8 Also please do not make any comments regarding your
9 jury service on any social networking sites. That includes
10 Facebook, Instagram. I am trying to think of them all.
11 Twitter. There are so many of them now I have lost track.

12 But you would also be amazed at the busybodies who
13 during the course of the day look at all of these mediums
14 and often call our jury coordinator to say that you all have
15 made some comment regarding your status on any of these
16 mediums, people who are not on jury duty. Again, it is
17 amazing to me. I just don't have that much time. But
18 apparently there are some folk that do.

19 So even an innocent conversation could be so very
20 easily misinterpreted as you commenting on something you
21 have heard in court. So please again do not make any
22 comments regarding your -- or take any pictures in front of
23 the courthouse and say I am on jury duty and post it on
24 Instagram.

25 And I forget the new one. It is video something. I

1 just am technologically challenged. I've still got to pick
2 up a book.

3 So as you can tell, I am not well versed in all of
4 these mediums. I know they are out there. But more
5 importantly, other people do as well. And they can really
6 make a mountain out of a molehill. So I would ask that you
7 refrain from that as well.

8 We would ask that you be prompt. It is not fair when
9 we must delay the proceedings because someone is tardy. By
10 the same token, please note that there will be times - and I
11 am telling you in advance - during this process when you
12 will be waiting on us.

13 But know that when you are waiting, we are working. As
14 the fact finders we have to insulate you from and maintain
15 your impartiality regarding certain things.

16 So many times when we are discussing matters of law we
17 have to exclude you from that process so that you will not
18 be influenced by those matters. So know that if you arrive
19 and you have to wait on us it is because we are working.

20 By the same token, if you run into some difficulty in
21 arriving in the morning, you know, life happens. People
22 have flat tires. Children get sick. You know, emergencies
23 of a car. Please make us aware of it. Because we don't
24 want to be concerned about your safety when it is something,
25 you know, that has come up during the course of your day.

1 And in lots of instances we can render assistance. So
2 please let us know if some emergency occurs at home, work,
3 or otherwise so that we can again know your status as well
4 as render any assistance if possible on our part.

5 We will select a criminal jury this morning. We will
6 also be selecting probably two civil juries. This will be a
7 long day for you. I am just telling you in advance.

8 And that is because we try to get as much done today as
9 possible so that you know what to expect of your week and we
10 know what to expect of ours.

11 The old system required that we bring jurors to the
12 courthouse every day. And we found that to be an
13 inefficient waste of time for -- use of time for you as well
14 as for us.

15 So once we are able to pick as many jurors as possible
16 today that allows you then to some extent go on with your
17 week uninterrupted and you will only have to call the jury
18 information line after six o'clock each evening for
19 instructions.

20 And if we don't need you, we will let you know then so
21 that if you need to go to work you will have ample time to
22 go ahead and go to work if you would like or to do whatever
23 else you had planned for that day so that we don't occupy
24 your time being at the courthouse.

25 We thank you for your time and your attention. I am

1 going to turn you over to the competent hands of clerk
2 staff.

3 They will separate the panel and be sending a panel up
4 to my courtroom as well as to Judge Young and to probably
5 then to Judge Hughston after both Judge Young and I have
6 selected panels.

7 I hope that y'all have a wonderful day. And again, I
8 hope this will be an informative and educational process for
9 you. Thank you.

10 (WHEREUPON, completion of jury qualification, July 15,
11 2013.)

12 (July 18, 2013, at 9:34 a.m., no jury present, as follows:)

13 THE COURT: Is the State ready to proceed?

14 MS. SHEALY: Yes, Your Honor.

15 MS. WHITAKER: Yes, Your Honor.

16 THE COURT: Defense ready to proceed?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: It is my understanding we are only going
19 forward on one of the indictments. Is that correct, the
20 burglary first-degree?

21 MS. WHITAKER: Yes, Your Honor.

22 THE COURT: Okay. Does your client wish to have a
23 formal arraignment?

24 MR. SMITH: No, Your Honor.

25 THE COURT: Were there any offers extended to the

1 defendant in this case?

2 MS. WHITAKER: Your Honor, there were in the past.

3 There are no -- none currently on the table.

4 THE COURT: I just need to know for PCR purposes so I
5 can question what's the offer, when was it extended, and
6 when was it rejected.

7 MS. WHITAKER: Your Honor, there was an original offer
8 of a plea to burg-first for a negotiated 15 years. That
9 expired about three weeks ago. Two weeks ago we extended an
10 offer of burg-second violent, a negotiated range of 10 to 15
11 years. And that was rejected the next day.

12 THE COURT: And what day was that; do you remember --
13 you said two weeks ago?

14 MS. WHITAKER: Two weeks ago. Your Honor, I believe it
15 was Thursday two weeks ago. Mr. Smith may have a better
16 recollection about that.

17 THE COURT: Was there ever -- what is -- what is going
18 to happen with the two B&E motor vehicle indictments? Do
19 you ---

20 MS. WHITAKER: Your Honor, I believe ---

21 THE COURT: --- plan to try them?

22 MS. WHITAKER: Your Honor, my understanding that Mr.
23 Porcher is willing to plead guilty today..

24 THE COURT: Oh, okay. And those are zero to five?

25 MS. WHITAKER: Yes, Your Honor.

1 THE COURT: So what do y'all plan to do with them I
2 guess is my question.

3 MS. WHITAKER: Your Honor, I think that will depend on
4 the results of today's trial.

5 THE COURT: Okay. And what is Mr. Porsche's record?

6 MS. WHITAKER: Yes, Your Honor. Your Honor, in the
7 State of South Carolina he has 2003 possession of marijuana,
8 open container, and possession of consumption of alcohol.

9 2006 ---

10 THE COURT: Possession of consumption?

11 MS. WHITAKER: Illegal possession and consumption of
12 alcohol; yes, Your Honor.

13 THE COURT: What is that?

14 MS. WHITAKER: Your Honor, it only carried \$154 fine.

15 I don't really know the details on that one.

16 THE COURT: Okay.

17 MS. WHITAKER: In two thousand and ---

18 THE COURT: It is like grain alcohol or something?
19 That is what I was thinking about.

20 MS. WHITAKER: Your Honor, I think it probably is some
21 sort of ---

22 THE COURT: Okay.

23 MS. WHITAKER: --- illegal alcohol, that sort of thing.

24 THE COURT: Okay.

25 MS. WHITAKER: Moonshine, that variety. In 2006 he

1 pled to a burg third-degree. That same year he also pled to
2 one, two, three, four burg-seconds. For that offense he was
3 sentenced to ten years suspended to five years probation.
4 So that would be a total of five burglaries.

5 And 2010 a breaking and entering motor vehicle,
6 sentenced to three years on that. 2011 giving false
7 information. And 2011 receiving stolen goods stemming from
8 this incident.

9 Out of New York his record is a little bit older: 1988
10 petty larceny, 1993 burglary in the second-degree, 1991 two
11 counts of unauthorized use of a vehicle and one count of
12 petty larceny.

13 THE COURT: Mr. Smith, did you fully explain the offers
14 that were extended to your client regarding the first being
15 a burglary-first with a negotiated plea of 15 years and a
16 burglary-second violent with a range of 10 to 15 years?

17 MR. SMITH: I did, Your Honor.

18 THE COURT: Do you believe he understood your
19 conversation with him?

20 MR. SMITH: I do, Your Honor.

21 THE COURT: And did he accept or reject that offer?

22 MR. SMITH: He rejected both of those offers.

23 THE COURT: And was that with or against your advice?

24 MR. SMITH: That was -- Your Honor, it is tough for me
25 to give an answer to that question because there are issues

1 in this trial.

2 What I told him was I would let him make the decision
3 and inform him fully of everything that was out there and
4 what could happen. And I felt comfortable with the decision
5 he made.

6 THE COURT: Okay. Sir, please stand and raise your
7 right hand to be sworn.

8 (WHEREUPON, the witness was duly sworn.)

9 THE COURT: You can put your right hand down. Sir,
10 state your full name for the record.

11 MR. PORCHER: Marvin Xavier Porcher.

12 THE COURT: Mr. Porcher, how old are you?

13 MR. PORCHER: Forty-seven.

14 THE COURT: How far have you gone in school?

15 MR. PORCHER: High school.

16 THE COURT: Graduated?

17 MR. PORCHER: Yes, ma'am.

18 THE COURT: And did Mr. Smith fully explain to you the
19 offers that have been published for the record that were
20 extended to you from the solicitor's office?

21 MR. PORCHER: Yes, ma'am.

22 THE COURT: Did you understand what he explained to
23 you?

24 MR. PORCHER: Yes, ma'am.

25 THE COURT: Were you suffering from any mental

1 disabilities or under the influence of any drugs or alcohol
2 at the time?

3 MR. PORCHER: No, ma'am.

4 THE COURT: And did you accept or reject the offers?

5 MR. PORCHER: Yes, ma'am.

6 THE COURT: Accept or reject them?

7 MR. PORCHER: Reject them.

8 THE COURT: Did you do that freely and voluntarily and
9 of your own will?

10 MR. PORCHER: On my own will.

11 THE COURT: Do you feel anybody forced you to do it?

12 MR. PORCHER: No, ma'am.

13 THE COURT: Do you feel you were threatened or coerced
14 in any way to do it?

15 MR. PORCHER: No, ma'am.

16 THE COURT: Okay. Thank you, sir. You make take his
17 seat.

18 Y'all may bring the jury up.

19 (Break 9:51 a.m. to 9:58 a.m.)

20 (WHEREUPON, jury enters the courtroom July 18, 2013,
21 9:58 a.m.)

22 THE COURT: Good morning, ladies and gentlemen. I am
23 Deadra Jefferson, and I am one of your resident circuit
24 judges.

25 We are going to select a jury this morning for the case

1 of the State of South Carolina versus Marvin Xavier Porcher
2 which is an indictment for burglary in the first-degree.

3 That indictment alleges that in Charleston County,
4 South Carolina, on or about November 3rd, 2011, the
5 defendant, Marvin Xavier Porcher, did enter the dwelling of
6 Susan Rutledge and Nancy Wohlford located at [REDACTED]
7 [REDACTED] Charleston, South Carolina, without consent
8 and with the intent to commit a crime therein alleging a
9 code violation of Section 1611-311 of the code of laws as
10 amended and alleging the factions to be against the peace
11 and dignity of the State of South Carolina.

12 We are going to go through a process that is called
13 voir dire where the attorneys will ask questions so that
14 they can more -- so the court is going to ask you questions
15 so the attorneys can more effectively exercise their
16 peremptory challenges in jury selection.

17 If the question applies, in a loud and clear voice give
18 us your name, your juror number, and an answer to the
19 question if applicable and remain standing until the court
20 has completed questioning you.

21 Before we begin that process I am going to have counsel
22 for the State to introduce themselves, tell us the names of
23 the lawyers in their office, and counsel for the defense to
24 have -- to provide us with the same information as well as
25 having your client stand and face the panel.

1 You may proceed.

2 MS. WHITAKER: Good morning. My name is Tyler
3 Whitaker. Sitting with me today is Jennifer Shealy. And
4 assisting us is law clerk, Daniel Cooper, who is a student
5 at the Charleston School of Law.

6 Our office is headed by the solicitor, Scarlet Wilson.
7 The other assistant solicitors in our office are Marian
8 Askins, Jessica Baldwin, Julie Cardillo, Natasha Chisolm,
9 Spencer Compton, Shannon Elliott, Emmanuel Ferguson, Timmy
10 Finch, Kelley Flynn, Meg Haley, Amy Harrell, Debbie
11 Herring-Lash, Culver Kidd, Chris Lietzow, Stephanie Linder,
12 Lindsey McClain, Jennifer McCoy, Elizabeth Riddle, Benjamin
13 Chad Simpson, Jim Stack, Rand Stoney, Greg Voight, Richard
14 Waring, Burns Wetmore, Todd Williams, Alex Zeigler, Spiro
15 Ferderigos, Kelly Lalante, and Sean Barfield.

16 THE COURT: Mr. Smith.

17 MR. SMITH: Good morning, ladies and gentleman. My
18 name is Ted Smith. I am the assistant public defender.
19 This is my client, Marvin Porcher. Assisting me today is
20 Jason King.

21 The other lawyers in my office are Ashley Pennington
22 who is the ninth circuit public defender, Martha Runey,
23 Rhett Dunaway, Christina Parnall, Cassie Winslow, Victoria
24 Anderson, Lori Proctor, Megan Ehrlich, Charlie Cochran,
25 Beattie Butler, Cantrell Frayer, Michael Cooper, Luke

1 Malloy, Patricia Kennedy, Mary Ford, Ben Lewis, Andrew
2 Grimes, Karen Barker, Alicia Penn, Mary Ellen Rankin, Tim
3 Taylor, John Kozelski, and Tammy Coppinger.

4 THE COURT: Thank you. Again, ladies and gentlemen, if
5 a question applies, please stand and in a loud and clear
6 voice give us your name, your juror number, an answer to the
7 question if application, and remain standing until the court
8 has completed questioning you.

9 Is there any member of the panel related by blood or
10 marriage to Marvin Xavier Porcher, Susan Rutledge or Nancy
11 Wohlford; if so, please stand at this time.

12 (No response.)

13 THE COURT: Does any member of the panel have a close
14 personal or social relationship with Nancy Wohlford, Susan
15 Rutledge or Marvin Xavier Porcher; if so, please stand at
16 this time.

17 (No response.)

18 THE COURT: The following are a list of potential
19 witnesses. I would ask that you listen very carefully.
20 Nancy Wohlford, John Nye, Kenny Thorpe, Nancy Kjellman --
21 Kathy Kjellman. I apologize. Deputy Rocky Burke, Deputy
22 Gilbert Baldwin, Sergeant Michael -- and I apologize. All
23 of the Charleston County Sheriff's Office; Fernando Salgado,
24 formally of the North Charleston Police Department; as well
25 as Kelly Murphy, Patricia Jourdan, Sergeant Michael Aiken,

1 Detective Mark Evans, all on the North Charleston Police
2 Department, and Sarah Lippe of the Charleston County Clerk
3 of Court's office, Kathy Natasha Callier -- and Kathy
4 Natasha Callier.

5 Is there any member of the panel related by blood or
6 marriage to any of the people that I have just listed or
7 does anyone have a close personal or social relationship
8 with any of these individuals; if so, please stand at this
9 time.

10 (No response.)

11 THE COURT: Has any member of the panel every been
12 represented by any of the attorneys in this case or any of
13 the attorneys in their offices; if so, please stand at this
14 time.

15 (No response.)

16 THE COURT: Is there any member of the panel related by
17 blood or marriage to or have a close personal or social
18 relationship with any of the attorneys in this case, any of
19 the attorneys in their offices, or anyone employed in their
20 offices; if so, please stand at this time.

21 (Potential juror stands.)

22 THE COURT: Yes, sir.

23 POTENTIAL JUROR: Carl Kern, Juror Number 145.

24 THE COURT: And who is it?

25 POTENTIAL JUROR: Both Richard Waring and Burns Wetmore

1 in the solicitor's office. And I am just recently a
2 neighbor of Burns Wetmore for five years. And Richard
3 Waring I see on almost a daily basis through karate.

4 THE COURT: If you could remain standing for me.
5 (Complied.)

6 THE COURT: Okay. Yes, sir?

7 POTENTIAL JUROR: Good morning, Your Honor.

8 THE COURT: Good morning,

9 POTENTIAL JUROR: Reese Stidham, 261. It would be
10 shorter for me to tell you who I don't know.

11 THE COURT: We can acknowledge that you -- where you
12 were formerly employed and that you know all of the
13 attorneys.

14 POTENTIAL JUROR: Yes, ma'am.

15 THE COURT: Okay.

16 Yes, ma'am?

17 POTENTIAL JUROR: Victoria Spearman, Juror 258. Mr.
18 Cooper and I go to law school together.

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

20 POTENTIAL JUROR: Mr. Cooper and I, the law clerk, ---

21 THE COURT: Okay.

22 POTENTIAL JUROR: --- we go to law school together.

23 THE COURT: As a result of these experiences do you all
24 feel that you can remain fair and impartial and render a
25 fair and impartial decision in this case based solely on the

1 evidence as it will be presented and on the law as the court
2 will instruct; if your answer is yes, please take your seat.
3 (All were seated.)

4 THE COURT: Let the record reflect that all answered
5 yes.

6 Has any member of the panel formed or expressed an
7 opinion about any issue or matter involved in this case? If
8 so, please stand at this time.

9 (No response.)

10 THE COURT: Is there any member of the panel who has
11 read, watched or listened to any media accounts about this
12 case; that includes anything that could have been in the
13 newspaper, on the radio, television or internet; if so,
14 please stand at this time.

15 (No response.)

16 THE COURT: Is there any member of the panel aware of
17 any bias or prejudice toward either the State or the defense
18 in this case? If so, please stand at this time.

19 (No response.)

20 THE COURT: Is there any member of the panel who was a
21 member of the grand jury which issued the indictment in this
22 case? If so, please stand at this time.

23 (No response.)

24 THE COURT: Is there any member of the panel who is a
25 member of or a contributor to any group which has as its

1 primary concern the promotion of law enforcement or victim's
2 rights? These groups would include but are not limited to
3 Mothers Against Drunk Driving, Students Against Drunk
4 Driving, Citizens Against Violent Crime, People Against
5 Rape, Citizens Advocating a Return to Decency and Ethics,
6 Parents Empowered To Save Teens, or any other community type
7 watch groups or jury nullification groups? If so, please
8 stand at this time.

9 (Potential juror stands.)

10 THE COURT: Yes, ma'am?

11 POTENTIAL JUROR: Jeanette Douglass. Sixty-nine is my
12 juror number. I am a guardian ad litem for Charleston
13 County.

14 THE COURT: In the family court?

15 POTENTIAL JUROR: Yes.

16 THE COURT: As a result of this experience do you feel
17 that you can remain fair and impartial and render a fair and
18 impartial decision in this case based solely on the evidence
19 as it will be presented and on the law as the court will
20 instruct? I couldn't hear you, ma'am.

21 POTENTIAL JUROR: Yes, ma'am.

22 THE COURT: Thank you. You may take your seat.

23 Yes, ma'am?

24 POTENTIAL JUROR: Victoria Spearman, 258. I am also a
25 guardian ad litem for family court.

1 THE COURT: As a result of this experience do you feel
2 that you can remain fair and impartial and render a fair and
3 impartial decision in this case based solely on the evidence
4 as it will be presented and on the law as the court will
5 instruct?

6 POTENTIAL JUROR: Yes, ma'am.

7 THE COURT: Thank you, ma'am. You may take your seat.

8 Is there any member of the panel who was formally
9 employed by law enforcement? If so, please stand at time.
10 (No response.)

11 THE COURT: Is there any member of the panel who has a
12 family member who is a current employee of law enforcement?
13 If so, please stand at this time.

14 (Potential juror stands.)

15 THE COURT: Yes, sir.

16 POTENTIAL JUROR: Jonathan Fischer, Number 80. My
17 brother-in-law works for the City of Charleston as an
18 officer.

19 THE COURT: Thank you, sir.

20 And yes, sir?

21 Sir, if you could remain standing for me.

22 Yes?

23 POTENTIAL JUROR: Carl Kern, Juror Number 145. My
24 brother is a police officer for the City of Hollywood.

25 THE COURT: Yes, ma'am?

1 POTENTIAL JUROR: Venus Silva, Juror Number 246. My
2 uncle is the lieutenant of Charleston County.

3 THE COURT: As a result of these experiences do you all
4 feel that you can remain fair and impartial and render a
5 fair and impartial decision in this case based solely on the
6 evidence as it will be presented and on the law as the court
7 will instruct? If your answer is yes, please take your
8 seat.

9 (Potential jurors took their seats.)

10 THE COURT: Let the record reflect that all answered
11 yes.

12 Is there any member of the panel who has been the
13 victim of a violent crime? If so, please stand at this
14 time.

15 (No response.)

16 THE COURT: Is there any member of the panel who has
17 any moral, philosophical or religious opposition to sitting
18 in judgment of a fellow human being? If so, please stand at
19 this time.

20 (Potential juror stands.)

21 THE COURT: Yes, sir, tell me your name and your juror
22 number.

23 POTENTIAL JUROR: One eighty-three, David Montgomery.

24 THE COURT: Sir, do you feel that you can set those
25 feelings aside, follow the instructions of the court and

1 fulfill your obligations as a juror? In other words, do you
2 feel that you can listen to this case impartially, listen to
3 the law and render a fair and impartial verdict?

4 POTENTIAL JUROR: Yeah, but the conflict comes in with
5 me as far as it is like I don't know for sure if all the
6 evidence that's presented is fair and everything is pieced
7 together for me to make an accurate judgment. So it is kind
8 of hard for me to ---

9 THE COURT: Okay. Have you ever served on jury duty
10 before?

11 POTENTIAL JUROR: (Shakes head.)

12 THE COURT: Okay. I am going to try to put this in a
13 real summary fashion. As the fact finders or as a juror it
14 is your responsibility to listen to the evidence according
15 to your oath.

16 The court instructs you on the law and then as a juror
17 you make those credibility decisions about whether you
18 believe the evidence or whether you don't believe the
19 evidence. That is a juror's responsibility.

20 It is their responsibility to look at the witnesses and
21 decide whether they believe they are telling the truth or
22 whether they don't believe they are telling the truth.

23 And then you have the benefit of 12 people's collective
24 thought and reasoning to come to what is a unanimous
25 decision regarding the facts of the case after you have

1 applied the law to those facts.

2 So knowing that -- and that is a real summarized
3 version of the process. Knowing that, do you feel then that
4 you can be an effective juror, in other words, that you can
5 listed to the evidence and render a fair and impartial
6 verdict in a case based solely on the evidence that you have
7 heard from the lips of the sworn witnesses and the law as
8 the court will instruct it?

9 POTENTIAL JUROR: (Nods head.)

10 THE COURT: You have to tell me yes or no.

11 POTENTIAL JUROR: I do.

12 THE COURT: Okay. Thank you, sir. You may take your
13 seat.

14 Is there any member of panel who lives in the Midland
15 Park area of North Charleston? If so, please stand at this
16 time. And that would be around the area of [REDACTED]

17 [REDACTED]
18 (No response.)

19 THE COURT: Is there any member of the panel who has
20 had what they would characterize as an unpleasant experience
21 with law enforcement such that it would affect your ability
22 to be fair and impartial? If so, please stand at this time.
23 (No response.)

24 THE COURT: Is there any member of the panel who has
25 any moral, philosophical or religious opposition to the

1 crime of burglary such that it would affect your ability to
2 be fair and impartial? If so, please stand at this time.

3 (No response.)

4 THE COURT: Does any member of the panel know of any
5 reason whatsoever why he or she should not serve as a juror
6 in this case, with particular emphasis being placed on your
7 ability to be fair and impartial to both the State and the
8 defense? If so, please stand at this time.

9 (No response.)

10 THE COURT: Any additional questions from the State?

11 MS. WHITAKER: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Bench conference as follows:)

14 MS. SHEALY: Your Honor, we just had some concern of
15 Mr. Stidham, Number 261, as he was in the public defender's
16 office while this was ---

17 THE COURT: You can use a peremptory challenge. He is
18 a lawyer. He is qualified.

19 MS. SHEALY: Okay.

20 THE COURT: He said he can be fair and impartial.

21 (Adjust microphone.)

22 MR. SMITH: Judge, the only additional question I would
23 request if anyone or the family members have been a victim
24 of a burglary. I thought that I had ---

25 THE COURT: I asked violent crime. I think burglary is

1 cumulative. I deliberately asked it that way because I
2 don't want to make a comment on the facts about the case.
3 Usually when people stand up when I say violent crime they
4 usually say I have been burglarized, someone in my family
5 has been killed. They usually will stand up. But I will
6 ask the question has anyone ever been a victim of a crime
7 just out of an abundance of caution.

8 MR. SMITH: Thank you, Your Honor.

9 MS. WHITAKER: One other thing, Judge, I was thinking
10 about it had come up recently. We may need to ask whether
11 they know anyone who is employed by the Solicitor's
12 Office, ---

13 THE COURT: I asked that question.

14 MS. WHITAKER: The general employment -- okay.

15 THE COURT: I asked it within the is anyone related by
16 blood or marriage or have a social relationship with any of
17 the lawyers or anyone who is employed ---

18 MS. WHITAKER: Okay.

19 THE COURT: --- in any of the offices.

20 MS. WHITAKER: Thank you.

21 THE COURT: You are welcome.

22 (End of bench conference.)

23 THE COURT: Is there any member of the panel who has
24 ever been the victim of a crime? And if so, please stand at
25 this time.

1 Yes, ma'am, tell me your name and your juror number.
2 POTENTIAL JUROR: Melissa Bridges, Number 23.
3 THE COURT: If you would remain standing.
4 Yes, sir, in the dark shirt and glasses.
5 POTENTIAL JUROR: Forrest Hammond, 108.
6 THE COURT: If you would remain standing.
7 Yes, sir?
8 POTENTIAL JUROR: Carl Kern, 145.
9 THE COURT: And Mr. Stidham?
10 POTENTIAL JUROR: Reese Stidham, 261.
11 THE COURT: And I will start in the back. Sir, in the
12 blue shirt.
13 POTENTIAL JUROR: Nicholas Wagner, Juror Number 277.
14 Also I would like to make a note that I am not feeling well
15 today and my attention span might be very limited.
16 THE COURT: Okay.
17 POTENTIAL JUROR: I think in order to be fair to the
18 court.
19 THE COURT: Why don't we just go ahead and excuse you
20 for today. And I hope you feel better. You can go ahead
21 and leave.
22 POTENTIAL JUROR: Appreciate it.
23 THE COURT: Number 277 is excused. Just call back
24 after 6:00. Although I think this is the last jury we are
25 going to select.

1 POTENTIAL JUROR: Yes, ma'am. Thank you.

2 THE COURT: You are welcome.

3 Yes, ma'am?

4 POTENTIAL JUROR: Victoria Spearman, 258.

5 THE COURT: And in front of you, yes, ma'am?

6 POTENTIAL JUROR: Pam Johnson, 129.

7 THE COURT: And yes, ma'am?

8 POTENTIAL JUROR: Stephanie Pritchett, 217.

9 THE COURT: As a result of these experiences do you all
10 feel that you can remain fair and impartial and render a
11 fair and impartial decision in this case based solely on the
12 evidence as it will be presented and on the law as the court
13 will instruct? If your answer is yes, please take your
14 seat.

15 THE COURT: Let the record reflect that all answered
16 yes with the exception of Number 23. Ma'am, you will be
17 excused from the trial of this case only. You can take your
18 seat. Thank you, ma'am.

19 Are there any additional questions from the State?

20 MS. WHITAKER: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. SMITH: No, Your Honor.

23 THE COURT: Strikes will be five and ten. If you all
24 would give the clerk your attention. If your name is
25 called, please come forward with all of your belongings.

1 Who is going to demonstrate for me? Mr. Robinson.

2 If your name is called, please come forward with all of
3 your personal belongings and stand where -- yeah, the deputy
4 is just Johnnie on the spot this week. And stand -- stand
5 in front of the podium for me.

6 Stand in front of the podium, as the deputy is
7 standing, facing back toward your fellow jurors until we
8 either seat or excuse you as a juror..

9 And also, if you come from the inside -- if someone
10 comes from the inside of one of the pews and they have to
11 return we would appreciate it if you all would slide down to
12 accommodate them being reseated. If you would give your
13 attention to the clerk.

14 You may proceed when you are ready.

15 (Documents provided to court and court reporter.)

16 THE COURT: Again, ladies and gentlemen, please give
17 the clerk your attention..

18 THE CLERK: When you hear your name, please collect
19 your belongings and come up to the podium as the bailiff
20 showed you. Juror Number 260, Mary Stewart.

21 (Potential juror approaches.)

22 THE CLERK: What say you for the State?

23 MS. WHITAKER: Please present the juror.

24 THE CLERK: What say you for the defendant?

25 MR. SMITH: Please excuse the juror.

1 THE CLERK: Ms. Stewart, if you could just please have
2 a seat back in the gallery.

3 Juror Number 129, Pamela Johnson.
4 (Potential juror approaches.)

5 THE CLERK: What say you for the State?

6 MS. WHITAKER: Please present the juror.

7 THE CLERK: What say you for the defendant?

8 MR. SMITH: Please excuse this juror.

9 THE CLERK: Ms. Johnson if you could just have a seat
10 back in the back gallery, please.

11 Juror Number 286, Kevin Wesley.
12 (Potential juror approaches.)

13 THE CLERK: What say you for the State?

14 MS. WHITAKER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. SMITH: Please seat this juror.

17 THE CLERK: Mr. Wesley, if you could have a seat in the
18 jury box, please.

19 Juror Number 283, Isaac Washington.

20 (Potential juror approaches.)

21 THE CLERK: What say you for the State?

22 MS. WHITAKER: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. SMITH: Please seat the juror.

25 THE CLERK: Mr. Washington, if you could have a seat in

1 the jury box, please.

2 Juror Number 121, Natalin Horlback.

3 THE CLERK: What say you for the State?

4 MS. WHITAKER: Please excuse this juror.

5 THE CLERK: Mr. Horlback, if you could have a seat back
6 the gallery, please.

7 Juror Number 201, Elizabeth Parker.

8 (Potential juror approaches.)

9 THE CLERK: What say you for the State?

10 MS. WHITAKER: Please present this juror.

11 THE CLERK: Was say you for the defendant?

12 MR. SMITH: Please present this juror.

13 THE CLERK: Ms. Parker, if you could have a seat in the
14 jury box, please.

15 Juror Number 268, Margaret Thomas.

16 (Potential juror approaches.)

17 THE CLERK: What say you for the State?

18 MS. WHITAKER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. SMITH: Please excuse this juror.

21 THE CLERK: Ms. Thomas, if you could have a seat back
22 in the gallery, please.

23 Juror Number 28, Linda Brown.

24 (Potential juror approaches.)

25 THE CLERK: What say you for the State?

1 MS. WHITAKER: Please present this juror.
2 THE CLERK: What say you for the defendant?
3 MR. SMITH: Please seat this juror.
4 THE CLERK: Ms. Brown, please have a seat in the jury
5 box.
6 Jonathan -- Juror Number 80, Jonathan Fischer.
7 (Potential juror approaches.)
8 THE CLERK: What say you for the State?
9 MS. WHITAKER: Please present this juror.
10 THE CLERK: What say you for the defendant?
11 MR. SMITH: Please excuse this juror.
12 THE CLERK: Mr. Fischer, if you could please have a
13 seat back in the gallery.
14 And Juror Number 88, Yardia Gadsden.
15 (Potential juror approaches.)
16 THE CLERK: What say you for the State?
17 MS. WHITAKER: Please excuse this juror.
18 THE CLERK: If you could have a seat back in the
19 gallery, Ms. Gadsden.
20 Juror Number 17, Jessica Bishop.
21 (Potential juror approaches.)
22 THE CLERK: What say you for the State?
23 MS. WHITAKER: Please present this juror.
24 THE CLERK: What say you for the defendant?
25 MR. SMITH: Please seat this juror.

1 THE CLERK: Ms. Bishop, please have a seat in the jury
2 box.

3 Juror Number 258, Victoria Spearman.

4 (Potential juror approaches.)

5 THE CLERK: What say you for the State?

6 MS. WHITAKER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. SMITH: Please excuse this juror.

9 THE CLERK: Ms. Spearman, please have a seat back in
10 the gallery. And that's five strikes for the defense.

11 Juror Number 151, Kim Kolgaklis.

12 (Potential juror approaches.)

13 THE CLERK: What say you for the State?

14 MS. WHITAKER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. SMITH: Please seat this juror.

17 THE CLERK: Mr. Kokgaklis, if you could have a seat in
18 the jury box, please.

19 Juror Number 262, Jack Summers.

20 (Potential juror approaches.)

21 THE CLERK: What say you for the State?

22 MS. WHITAKER: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. SMITH: Please excuse this juror.

25 THE CLERK: Mr. Summers, if you would have a seat back

1 in the gallery, please.

2 Juror Number 165, Kelly Maloney.

3 (Potential juror approaches.)

4 THE CLERK: What say you for the State?

5 MS. WHITAKER: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. SMITH: Please seat this juror.

8 THE CLERK: Ms. Maloney, if you have a seat in the jury

9 box, please.

10 Juror Number 246, Venus Silva.

11 (Potential juror approaches.)

12 THE CLERK: What say you for the State?

13 MS. WHITAKER: Please present this juror.

14 THE COURT: What say you for the defendant?

15 MR. SMITH: Please seat this juror.

16 THE CLERK: Ms. Silva, if you could have a seat in the

17 jury box, please.

18 Juror Number 211, Amanda Phillips.

19 (Potential juror approaches.)

20 THE CLERK: What say you for the State?

21 MS. WHITAKER: Please excuse this juror.

22 THE CLERK: Ms. Phillips, if you could have a seat back

23 in the gallery, please.

24 That's three strikes for the State.

25 Juror Number 236, Robert Roll.

1 (Potential juror approaches.)

2 THE CLERK: What say you for the State?

3 MS. WHITAKER: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. SMITH: Please seat this juror.

6 THE CLERK: Mr. Roll, if you could have a seat in the
7 jury box, please.

8 Juror Number 21, Samantha Botel.

9 (Potential juror approaches.)

10 THE CLERK: What say you for the State?

11 MS. WHITAKER: Please present this juror.

12 THE COURT: What say you for the defendant?

13 MR. SMITH: Please seat this juror.

14 THE CLERK: Ms. Botel, if you could have a seat in the
15 jury box, please.

16 Juror Number 36, Sarah Bussard Wright.

17 (Potential juror approaches.)

18 THE CLERK: What say you for the State?

19 MS. WHITAKER: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. SMITH: Please excuse this juror.

22 THE CLERK: Ms. Wright, if you could have a seat in the
23 jury -- in the gallery, please.

24 Juror Number 108, Forrest Hammond.

25 (Potential juror approaches.)

1 THE COURT: What say you for the State?
2 MS. WHITAKER: Please present this juror.
3 THE CLERK: What say you for the defendant?
4 MR. SMITH: Please seat this juror.
5 THE CLERK: Mr. Hammond, if you could have a seat in
6 the jury box, please.
7 Juror Number 70, Charles Duffy.
8 (Potential juror approaches.)
9 THE CLERK: What say you for the State?
10 MS. WHITAKER: Please present this juror.
11 THE CLERK: What say you for the defendant?
12 MR. SMITH: Please excuse this juror.
13 THE CLERK: Mr. Duffy, please have a seat back in the
14 gallery. That is eight strikes for the defendant.
15 Juror Number 139, Evelyn Kabine.
16 (Potential juror approaches.)
17 THE CLERK: What say you for the State?
18 MS. WHITAKER: Please present this juror.
19 THE COURT: What say you for the defendant?
20 MR. SMITH: Please seat this juror.
21 THE CLERK: Ms. Kabine, if you could please have a seat
22 in the jury box.
23 Your Honor, we will be choosing the alternates on this
24 one.
25 THE COURT: Yes, one alternate. Is that acceptable to

1 the State?

2 MS. WHITAKER: Yes, Your Honor.

3 THE COURT: From the defense?

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: You may proceed. Strikes are one and two.

6 THE CLERK: For our first alternate juror, Juror Number
7 40, Patrick Carswell.

8 (Potential juror approaches.)

9 THE CLERK: What say you for the State?

10 MS. WHITAKER: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 MR. SMITH: Please excuse this juror.

13 THE CLERK: If you could have a seat back in the
14 gallery, Mr. Carswell.

15 Juror Number 171, John McCord.

16 (Potential juror approaches.)

17 THE CLERK: What say you for the State?

18 MS. WHITAKER: Please present this juror.

19 THE COURT: What say you for the defendant?

20 MR. SMITH: Please excuse this juror.

21 THE COURT: If you could have a seat back in the
22 gallery, Mr. McCord.

23 THE COURT: Juror Number 62, Kelcey Davis.

24 (Potential juror approaches.)

25 THE CLERK: What say you for the State?

1 MS. WHITAKER: Please present this juror.

2 THE CLERK: Any challenges from the defendant?

3 MR. SMITH: None.

4 THE CLERK: Please have a seat in the jury box, Mr.
5 Davis.

6 THE COURT: Any motions from the State?

7 MS. SHEALY: None, Your Honor.

8 THE COURT: From the defense?

9 MR. SMITH: No, Your Honor.

10 (Discussions between clerk and Court.)

11 THE COURT: Ladies and gentlemen, I have good news.
12 You are excused for the remainder of the week. We hope for
13 those of you who did not have the ability to serve on jury
14 duty that the process was likewise educational for you.

15 Just a little bit of anecdotal information. And I
16 apologize to my panel, because you all might get to hear
17 this twice.

18 Charleston County is one of the busiest counties in the
19 state as far as jury service and as far as jury trials. We
20 hold courts that require the services of juries about 46 of
21 52 weeks out of the year.

22 We generally have four trial courts that operate at one
23 time. And that doesn't include the family court that
24 operates on the first floor -- I mean on the second floor
25 which generally has about four courts operating as well as

1 the master in equity and the probate court which can have
2 anywhere from two to three judges operating at a time. So I
3 hope that -- I just give you that information to let you
4 know how very valuable your service is to us.

5 While judges hear cases in a nonjury capacity - and
6 there are many terms of court that we do that - the bulk of
7 our work requires individuals like yourselves who are
8 willing really to donate your time to us.

9 So I hope that even if you did not have the opportunity
10 to serve on a jury that it instills your faith in the system
11 and that it works because of your willingness really to give
12 us your time. I hope that you all have a great day. And
13 you are excused with the court's profound thanks.

14 If anybody needs a work excuse you can get that on the
15 first floor of the Clerk's Office. Anybody at the window
16 can give you one. And if not, we will mail them to you on
17 Friday along with your checks.

18 Please stand and raise your right hands to be sworn by
19 the clerk.

20 (WHEREUPON, jurors were duly sworn.)

21 THE COURT: You may take your seats. Ladies and
22 gentlemen, I am going to give you all a brief opportunity to
23 refresh yourselves, go to the restroom if you would like.

24 We are going to go ahead and start with opening
25 instruction from the court, and then we are going to have

1 opening arguments from the attorneys and we are going to go
2 ahead and start testimony.

3 We anticipate that we will finish the testimony in this
4 case today and that we will have closing argument and
5 instruction in the morning.

6 That schedule may vary a little. If we get done
7 earlier today we may have closing argument and instruction
8 today.

9 But we try to let you all go as close to 5:00 as
10 possible knowing that you all have other responsibilities
11 that you need to attend to.

12 During this break please do not discuss the case in any
13 manner whatsoever. Please don't speculate about what you
14 think it may or could be about.

15 And as soon -- I am going to give you about ten minutes
16 for that. And then once we are concluded with that we will
17 then -- you all will be brought back into the courtroom and
18 we will begin the trial of this case. If you would go with
19 the bailiff's, please.

20 (WHEREUPON, jurors exits courtroom at 10:45 a.m.)

21 THE COURT: Okay. I assume you all will agree to
22 sequester the witnesses?

23 MS. SHEALY: Yes, Your Honor. Our victim obviously
24 will be able to stay.

25 THE COURT: Yeah, that's -- yeah, that goes without

1 saying. Okay. Now let's see. All of the State's motion in
2 limine just so -- we had a status conference on yesterday
3 while my other jury was deliberation.

4 And I would instruct you all to stay away from any of
5 the items in the State's motion in closing -- in opening
6 argument until such time as the court has the opportunity to
7 rule on these matters.

8 And I would also ask that you all once you approach any
9 of this information or the subject of the motion that you
10 simply let me know that you have a matter of law. We will
11 take it up outside of the jury's presence, create a proffer,
12 and if I need argument we will take that so that we can have
13 a clear record.

14 Is there any exception from the State?

15 MS. SHEALY: No, Your Honor. We may be able to clarify
16 one thing.

17 THE COURT: Okay.

18 MS. SHEALY: If I were to agree to elicit testimony
19 about his convictions under the municipal charges --

20 It is my understanding that you have no objection to
21 that?

22 MR. SMITH: That is correct, Your Honor.

23 THE COURT: Okay. So ---

24 MS. SHEALY: We ---

25 THE COURT: --- maybe it's -- maybe then y'all have

1 resolved the issue then?

2 MS. SHEALY: We may ---

3 THE COURT: At least as to the municipal court. Which
4 the first one was the fact that the defendant pled guilty in
5 North Charleston Municipal Court to the offense of the false
6 information to police and possession of stolen goods.

7 MS. SHEALY: That's correct.

8 THE COURT: So y'all have resolved that one?

9 MS. SHEALY: If I could have until the end of the
10 restroom break to tell you for sure. But I believe I am
11 going to go ahead and elicit that.

12 THE COURT: You have no problem with that?

13 MR. SMITH: I do not.

14 THE COURT: Okay. Then the only other thing we needed
15 to deal with was the hearsay which is his statement to
16 Detective Evans, the willingness to give a Miranda -- to
17 give a statement and waive Miranda, and the recording not
18 being available.

19 MS. SHEALY: And it was my understanding, Your Honor,
20 that yesterday ---

21 THE COURT: Well, we will -- we will take it up.

22 MS. SHEALY: We will take that up?

23 THE COURT: Yeah. I just need y'all to tell me it is a
24 matter of law and then -- I need a full record to rule on
25 it.

1 My original impression was that it would be admissible,
2 however, because it goes to the thoroughness of their
3 investigation.

4 MS. SHEALY: And I think I am going to go ahead and go
5 into that as well.

6 THE COURT: I assume Mr. Smith doesn't have a problem
7 with that. So then that is resolved as well, recording --
8 the recording not being available, his willingness to give a
9 statement and waive Miranda. And the statement ---

10 MS. SHEALY: We are going to go into the statement.

11 THE COURT: Okay. So then all of your motions in
12 limine are resolved.

13 MS. SHEALY: Your Honor, and we -- would you like for
14 me to put on the record what we have agreed to evidence wise
15 coming in?

16 THE COURT: Give me one second.

17 MS. SHEALY: Okay.

18 THE COURT: Yeah. I want to go through a couple of
19 other things first.

20 MS. SHEALY: Oh, I'm sorry.

21 THE COURT: That's okay. Motion to exclude testimony
22 of prior bad acts, is the State going to be eliciting any
23 Lyle type evidence?

24 MS. SHEALY: Nothing other than what occurred that
25 evening.

1 THE COURT: Okay. And I assume you have no exception
2 to that, Mr. Smith?

3 MR. SMITH: No, Your Honor.

4 THE COURT: And a motion in limine we will deal with
5 his prior convictions at the time that I question him. But
6 we have already put his record on the record, so he is
7 clear.

8 I would assume the only thing you all would be seeking
9 to use to impeach him would be the burglary offenses?

10 MS. SHEALY: That's correct, Your Honor. And we have
11 three of his prior ---

12 THE COURT: Well, the false information, yeah.

13 MS. SHEALY: I'm sorry, are you ---

14 THE COURT: I said the false information.

15 MS. SHEALY: Do you mean within the trial ---

16 THE COURT: If he ---

17 MS. SHEALY: Before ---

18 THE COURT: --- testifies.

19 MS. SHEALY: Oh, if he testifies ---

20 THE COURT: I am talking about if he testifies.

21 MS. SHEALY: No, let me take a look at that. Because
22 I think there are some other things. If he were to
23 testify ---

24 THE COURT: Well, you gave me his whole record; didn't
25 you?

1 MS. SHEALY: Yes. I was just double-checking that New
2 York record. I think we could -- couldn't we also get into
3 the petty larcenies?

4 THE COURT: Uh-huh.

5 MS. SHEALY: And the unlawful use of vehicle?

6 THE COURT: That is not a theft. That is one of those
7 fudgy -- I don't know. That is an iffy one.

8 MS. SHEALY: To me it is suggestive of ---

9 THE COURT: It is suggestive. But ---

10 MS. SHEALY: Okay.

11 THE COURT: --- it is not dispositive. I think a theft
12 is a theft. Use without permission can cover so many
13 things.

14 MS. SHEALY: Okay.

15 THE COURT: And you have -- it is almost like piling it
16 on to some extent. Because I am going to limit probably
17 some of this. Because it gets to be a little -- it just
18 depends on the age of it as well. Because use without
19 possession was from 1991.

20 So even with him being released from confinement I'm
21 sure it is more than ten years old; '91, 2001. We are in
22 2013 now. That is 22 years ago.

23 MS. SHEALY: He has just been ---

24 THE COURT: Unless the ---

25 MS. SHEALY: --- very active.

1 THE COURT: --- date you gave me was inaccurate.

2 Huh?

3 MS. SHEALY: I said he has just been very active.

4 THE COURT: Well, the rules still apply.

5 MS. SHEALY: Yes, Your Honor.

6 THE COURT: Ten years.

7 MS. SHEALY: So you are saying the burglaries and ---

8 THE COURT: If it is more than ten years old and you
9 didn't give them notice I think, you know, the rules
10 restrict you.

11 That they come in irregardless of punishment. But it
12 still doesn't -- you know, there is still a second part of
13 that rule that deals with the ten-year limitation if my
14 memory serves me accurately.

15 MS. SHEALY: I will double-check that as well. The
16 regarding the breaking into the automobile storer tank ---

17 THE COURT: What year was that?

18 MS. SHEALY: That is in 2010.

19 THE COURT: Anything that deals with a theft -- I mean
20 I am going to deal with this when he testifies.

21 MS. SHEALY: Okay.

22 THE COURT: I don't know that we need to -- if he ---

23 MS. SHEALY: Because we can ---

24 THE COURT: --- if he doesn't decide to testify really
25 it is sort of an exercise in futility at this moment. If he

1 decides to testify, I will make a decision then.

2 MS. SHEALY: Yes. One thing I don't know if you want
3 to take up now. We ---

4 THE COURT: Well, let me -- let me -- let me finish one
5 thing.

6 MS. SHEALY: Oh, goodness. I keep doing that. I'm
7 sorry.

8 THE COURT: That is okay. And as I understand it
9 State's Exhibits 1 through 30 have been marked and there is
10 no exception to those documents; is that correct, Mr. Smith?

11 MR. SMITH: Let me just double check.

12 MS. SHEALY: No, Your Honor, the thing I keep wanting
13 to rush to talk to you about is we have pre-marked items 25
14 through 27 as ID only right now ---

15 THE COURT: Okay.

16 MS. SHEALY: --- unless Your Honor would like to
17 address that.

18 THE COURT: I will take them up contemporaneously.

19 MS. SHEALY: Okay.

20 THE COURT: So one through twenty-five would come in
21 without objection; is that correct?

22 MS. SHEALY: One through ---

23 THE COURT: One through twenty-four. I'm sorry.

24 MS. SHEALY: One through twenty-four. And then also
25 number ---

1 THE COURT: Well, let me -- you are getting ahead of
2 me.

3 MS. SHEALY: Okay.

4 THE COURT: One through twenty-four would come in
5 without objection; is that correct, Mr. Smith?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: And then 25 through 27 would be marked for
8 ID only?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: And 28 through 30 would come in without
11 objection? Or is that not accurate?

12 MS. SHEALY: That is not accurate. Number 28 is the
13 actual jewelry that was taken.

14 THE COURT: I just need to know if it was with or
15 without objection.

16 MS. SHEALY: It is ID only.

17 THE COURT: Twenty-eight is ID only?

18 MS. SHEALY: And 29 is ID only.

19 THE COURT: Twenty-eight and twenty-nine is ID. And so
20 does 30 come in without objection?

21 MS. SHEALY: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SMITH: Yes, Your Honor.

24 (WHEREUPON, State's Exhibit Number 1, 8 x 10 color photocopy
25 was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 1 was admitted into
2 evidence.)
3 (WHEREUPON, State's Exhibit Number 2, 8 x 10 color photocopy
4 was marked for identification.)
5 (WHEREUPON, State's Exhibit Number 2 was admitted into
6 evidence.)
7 (WHEREUPON, State's Exhibit Number 3, 8 x 10 color photocopy
8 was marked for identification.)
9 (WHEREUPON, State's Exhibit Number 3 was admitted into
10 evidence.)
11 (WHEREUPON, State's Exhibit Number 4, 8 x 10 color photocopy
12 was marked for identification.)
13 (WHEREUPON, State's Exhibit Number 4 was admitted into
14 evidence.)
15 (WHEREUPON, State's Exhibit Number 5, 8 x 10 color photocopy
16 was marked for identification.)
17 (WHEREUPON, State's Exhibit Number 5 was admitted into
18 evidence.)
19 (WHEREUPON, State's Exhibit Number 6, 8 x 10 color photocopy
20 was marked for identification.)
21 (WHEREUPON, State's Exhibit Number 6 was admitted into
22 evidence.)
23 (WHEREUPON, State's Exhibit Number 7, 8 x 10 color photocopy
24 was marked for identification.)
25 (WHEREUPON, State's Exhibit Number 7 was admitted into

1 evidence.)
2 (WHEREUPON, State's Exhibit Number 8, 8 x 10 color photocopy
3 was marked for identification.)
4 (WHEREUPON, State's Exhibit Number 8 was admitted into
5 evidence.)
6 (WHEREUPON, State's Exhibit Number 9, 8 x 10 color photocopy
7 was marked for identification.)
8 (WHEREUPON, State's Exhibit Number 9 was admitted into
9 evidence.)
10 (WHEREUPON, State's Exhibit Number 10, 8 x 10 color
11 photocopy was marked for identification.)
12 (WHEREUPON, State's Exhibit Number 10 was admitted into
13 evidence.)
14 (WHEREUPON, State's Exhibit Number 11, 8 x 11 color
15 photocopy was marked for identification.)
16 (WHEREUPON, State's Exhibit Number 11 was admitted into
17 evidence.)
18 (WHEREUPON, State's Exhibit Number 12, 8 x 10 color
19 photocopy was marked for identification.)
20 (WHEREUPON, State's Exhibit Number 12 was admitted into
21 evidence.)
22 (WHEREUPON, State's Exhibit Number 13, 8 x 10 color
23 photocopy was marked for identification.)
24 (WHEREUPON, State's Exhibit Number 13 was admitted into
25 evidence.)

1 (WHEREUPON, State's Exhibit Number 14, 8 x 10 color
2 photocopy was marked for identification.)
3 (WHEREUPON, State's Exhibit Number 14 was admitted into
4 evidence.)
5 (WHEREUPON, State's Exhibit Number 15, 8 x 10 color
6 photocopy was marked for identification.)
7 (WHEREUPON, State's Exhibit Number 15 was admitted into
8 evidence.)
9 (WHEREUPON, State's Exhibit Number 16, 8 x 10 color
10 photocopy was marked for identification.)
11 (WHEREUPON, State's Exhibit Number 16 was admitted into
12 evidence.)
13 (WHEREUPON, State's Exhibit Number 17, 8 x 10 color
14 photocopy was marked for identification.)
15 (WHEREUPON, State's Exhibit Number 17 was admitted into
16 evidence.)
17 (WHEREUPON, State's Exhibit Number 18, 8 x 10 color
18 photocopy was marked for identification.)
19 (WHEREUPON, State's Exhibit Number 18 was admitted into
20 evidence.)
21 (WHEREUPON, State's Exhibit Number 19, 8 x 10 color
22 photocopy was marked for identification.)
23 (WHEREUPON, State's Exhibit Number 19 was admitted into
24 evidence.)
25 (WHEREUPON, State's Exhibit Number 20, Box of Defendant's

1 Clothing and Personal Effects, was marked for
2 identification.)
3 (WHEREUPON, State's Exhibit Number 20 was admitted into
4 evidence.)
5 (WHEREUPON, State's Exhibit Number 21, Stipulation Regarding
6 Defendant's Clothing for Detention, was marked for
7 identification.)
8 (WHEREUPON, State's Exhibit Number 21 was admitted into
9 evidence.)
10 (WHEREUPON, State's Exhibit Number 22, Stipulation Regarding
11 N. Charleston Police, was marked for identification.)
12 (WHEREUPON, State's Exhibit Number 22 was admitted into
13 evidence.)
14 (WHEREUPON, State's Exhibit Number 23, Stipulation - Advise
15 Rights, was marked for identification.)
16 (WHEREUPON, State's Exhibit Number 23 was admitted into
17 evidence.)
18 (WHEREUPON, State's Exhibit Number 24, Photograph, was
19 marked for identification.)
20 (WHEREUPON, State's Exhibit Number 24 was admitted into
21 evidence.)
22 (WHEREUPON, State's Exhibit Number 25, Indictment
23 11/5-6/2005, was marked for identification.)
24 (WHEREUPON, State's Exhibit Number 26, Indictment
25 11/27/2005, was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 27; Indictment
2 11/24-25/2006, was marked for identification.)
3 (WHEREUPON, State's Exhibit Number 28, Jewelry in Envelope,
4 was marked for identification.)
5 (WHEREUPON, State's Exhibit Number 29, Computer, was marked
6 for identification.)
7 (WHEREUPON, State's Exhibit Number 30, Envelope w/Receipts,
8 was marked for identification.)
9 (WHEREUPON, State's Exhibit Number 30 was admitted into
10 evidence.)

11 THE COURT: All right. And the defense has no exhibits
12 they wish to mark at this time, correct?

13 MR. SMITH: That is correct, Your Honor.

14 THE COURT: All righty. Now are there any other issues
15 I haven't covered that we need to take up?

16 MS. SHEALY: I don't think so. Thank you.

17 THE COURT: Anything, Mr. Smith?

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right. Why don't y'all take a quick
20 restroom break and then get set up for argument. If you
21 need any equipment, let the clerk know so that can be set up
22 as well. And then we will start with opening instruction
23 and argument and then we will go ahead and proceed with
24 witnesses.

25 Let's give ourselves about maybe five -- well, probably

1 ten minutes is more realistic.

2 (WHEREUPON, break taken July 18, 2013, 10:54 a.m.)

3 (WHEREUPON, resumed July 18, 2013, 11:00 a.m.)

4 THE COURT: Anything from the State before we proceed
5 with opening argument and instruction?

6 MS. SHEALY: Your Honor, one question regarding our
7 first witness. And I have already spoken with Mr. Smith
8 about this.

9 THE COURT: Uh-huh.

10 MS. SHEALY: We have entered into a stipulation
11 regarding the items taken off the defendant when he was
12 booked in.

13 With the court's permission I would like to in the
14 middle of my questioning of the first witness read the
15 stipulation into the record if I could bring it to the
16 court's attention at that time.

17 THE COURT: Why would you publish a stipulation in the
18 middle of a witness's testimony?

19 MS. SHEALY: Because it involves his property, so that
20 they will know that what I am bringing out that we both have
21 agreed was the property that ---

22 THE COURT: I think it is better to do that at the
23 conclusion of the witness's testimony and then I can explain
24 what the stipulation is. I think it is a little disjointed
25 to do that in the middle of testimony. But it is up to you.

1 MS. SHEALY: I don't typically do it. The only reason
2 I would want to do it here is I then need to go through some
3 of the items with him and the jury would have the benefit of
4 knowing that in fact we agreed this is what he had on when
5 he was booked in that night.

6 THE COURT: Any exceptions, Mr. Smith?

7 MR. SMITH: No, Your Honor.

8 THE COURT: All right. Number 28 is the foreperson.
9 And there was something else I was about to ask. Oh, yeah.
10 We have a juror, Number 201, Ms. Parker, who made me aware
11 during the break that she works for a summer camp. They
12 found a substitute for her Monday through today, but they do
13 not ---

14 Don't bring them in yet. Don't bring them in yet.

15 But they do not have a substitute for her tomorrow. I
16 wish she had told me that at the beginning. But she didn't.

17 And whatever camp it is, they have to comply with
18 DHEC's requirements. And they said they have to have her
19 there or they have to shut the camp down basically tomorrow.
20 Because to comply with DHEC they need her there tomorrow at
21 8:00 in the morning.

22 So I told her that we would do our best to accommodate
23 her. We may have to -- if we don't finish today we may have
24 to let her go if they are going to have to shut their camp
25 down, and seat the alternate. I guess we will just have to

1 cross that bridge when we come to it. So I wanted to make
2 you all aware of it.

3 And I don't know what type of camp it was -- I mean I
4 don't know the name of the camp, because I didn't ask. But
5 apparently it is a camp with small children that DHEC --
6 they have to have DHEC compliance to operate.

7 Is the State ready to proceed?

8 MS. WHITAKER: Yes, Your Honor, we are.

9 THE COURT: Is defense ready to proceed?

10 MR. SMITH: Yes, Your Honor.

11 THE COURT: Please bring in the jury.

12 (WHEREUPON, the jury entered the courtroom 11:15 a.m.)

13 THE CLERK: All jurors are present, Your Honor.

14 THE COURT: Thank you. Ladies and gentlemen, you may
15 be seated.

16 Please pass out those notebooks for me.

17 Ladies and gentlemen, you are going to be given an
18 opportunity to take notes during this trial. There is a
19 white sticker on the front of each notepad. If you would
20 write your juror number on that sticker so that you would be
21 able to identify which notebook belongs to you. And I will
22 give you some further instructions on note taking during the
23 course of these preliminary instructions to you.

24 Ladies and gentlemen, we are going to try the case of
25 the State of South Carolina versus Marvin Xavier Porcher.

1 What I will now say is intended to serve as an
2 introduction to the trial of this case so that you may
3 better understand procedurally how the case will develop as
4 we go through this process.

5 These remarks are not a charge on the law. And I will
6 tell you charge is a legal term of art that simply means
7 instructions. So you will hear us use that word. And that
8 word, again, simply means instruction. So charge and
9 instructions are interchangeable terms.

10 I will instruct you on the law applicable to this case
11 at the end of the trial before you retire to consider your
12 verdict.

13 This is merely an explanation of the procedure that we
14 will follow in the trial of this case so that you may better
15 understand what is happening.

16 The defendant is charged by an indictment filed in this
17 court with the offense of burglary in the first degree, the
18 elements of which I will explain to you at the conclusion of
19 the trial after we have closing arguments by counsel.

20 The indictment, ladies and gentlemen, is simply the
21 charge by which this case is brought into court and it is
22 not in any sense evidence of any of the allegations it may
23 contain.

24 The defendant has pled not guilty to the indictment.
25 The State therefore has the burden of proving each of the

1 elements of the indictment beyond a reasonable doubt. And
2 it will be your duty, ladies and gentlemen, to decide
3 whether the State has met that burden or not.

4 Your purpose as jurors is to find and determine the
5 facts. You are the sole judges of the facts in this case.
6 If at any time I make any comment regarding the facts, you
7 must disregard it.

8 You are to determine the facts from the testimony you
9 hear and the other evidence introduced in court. It is up
10 to you to determine the inferences which you feel may be
11 properly drawn from the evidence.

12 It is especially important that you perform your duty
13 of determining the facts diligently and conscientiously.
14 Because ordinarily there is no way to correct an erroneous
15 determination of facts made by a trial jury.

16 On the other hand and with equal emphasis, the same law
17 that makes you the judges of the facts makes me the judge of
18 the law.

19 The law as given by the court is the only law you may
20 consider. You must accept and follow it even though you may
21 disagree with it. The court cannot tell you what the facts
22 are, and you cannot disagree with the court about what the
23 law is or what the law should be.

24 Your responsibility, ladies and gentlemen, is to take
25 the law as I instruct it and apply it to the facts as you

1 find them from the testimony of the witnesses and the other.
2 evidence introduced during the course of this trial.

3 After doing that, you will render your verdict, a true
4 and just verdict, under the solemn oath that you have taken
5 as jurors in this case.

6 Until I advise you to begin your deliberations you must
7 not discuss this case with anyone including your fellow
8 jurors, friends, family members and anyone involved in the
9 case. After the case is submitted to you, you must discuss
10 it only in the jury room among your fellow jurors.

11 The attorneys and the parties have been advised that
12 they should not speak with you at all. So if you should see
13 them about the courthouse, even in the elevator or the
14 restrooms, in a local restaurant, on the street or even the
15 parking garage and they don't speak with you or acknowledge
16 your presence, please don't think they are being unfriendly
17 or untoward. They are simply strictly following the court's
18 instructions. As we would not want an innocent conversation
19 or a passing comment to be misinterpreted.

20 During this trial you are not to read, watch, or listen
21 to any media accounts about this case. That includes
22 anything that could be on the radio, television, newspaper
23 or internet. And you are not to do any independent research
24 regarding any fact or issue in this case on the internet.

25 You must not consider anything that you may have read

1 or heard about this case outside of the courtroom whether
2 before or during this trial.

3 It is essential that you keep an open mind and not
4 decide any issue in this case until all of the evidence has
5 been presented, the parties have made their closing
6 arguments, and I have instructed you on the law of this
7 case.

8 It is your solemn responsibility to determine the guilt
9 or innocence of the defendant. And your verdict must be
10 based solely on the evidence as it is presented to you in
11 this trial and on the law as I will instruct you during and
12 at the close of this trial.

13 In just a moment the solicitor will make what is
14 called an opening statement in which she will outline what
15 she believes to be the issues in this case. In other words,
16 she will argue to you what she believes the evidence will
17 show in this case. The attorney for the defendant may also
18 make an opening statement, although he is not required to do
19 so.

20 Keep in mind, ladies and gentlemen, that what the
21 attorneys tell you during opening statements is only their
22 contention as to what they believe the evidence will show.
23 It is not evidence in this case. It is only their
24 contention as to what they believe the issues are.

25 The evidence in this case will be presented to you by

1 the testimony of sworn witnesses from the witness stand and
2 other evidence that may be introduced.

3 From time to time during the trial you may hear one of
4 the attorneys say Your Honor I object. Just as in sports,
5 business or any other structured activity there are certain
6 rules that we must obey in the presentation of evidence.
7 These rules ensure that you receive the most trustworthy and
8 reliable evidence available.

9 An objection is the procedure that an attorney uses to
10 call a possible violation of these rules to my attention as
11 the judge of this court. And for this reason you should
12 never hold an attorney's objection against them nor should
13 you conclude from the court overruling or sustaining an
14 objection that I favor one side or the other.

15 Also from time to time you may hear one of the
16 attorneys say Your Honor we have a matter of law to take up
17 or they may ask to approach the bench or I might find it
18 necessary to ask them to approach the bench or it might even
19 be necessary for us to exclude you from the courtroom for a
20 short while while we discuss matters of law.

21 The reason we do this is because you are the finders of
22 the facts. And sometimes when we are discussing matters of
23 law it might be necessary for the court to make some comment
24 about the facts in connection with ruling whether a statute
25 applies or a procedural rule or an evidentiary rule. And

1 for this reason we exclude you from the courtroom so that in
2 no way will you be influenced that by anything that the
3 court may say or do in connection with the facts of this
4 case.

5 In deciding what the true facts are in this case you
6 must decide whether or not the testimony of a witness or
7 witnesses is believable. It is my responsibility to rule as
8 a matter of law as to whether certain testimony is
9 admissible at all or not.

10 But once it is admitted, ladies and gentlemen, whether
11 or not you believe it is solely a matter for you to
12 determine in your fact finding providence.

13 In deciding whether to believe the testimony of a
14 witness you have the right to consider the interest of any
15 witness, the bias of any witness, the prejudice of any
16 witness, the opportunity for the witness to have seen the
17 things and matters about which the witness may testify and
18 the way the witness acts on the witness stand, something we
19 commonly refer to as demeanor.

20 You have the right, ladies and gentlemen, to consider
21 anything that is in the record that will help you evaluate
22 the testimony of the witnesses.

23 That means that it is your duty to pay close attention
24 to the witnesses, to observe them, to listen to them and pay
25 close attention to the attorneys in the court.

1 Although I know it is very difficult sometimes, please
2 do not allow your thoughts to wander but give strict
3 attention to the testimony so that at the end of the
4 testimony after the arguments of the attorneys and the
5 charge on the law given by the court you will then be in a
6 position to determine what the true facts are and apply the
7 law to those facts and thus render a true and just verdict
8 in this case.

9 You will be given the opportunity to take notes during
10 this trial. Note taking is a privilege that you may choose
11 to exercise or choose not to exercise. Please don't feel
12 you are required to take notes. Not everyone finds note
13 taking helpful to them.

14 If you should decide to take notes, please don't try to
15 record everything that is said. It really is physically
16 impossible.

17 The average person talks at the rate of 200 words a
18 minute. The only reason they court reporters can take it
19 down is because they have specialized training. And even
20 with that when they do a transcript which is usually weeks
21 or months after a trial they still have a backup.

22 You see microphones, digital microphones all over the
23 courtroom. They still have to listen to a backup tape to
24 make sure that everything they have taken down is accurate.
25 So please don't try to record everything that is said. It

1 is physically impossible.

2 You may want to keep an outline of the main points that
3 are being made and the main arguments that are being made so
4 that when you retire to deliberate you can allow your notes
5 to refresh your memory.

6 Please be reminded that your notes are for your
7 specific and your individual purposes. They are not to be
8 shared with anyone else.

9 During breaks and recesses your notes are to be left in
10 your seats. And we do that to ensure that there is no
11 premature deliberation in the case.

12 Also be reminded that your notes should not be
13 considered any more reliable than another juror's memory.

14 It is your added duty, madam forelady, to fill out the
15 verdict form. But I will give you further instructions
16 regarding that at the conclusion of the trial.

17 Ladies and gentlemen, your foreperson is selected by
18 random -- it is selected randomly. There really is no
19 formal procedure for that process.

20 But be reminded that the foreperson does not have any
21 greater vote or voice than you do. It is simply an
22 administrative function. That person fills out the verdict
23 form and writes out any questions that you may have during
24 jury deliberation.

25 In order to preserve everyone's rights I am going to

1 give the attorneys the opportunity to take exception to
2 anything that the court has said by way of opening
3 instruction. Any exception from the State?

4 MR. SMITH: No, ma'am.

5 THE COURT: From the defense?

6 Ms. Whitaker, any exception from the State? Ms.
7 Whitaker?

8 MS. WHITAKER: Your Honor, I believe we have an issue
9 we may need to bring up with the court.

10 THE COURT: Well, I need to know if you have any
11 exception to opening instructions.

12 MS. WHITAKER: Nothing to opening instructions, Your
13 Honor.

14 THE COURT: From the defense?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Okay. Approach, please. Ladies and
17 gentlemen, we appreciate your patience.

18 If counsel could approach for me, please.

19 (WHEREUPON, bench conference was held out of presence of
20 jury as follows:)

21 MS. SHEALY: It appears that our victim may know one of
22 the jurors. This is ---

23 THE COURT: Appears or definitely?

24 MS. SHEALY: Your Honor, this is the note we have
25 received.

1 (Document presented to the court.)

2 THE COURT: One of the jurors. Friend or foes. She
3 worked somewhere or worked as a security professional -- oh,
4 as security; it was just professional.

5 I mean I can voir dire the person if she knows who it
6 is. But apparently she doesn't remember her or doesn't ---

7 MS. SHEALY: Yeah ---

8 THE COURT: --- didn't make ---

9 MS. SHEALY: May not know her by name.

10 THE COURT: Sounds like a passing acquaintance. What
11 is the defense's comment?

12 MR. SMITH: I think it is probably still we would like
13 to have that person ---

14 THE COURT REPORTER: I'm sorry?

15 MR. SMITH: I'm sorry. We would like to at least have
16 the person questioned to make sure there is not ---

17 THE COURT: I need to know who it is. And I need to
18 make sure so I can question with this person to know if it
19 is even the same person.

20 MS. SHEALY: Give me one second. Because I think I
21 know which one.

22 THE COURT: Court security.

23 MS. SHEALY: Okay.

24 (End of bench conference.)

25 THE COURT: If counsel could approach for me.

1 (Bench conference as follows:)

2 THE COURT: The person who works security was struck.

3 MS. SHEALY: Oh, maybe it was somebody ---

4 THE COURT: I'm almost certain.

5 MS. SHEALY: I don't know.

6 THE COURT: Because 286 is a school bus and limo
7 driver. Two eighty-three is a school bus and security
8 guard. Is she talking about Isaac Washington?

9 MS. SHEALY: Let me go find out.

10 THE COURT: Okay.

11 (Pause for Ms. Whitaker to confer.)

12 THE COURT: Yeah, I knew there was a security guard
13 somewhere and another security guard ---

14 MS. SHEALY: This is a foreperson.

15 THE COURT: She is a teacher. So she is apparently
16 misapprehended who it is.

17 MS. SHEALY: Well, let's see. What was -- what is her
18 number?

19 THE COURT: Her name is Ms. Linda Brown, 28. She is a
20 teacher. Unless I wrote something down wrong. You know --
21 no, she is a teacher.

22 MS. SHEALY: Hold on one second. It does say retired
23 teacher.

24 THE COURT: Let's see what my notes say. Yeah, retired
25 teacher, 61. I mean if she is a retired teacher I am sure

1 she retired from the state system. But that is what she
2 did. Teacher and security guard. I mean I need more
3 information ---

4 MS. SHEALY: Right.

5 THE COURT: --- from your client -- I mean your
6 victim ---

7 MS. SHEALY: Okay.

8 THE COURT: --- to make sure this is actually the
9 person she remembered.

10 (Pause to confer.)

11 MS. SHEALY: She, the forelady, was in the school
12 system and worked with this -- our witness regarding issues
13 involving her children while she, the witness, was working
14 security.

15 THE COURT: How long ago was that? How long was it;
16 ten years?

17 MS. SHEALY: I didn't ask that.

18 THE COURT: I mean ---

19 MS. SHEALY: She is just bringing it up just to make
20 sure she hasn't done anything inappropriate.

21 THE COURT: What school was it?

22 MS. SHEALY: Okay, I didn't ask her all that. Anything
23 else that I need to ask while I go back?

24 THE COURT: How long ago was it?

25 MS. SHEALY: And which school?

1 THE COURT: Yeah.

2 MS. SHEALY: And what capacity or something?

3 THE COURT: No, just what school it was and how long
4 ago it was.

5 (Break for Ms. Shealy to confer.)

6 MS. SHEALY: She said she is not sure which school.
7 She recognizes her face. It was only on a professional
8 setting.

9 THE COURT: A long time ago ---

10 MS. SHEALY: Her baby child is 19 years old. She
11 doesn't remember which one, but she remembers having
12 contact.

13 THE COURT: More than ten years though.

14 MS. SHEALY: She said the children have not lived in
15 this area in the past eight years.

16 THE COURT: Yeah, it has been a while. Okay. You all
17 can stand back.

18 (Bench conference concluded.)

19 THE COURT: Madam forelady, ladies and gentlemen, I.
20 have a very brief matter of law that I need to take up. If
21 everybody but the foreperson could go with the bailiffs for
22 me, please.

23 You can just have them stand in the hallway. You don't
24 have to take them all the way down the hall because this
25 should be brief.

1 I need -- Madam Forelady, I need for you to stay seated
2 for me, please.

3 (Jury out of courtroom 11:31 a.m.)

4 THE COURT: Ma'am, tell us your name for the record.

5 MS. BROWN: Linda Brown.

6 THE COURT: And Ms. Brown, where were -- I have that
7 you were a retired teacher. Where were you formerly
8 employed?

9 MS. BROWN: Not in South Carolina. I have been
10 employed teaching in Ohio, Kentucky, and Tennessee.

11 THE COURT: Okay. So you have never taught in South
12 Carolina?

13 MS. BROWN: No.

14 THE COURT: You have been retired since you have
15 been ---

16 MS. BROWN: In South Carolina.

17 THE COURT: So you moved here to retire. So you have
18 never worked in the school system here?

19 MS. BROWN: No, I haven't.

20 THE COURT: Okay.

21 MS. BROWN: Not -- I am trying to think. Not that
22 I

23 THE COURT: Okay.

24 Do you want to maybe clarify that? Because she
25 couldn't ---

1 MS. BROWN: The only thing in the school system I --
2 and it is not in the system is that I worked Camp Inventions
3 in the summer. And that was in the schools.

4 THE COURT: Okay. How long ago was that?

5 MS. BROWN: The last one I did was maybe three years
6 ago. I am not really sure.

7 THE COURT: Okay.

8 MS. BROWN: Three, four, five.

9 MS. SHEALY: May I approach, Your Honor?

10 THE COURT: Yes.

11 Ma'am, bear with us one moment.

12 MS. BROWN: Okay.

13 (Whereupon bench conference was held as follows:)

14 MS. SHEALY: Her child did go to Camp Invention.

15 THE COURT: She said the children haven't been in South
16 Carolina eight years ---

17 MS. SHEALY: No, my witness's child did go to Camp
18 Invention which she said she worked at.

19 THE COURT: She said four years ago.

20 MS. SHEALY: Was the last time that she did it.

21 THE COURT: Yeah, but that means she -- that means four
22 years ago your -- your person said that your children
23 haven't been in South Carolina eight years.

24 MS. SHEALY: Right. But we don't know how many years
25 she did Camp Invention. We just know the last time she did

1 it was four years ago.

2 THE COURT: What is your witness's name?

3 MS. SHEALY: Nancy Wohlford.

4 THE COURT: Okay. Because I asked that question ---

5 MS. SHEALY: I think she was just trying to ---

6 THE COURT: --- in voir dire. But she didn't ---

7 MS. SHEALY: I'm sure she doesn't remember her
8 probably.

9 THE COURT: Probably not.

10 MS. SHEALY: But she is the one that did bring it to
11 the court's attention.

12 THE COURT: Okay.

13 (Bench conference concluded.)

14 THE COURT: Ma'am, did you ever interact in that camp
15 with any children by the last name of Wohlford?

16 MS. BROWN: I don't recall any children's last name
17 or ---

18 THE COURT: Okay.

19 MS. BROWN: You know.

20 THE COURT: Do you recall if you ever had any
21 interaction with Nancy Wohlford as a parent of a child in a
22 camp?

23 MS. BROWN: Not that I recall.

24 THE COURT: When you say that you worked in a camp,
25 the last one was four years ago, was that four years -- how

1 many -- I guess my question is how many years did you work
2 at that camp.

3 MS. BROWN: It's only one week.---

4 THE COURT: Uh-huh.

5 MS. BROWN: --- at some -- you know, at each -- at that
6 camp.

7 THE COURT: Okay.

8 MS. BROWN: Each summer I did one week for a few years.

9 THE COURT: Okay. And do you remember what years those
10 were? I know, I apologize.

11 MS. BROWN: No, I really don't. I would say -- could I
12 give you the schools?

13 THE COURT: Sure.

14 MS. BROWN: Would that be helpful?

15 THE COURT: Uh-huh.

16 MS. BROWN: PCA, Palmetto Christian. I directed that
17 camp for that one week. I worked at ---

18 THE COURT: Do you remember how long ago that was?

19 MS. BROWN: I am thinking that was the last one I did
20 four years ago.

21 THE COURT: Okay.

22 MS. BROWN: I think it was -- yeah, I am almost sure it
23 was four. But I, you know ---

24 THE COURT: Okay.

25 MS. BROWN: Unless I could look at my records. I also

1 was at the one on Rifle Range that has moved -- it is not --
2 that is Sullivan's Island now. What ---

3 MS. SHEALY: Mamie Whiteside?

4 MS. BROWN: Yes, I was -- I was there.

5 THE COURT: And how long ago was that?

6 MS. BROWN: Maybe five years ago.

7 THE COURT: Okay.

8 MS. BROWN: And then Christ our King.

9 THE COURT: And do you know how long ago that was? You
10 can give me an estimate.

11 MS. BROWN: Five, six.

12 THE COURT: Okay.

13 MS. BROWN: I was a teacher in those. May I also say
14 something?

15 THE COURT: Sure.

16 MS. BROWN: In case there is a connection that I don't
17 see. I did work part-time for the Mt. Pleasant Library
18 since I have been in South Carolina.

19 THE COURT: Okay.

20 MS. BROWN: You know, as subbing.

21 THE COURT: Okay.

22 Please approach.

23 MS. BROWN: Okay.

24 (WHEREUPON, bench conference had 11:37 a.m. as follows:)

25 THE COURT: Since she indicates she has no recollection

1 of Ms. Wohlford or her children I don't think there is any
2 further voir dire that I could ask of her. She has
3 absolutely no recollection.

4 MR. SMITH: She ---

5 THE COURT: She is sitting right there. She knows who
6 we are talking about. She has seen them go back and forth.
7 She would have said something by now.

8 MR. SMITH: I don't think she ---

9 THE COURT: If she re- -- I mean I think that if she
10 would have -- and also the timeframe is inconsistent. She
11 says the last time she worked at camp was five years ago.
12 Ms. Wohlford says her children haven't been here for eight
13 years. They are nineteen.

14 Five years would have been what; they would have been
15 15 or something. I kind of doubt you would be in a camp at
16 any of those schools at 15 years of age, would you?

17 MS. SHEALY: No, but I still think she is a little bit
18 unclear about how many years before that last one she did
19 it. But -- she doesn't remember her so.

20 THE COURT: She still doesn't remember her. I mean
21 apparently it didn't make any real -- I mean when you are
22 dealing with that volume of people I can't imagine that they
23 necessarily would make any indelible impression.

24 But in any event for purposes of ours she doesn't
25 remember. She doesn't know her. She doesn't have any

1 independent recollection of her child.

2 Is there anything further that the State would ask that
3 I ask of the witness?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: I mean of the juror. I apologize.

6 MR. SMITH: No, Your Honor.

7 THE COURT: Any exception to retaining the juror, from
8 the State?

9 MS. SHEALY: No, Your Honor.

10 THE COURT: From the defense?

11 MR. SMITH: No, Your Honor.

12 THE COURT: All right. Thank you.

13 (Bench conference concluded.)

14 THE COURT: Thank you, ma'am, for indulging us. We
15 would appreciate it if you would not discuss this additional
16 voir dire that the court has engaged with you with any of
17 your fellow jurors.

18 Please bring the jury back in.

19 Is the State ready to begin opening -- opening
20 argument?

21 MS. WHITAKER: Yes, Your Honor.

22 THE COURT: Is the defense ready to begin opening
23 argument?

24 MR. SMITH: Yes, Your Honor.

25 (WHEREUPON, jury enters courtroom July 18, 2013, 11:49 a.m.)

OPENING BY MS. WHITAKER

113

1 THE CLERK: All jurors are present, Your Honor.

2 THE COURT: Thank you, ladies and gentlemen, we
3 appreciate your patience. We are now going to resume with
4 opening argument. I would ask that you give the attorneys
5 your undivided attention.

6 You may proceed.

7 MS. WHITAKER: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 MS. WHITAKER: May it please the court.

10 THE COURT: Yes, ma'am.

11 MS. WHITAKER: Mr. Smith, Mr. King.

12 OPENING BY MS. WHITAKER:

13 Good morning. Everyone should feel safe in their own
14 home. They should feel secure in their own home. And not
15 only should they feel like they are safe in their own home,
16 they should feel like their belongings are safe when they
17 leave them in their home.

18 For Nancy Wohlford and Susan Rutledge that was not the
19 case. You are going to hear from Nancy very soon. She is a
20 very busy woman. She works multiple jobs. In fact, one of
21 her jobs is as a security job. As a security guard she
22 makes sure that others can feel safe.

23 On the night in question her own home was burglarized.
24 And what adds insult to injury, the perpetrator was someone
25 she knew. It was this man over here, (motioning) Marvin

1 Porcher, the defendant.

2 Now Nancy knew neighbors on both sides of the trailer.
3 On one side she had -- it was an older man, and she would
4 help him from time to time. On the other side was the
5 defendant, Marvin Porcher, and Cassie Callier his
6 girlfriend.

7 Now Nancy knew Cassie from work. Occasionally they
8 would socialize. Nancy also knew Marvin Porcher. Not very
9 well. They had more of a business relationship. Marvin
10 Porcher had done some work on Nancy's trailer.

11 Nancy's roommate, Susan Rutledge, who has since passed
12 away had some health difficulties and she needed some help
13 moving around. So Nancy had hired Marvin Porcher to do a
14 little work on the outside of the house to make that
15 possible. But he had never really been inside the home
16 until the night before the burglary.

17 In fact, the first time he was in the home was to do a
18 tattoo. Nancy had learned from Cassie, the defendant's
19 girlfriend, that he was good at doing tattoos.

20 And Nancy is a big -- big fan of tattoos. And she
21 likes them and she had wanted a new tattoo. So she had
22 spoken -- spoken to Cassie and found out that Marvin Porcher
23 would do this tattoo for her.

24 So the night before the burglary Marvin Porcher,
25 Cassie, and Nancy's friend Kenny they all came over. Nancy

OPENING BY MS. WHITAKER

115

1 was going to make dinner for them. She was cooking some
2 country ribs. After everybody ate they all stayed around
3 and chatted for a while. And the defendant over there did
4 the tattoo on Nancy.

5 The process is pretty involved. It takes a while. And
6 Nancy needed a break during the tattoo. So she let Marvin
7 Porcher get on her laptop. He logged onto his Facebook
8 account, stayed on there for about 20 minutes, played on the
9 computer for a little while before they finished -- finished
10 doing the tattoo.

11 The next day Nancy and Cassie talked about going out
12 for the evening. Nancy wasn't sure because she was still
13 kind of sore from the tattoo, a little bit tired.

14 But she decides to rally and around 9:20 that evening
15 Nancy goes over to Cassie's home which is right next door so
16 they can go out for the evening. They head out to Rivals
17 which is a bar in North Charleston that they were familiar
18 with.

19 After they went to Rivals they headed over to Denny's...
20 to get a cup of coffee and some snacks. But as they are
21 leaving Denny's, as they are getting in the car - they are
22 getting in Nancy's car - Nancy gets a phone call from North
23 Charleston Police Department. Her laptop had been located
24 on Marvin Porcher.

25 She follows the instructions of the police and she

1 heads home where she finds that her laptop, some of her
2 jewelry, her roommate Susan's television, they had all been
3 stolen. Her home had been broken into. The back door had
4 been forced open.

5 Now I'm going to stop here for a minute because there
6 is something about this case that might be a little bit
7 confusing. There are two different agencies that are
8 working on this investigation, the Charleston County
9 Sheriff's Office and the North Charleston Police Department.

10 And the reason there are two different agencies is
11 because where Nancy's home is located, that is in the
12 jurisdiction of the Charleston County Sheriff's Office.
13 Where Marvin Porcher was located just about a mile away it
14 is in North Charleston jurisdiction, and that is where he
15 was found.

16 So I want you to know that these are all in Charleston
17 County and both of the agencies are working together, but
18 you are going to hear from both of them.

19 In fact, you are going to hear about Resource Officer
20 Fernando Salgado coming across Marvin Porcher after midnight
21 with the bulky, bulging jacket he was wearing and what
22 happened as a result of their conversation. They found a
23 laptop and some jewelry on his person.

24 When the police came across the laptop they opened up
25 the computer. There was no password needed. So Detective

OPENING BY MS. WHITAKER

117

1 Mark Evans tried to go through the computer and find out who
2 owned it. And he came across Nancy's resume, and he called
3 her and asked her where her laptop was. She said she
4 thought it was at home where she had left it sitting safely
5 on her bed.

6 At this point in time Evans who was with North
7 Charleston Police Department realized that her home,
8 Nancy's home, was in the Charleston County Sheriff's
9 Office jurisdiction so went ahead and called them to let
10 them know. So they all arrived on the scene together:
11 North Charleston, Charleston County Sheriff's office, and
12 Nancy.

13 When they arrived at the home they performed a
14 walk-through. They found that the back door of the mobile
15 home had been forced open.

16 They found out that the television had been taken from
17 Susan's room, taken right off her dresser right off of a
18 stand, and that jewelry had been taken out of Nancy's
19 closet.

20 And now this jewelry, it was costume jewelry. It might
21 not have had a whole lot of monetary value, but it had a
22 great deal of sentimental value because it belonged --
23 several pieces of it belonged to Nancy's grandmother.

24 You are going to be presented with other evidence in
25 this case. You are going to see what the Crime Scene did

1 when they responded to the mobile home. You will see some
2 pictures of the crime scene. And you are also going to see
3 the laptop that was found on Marvin Porcher's person as well
4 as the jewelry that was found in his pocket.

5 Now please give Marvin Porcher a fair trial. But
6 listen to the evidence and listen to the testimony and
7 return a verdict of guilty to the charge of burglary in the
8 first degree. Thank you.

9 THE COURT: You may proceed.

10 MR. SMITH: Thank you, Your Honor. May it please the
11 court.

12 THE COURT: Yes, sir.

13 OPENING BY MR. SMITH:

14 Ms. Shealy, Ms. Whitaker.

15 Three poor decisions don't equal burglary. Marvin
16 Porcher on the evening this happened, he got home from work.
17 He had been working at an auto parts place. He gets let out
18 at the end of the street. When he gets out there he sees
19 his cousin.

20 MS. SHEALY: Your Honor, may we approach? I have an
21 objection.

22 THE COURT: Yes, you may approach.

23 (Bench conference 11:47 a.m. as follows:)

24 MS. SHEALY: My objection would be to him getting into
25 any details unless he plans on putting his defendant up.

OPENING BY MR. SMITH

119

1 Otherwise he is presenting his defendant's case.

2 THE COURT: And he has another witness to ---

3 MS. SHEALY: But I have just asked ---

4 THE COURT: --- present that evidence. Because he has
5 a witness listed. Opening argument is only what the
6 evidence will say. He proceeds at his own risk if he
7 doesn't present testimony to support that.

8 So he can argue what he believe the evidence is going
9 to show; and if he falls short of that, then that is his
10 peril with the jury.

11 MS. SHEALY: Thank you.

12 THE COURT: You are welcome.

13 (End of bench conference.)

14 THE COURT: You may proceed.

15 (RESUME OPENING BY MR. SMITH:)

16 MR. SMITH: When Marvin gets home his girlfriend is at
17 the house. She is talking about going out, going out with
18 Ms. Wohlford. And she really isn't -- she is kind of
19 undecided about whether to go out or not. ...

20 And so she talks to Marvin. And what she says to him
21 is what are you going to do. And Marvin says I've got work
22 to do; I've got to go work on a car; go out if you want.

23 And so Marvin leaves. He goes to work on the car. He
24 goes down. He is gone until almost 10 o'clock. When he
25 gets back there is a note on the table. That note says I

1 have gone out; I am going to be gone for a while, dinner is
2 being cooked, have dinner.

3 And so Marvin grabs something to eat. He is thinking
4 about what is going to go on for the rest of the evening.
5 And he says you know what, I am going to go out and grab a
6 beer.

7 And so Marvin goes out in his yard. There is a bicycle
8 that he has borrowed, someone -- a friend of theirs had left
9 there. And so he says I am going to take the bicycle, I am
10 going to go down the road, I am going to get a beer.

11 Marvin Porcher made his first bad decision when he
12 started out on that bike. As he began to go down the street
13 what he saw on the ground was a little tube, and what was in
14 it was some jewelry. He picked it up. It is dark outside.
15 I don't know what this is about but I will take a look at it
16 when he gets -- when I get back home.

17 So he puts that into his pocket. Then what happens, he
18 goes a little bit further. Under the light there are some
19 necklaces on the ground. He picks up that necklace. Does
20 the same thing. I can't see much of anything out here. I
21 will look at it when I get home.

22 So Marvin proceeds. He goes on down the road. He is
23 on his way to Big Keys to get a beer. And when -- as he is
24 approaching the area where Big Keys is, there is a man
25 there. And that man says hey do you want to buy a laptop.

OPENING BY MR. SMITH

121

1 Marvin begins to kind of haggle with him and say how
2 much do you want for it. The guy says I want a hundred
3 bucks. Marvin says I don't have a hundred bucks, I will
4 give you sixty. The guy said no \$60 that is not enough,
5 you will have to owe me. Marvin says I don't know you, you
6 either take the \$60 or you don't.

7 The guy says okay I will take the \$60. Marvin says
8 show me the computer works. Show me that you have the
9 charger for it. The guy powers the computer on, shows him
10 the charger. Marvin pays him the \$60 dollars and takes the
11 computer.

12 By the time he is finished with all of this, Big Keys
13 is closed. He can't get his beer. So what he does is he
14 takes the bike that he had in his yard, his friend's bike.
15 He returns that bike and he begins to walk home.

16 As he is walking home Officer Salgado comes up behind
17 him and stops him. This is where he makes probably the
18 poorest decision that he made that entire night. And that
19 decision was to give them someone else's name. He only used
20 part of his name.

21 He was worried about the computer that he had. He was
22 worried about the jewelry that he had gotten. He had just
23 picked up the jewelry. He had just purchased the computer
24 off the street.

25 Marvin is in a situation that he made three poor

1 decisions. But fortunately for him those three poor
2 decisions don't equal a burglary.

3 So what else are we going to look at in this case and
4 what else is important in this case is simply this: There
5 was a social relationship. There was a working relationship
6 between Mr. Porcher, Ms. Wohlford, and Ms. Rutledge. He had
7 been at her home to do work in the past. He had been in her
8 home in the past socially.

9 On the night before, he was there. He gave her a
10 tattoo. There is no question about that. He didn't charge
11 her for the tattoo.

12 But in the past when he had done work on the house they
13 had worked out an arrangement and money was exchanged for
14 that.

15 Probably what is most important is what you won't hear
16 today. And what you are not going to hear is you are not
17 going to hear any evidence, any scientific evidence, any
18 DNA, any fingerprints, anything, any other eyewitness that
19 is going to say Marvin Porcher burglarized that house that
20 night.

21 At the conclusion of this trial I am going to come back
22 to you and after you have heard the lack of physical
23 evidence, about the decisions that Marvin Porcher made that
24 night and how poor they were. But even being poor they'
25 don't equal burglary. And I'm going to ask you at the

1 conclusion of this case to find Mr. Porcher not guilty.

2 Thank you.

3 THE COURT: You may call your first witness.

4 MS. SHEALY: May it please the court.

5 THE COURT: Yes, ma'am.

6 MS. WHITAKER: Fernando Salgado.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: State your full name and spell your last
9 name.

10 MR. SALGADO: Fernando Salgado, S-A-L-G-A-D-O.

11 THE COURT: You may proceed.

12 MS. SHEALY: Your Honor, at this time may we go ahead
13 and move into evidence the items that we have had previously
14 marked that are without objection?

15 THE COURT: Proceed.

16 MS. SHEALY: Okay. At this time we would move into the
17 record State's Exhibits 1 through 24.

18 THE COURT: I have already marked -- I have already
19 moved your exhibits into ---

20 MS. SHEALY: Okay. I just wanted to do it on the
21 record.

22 THE COURT: You -- it is on the record.

23 MS. SHEALY: Okay. Very good. Thank you.

24 (FERNANDO SALGADO, having first
25 been duly sworn, testified as follows:)

1 DIRECT EXAMINATION BY MS. SHEALY OF MR. SALGADO:

2 Q Mr. Salgado, you may need to speak up just a little bit
3 for us if you don't mind; okay?

4 A Yes, ma'am.

5 Q Tell the jury your name again.

6 A Fernando Salgado.

7 Q And where are you currently employed?

8 A Stabilus.

9 Q Spell that for me.

10 A S-T-A-B-I-L-U-S.

11 Q Okay. And where is that business?

12 A It is in Gastonia, North Carolina.

13 Q Where did you grow up?

14 A Dallas, North Carolina.

15 Q Okay. Now tell us about your educational background.

16 A I graduated from North Gaston High School. And
17 graduated from Gaston College with an associate's degree in
18 applied sciences.

19 Q Okay. Did you have any further educational training?

20 A The South Carolina Criminal Justice Academy.

21 Q Okay. Did you in fact work for North Charleston Police
22 Department?

23 A I did.

24 Q And would you tell the jury please when you were
25 employed there.

1 A From 2008 to 2012.

2 Q And in your capacity there did you have to attend the
3 Criminal Justice Academy?

4 A Yes, ma'am.

5 Q If we could focus your attention back to November of
6 2011. Would you tell the jury in what capacity you were
7 working with North Charleston.

8 A I was a neighborhood resource officer.

9 Q Okay. And could you describe for us what a
10 neighborhood resource officer does?

11 A They work very closely with the community having
12 community meetings, talk with the community helping them
13 whatever way they can if we can help them out, and just try
14 and answer questions and concerns that they have for us.

15 Q Okay. And pursuant to that rule did you in fact were
16 you assigned to a certain area of North Charleston?

17 A Yes, ma'am, I was assigned two neighbors, the Stall and
18 Midland Park area and also Pepperhill.

19 Q Okay. Focusing your attention specifically on
20 November 3rd, 2011, spilling into the morning hours of
21 November 4th, would you tell the jury please what shift you
22 worked that day.

23 A I worked 5:00 to 1:00 shift.

24 Q Okay. And in being a resource officer do you patrol
25 the streets?

1 A Yes, I just ride around and patrol. Yes, ma'am.

2 Q Okay. You indicated to us that you attend community
3 meetings. Is that in an effort to make relationships within
4 that community?

5 A Yes, ma'am.

6 Q On that night in question were you at any point
7 traveling down Stall Road?

8 A Yes, ma'am.

9 Q Your Honor, at this time I would ask that Mr. Salgado
10 be allowed to approach the dry-erase board for a diagram for
11 me.

12 THE COURT: Uh-huh.

13 Q If you will stand down over here. If you will open
14 that. Just to give members of the jury who may not be
15 familiar with that area an idea about where you were on
16 Stall Road could you draw that for us.

17 A (Witness complies.)

18 Q And what are you writing there?

19 A This will be Ashley Phosphate Road.

20 Q Okay. So if you could orient the jury.

21 A This is Ashley Phosphate Road (pointing), and this
22 would be Stall Road (pointing), the actual road where the
23 incident took place. And this is Midland Park Road
24 (pointing).

25 Q Okay. You can go ahead and have a seat for us. Well,

1 while you are up there if you would indicate please as you
2 were traveling down Stall Road before you encountered Mr.
3 Porcher could you explain to the jury which way you were
4 traveling.

5 A I was traveling this way (pointing).

6 Q Okay. And when do you come across an individual on a
7 bicycle?

8 A Around this general area right here (pointing).

9 Q Okay. We are going to go to some photographs. So you
10 can have a seat. Go ahead and close that door if you would
11 so we can see the photographs.

12 A (Witness complies.)

13 Q The picture should come up on your monitor after it
14 comes up here showing you what has been previously marked as
15 State's Exhibit 1.. Do you see -- can you see that?

16 A Yes, ma'am..

17 Q Can you describe that area by pointing to it to kind of
18 give us a place of reference?

19 A Do you want me

20 Q I think if you -- does he need to actually draw on the
21 diagram?

22 THE COURT: Uh-huh.

23 THE CLERK: He can just

24 A Draw like a circle right here (motioning)?

25 THE COURT: Uh-huh.

- 1 A (Witness complied.)
- 2 Q Okay. Now what drew your attention when you went by
- 3 the bicyclist?
- 4 A I drove by. And as I passed him I noticed that he did
- 5 not have a rear blinking light ---
- 6 Q Okay.
- 7 A --- on his bicycle.
- 8 Q And why -- why did that catch your attention; what were
- 9 you concerned about?
- 10 A It concerned me because right there where he was it was
- 11 very dark area and he disappeared, and I was concerned for
- 12 his safety and also the safety of others.
- 13 Q Was he clothed in bright colors?
- 14 A Dark clothing.
- 15 Q Okay. I am showing you what has been previously marked
- 16 as State's Exhibit 2. Okay. Now this photograph obviously
- 17 was taken during the daytime, but what hour -- well, what
- 18 time of the evening did you come across the bicyclist?
- 19 A 12:04 ---
- 20 Q 12:04 in the ---
- 21 A --- a.m.
- 22 Q --- evening -- early morning hours ---
- 23 A Yes, ma'am.
- 24 Q --- of the 4th? Can you explain to the jury, please,
- 25 which way you were going initially and which way the

1 bicyclist was?

2 A I was going this way (pointing). He was coming this
3 way (pointing).

4 Q Okay. And after you passed him what did you then do?

5 A Went to somewhere where I could turn around safely and
6 then come back and meet ---

7 Q Okay.

8 A --- and speak with him.

9 Q I am showing you again State's 1. Can you point out
10 for us there where it was that you turned around?

11 A (Indicating on monitor.)

12 Q When you turned around and came back did you come back
13 with flashing -- with your blue lights on or with your siren
14 or anything?

15 A No, ma'am.

16 Q Okay. What was your intention in coming back towards
17 the bicyclist?

18 A To advice him of my concern and hoping he would take my
19 advice, and because I don't want anybody to get injured ---

20 Q Okay.

21 A --- especially

22 Q Especially what?

23 A Especially him or somebody else.

24 Q When you returned back from making your U-turn - I am
25 showing you State's Exhibit 2 - could you point out to us

1 where it was that you encountered Mr. Porche?

2 A When I came back, ma'am?

3 Q When you came back down.

4 A This area right here (indicating on monitor.)

5 Q Okay. And which direction if you could show us on the
6 map you were coming back.

7 A I was coming this way (indicating on monitor.)

8 Q Okay. Did he still have the bicycle?

9 A No, ma'am.

10 Q Were you in some type of marked car that evening?

11 A Yes, ma'am.

12 Q So you went past him in a marked car, turned around;
13 and when you came back the bicycle was no longer there?

14 A Yes, ma'am.

15 Q Okay. And showing you State's Exhibit 3 does that
16 better show you where you encountered him? You may need to
17 redraw those.

18 A Around in this general area (indicating on monitor.)

19 Q Describe for the jury if you would on Stall Road in the
20 evening hours is that area very well lit?

21 A There are some areas that are not well lit at all.

22 Q And what about that area?

23 A No.

24 Q Okay. If you would tell us then when you approached
25 Mr. Porcher tell us what happened. What happened?

1 A Well, I greeted him like I greet everyone else and
2 advised him of my concern for his safety.

3 Q Did you ask him his name?

4 A Yes, ma'am.

5 Q And tell the jury whether or not you recognized him
6 from the community..

7 A Yes, ma'am, I did recognize him.

8 Q Okay. When he gave you his name what name did he give
9 you?

10 A He gave me Marvin Swinton.

11 Q Okay. And is that the name you knew him as?

12 A No, ma'am.

13 Q When ya'll were talking did he indicate -- well, what
14 did you do based on the name that he gave you?

15 A Well, I knew that he was -- he wasn't being truthful
16 with me. So I asked him for his ID.

17 Q Okay. And while you were talking to him did you notice
18 anything about his jacket area?

19 A Yes, I noticed he had a bulge in his jacket.

20 Q Okay. Did Mr. Porcher give you his lic- -- his ID?
21 I'm sorry.

22 A No, ma'am.

23 Q Tell us what happens next. Do you call to check on
24 that ID at any point?

25 A Yes, ma'am.

1 Q Describe to the jury when you are checking on someone's
2 ID who are you actually calling?

3 A The North Charleston Reference Department.

4 Q Okay... And what information do you give them when you
5 call?

6 A I gave them the name and date of birth.

7 Q And they are checking for what?

8 A For ID.

9 Q Okay. And did you give the name Marvin Swinton?

10 A Yes, ma'am.

11 Q Did anything come back?

12 A No, ma'am.

13 Q Did you have a further discussion with Mr. Porcher
14 about where he was from?

15 A Yes, ma'am, he said he was from New York.

16 Q Okay. And that is when he was giving you the name
17 Swinton?

18 A Yes, ma'am.

19 Q Based on that, when you called in for an ID check did
20 you tell anything to the person that you called; did you ask
21 them anything regarding New York?

22 A Yeah, I told them to run it through New York ---

23 Q Okay.

24 A --- and make sure it is through New York.

25 Q So it had already been run through South Carolina?

- 1 A Yes, ma'am.
- 2 Q And then you asked them to run it through New York?
- 3 A Yes, ma'am.
- 4 Q And did anything come back on Marvin Swinton?
- 5 A No, ma'am.
- 6 Q When you were looking at Mr. Porcher if you could
- 7 describe to the jury how he appeared.
- 8 A He appeared sweaty and nervous.
- 9 Q Okay. And what about his coat, was there anything that
- 10 you noticed about the way his jacket looked?
- 11 A Yeah, it was bulging out a little.
- 12 Q Okay.
- 13 A It didn't look normal at all.
- 14 Q Based on that what did you ask Mr. Porcher?
- 15 A I asked for consent to search his person.
- 16 Q And did he in fact give that to you?
- 17 A Yes, ma'am.
- 18 Q If you would please, tell the jury what you found as
- 19 you searched him.
- 20 A I found the laptop with the charger which I put on the
- 21 hood. And then in his back, left pock- -- pant pocket I
- 22 found his wallet which contained his ID.
- 23 Q Okay. And when you found that ID did it have the name
- 24 Marvin Swinton?
- 25 A No, ma'am.

1 Q What name did it have?

2 A Marvin Porcher.

3 MS. SHEALY: Your Honor, at this time with the court's
4 permission I would like to read a stipulation into the
5 record.

6 THE COURT: You may proceed.

7 MS. SHEALY: This is State's Exhibit 21. Attorneys for
8 the State and the defense agree and stipulate to the
9 following: Marvin Porcher was booked into the Charleston
10 County Detention Center on November 4th, 2011, charged with
11 burglary-first.

12 Removed from Mr. Porcher were the following items: one
13 pair of black sweatpants, one brown belt, one grey hat, one
14 green jacket, one black wallet, one penny, a Visa Plasma
15 card, one watch, one black rag, South Carolina ID, three
16 keys on a ring, two brown shoes, one pair of blue jeans, and
17 one black sweatshirt.

18 Q Now Mr. Salgado, I am showing you what has been
19 previously marked as State's Exhibit 20. Was this the hat
20 that Mr. Porcher had on?

21 A Yes, ma'am.

22 Q You would not have seen any underclothes from him?

23 A No, ma'am.

24 Q Or sweat pants if they were under jeans?

25 A No, ma'am.

1 Q Did he have on jeans?

2 A Yes, ma'am.

3 Q If you could step down with the court's permission.

4 THE COURT: Uh-huh.

5 (Witness complied.)

6 Q And in taking a look at the jacket that Mr. Porcher had
7 on can you show us where you found items..

8 A In this pocket.

9 Q And speak loud enough so the court reporter can hear
10 you for me. Maybe you should stand over here so you are
11 facing her.

12 A I found the items in this jacket pocket right here
13 (pointing).

14 Q What did you find there?

15 A A pearl necklace.

16 Q Okay. And were there other -- any other area of the
17 jacket that you found anything?

18 A Huh-uh.

19 Q Where did you -- was there a cylinder found?

20 A Yes, ma'am.

21 Q Where was that found?

22 A In the left, pant pocket ---

23 Q Okay.

24 A --- along with the wallet.

25 Q And when you say left pant pocket you are talking about

1 his jeans; is that correct?

2 A Yes, ma'am.

3 Q And there you found a cylinder?

4 A Yes, ma'am.

5 Q Now did you -- let me show you what's been marked just

6 for ID purposes and ask you, do you recognize that?

7 A Yes, ma'am.

8 Q And is this the laptop that you found?

9 A Yes, ma'am.

10 Q That is State's Exhibit for ID 29. And the charger?

11 A Yes, ma'am.

12 Q You can go ahead and take your seat now.

13 (Witness complied.)

14 Q I am showing State's Exhibit 20. Do you see State's

15 Exhibit 20? When you describe the word cylinder can you

16 point in that photograph and show us what you are talking

17 about?

18 A (Indicating.)

19 Q Okay. And in the jacket you found what if you recall

20 from that jewelry?

21 A (Indicating.)

22 Q That is the pearl necklace?

23 A Yes, ma'am.

24 Q Okay. The other items in that photograph are you aware

25 of whether or not they were in that cylinder?

1 A Yes, ma'am.

2 Q Very good. What did Mr. Porcher tell you about that
3 laptop?

4 A He advised that he was going to go to a friend's house
5 on Stall Road to get on the internet.

6 Q That that is why he had that laptop with him?

7 A Yes, ma'am.

8 Q Okay. Now based on the fact that he gave you a name
9 other than this own name that night what did you do?

10 A Placed him under arrest for false information to
11 police.

12 Q Okay. One other matter. Did you find any other items
13 on him tool wise?

14 A Yes, ma'am. I located a razor knife, an Allen wrench,
15 a wrench, and a zip tie. And that was in his pants, left
16 pocket, front.

17 Q Pants, left, front pocket?

18 A Front, left pocket. Yes, ma'am.

19 Q Okay. So those tools on the front and the wallet and
20 the cylinder on the back and the pearl necklace in the coat
21 pocket; is that correct?

22 A Yes, ma'am.

23 Q You then put him under arrest; is that what you said?

24 A Yes, ma'am.

25 Q And that was for what charge?

1 A False information to police.

2 Q What did you then do after making that arrest?

3 A I continued to search revealing the other property and
4 then I placed him in the back of my patrol vehicle.

5 Q Where did y'all go once you left that scene?

6 A Went to the North Charleston City Hall where the
7 detective bureau is located.

8 Q Okay. So the way that the police hierarchy is you have
9 people who are resource officers and patrolmen and then
10 there's a detective unit as well?

11 A Yes, ma'am.

12 Q Okay. And you in fact took Mr. Porcher to the
13 detective unit?

14 A Yes, ma'am.

15 Q Tell the jury if you would which detective you brought
16 Mr. Porcher to.

17 A Detective Evans.

18 Q Okay. Is that Mark Evans?

19 A Yes, ma'am.

20 Q When y'all arrived at the police station what was --
21 what happened with Mr. Porcher?

22 A He was put in the room, in the interview room.

23 Q Okay. And did -- were you around when Mr. Evans did
24 something with the computer?

25 A Yes, ma'am, he opened it up.

1 Q And after he opened it up were you present when he did
2 something further?

3 A Yes, ma'am.

4 Q What did he do?

5 A He turned it on and looked through a couple of files.

6 Q That were on the computer?

7 A Yes, ma'am.

8 Q Were you present when he made a phone call?

9 A Yes, ma'am.

10 Q Okay. And I can have him talk about the details of the
11 phone call. After the phone call or some time while y'all
12 were there was Mr. Porcher in fact interviewed by Detective
13 Evans?

14 A While he was there?

15 Q Yes.

16 A Yes, ma'am.

17 Q Okay. Were you a participant in that process?

18 A No, ma'am.

19 Q After the interview and after Detective Evans made a
20 phone call what did you then do with Mr. Porcher?

21 A I transported to the Charleston County Detention
22 Center.

23 Q Okay. Was he in fact charged with something else in
24 North Charleston that evening as well?

25 A Yes, ma'am.

- 1 Q Tell us what he was charged with?
- 2 A Possession of stolen property.
- 3 Q Okay. And that is a North Charleston charge?
- 4 A Yes, ma'am.
- 5 Q Based on the items that you found on him while on Stall
6 Road?
- 7 A Yes, ma'am.
- 8 Q And again, you came in contact with him just minutes
9 after 12 o'clock?
- 10 A Yes, ma'am.
- 11 Q Okay. Now those charges, false information and
12 possession of stolen goods, those are municipal court
13 charges?
- 14 A Yes, ma'am.
- 15 Q Where you go to traffic court?
- 16 A Yes, ma'am.
- 17 Q Okay. Let me ask you this: Did y'all find out where
18 the owner of the laptop lived?
- 19 A Yes, ma'am.
- 20 Q And could you tell the jury if you recall what street
21 that is? Do you remember the name of the street?
- 22 A No, ma'am.
- 23 Q Okay. Do you know whether or not it was in North
24 Charleston's jurisdiction?
- 25 A Yes, it was in the North Charleston jurisdiction.

- 1 Q Okay. If I showed you something to refresh your
2 memory -- you don't recall the name of the street? Do you
3 remember where it was located?
- 4 A Yes, ma'am.
- 5 Q Okay. Where was it located?
- 6 A Off of Townsend.
- 7 Q And is that off -- also off of Rivers?
- 8 A It is off of -- Townsend is off of Midland Park Road.
9 (Cough) I'm sorry. Hayne Street is off of Rivers Avenue.
- 10 Q Well, that is the street I was asking you about,
11 Hayne ---
- 12 A Oh, Hayne Street.
- 13 Q --- Street.
- 14 A I'm sorry..
- 15 Q You didn't go out to the trailer that night?
- 16 A No, ma'am.
- 17 Q Okay. Now on your diagram if you could approach that
18 one more time and just show us in connection to where Stall
19 Road is where is Hayne Road -- or Hayne Street?
- 20 A (Indicating.)
- 21 Q Okay. Do you know how far it was from where you came
22 across Mr. Porcher back over to Hayne Street approximately
23 how far?
- 24 A A mile and a half.
- 25 Q A mile and a half. Were you present when Detective

1 Evans asked that another detective from North Charleston go
2 to Hayne Street?

3 A Yes, ma'am.

4 MS. SHEALY: Beg the court's indulgence just one
5 moment.

6 THE COURT: Uh-huh.

7 MS. SHEALY: I have no further questions. Please
8 answer any that the defense may have.

9 THE COURT: You may proceed.

10 MS. SHEALY: Thank you.

11 THE COURT: Mr. Smith, you may proceed when you are
12 ready.

13 CROSS-EXAMINATION BY MR. SMITH OF MR. SALGADO:

14 Q Good morning.

15 A Good morning.

16 Q Officer Salgado, when you initially encountered Mr.
17 Porcher you advised him about a bicycle violation; is that
18 correct?

19 A The red blinking light.

20 Q And is that something that you gave him a ticket for?

21 A No, sir.

22 Q And so you were just basically stopping just to advise
23 him about that and that he might want to get that on his
24 bike; is that correct?

25 A Yes, sir. My intention was never to give him a ticket

1 for it.

2 Q At some point he gave you the name Marvin Swinton; is
3 that correct?

4 A Yes, sir.

5 Q He talked to you though; is that correct?

6 A Yes, sir.

7 Q He didn't try to run at any point?

8 A No, sir.

9 Q He was cooperative with you aside from giving the
10 different name?

11 A Yes, sir.

12 Q When you passed him initially do you think he saw
13 you?

14 A I believe so.

15 Q And he didn't veer from the path he was on, did he?

16 A No, ma'am.

17 Q But when you came back, there was no bike; is that
18 correct?

19 A Yes, sir.

20 Q And he -- you asked him about the bike, didn't you?

21 A Yes, sir.

22 Q And he said that he was leaving it off at a friend's
23 house?

24 A At his girlfriend's house.

25 Q Okay. And did you ever follow up on the bike to see if

1 the bike was somewhere else?

2 A No, sir.

3 Q He also told you at some point about he was going to go
4 to a friend's house to get on the internet with the laptop;
5 it that correct?

6 A Yes, sir.

7 Q Did you ever follow up with that friend ---

8 A No, sir.

9 Q --- to find out if he was scheduled to come over or
10 planning to come over?

11 A No, sir, I did not.

12 Q Okay. Did he give you the address where his friend was
13 supposed to be?

14 A He advised Spivey's Mobile Home Park which is at [REDACTED]
15 [REDACTED].

16 Q But you never really followed up on that to know if
17 that was true or not; is that correct?

18 A No, sir.

19 Q Did you ask him the name of the friend?

20 A No, sir.

21 Q Now when you have your encounter with Mr. Porcher he --
22 you asked him about permission to search his person; is that
23 correct?

24 A Yes, sir.

25 Q And he gave you that permission?

1 A Yes, sir.

2 Q And the solicitor was asking you about knowing Mr.
3 Porcher from the community. Even though you knew him you
4 still called him the name Marvin Swinton; is that correct?

5 A Yes, sir.

6 Q When you took the other items from him did you ask him
7 about the knife, the razor knife, the Allen wrench, what he
8 had those for?

9 A No, sir.

10 Q And I just want to be clear on the jewelry. The pieces
11 of the jewelry aside from the necklace, they were down in
12 that little cylinder; is that correct?

13 A Yes, sir.

14 Q Now you transported Mr. Porcher at some point over to
15 the Detective Bureau; is that correct?

16 A Yes, sir.

17 Q And were you there when he waved his Miranda warnings?

18 A No, sir.

19 Q Okay. When you left -- and your involvement in the
20 case was that he had been charged with false information to
21 police and with receiving stolen goods; is that correct?

22 A Yes, sir.

23 Q And that pertained specifically to the items that he
24 had on his person?

25 A Yes, sir.

1 Q And to the fact that he had given you the name Marvin
2 Swinton?

3 A Yes, sir.

4 Q As part of those charges do you appear in magistrate
5 court?

6 A Municipal -- yes.

7 Q Municipal court?

8 A Yes, sir.

9 Q And did you appear at municipal court in this case?

10 A Yes, sir.

11 Q And do you remember how that case was disposed of?

12 A I can't recall.

13 Q Okay. Do you remember if -- did you ever have a jury
14 trial on that charge that you are aware of?

15 A We didn't have a jury trial.

16 Q Okay. Do you remember if he pled guilty or not?

17 A I believe he plead -- pled guilty.

18 MR. SMITH: I beg the court's indulgence.

19 THE COURT: --Yes, sir.

20 MR. SMITH: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. WHITAKER: Just a few follow-up questions.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION BY MS. SHEALY OF MR. SALGADO:

25 Q I just want to make sure I understand correctly. When

1. you asked Mr. Porcher what happened to the bike, he said he
2 took it to where?

3 A His girlfriend's house.

4 Q His girlfriend's house. Okay. And when Mr. Smith was
5 asking you about whether Mr. Porcher pled guilty to the
6 false information and to the possession of stolen goods,
7 that didn't happen in this courthouse; right?

8 A No -- no, ma'am.

9 Q That happened over where the traffic court is held in
10 North Charleston Municipal Court?

11 A Yes, ma'am.

12 Q Okay. That is on a big court charge?

13 A Yes, exactly.

14 Q Okay. And I wasn't sure I understood correctly. Mr.
15 Smith asked you whether you continued to call him Swinton?
16 Tell the jury who did you know he was when you walked up to
17 him.

18 A Marvin Porcher.

19 Q What name did he give you?

20 A Marvin Swinton.

21 Q Okay. And do you see the individual that you dealt
22 with that evening in the courtroom?

23 A Yes, ma'am.

24 Q Can you point him out to us?

25 A Yes, ma'am. Right there (indicating).

1 Q Okay. And just one follow-up. Hayne Street was not in
2 North Charleston's jurisdiction, but it is in Charleston
3 County's jurisdiction?

4 A Yes, ma'am.

5 Q Very good. I have no further questions. Thank you.

6 THE COURT: Any objection to the witness being excused,
7 from the State?

8 MS. SHEALY: Your Honor, we would ask that he remain
9 under subpoena.

10 THE COURT: Sir, you are excused subject to being
11 recalled. You may call your next witness.

12 MS. SHEALY: Detective Mark Evan.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: State your first name and spell your last
15 name.

16 MR. EVANS: Mark Evans, E-V-A-N-S.

17 THE COURT: You may proceed.

18 MS. SHEALY: Thank you, Your Honor.

19 THE COURT: You are welcome.

20 (MARK EVANS, having first been duly
21 sworn, testified as follows:)

22 DIRECT EXAMINATION BY MS. SHEALY OF MR. MARK EVANS:

23 Q It is actually Sergeant Evans now; is that correct?

24 A Yes.

25 Q Let me close this behind you. Tell the jury a little

1 bit about yourself. Where are you from?

2 A Wheeling, West Virginia.

3 Q Okay. And how long have you been in the Charleston
4 area?

5 A Roughly about 11 years.

6 Q Tell us about your educational and employment
7 background.

8 A Yes, ma'am. I have a bachelor's degree in criminal
9 justice. I have an associate's degree in business -- or
10 business management. And I have a -- been in law
11 enforcement for ten years now.

12 Q Okay. Were you at a different agency other than North
13 Charleston originally?

14 A I worked with the Hanahan Police Department and North
15 Charleston.

16 Q Okay. Focusing your attention then back to
17 November 4th of 2011 if you would please tell the jury what
18 capacity you were working and where.

19 A At that time I was assigned to the North Charleston
20 Police Department Detective Division. I was over the
21 Persons Crime Unit. I was assigned on the Persons Crime
22 Unit.

23 Q Okay. And how long had you been in that capacity? Do
24 you remember?

25 A I guesstimate maybe two years.

1 Q Okay. On the date of the fourth, the early morning
2 hours, did you receive a phone call from Resource Officer
3 Salgado?

4 A Yes, I did.

5 Q Okay. And based on your conversation with him did you
6 instruct him to do something?

7 A Based on the information that he provided, Detective
8 Jourdan asked me to have him bring up Mr. Porcher.

9 Q Okay. And did in fact Mr. Salgado bring Mr. Porcher to
10 the detective unit?

11 A He did.

12 Q When he arrives there could you tell the jury please
13 what you did.

14 A Upon Mr. Porcher's arrival he would have been brought
15 in and placed into an interview room and then I would have
16 spoke with Officer Salgado about obtaining whatever
17 information he had.

18 Q Okay. So you spoke with Salgado, and Mr. Porcher was
19 in an interview room?

20 A Yes.

21 Q Did Mr. Salgado in fact show you a laptop?

22 A He did.

23 Q And showing you what has been previously marked for ID
24 purposes State's 29, does this appear to be the laptop?

25 A That appears to be the laptop.

1 Q Okay. And did you in fact also see the charger?

2 A Yes.

3 Q Okay. Now at some point do you speak with Mr. Porcher?

4 A Later, yes.

5 Q Okay. So initially what -- tell the jury what you did
6 with the laptop.

7 A Initially when Officer Salgado brought the laptop I
8 opened up the laptop. I turned the power on. I observed --
9 I don't exactly recall what the background was, but I
10 believe it was some writing with pink and brown. At which
11 point I clicked on an icon and then observed that the --
12 there was a thing that said Nancy -- I believe it was
13 Nancy's resume. And I opened that up where I found a phone
14 number and contacted.

15 Q Okay. And so you off of that resume found the number?

16 A Yes.

17 Q Could you tell the jury what you said when you called
18 the number?

19 A I don't recall exactly what I said. But it was
20 basically I am a detective with North Charleston, I am
21 inquiring about your laptop, do you know where it is. And I
22 believe her response was it is at my residence.

23 Q Okay. Now when Mr. Porcher came in prior to your doing
24 that, were you made aware of the items that he had on him?

25 A Yes.

1 Q Okay. And so did you in fact see a cylinder with
2 jewelry?

3 A I believe Officer Salgado showed me that, yes.

4 Q Okay. And do you also recall some tools?

5 A I believe so. But I don't -- I can't --

6 Q Okay.

7 A -- recall exactly what they were.

8 Q You are not as fresh on the items?

9 A Yes.

10 Q Your attention was where?

11 A On the laptop computer.

12 Q Okay. And when talking to -- was it Nancy ---

13 A Yes.

14 Q --- Waldrop that you called?

15 A Wohlford I believe is her ---

16 Q Yes.

17 A --- last name. When you called her, she indicated what
18 about her laptop?

19 A That it was last seen at her residence.

20 Q Did you give her any other information at that point?

21 A No.

22 Q Okay. Did you instruct her to do something?

23 A I asked her to return to her residence and that
24 Charleston County deputy along with a North Charleston
25 detective would meet her there.

1 Q Did Detective Jourdan then leave to actually go and
2 meet ---

3 A Yes, ma'am.

4 Q --- Ms. Wohlford? Now what did you do after
5 establishing that? Did you speak with Mr. Porcher?

6 A After I established that the laptop did not belong to
7 Mr. ---

8 Q Yes.

9 A --- Porcher? Yes, ma'am.

10 Q Okay. And if you would, describe what an investigative
11 room looks like or an interview room looks like at North
12 Charleston.

13 A Our interview rooms are I guess I would say ten by ten.
14 There's a table sitting in the middle with two chairs on
15 each side. On one side the walls are white. At that time
16 the floors were kind of a linoleum tile. On one wall there
17 is a viewing window. And that is

18 Q Okay. Now when you were interviewing Mr. Porcher was
19 anyone else in the room with you?

20 A No.

21 Q What is one of the first things you do when you begin
22 to talk to a suspect?

23 A Obtain some biographical information and then do an
24 advisement of constitutional rights.

25 Q Okay. And did you in fact do that with Mr. Porcher?

1 A I did.

2 Q I'm showing you what has have been marked as State's
3 Exhibit 23. I ask you if you would describe to the jury
4 what that document is.

5 A This is the assigned North Charleston form. It is the
6 form that we use when we provide both witnesses, victims,
7 suspects, with their advise of constitutional rights.

8 Q Okay.

9 MS. SHEALY: Beg the court's indulgence just a
10 second.

11 (Pause.)

12 Q Okay. If you would please, on this document -- well,
13 first of all, go through if you would exactly how you read
14 Mr. Porcher his Miranda warnings that evening.

15 A At the top of the form I would have asked him what his
16 name was. To which he replied Marvin Porcher.

17 I would have made sure that I had the correct spelling.
18 I then asked date of birth. Which he provided his age which
19 he provided as 45, the grade he completed in school which is
20 the 10th grade, and whether he had a diploma or GED. And he
21 advised that he had a diploma.

22 Q When beginning to interview someone is it important for
23 you to establish whether or not you are able to understand
24 them and they appear to be able to understand you?

25 A Yes, very much so.

1 Q And in your dialogue with Mr. Porcher did he appear to
2 understand what you were saying to him?

3 A Yes, ma'am.

4 Q Did you have any difficulty in understanding what he
5 was saying?

6 A No, ma'am.

7 Q Okay. If you would continue with your process then.

8 A The next line following down it says I, and then I
9 wrote Marvin Porcher have been advised by Detective M. Evans
10 of the North Charleston Police Department that. And then it
11 proceeds through your advisement of constitutional rights.

12 And I read them as: I have the absolute right to
13 remain silent and do not have to answer any questions or
14 give a statement and this fact cannot be used against me.

15 He advised that he understood if I do answer any
16 questions or give a statement anything I say can and will be
17 used against me in a court of law. Again, he advised that
18 he understood.

19 I have the right to consult with a lawyer of my choice.
20 before I answer questions or give a statement and also have
21 him or her present while I am being questioned. Again, he
22 understood.

23 If I wish to talk to a lawyer or have him or her
24 present but I am unable to afford to hire a lawyer one will
25 be appointed to represent me free of charge. Again, he

1 understood.

2 If I decide to answer questions or give a statement
3 without having a lawyer present representing I have the
4 absolute right during this interview to stop answering
5 questions and to remain silent. Again, he understood.

6 I would have then provided him with a form. He would
7 have initialed beside each one. The following line says I
8 fully understand each of these rights explained to me.

9 He would have then signed that form, that line,
10 acknowledging that he understood each of the rights that I
11 explained to him previously.

12 Most of the time I would say just keep a hold of the
13 pen and I would proceed down to: Having these rights of
14 mine I wish to waive these rights and answer questions. No
15 threats, force or promise of any kind have been made to me
16 by anyone to cause me to waive these rights and/or answer
17 questions. And again, he would have signed that form and
18 then I would have taken the form back.

19 I placed my name on the signature where it says
20 witness, on two lines. And then I would have put the date
21 and the time as when I completed this form which was
22 zero-one-forty-five.

23 Q Okay. And if you will hand me that form back. I am
24 going to give you a copy to look at. It is going to show up
25 on this monitor as well.

1 So this is where you put the biographical information?

2 A Yes, ma'am.

3 Q And each of these lines that appear to have initials
4 reflect what?

5 A Those are Mr. Porcher's initials.

6 Q Okay. And whose signature is this (pointing)?

7 A Mr. Porcher's signature.

8 Q And whose signature is this?

9 A Mr. Porcher's signature.

10 Q Okay. Now when interviewing him, tell the jury whether
11 or not you used any type of recording device.

12 A I -- at the time our interview rooms were not equipped
13 with video and audio recording. We used a departmental
14 issued, handheld digital recorder.

15 Q And did you in fact use that in this case?

16 A It was activated.

17 Q Okay. Now after getting -- going over his rights with
18 him and his indicating he wanted to speak to you, could you
19 describe for the jury how that conversation went and what
20 Mr. Porcher said.

21 A I don't really recall exactly what Mr. Porcher said. I
22 recall that he had mentioned that he had purchased it from a
23 gentleman on Remount Road.

24 He didn't really divulge any information as to who he
25 purchased it from, exactly where he purchased it from, or

1 any other pertinent details.

2 Q Okay. Was he being cooperative and talkative when he
3 was being interviewed?

4 A We were conversating.

5 Q Okay. But as it came to details he didn't tell you the
6 name of the person?

7 A No.

8 Q He didn't give you a description of the person?

9 A No.

10 Q He didn't tell you the specific location?

11 A No.

12 Q Okay. Now when you finished interviewing him that
13 evening did you in fact at some point make notes of your
14 conversation with him?

15 A I would have, yes.

16 Q And do you have your notes with you?

17 A My case notes?

18 Q Yes.

19 A Yes, ma'am. I have a copy in my pocket.

20 Q Well, I can just show you in case you need to refer to
21 them. When would you have made these notes?

22 A I try to make them as soon as possible after the --
23 after the conclusion of whatever action was taken. At this
24 night I don't recall whether I made it that night or when I
25 came in the following day.

1 Q Okay. But it would have either been that same night or
2 the next day that you would have reported it?

3 A Actually I began these notes at 0306 a.m. on the
4 fourth.

5 Q Okay.

6 A So it would have been the same night.

7 Q So that was pretty contemporaneous with your having
8 spoken to him; you spoke to him and then you made your notes
9 a little bit later that morning; ---

10 A Yes, ma'am.

11 Q --- is that correct? And again, any details that Mr.
12 Porcher gave you about allegedly buying it off the street?

13 A Not that I recall.

14 Q Okay. In writing your notes did you put down the
15 detail that you thought was significant regarding what he
16 had said?

17 A Mr. Porcher denies having any involvement in the theft
18 of the property and states that he purchased the laptop from
19 a subject on Midland Park.

20 Q And no other details were given?

21 A No.

22 Q Now pursuant to our request did we ask that you provide
23 us with a copy of that recording?

24 A You did.

25 Q And could you in fact find the recording?

1 A Unfortunately not.

2 Q Describe if you would to the jury what is usually done
3 with the recording after it has been completed.

4 A Once we are finished with our interviews we take those
5 recordings. We go through our computer that is stationed at
6 our desk. We plug it into our computer. It is a USB plug.
7 We plug it in. We take that and download it from the
8 player -- or the recorder I should say, onto a CD.

9 That CD is usually then taken and placed into the case
10 file which is maintained by what would be the case agent or
11 the arresting officer in this case.

12 Q Okay. And despite efforts did you ask other people to
13 look for the recording for us as well?

14 A Yes, I went to our records division in reference to
15 obtaining the entire case file. And when I did such I was
16 advised that the case file had been missing.

17 Q Okay. Now as far as North Charleston was concerned,
18 the two charges that y'all had against him, the false
19 information and the possession of stolen property, had been
20 disposed of for months before we asked for it; is that
21 right?

22 A I could only assume, yes, ma'am.

23 Q And those again are municipal level charges?

24 A Yes.

25 Q And Detective Jourdan went to the trail- -- to the

1 mobile home because it was in a different jurisdiction?

2 A Yes, it was in Charleston County jurisdiction.

3 Q Now y'all have an evidence room at North Charleston; is
4 that correct?

5 A Correct.

6 Q And when someone -- when there are items from a crime
7 they are, if they are in the possession of a police officer,
8 lodged in evidence; is that correct?

9 A Yes, ma'am.

10 Q Okay. Now with this situation we also have Charleston
11 County getting involved; is that correct?

12 A Yes, ma'am.

13 Q So that evening you remembered the items of evidence
14 being the laptop, the jewelry, and the tools?

15 A Yes, ma'am.

16 Q Are you also aware of some receipts being found on Mr.
17 Porcher?

18 A No, ma'am. I believe those were found later at a later
19 date. I was only made aware of those yesterday.

20 Q Okay. Well, pursuant to my request did you in fact
21 pick up those receipts for us today?

22 A I did.

23 Q And tell the jury where you picked them up from?

24 A I signed them out of the North Charleston evidence
25 room.

1 Q And you brought them to the courtroom today?

2 A Directly here.

3 Q And I am showing you what has been previously marked as
4 State's Exhibit 30. If you could tell the jury whether or
5 not that is what you brought to court for us.

6 A That is exactly what I received from evidence and
7 brought here.

8 MS. SHEALY: Beg the court's indulgence just a
9 moment.

10 (Pause.)

11 MS. SHEALY: I have no further questions. Please
12 answer any that the defense may have.

13 THE COURT: You may proceed.

14 CROSS-EXAMINATION BY MR. SMITH OF MARK EVANS:

15 Q Good afternoon Sergeant Evans. How are you?

16 A Good. How are you, sir?

17 Q Good. Can you tell me at the time that this occurred
18 was there a specific area of crime that you dealt with?

19 A Yes, I was in the violent crimes.

20 Q Okay. And as part of that are property crimes
21 something that you investigate?

22 A When we are on call or when we are working, any crime
23 that occurs if a detective is needed if you are the one that
24 is there, you handle it. Yes, sir.

25 Q And so that would have been your reason for involvement

1 in this case; is that correct?

2 A Yes, sir.

3 Q Now when Mr. Porcher sat down with you do you remember
4 the time when you all began your interview?

5 A I have in my notes it was 0140.

6 Q Okay. And you spent approximately 35 minutes with him;
7 is that correct?

8 A That is when I said that the interview had stopped,
9 yes, sir.

10 Q So that would have been at the point where you stopped
11 recording, you weren't writing anything down at that point;
12 is that correct?

13 A I am not -- I am not writing anything down during the
14 interview or at 0215 when I walked out?

15 Q What I am trying to get at is you would have stopped
16 any type of recording either written or audibly recording
17 Mr. Porcher at 2:15; is that ---

18 A I would have, yeah.

19 Q Okay. As a result of your talk with Mr. Porcher were
20 there any other notes that you took other than what are
21 contained in this report?

22 A Not that I am aware of.

23 Q Now do you routinely interview people that have been
24 charged with a crime?

25 A Yes.

1 Q And as part of that, sometimes you let a person give a
2 narrative about what happened; is that correct?

3 A I do.

4 Q And sometimes you do some questions and answers; is
5 that correct?

6 A Often.

7 Q In this case you didn't do them, question and answer;
8 is that correct?

9 A I would assume that I would have done some question and
10 answers. But I obviously did not obtain any information
11 that I felt pertinent to put in my case notes.

12 Q So there was nothing that you felt was pertinent to the
13 case; is that correct?

14 A Exactly.

15 Q Or you would have recorded it in some form or fashion?

16 A I would have hoped so, yes, sir.

17 Q Did -- when Mr. Porcher told you -- I think the
18 solicitor asked you this question. When Mr. Porcher told
19 you about purchasing the laptop did you have any further
20 questions about the person that he purchased the laptop
21 from?

22 A I could only assume yes that I would.

23 Q But there was no information contained in your report?

24 A No information contained, which means I wasn't provided
25 a description. If I would have been provided that

1 description I would have noted it in my case notes and would
2 have furthered that -- passed that information on to the
3 Charleston County deputies.

4 Q And so it is fair to assume that you didn't -- you
5 didn't follow up in any way on what Mr. Porcher told you; is
6 that correct?

7 A I did not.

8 Q Now along with your time in violent crime have you ever
9 worked in the Property Crime Division?

10 A Never.

11 Q Okay. Are you familiar with what happens sometimes in
12 property crime cases with goods being sold on the street?

13 A Yes.

14 Q Okay. Would you say that that is a common occurrence?

15 A It -- yes.

16 Q And in some instances because it is maybe taken to the
17 pawn shop; is that correct?

18 A Often times obviously.

19 Q And so either of those ways can come up in a situation
20 where things are stolen?

21 A Correct.

22 MR. SMITH: Beg the court's indulgence.

23 THE COURT: Uh-huh.

24 MR. SMITH: No further questions.

25 THE COURT: Any redirect of the witness?

1 MS. WHITAKER: Just -- just briefly, Your Honor.

2 THE COURT: You may proceed.

3 REDIRECT EXAMINATION BY MS. SHEALY OF MARK EVANS:

4 Q Sergeant Evans, Mr. Smith asked you about there being
5 people on the street who go to buy items off of other
6 people; is that correct?

7 A Correct.

8 Q Certainly there are also people who go to certain areas
9 to sell things; is that correct?

10 A Correct.

11 Q And there are people who go to sell things they have
12 just stolen; is that correct?

13 A Correct.

14 MS. SHEALY: I have nothing further. Thank you.

15 THE COURT: Any objection to the witness being excused,
16 from the State?

17 MS. SHEALY: I would like for him to remain under
18 subpoena.

19 THE COURT: Sir, you are excused subject to being
20 recalled.

21 MR. EVANS: Thank you.

22 THE COURT: You are welcome. You may call your next
23 witness.

24 MS. SHEALY: Cathy Wohlford. Nancy. I'm sorry. Nancy
25 Wohlford.

1 (WHEREUPON, the witness was duly sworn.)

2 THE CLERK: State your full name and spell your last
3 name.

4 MS. WOHLFORD: Nancy Tina Marie Wohlford,
5 W-O-H-L-F-O-R-D.

6 THE COURT: You may proceed.

7 MS. SHEALY: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 (NANCY WOHLFORD, having first been
10 duly sworn, testified as follows:)

11 DIRECT EXAMINATION BY MS. SHEALY OF NANCY WOHLFORD:

12 Q Do you mind if I refer to you as Nancy?

13 A That's fine.

14 Q If you would tell the jury. How long have you been
15 living in Charleston?

16 A Well over ten years in the area.

17 Q And when you were a younger person you lived in
18 Charleston as well for a short time?

19 A When I was 14 I moved to Charleston.

20 Q Okay. So let us know about your educational
21 background. How far did you go in school?

22 A I dropped out in 9th grade, went back when I was 30 and
23 got my diploma.

24 Q Now, you know what, you are going to need to speak up
25 just a little bit for me. If you can just kind of maybe

1 turn that microphone a little bit toward you.

2 (Witness complies.)

3 Q There you go.

4 A I dropped out in the 9th grade, went back to school
5 when I was 30 and got my diploma.

6 Q And if you would, tell us -- tell us what you have been
7 doing work wise for the last several years.

8 A I was an EMT for eight years until I hurt my back, and
9 then I became a security officer. And that has been
10 probably five plus years now.

11 Q Okay. And when you were working as an EMT where were
12 you working?

13 A I was working for St. Paul's Fire Department. And I
14 was also working with Personal Care Ambulance Service and
15 American Heritage.

16 Q Okay.

17 A And MUSC.

18 Q And MUSC. And the injury to your back has led you to
19 what type of work?

20 A Being a security officer.

21 Q Now as a security officer do you have to hold a certain
22 license?

23 A Yes, ma'am, you have to go through training through
24 SLED.

25 Q And do you in fact have that license currently?

1 A Yes, ma'am, I do.

2 Q And how long have you had a license?

3 A Since '08; '07, '08.

4 Q So now when you are working security, if you would, do
5 you work one job or do you work ---

6 A I work two different security jobs and a cleaning
7 service.

8 Q And a cleaning service. And when you are working a
9 security job are you working for other businesses or for
10 residences?

11 A I am working for two companies. One is with residence.
12 Another one is with business.

13 Q Okay. Now focusing your attention back to November of
14 2011 would you tell the jury where you were employed at that
15 time.

16 A I was employed with ASG Security going into Signal AVA
17 Security. I was leaving one getting to the other.

18 Q Say that again.

19 A I was leaving one to ---

20 Q Going to ---

21 A --- with notice going into another.

22 Q And where were you living at that time?

23 A At [REDACTED].

24 Q And when you say Lot 82 is that a mobile home park?

25 A Yes, ma'am.

1 Q Okay. I am showing you what has been marked as State's
2 Exhibit 5. Can you see that on your monitor?

3 A Uh-huh.

4 Q Is that a photograph of your mobile home at the time?

5 A Yes, ma'am.

6 Q Whose vehicle is that in that picture?

7 A Katherine Jackson.

8 Q And Katherine Jackson, who is that?

9 A She is a fellow security officer, a very good friend of
10 mine.

11 Q Okay. She came over that evening?

12 A Yes, I called her.

13 Q Who was your roommate at the time?

14 A Susan Rutledge.

15 Q Can you see Susan in that picture?

16 A Yes, she is sitting in the -- on the step there in the
17 white outfit.

18 Q Can you point to where she is.

19 A (Witness complies.)

20 Q Okay. And how long had you and Susan lived together
21 before this happened?

22 A About four to six months, four to five months.

23 Q Tell us a little bit about your mobile home how many
24 bedrooms were in there.

25 A It is actually a three-bedroom mobile home. But I

- 1 converted one of the bedrooms into a wash -- washer and
2 dryer area. So it became a two bedroom; one bath.
- 3 Q Okay. And did Susan have any health concerns?
- 4 A Yes, ma'am, she had COPD, anxiety, depression, bipolar.
- 5 Q So was she able to work?
- 6 A No, ma'am.
- 7 Q And did she have a boyfriend at that time?
- 8 A Yes, ma'am.
- 9 Q Okay. And what was his name?
- 10 A John Nye.
- 11 Q Now looking at that photograph could you please tell
12 us -- see the other mobile home depicted in the photograph
13 behind you; can you see it?
- 14 A Oh, yeah, that is my shed.
- 15 Q That is who?
- 16 A That is a shed.
- 17 Q That's -- over here (pointing)?
- 18 A Oh, over there ---
- 19 Q Yes.
- 20 A --- on that side?
- 21 Q Yes.
- 22 A Okay. Yeah, that is the old man.
- 23 Q And then who lived over on the other side of this
24 mobile home?
- 25 A Marvin Porcher and Cassie Callier at the time.

1 Q Now tell the jury who did you realize lived there
2 first, Marvin Porcher or Cassie?

3 A Well, I know Bill owned it. And Marvin Porcher was
4 living in it.

5 Q Okay. And Bill is a gentleman that owned a couple of
6 homes in that ---

7 A Yes.

8 Q --- mobile home park?

9 A Well, that one I know for sure. I can't say for
10 anything more.

11 Q And as far as you knew was anyone else ever living in
12 that trailer with them, with Marvin Porcher and with Cassie?

13 A As far as I know, nobody. I'm

14 Q That's fine.

15 A Now did Bill, the gentleman you said that owned the
16 trailer, give you some assistance in finding someone to do
17 some handy men -- handyman work?

18 A Marvin Porcher.

19 Q Okay. And you learned about him through Bill?

20 A Through Bill.

21 Q And what type of work did you actually need done on the
22 trailer?

23 A I needed some facet fascia, some stuff underneath the
24 awning fixed.

25 Q Okay.

1 A And I needed a handrail put up and some lights put up.

2 Q And why was the handrail necessary?

3 A Because Susan was a little unsteady on her feet and she
4 needed that extra help to get up and down the stairs.

5 Q Okay. Do you recall how long before this incident
6 occurred that you had met Mr. Porcher?

7 A I want to say it was probably a good month, maybe six
8 weeks, if that long.

9 Q Okay. And when he came over to do the work, the work
10 along the roofline or the eaves and the handrail, did he
11 come into your trailer?

12 A No.

13 Q Okay. Now did you say he did some work on some lights
14 as well?

15 A I needed him to. It never got done.

16 Q That never happened?

17 A That never got done.

18 Q So when it came to the handrail and the work along the
19 top of the mobile home did you in fact pay Mr. Porcher?

20 A Yes, I did.

21 Q At the time that this occurred did you still owe him
22 some money?

23 A I felt I owed him money for the lights that did not get
24 put up.

25 Q Okay, so ---

1 A So there is nothing ---

2 Q You didn't pay him for the lights, but he didn't get a
3 chance to put the lights up?

4 A No, he never got the chance. The opportunity wasn't
5 there. It was all bundled into one price, and he never got
6 to the lights.

7 Q Now you learned at some point that Cassie is his
8 girlfriend?

9 A Yeah. Porcher had a roommate at one point named Tina
10 that was Bill's girlfriend. And she was in the hospital.
11 And then I found out about Cassie being over there.

12 Q Okay. And did you in fact know Cassie already?

13 A Yes, ma'am, I did.

14 Q How did you know her?

15 A She was a fellow security officer. She worked with me
16 in a couple of different companies that we both were
17 employed at.

18 Q Okay. And was she still employed at the companies at
19 the time that this occurred?

20 A No, ma'am.

21 Q Now were you aware of whether or not Mr. Porcher or
22 Cassie owned a vehicle?

23 A I don't think they did.

24 Q Describe your relationship if you would with Cassie.
25 Were y'all friends; did y'all socialize?

1 A We socialized a little bit. But mainly professional.

2 Q Okay. And when you said socialize a little bit, had
3 y'all gone out together ---

4 A Yes, ma'am.

5 Q --- in the evening before ---

6 A Yes, ma'am.

7 Q --- before this night?

8 A Yes, ma'am.

9 Q Now had you ever gone into their mobile home while they
10 were living in it, socially?

11 A No.

12 Q Did Marvin Porcher ever come into your mobile home
13 socially prior to November 2nd, 2011?

14 A No.

15 Q Now on November 2nd tell the jury what happened that
16 evening.

17 A Cassie, Marvin, and my friend Kenny came over for
18 Marvin to put a tattoo on me. I cooked dinner and we ate
19 dinner. Chit chatted a little bit. And he got busy on the
20 tattoo.

21 I want to say halfway through -- about halfway through
22 I needed a break. So he wanted to go on Facebook. So I
23 handed him my computer for him to go ahead and go on
24 Facebook because I needed a break.

25 Q Okay. Now the image that you had tattooed was a flame?

1 A It was flames.

2 Q Flames. And you told us that you had previously worked
3 where?

4 A As a firefighter.

5 Q Okay. On that occasion you said that while you were
6 getting your tattoo who all was in the mobile home?

7 A It was me, Kenny, Cassie and Marvin.

8 Q Okay. And when you fixed dinner who all ate with you?

9 A The same three; Kenny, Cassie and Marvin.

10 Q Okay. At the end of that evening was the tattoo
11 actually finished?

12 A No, ma'am.

13 Q Okay. Has that tattoo ever become finished?

14 A No, ma'am.

15 Q Okay. Now focusing then on the next day, that being
16 November 3rd, did you work that day?

17 A No, ma'am.

18 Q Did anyone suggest or did you have the idea that maybe
19 you and Cassie should go out that night; whose idea was
20 that?

21 A I know at one point we went to where Marvin Porcher
22 worked because I was going to give him last payments and you
23 know line up payment on the -- one of the payments of \$20 on
24 the house, the work that I was having him do.

25 Q Well, let me slow you down a little bit. Do you mean

1 earlier during the day ---

2 A During ---

3 Q --- of November 3rd who went to where he was?

4 A Cassie and I did.

5 Q Okay. And who drove?

6 A I did.

7 Q And the purpose of going there was what?

8 A To give him money.

9 Q Okay. And did you in fact give him money?

10 A Yes, I did.

11 Q And what did he do with that money?

12 A He handed it to Cassie.

13 Q Okay. Did you and Cassie go anywhere after he gave her
14 the money?

15 A We went to some -- one of the little beauty stores over
16 there off of Remount ---

17 Q Like a supply store?

18 A Kind of like a supply store. But they also have boots
19 and, you know, weave and all that.

20 Q Okay. Did you and Cassie make plans while y'all were
21 out at that time to go out socializing later?

22 A Marvin Porcher asked me if Cassie and I were going to
23 go out. Because we had started a pattern of every Thursday
24 night we went out.

25 Q Okay. And at that time did you commit to going out?

1 A I told them no I didn't feel like it at that time, that
2 I was kind of sore from the night before.

3 Q Okay. And do you at some point change your mind?

4 A Yes, I do.

5 Q Tell the jury if you would what happened then. When
6 you changed your mind what happened?

7 A Actually Cassie had come over earlier asking me about
8 seven o'clock if we were going to go out that night. I told
9 her I didn't know because I wasn't -- still hurting, kind of
10 tired.

11 About nine o'clock I went over and knocked on her door
12 and I said do you still want to go out. She said yes. So
13 at 9:30 we left the house.

14 Q Okay. And when you went over there did you know
15 whether or not Mr. Porcher was still there?

16 A I didn't see him anywhere.

17 Q Okay. Did you go into the house?

18 A No, I did not.

19 Q So you are not sure whether he was in the house or out
20 of the house?

21 A Right.

22 Q Where did you and Cassie in fact go?

23 A Cassie and I went to Rivals and then we went to
24 Denny's.

25 Q To Rivals and then to Denny's?

1 A Uh-huh.

2 Q When you were leaving Denny's did anything significant
3 happened?

4 A I received a phone call.

5 Q Okay. And tell the jury if you would please about the
6 phone call.

7 A I received a phone call from North Charleston Police
8 Department stating -- asking me if I had a burg- -- if I had
9 reported a burglary to my home. I stated no I have not,
10 that they must have the wrong number. And then they asked
11 me if I had an Acer laptop.

12 Q Okay. And did you in fact have an Acer laptop?

13 A Yes, ma'am, I did.

14 Q I'm showing you what has been marked as State's ID 29.
15 Is this in fact your Acer laptop?

16 A It is.

17 Q And is this in fact your charger?

18 A Yes, ma'am, it is.

19 Q Okay. When you left your home earlier that evening to
20 go out where was your Acer laptop?

21 A It was on my bed on a stack of paper.

22 Q When the officer had that conversation with you what
23 did you then do?

24 A Told him that I would head to -- I was heading home --
25 I was on my way home. I told him I was headed to the house.

1 He stated for me to sit tight outside, to not go in, don't
2 touch anything until the other officers arrived.

3 Q Okay. And did you in fact head to your house?

4 A Yes, I did.

5 Q Was anyone present when you got there?

6 A No, not -- just me and Cassie at that point. A couple
7 minutes later North Charleston showed up.

8 Q Where were you when they showed up?

9 A I was leaning on the back of my car.

10 Q And let's go back for a moment. When Mr. Porcher was
11 in your home doing the tattoo did he go in any area other
12 than where you were having your tattoo put on?

13 A I really don't remember him going anywhere. But he may
14 have went to the bathroom. But I seriously doubt he went
15 anywhere.

16 Q Okay. And showing you what has been marked as State's
17 Exhibit 15. Is -- does this reflect the area where you were
18 when you were having the tattoo put on?

19 A I was on the beige -- tan couch.

20 Q On the tan couch. Okay. Now when the police got there
21 who went into the -- into your home first; did you or did
22 they?

23 A No, it was a female detec- -- I'm sorry, I don't
24 remember her name. North Charleston and a county sheriff.

25 Q Now when you were with Cassie that evening did she have

1 a cell phone?

2 A No, ma'am.

3 Q And so you and she are waiting outside and Detective
4 Jourdan and the county officer arrives; is that correct?

5 A Correct.

6 Q What do they then do?

7 A They go in the house and do whatever they do inside. I
8 didn't know -- I don't even know what they did inside
9 really. They came back out and I asked -- the first
10 question I asked them about my dog.

11 Q The first question you asked was what?

12 A About my dog.

13 Q Okay. And that is the dog that you have lost since
14 this has happened?

15 A Uh-huh.

16 Q Okay. When you -- why were you concerned about your
17 dog?

18 A Well, she doesn't bark. She was elderly.

19 Q And so when they opened the trailer door you were
20 interested in what?

21 A My dog.

22 Q Did in fact you at some point go through the -- your
23 home with the detective and the officer?

24 A Yeah, the female detective took me in. I saw my dog on
25 the couch. I grabbed her up, and we walked around.

1 Q Okay. At this point had they mentioned to you at all
2 about who they found your laptop on?

3 A No.

4 Q So neither you nor Cassie knew at that point who they
5 found the laptop on?

6 A I just kept asking Cassie, you know, who would do
7 something like this.

8 Q When you were walking through your house with the
9 officers could you tell the jury what you noticed that
10 appeared to have been missing.

11 A I noticed that Susan's TV was missing and my laptop was
12 missing and some jewelry boxes were missing.

13 Q Okay. Now in taking it kind of room by room and
14 showing you State's Exhibit 16 could you tell us whose room
15 that was.

16 A That was Susan's room.

17 Q Okay. And is -- what piece of furniture -- let me
18 remove those markings real quick.

19 What piece of furniture are we looking at?

20 A That is her dresser.

21 Q And does it appear in that photograph like it appeared
22 prior to your going out that night?

23 A No, ma'am.

24 Q What was different?

25 A The black box that is over there has been moved when it

1 was facing the same way the handles on the dresser are. And
2 the TV is missing.

3 Q Okay. And what type of television was it?

4 A It was a Dysney (ph)?

5 Q Well, that's okay. How large of a television was it?

6 A It is like a 22 to 24-inch flat screen.

7 Q And that was actually Susan's television?

8 A That was Susan's television.

9 Q Now help me with the bedroom. I'm showing you
10 State's 17. Is -- whose bedroom is that?

11 A That's mine.

12 Q And where had you left your laptop?

13 A Right here (pointing).

14 Q What is that that we are looking at?

15 A That is a pile of printer paper.

16 Q Okay. So your laptop would have been there when you
17 left for the evening?

18 A Uh-huh.

19 Q Showing you State's Exhibit 18. Could you tell us what
20 is that in the brown chair, right here (pointing)?

21 A It is one of my jewelry boxes.

22 Q And was that jewelry box out like that when you left?

23 A No, ma'am.

24 Q If you would, please, tell -- and looking at 19 we
25 might get a little bit better picture of it. Okay, we will

1 just stick with that one. Did you have very valuable
2 jewelry?

3 A Not in there.

4 Q Okay. And was -- did you notice whether or not any
5 jewelry had been taken?

6 A Yes, some pearls that my grandmother had given to pass
7 down to the family.

8 Q Did those have monetary value or was it more
9 sentimental value?

10 A Probably at the time she purchased it it wasn't too
11 much. But in today's economy probably a little bit more.
12 But more sentimental than anything else. You can't put
13 memories on -- you know, money on anybody.

14 Q Do what? I'm sorry.

15 A It is more memories than anything else.

16 Q Than anything. Okay. Showing you State's Exhibit --
17 I'm sorry. Hold on just a second.

18 MS. WHITAKER: Beg the court's indulgence.

19 THE COURT: Uh-huh.

20 BY MS. WHITAKER:

21 Q Showing you State's Exhibit 24. I am going to put it
22 up on this monitor if possibly. Could you tell the jury
23 what items this photographs depicts.

24 A It has got the necklace from my grandmother and some
25 costume jewelry and a pendant I bought for my daughter on

1 her third birthday.

2 Q Okay. Where was that jewelry when you left your home
3 that evening?

4 A In my jewelry boxes in my closet.

5 Q Not the jewelry box we saw on the chair?

6 A I had three.

7 Q Okay. And which of the two necklaces is the necklace
8 from your grandmother?

9 A (Indicating on screen.)

10 Q Now did you ever give Marvin Porcher at any time
11 permission to go into your room?

12 A Only during the tattoo.

13 Q And prior to that it was just for the work outside?

14 A Right.

15 Q He did not have your permission to go back into your
16 home?

17 A No.

18 Q Did you ever agree to give him the computer for any
19 reason?

20 A No.

21 Q Let's talk about your computer for a second. When your
22 screen comes up did you have like a design on the
23 background?

24 A Yes, I had it is like I will say four little blocks
25 across, three down. And each one said the same thing.

- 1 Q Each one says the same thing?
- 2 A Uh-huh.
- 3 Q And would you see that when you opened your computer?
- 4 A Yes.
- 5 Q Okay. So it was distinctive?
- 6 A Yes.
- 7 Q Now describing the outside of your trailer how many
- 8 different entrances are there to the out -- to the inside of
- 9 your home?
- 10 A Two.
- 11 Q Like how many doors are there?
- 12 A Two.
- 13 Q And would you typically use the one that was where
- 14 Susan had been sitting in that photograph?
- 15 A That is one I would be using, yes.
- 16 Q Okay. So showing you State's Exhibit -- let's go back
- 17 to five if we could. Show us where the front door is in
- 18 that picture.
- 19 A Right where the light is.
- 20 Q Okay. Whereas the back door, showing you State's
- 21 Exhibit 6, does that reflect the area where the back door
- 22 is?
- 23 A Right, where that porch is in this -- the fenced area
- 24 there.
- 25 Q Showing you State's Exhibit 7 is that a closer up

1 picture in daylight?

2 A Yeah.

3 Q Okay. So that is the back door?

4 A Yes.

5 Q Did you use that door frequently?

6 A No.

7 Q How did you lock it?

8 A It had a handle and then I had a hasp at the bottom.

9 Q Okay. And in general was that door left unlocked or
10 locked?

11 A Locked.

12 Q On the night that you went out with Cassie did you
13 check to see whether both of your doors were locked?

14 A Yes.

15 Q And were they both locked?

16 A Well, the back door was locked. As I exited the front
17 door I did the deadbolt and made sure it was locked.

18 Q Showing you State's Exhibit 10, this being a closer up
19 picture of that door, was it in that condition when you left
20 that night?

21 A No, ma'am.

22 Q Showing you State's Exhibit 11, a closer version, had
23 your door been damaged like that before you left that night?

24 A No, ma'am.

25 Q State's Exhibit 12, a closer version, had it suffered

1 that damage before that evening?

2 A No, ma'am.

3 Q And State's Exhibit 13?

4 A Nope.

5 Q Okay. When did the police mention anything to you at
6 all about Marvin Porche?

7 A It was a female detective, North Charleston.

8 Q Uh-huh.

9 A She asked me if I knew anybody by the name of Marvin.
10 I told her no. And when she gave up the last name saying
11 Marvin Porcher -- I didn't even know Marvin's last name. I
12 didn't really even know Marvin's first name too well to call
13 him by name out in the street.

14 Q Tell the jury how you reacted when they told you he had
15 had your laptop.

16 A I was very very surprised. I didn't know what to say.
17 I was lost for words. Kay -- Cassie's facial reaction said
18 the same thing. We were both just like -- looked at each
19 other and just could not believe it.

20 Q Does Cassie still live over there as far as you know?

21 A Not to my knowledge.

22 Q Had she moved out before -- you in fact moved out of
23 that area as well, right?

24 A Yes, I have moved out of that area.

25 Q And had Cassie moved out of there prior to your moving

1 out?

2 A I think she took her suitcase the next day. She
3 wanted -- she came over to use my phone to get a hold of her
4 cousin who was going to Trident Tech to go back home to her
5 mom's house.

6 Q So she left the next day?

7 A She left the next day.

8 Q You learned then that the police had both your computer
9 and your jewelry?

10 A Uh-huh.

11 Q Did you in fact receive those items back from the
12 Charleston County Sheriff's Department?

13 A Yes, it was from Charleston County.

14 Q Okay. And in the photograph that we showed you,
15 State's 24 of your jewelry items, the envelope that is
16 depicted in that photograph - do you see the yellow
17 envelope?

18 A Uh-huh.

19 Q Is that the envelope that the Sheriff's Department gave
20 you your jewelry back in?

21 A The jewelry was actually in a plastic evidence bag up
22 in the corner.

23 Q Okay.

24 A Inside that yellow bag.

25 Q Inside the yellow bag?

1 A Yes, ma'am.

2 Q Okay. Very good.

3 MS. SHEALY: Beg the court's indulgence just a
4 moment.

5 THE COURT: Yes, ma'am.

6 MS. SHEALY: I have no further questions. Please
7 answer any the defense may have for you.

8 THE COURT: Ladies and gentlemen, we are going to take
9 advantage of this break in testimony to take our lunch
10 recess. During the break please do not discuss the case in
11 any manner whatsoever. Please leave your notepads in your
12 seats.

13 When you return to the courthouse, please return
14 directly to your jury room. The bailiffs will show you how
15 to do that.

16 Please don't have any contact with anyone in or about
17 the courthouse. Upon your return we would not want an
18 innocent conversation misinterpreted.

19 Have a good lunch. We will resume these proceedings at
20 2:15. If you would go with the bailiff, please.

21 (WHEREUPON, jury exits courtroom at 1:10 p.m.)

22 THE COURT: Anything from the State before we adjourn
23 for lunch?

24 MS. WHITAKER: No, Your Honor.

25 THE COURT: From the defense?

1 MR. SMITH: No, Your Honor.

2 THE COURT: Ma'am, you may step down. But during the
3 lunch break please do not -- please do not discuss your
4 testimony with anyone. Okay. And we will resume at 2:15.

5 (WHEREUPON, lunch break was had 1:11 p.m.)

6 (WHEREUPON, resumed 2:39 p.m.)

7 THE COURT: If the witness would retake the stand,
8 please. I will remind you you are still under oath.

9 MS. SHEALY: Your Honor?

10 THE COURT: Yes.

11 MS. SHEALY: I asked Mr. Smith if he had any
12 objection to this. I actually have like two other questions
13 I need to ask of her. And he has no objection if that is
14 okay.

15 THE COURT: That is fine.

16 (Awaiting jury.)

17 THE COURT: How many other witnesses does the State
18 have other than Ms. Wohlford?

19 MS. WHITAKER: Your Honor, we have three. We have two
20 other officers and a representative from the Clerk's Office.

21 THE COURT: That being Mr. Baldwin?

22 MS. WHITAKER: Mr. Baldwin and Ms. Kjellman, crime
23 scene analyst, and then Sarah Lippe in the Clerk's Office.

24 THE COURT: Do ya'll want to stipulate to the two
25 burglaries or do y'all want them to bring in the clerk?

1 MR. SMITH: I prefer that they bring in the clerk.

2 (WHEREUPON, jury enters courtroom 2:41 p.m.)

3 THE CLERK: All jurors are present, Your Honor.

4 THE COURT: Thank you, ladies and gentlemen. I hope
5 that you all had a pleasant lunch recess. We appreciate
6 your patience.

7 We worked until 1:30 and so I needed to give the
8 attorneys additional time to have lunch. So we had a class
9 that was present and they had a lot more questions than I
10 anticipated. And I should have followed my first gut as
11 they say or my first mind. Because I kind of -- I figured
12 it might take a little longer than I anticipated.

13 So we appreciate your patience and we don't take your
14 time for granted. We are now going to resume questioning of
15 the witness. You may proceed. The State may proceed.

16 MS. SHEALY: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 CONTINUED DIRECT EXAMINATION BY MS. SHEALY OF NANCY
19 WOHLFORD:

20 Q I just have a couple more questions for you. Tell us
21 the name of your roommate again.

22 A Susan Rutledge.

23 Q Okay. And you had indicated to us that at the time
24 that this occurred she was still your roommate; is that
25 correct?

1 A Yes, ma'am.

2 Q Was she present the night that you had your tattoo
3 done?

4 A No, ma'am.

5 Q And was she at your home before you left to go out with
6 Cassie the evening in question?

7 A No, ma'am.

8 Q Was she at your residence when you arrived back to meet
9 the officers after this incident?

10 A No, ma'am.

11 Q Could you tell the jury where she was staying?

12 A She was at her boyfriend's house.

13 Q Okay. And her boyfriend was?

14 A John Nye.

15 Q And would she spend the night with him on several
16 nights?

17 A Pretty much, yeah.

18 Q Okay. Did you in fact go and get her the evening in
19 question after you went and met the officers at your mobile
20 home?

21 A Yes, ma'am, I couldn't reach her by phone or John by
22 phone.

23 Q And so what did you do?

24 A I drove over there after I asked Officer Burke I asked
25 him do you want me to go get her. And he said yes. So I

1 went and got her and brought her back in my car.

2 Q And you had shown us earlier where she was standing
3 outside the night in question?

4 A Right.

5 Q Okay. Very good. I have no further questions. Thank
6 you.

7 THE COURT: Any cross-examination of the witness?

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: You may proceed.

10 CROSS-EXAMINATION BY MR. SMITH OF MS. WOHLFORD:

11 Q Good afternoon, Ms. Wohlford.

12 A Good afternoon.

13 Q I want to talk to you briefly about some of the things
14 that were missing from your home, okay?

15 A Uh-huh.

16 Q I think you told us earlier that there was a laptop
17 that was missing; is that correct?

18 A Yes, sir.

19 Q There was also a television, a 22- or a 24-inch flat
20 screen television?

21 A Yes, sir.

22 Q In addition to that I think you mentioned that you had
23 three jewelry boxes; is that correct?

24 A Yes, sir.

25 Q And two of those jewelry boxes were missing?

1 A Yes, sir.

2 Q And in addition to the things that you -- were returned
3 there was jewelry in those other boxes; is that correct?

4 A Yes, sir.

5 Q And those items you were never able to get back?

6 A No, sir.

7 Q Was there more jewelry in the other two jewelry boxes,
8 or was it about the same?

9 A About the same.

10 Q And at some point did you give any kind of an estimate
11 to the deputies about what the jewelry was worth?

12 A I what to say I said right around 150, \$250; somewhere
13 in that area.

14 Q And you felt like you got maybe about \$50 back, \$50
15 worth of jewelry back?

16 A About that.

17 Q But the jewelry boxes that were taken you never
18 recovered those; ---

19 A No.

20 Q --- is that correct? Were there any cell phones that
21 were taken?

22 A I don't remember.

23 Q Okay. Now I think initially you had talked about the
24 location of where the laptop was and you said it was in the,
25 bedroom?

1 A Yes.

2 Q But I think at first you reported maybe it was in the
3 living room?

4 A No.

5 Q So it was always in the bedroom?

6 A Uh-huh.

7 Q Now I want to talk to you for just a minute about
8 Marvin Porcher and how you knew him, okay. You knew him
9 initially through a fellow named Bill; is that ---

10 A Yes, sir.

11 Q --- is that correct? And Bill had a girlfriend named
12 Tina; ---

13 A Yes, sir.

14 Q --- is that right? And Tina -- did Tina stay with
15 Marvin and Cassie for a period of time?

16 A I'm not sure about Cassie.

17 Q Okay.

18 A But I know that when Tina was there at one point,
19 Marvin was there. I don't know how long, the duration or
20 any of that.

21 Q And was Tina in some kind of bad health that you were
22 aware of?

23 A I never saw Tina, personally. I was just told she was
24 there.

25 Q Okay. Now you had said earlier that Marvin did some

- 1 work on your roof; is that correct?
- 2 A Not my roof. The eves where the roof is. I don't
- 3 remember the name of the -- I want to say facet, but I know
- 4 that ain't right.
- 5 Q Okay.
- 6 A Flashing.
- 7 Q Flashing. Okay. And then he also did some work on a
- 8 banister out front?
- 9 A Yes, he installed a banister for Susan.
- 10 Q And at some point wasn't there a carport that he tore
- 11 down for you?
- 12 A Oh, yeah. Yeah. I forgot about that.
- 13 Q And so that was some work he had done for you?
- 14 A There was part of a carport, yeah.
- 15 Q Part of a carport?
- 16 A Part of a carport. Because I kept the awning over
- 17 the -- over the steps.
- 18 Q So he removed that completely and took it out; is ---
- 19 A Yeah.
- 20 Q --- that correct?
- 21 A Yeah.
- 22 Q And you all have worked out an arrangement, kind of a
- 23 payment plan for this work that he had done; ---
- 24 A Correct.
- 25 Q --- is that right?

1 A Correct.

2 Q And so when you went up with Cassie that day to see
3 him, that was part of that payment plan to pay him some
4 money?

5 A Yes, sir.

6 Q And there was still a little bit of money owed at that
7 point?

8 A I thought there was going to be, because he was
9 supposed to put in some lighting for me and he never did
10 that. So I don't feel I owe that money.

11 Q Okay. But at the point that you went, you had a little
12 bit more to pay him for work he had already done?

13 A Not for what he had already done. He still had to put
14 the lighting in.

15 Q He still had to put the lighting in, okay. Now when
16 Marvin and Cassie came over to the house the night before
17 this burglary happened how long were they there?

18 A Well, the tattoo took about three hours. So I would
19 probably say three and a half, four hours.

20 Q Okay. And there was kind of some down time. You said
21 at one point you all sat down and had dinner; is that
22 correct?

23 A Yes, we all sat in the living room.

24 Q Okay. Was that prior to the having the tattoo done or
25 was that afterwards?

1 A It was prior to the tattoo being done.

2 Q And there wasn't any kind of charge for doing the
3 tattoo work or anything like that?

4 A No, no, no.

5 Q Okay. Now you had mentioned when you testified earlier
6 about Thursday nights being a night that you traditionally
7 had gone out; is that ---

8 A If we went out we would go out on Thursday nights.

9 Q Okay. And you had -- I think you had mentioned that
10 you had been out with Cassie socially before; is that
11 correct?

12 A Yes, sir.

13 Q And did you do that -- was that a Thursday night thing
14 when you would go out with her?

15 A If we went out we would go out on Thursday nights.
16 Because that was my night if I was -- if I was off work. I
17 would typically be off on Thursdays.

18 Q One thing that the police asked you about and I wanted
19 to check with you about, your house had a video system in
20 it; is that right, a monitoring system?

21 A I had security cameras up, yes.

22 Q Okay. And people -- where were -- where were those
23 monitors?

24 A The cameras or the monitors?

25 Q The cameras.

1 A That's two different entities.

2 Q Yeah, the cameras. I'm sorry.

3 A The cameras I had one in one -- the front window. I
4 can point it out if you bring me the picture of it. It
5 would be the one where Susan is at.

6 MR. SMITH: May I approach?

7 THE COURT: Yes, sir, you may.

8 Q I'm going to have them put up what has been marked as
9 State's Exhibit 5.

10 A In the corner here (pointing) I had a security camera
11 pointing toward the front door. There's a window over here
12 by the shed (pointing). I had a camera there pointing to
13 the front door. There is another window behind the shed. I
14 had it pointing out this way (pointing). And the house.

15 Q Okay. And the video system that you are talking about
16 was not working on this particular night; is that correct?

17 A No, my tower had crashed.

18 Q Okay. And I believe that you told the police that you
19 didn't tell anybody that the video system was not working
20 until you told the police?

21 A Exactly. So I had power going to the cameras so the
22 light was still on as if they were working, but they weren't
23 recording.

24 Q Okay. So the only person you told about that was the
25 police; is that ---

1 A Right.

2 Q Is that correct?

3 MR. SMITH: Beg the court's indulgence.

4 THE COURT: Uh-huh.

5 Q Ms. Wohlford, just a couple of other quick questions.

6 Can you tell me again, what was the locking mechanism on the
7 back door?

8 A There was like a hasp type lock at the bottom and a
9 door lock -- a door handle lock.

10 Q Okay. And on the front door, that was where the
11 deadbolt was?

12 A Yes, sir.

13 Q Okay. And when people come to your house how do they
14 normally come in?

15 A Through the front door ---

16 Q Through ---

17 A --- regularly.

18 Q Through the front door?

19 A Uh-huh.

20 MR. SMITH: Thank you, Your Honor. No further
21 questions.

22 THE COURT: Any redirect of the witness?

23 MS. SHEALY: I beg the court's indulgence just a
24 moment.

25 THE COURT: Uh-huh.

1 REDIRECT EXAMINATION BY MS. SHEALY OF MS. WOHLFORD:

2 Q Let me make sure I understand your testimony regarding
3 the non-activated cameras. Were they pointed towards the
4 outside?

5 A Yes, ma'am.

6 Q Okay. And you indicated that on that side of the
7 trailer there were two pointing out from on the outside; is
8 that right?

9 A Two pointing toward the front door. And actually this
10 camera right here (pointing) actually come out this way more
11 toward where my car was at -- would be normally parked.

12 Q Okay.

13 A Because that is my driveway right here (pointing).

14 Q And that is where your cameras were?

15 A That is where that camera was. They are all on the
16 inside pointing out the window.

17 Q Okay. And is it -- are they all pointed out of that
18 window?

19 A Then I got -- I had a bay-style window right here
20 (pointing), and that one went directly toward the shed and
21 to the front door.

22 Q And so none of those cameras were working?

23 A None of them were.

24 Q But those were the cameras that were obvious from the
25 outside?

1 A Yes, ma'am.

2 Q Okay. I have nothing further. Thank you.

3 THE COURT: Any objection to the witness being excused,
4 from the State?

5 MS. SHEALY: No objection, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Ma'am, you are excused. You may step down.
9 You may call your next witness.

10 MS. SHEALY: Your Honor, at this time I would like to
11 read the stipulation into the record.

12 THE COURT: You may proceed.

13 (STIPULATION:)

14 MS. SHEALY: This is State's Exhibit Number 22. The
15 attorneys for the State and the defense agree and stipulate
16 to the following:

17 That on November 4th, 2011, while at North Charleston
18 Police Department the following items that were taken off
19 the person of Marvin Porcher were maintained in the evidence
20 locker: a razor knife, Allen wrench, wrench, and zip tie,
21 an Acer laptop serial -- laptop with the serial number
22 LXATSOY03485011E2220, a tube containing miscellaneous
23 earrings and two white in color pearl like necklaces and
24 receipts.

25 The attorneys for the State and the defense further

1 agree that the laptop and the jewelry were transferred to
2 the County evidence compound on December 5th, 2011, by
3 Franklin Burke; the razor knife, the wrenches, and the zip
4 tie were destroyed on February 1st, 2012, by North
5 Charleston Police Department; and the receipts were brought
6 to the courtroom from the evidence office for court this
7 morning.

8 Thank you, Your Honor.

9 MS. SHEALY: Your Honor, the State calls Gilbert
10 Baldwin.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: State your full name and spell your last
13 name.

14 MR. BALDWIN: My name is Gilbert Cordray Baldwin.
15 Spelling the last as B-A-L-D-W-I-N.

16 THE COURT: You may proceed.

17 (GILBERT BALDWIN, having first been
18 duly sworn, testified as follows:)

19 DIRECT EXAMINATION BY MS. SHEALY OF GILBERT BALDWIN:

20 Q Good afternoon, Deputy Baldwin. Could you tell us a
21 little bit about your educational background.

22 A I was raised in Charleston and I graduated from St.
23 Andrews High School. Attended Trident Technical College,
24 criminal justice.

25 Q Now where did you work when you finished up at Trident

1 Tech?

2 A I worked at a family business in West Ashley,
3 automotive business.

4 Q Now after you were done with that what did you do?

5 A After I was done with that I began a career at the
6 Charleston County Detention Center where I worked for
7 approximately one year.

8 Q Okay. Did you go to the Criminal Justice Academy?

9 A Yes, ma'am.

10 Q Okay. And what did you do upon graduation from the
11 Criminal Justice Academy?

12 A I begin working with Charleston County Sheriff's
13 Office.

14 Q Can you tell us when that was approximately?

15 A May 2010.

16 Q While you were at the Criminal Justice Academy did you
17 win any awards there?

18 A Yes, ma'am, I won the JB Strong award.

19 Q Okay. And what does that award signify?

20 A The highest average of your graduating class above a
21 97.

22 Q Okay. Great. Now where are you currently employed?

23 A Charleston County Sheriff's Office.

24 Q So the same place that you were employed in 2010 when
25 you graduated?

1 A Yes, ma'am.

2 Q Okay. And so you have been employed there since 2010;
3 is that correct?

4 A Yes, ma'am.

5 Q Okay. What is your current position there?

6 A Deputy Sheriff.

7 Q Okay. And how long have you been in that particular
8 position?

9 A Just over two years.

10 Q Okay. What was your position in November of 2011?

11 A Deputy Sheriff. Okay. Can you describe for us a
12 little bit what your duties are as deputy sheriff what you
13 do on a day-to-day basis.

14 A Yes, ma'am, I am assigned to patrol which is answering
15 calls for service. We perform traffic stops, traffic
16 conducting.

17 Q Are you assigned -- well, actually in November of 2011
18 were you assigned to a specific geographic area?

19 A Yes, ma'am, I was assigned to north -- north area.

20 Q Can you describe what that encompasses?

21 A It is everything north of Leeds Avenue including North
22 Charleston areas, Lincolnville, Ladson.

23 Q Okay. Do you remember the early morning of
24 November 4th, 2011?

25 A Yes, ma'am.

1 Q Were you dispatched to [REDACTED]?

2 A Yes, ma'am.

3 Q Now is that in Charleston County?

4 A Yes, ma'am.

5 Q Could you describe what the scene was like when you
6 arrived?

7 A When I arrived on the scene I met with Detective
8 Jourdan of the North Charleston Police Department.

9 Q Can you tell me who all was there?

10 A At this point it was Detective Jourdan and Ms.
11 Wohlford.

12 Q Okay. Was Susan Rutledge there at that point when you
13 first arrived?

14 A No, ma'am.

15 Q Okay. Had they assessed the scene yet; had Detective
16 Jourdan gone inside?

17 A No, ma'am.

18 Q Okay. So what did you do when you arrived?

19 A When we arrived on the scene we received the keys from
20 Ms. Wohlford. And Detective Jourdan and I entered the
21 residence.

22 Q Okay. What did you do when you entered the residence;
23 can you describe for us kind of what you did, what your path
24 was?

25 A Yes, ma'am, we -- we entered the front door and just to

1 conduct a protective sweep of the residence.

2 Q Okay. And what do you mean by protective sweep; what
3 are you looking for when you do a protective sweep?

4 A At that time we are not looking -- we are not
5 collecting evidence; we are not doing anything like that.
6 We are just going through the residence to secure for any
7 threats, look for possible suspects who could still be in
8 the residence.

9 Q Okay. What did you observe during that protective
10 sweep?

11 A After we made entry in the living room we proceeded
12 down the hallway. We observed that the rear door the frame
13 was actually bent. The door had been pried open from the
14 outside.

15 Q Okay. So did you see a point of entry?

16 A Yes, ma'am, it was that back door.

17 Q Now I am going to show you what has been marked as
18 State's Exhibit 10. Can you -- can you show on that picture
19 where the point of entry would have been?

20 A Well, at the jam itself you can see at the bottom
21 especially that an item had been used to pry open. And also
22 the frame on this side (pointing) had been pried away.

23 Q Okay. Now we are going to show you what is State's
24 Exhibit Number 11. Okay. And can you point out on that --
25 oh, you have already gotten it for me. If you could point

1 out for the jury there what the point of entry was as far as
2 if there was damage to the door.

3 A Yes, ma'am, all of this -- this is actually -- this
4 piece here (pointing) is actually metal laminate of the
5 door. And it had been pried away. And once you are able to
6 move that far enough including the jam you have clearance
7 for the door to open.

8 Q Okay. And now I am going to show you what has been
9 marked as State's Exhibit 12. And can you see is there any
10 injury -- is there any injury on that side of the doorframe?

11 A Yes, ma'am, it appears that the inside trim is actually
12 missing from the door.

13 Q Okay. Are you familiar with doors of this type?

14 A Yes, ma'am.

15 Q Okay. Can you tell me how difficult it is to open that
16 sort of door when it is locked?

17 A Trailer doors are, because it was a mobile home, are
18 fairly secure.

19 Q Okay.

20 A But they are metal. So unlike wood, when you pry them
21 they actually stay pried.

22 Q Okay. In your experience what sort of items could be
23 used to pry open such a door?

24 A Many -- many different metal items. Anything small to
25 fit in the door of the jam ---

1 Q Okay.

2 A --- could be used.

3 Q Okay. Now let's see. Now we are going to move in the
4 inside of the house. Can you tell us what you found inside
5 of the house?

6 A When we conducted a protective sweep we went in and
7 when we re-entered the residence ---

8 Q Oh, yeah, I'm sorry, let's go back to the -- when you
9 re-entered the residence was anybody with you?

10 A Yes, sir.

11 Q Okay.

12 A Detective Jourdan was there with me.

13 Q Okay. Where was Nancy Wohlford at this point in time?

14 A She walked in I believe on the -- it was our -- I
15 believe it was our third entry.

16 Q Third entry?

17 A Yes, ma'am.

18 Q Okay. So let's go back to that second entry. Did
19 you -- did you discover anything on that second entry?

20 A When we made it to the bedroom we noticed there was a
21 jewelry box that had been pulled out of the closet. We
22 noticed in the rear bedroom, which would be the roommate's
23 bedroom, that a cable box had been removed and it looked
24 like there was possibly a TV that used to be there.

25 Q Okay.

1 MS. SHEALY: Can we pull up State's Exhibit

2 Number 16.

3 (Complied.)

4 MS. SHEALY: Okay.

5 Q Can you tell me what -- can you describe that scene
6 what you -- what you saw there?

7 A Yes, ma'am, that was the cable box that had been
8 removed. And actually on the dresser top you could see
9 where the dust had been disturbed from, you know, a square
10 item being there.

11 Q And your understanding whose room was that; do you
12 know?

13 A That was Ms. Wohlford's roommate.

14 Q Ms. Wohlford's roommate. Thank you. Let's see.
15 State's Exhibit Number 17 I will show you. And can you tell
16 us what we are looking at here?

17 A That was Ms. Wohlford's bedroom.

18 Q Okay. And State's Exhibit 19. And can you tell us
19 what we are looking at there?

20 A That is the actual closet of her bedroom.

21 Q Okay. And can you kind of point to us where that
22 closet is and show us what ---

23 A Well, the doorway -- this would -- this picture would
24 have been taken between the bed and the doorway.

25 Q Okay.

1 A Because the closet is in the back, right corner.

2 Q In the back, right corner. So is the closet the area
3 where we have that draped, pink fabric?

4 A Yes, ma'am.

5 Q Okay. So the surface is there; it is all fabric; it is
6 not like there is a door or anything of that nature, is
7 there?

8 A Yes, ma'am, no, there isn't.

9 Q All fabric. Okay. Now you said that there was also a
10 third walk-through?

11 A Yes, ma'am.

12 Q Okay. Did Nancy go through the house with you?

13 A Yes, ma'am, she did.

14 Q At that point did she point out specific items that
15 were missing?

16 A Yes, ma'am.

17 Q Okay. Do you remember what those items were?

18 A She addressed that there was a TV, as we suspected, in
19 the roommate's bedroom that had been stolen. Also the
20 jewelry box that had been taken out she listed several items
21 of jewelry that were removed.

22 Q Okay.

23 A Also on the -- she said in the bedroom was also located
24 a laptop ---

25 Q Okay.

- 1 A --- that was no longer.
- 2 Q That was no longer there?
- 3 A Yes, ma'am.
- 4 Q Okay. What happened after y'all completed that
- 5 walkthrough with Nancy?
- 6 A After we completed the walkthrough and were able to
- 7 determine what had been disturbed and what location we
- 8 needed to concentrate on we notified our supervisors to
- 9 request Crime Scene.
- 10 Q Okay. Can you tell me what Crime Scene is and what
- 11 they come in -- what is their task?
- 12 A Our Crime Scene they do all of our photog- --
- 13 photographs. They lift for prints, collect all evidence at
- 14 the scene.
- 15 Q Okay. So at that point the scene -- they are going to
- 16 kind of take over the interior of the house; is that ---
- 17 A Yes, ma'am.
- 18 Q Okay.
- 19 A Once we ---once we have them in route we just secure
- 20 it.
- 21 Q Okay. So what did you do while Crime Scene was in
- 22 route?
- 23 A Interviewed Ms. Wohlford.
- 24 Q Okay. Did you ask Nancy if she knew Marvin Porcher?
- 25 A Yes, ma'am..

1 Q Okay. And did she know Marvin Porcher?

2 A Yes, ma'am.

3 Q Okay. How did she appear; how did she react when you
4 told her that Porcher had been found in possession of her
5 computer?

6 A Surprised. She was upset.

7 Q Now did you share that information with Cassie Callier
8 that Porcher had been found in possession of that computer?

9 A Yes, ma'am.

10 Q Could you describe Cassie's demeanor for us, please.

11 A Extremely upset.

12 Q What did you do then?

13 A We asked Ms. Wohlford the connection between her and
14 Mr. Porcher.

15 Q Okay. Do you do anything with Cassie -- Cassie's
16 house?

17 A Not at this point.

18 Q Not at this point. Okay.

19 A We had first determined what the relationships were.

20 Q Okay. And then they told you what the relationships
21 were. What did you do next?

22 A We asked for permission to search Ms. Callier's
23 residence.

24 Q And was permission granted?

25 A Yes, ma'am.

- 1 Q Okay. Who went on that walkthrough?
- 2 A Myself.
- 3 Q Okay. Did you go with -- was Cassie Callier with you
- 4 or not?
- 5 A No, ma'am, she waited outside.
- 6 Q Okay.
- 7 A She was just outside the door.
- 8 Q Okay. Did Cassie Callier stay there the whole time
- 9 outside of the ---
- 10 A Yes, ma'am.
- 11 Q Okay. Did you see anything that matched the
- 12 description of the missing television in that house?
- 13 A No, ma'am.
- 14 Q Okay.
- 15 A How were Nancy and Cassie behaving after all of this?
- 16 A They were very upset. They kind of sat off to the side
- 17 and had conversations amongst themselves.
- 18 Q Now pursuant to your investigation was a warrant signed
- 19 by the judge and was the defendant arrested in Charleston
- 20 County?
- 21 A Yes, ma'am.
- 22 MS. SHEALY: Court's indulgence.
- 23 Q Just one other question. I'm going to go back to -- we
- 24 were talking about the point of entry on the door. You had
- 25 indicated you had had some experience with those kind of

1 doors and were somewhat familiar with what could be used to
2 pry them open; is that correct?

3 A Yes, ma'am.

4 Q Would it be possibly for instance for a wrench or a
5 razor knife to be used to pry them open?

6 A Certainly.

7 Q What about an Allen wrench?

8 A Yes, ma'am.

9 Q Okay. No further questions. Please answer and defense
10 many have.

11 THE COURT: Any questions for the witness?

12 MR. SMITH: Yes, Your Honor.

13 CROSS-EXAMINATION BY MR. SMITH OF GILBERT BALDWIN:

14 Q Good afternoon, Deputy Baldwin.

15 A Good afternoon.

16 Q I have got a few questions for you kind of
17 about the case. I am going to start I guess and kind of
18 talk a little bit about the entry point to this house if we
19 could.

20 You indicated -- the solicitor asked a question about
21 whether a wrench, an Allen wrench, or a razor knife could be
22 used as an entry point to this house; is that correct?

23 A Yes, sir.

24 Q And your answer was it certainly could have been; is
25 that correct?

1 A Yes, sir.

2 Q And to go along with what you testified to earlier I
3 think what you would say is any of those things would have
4 to be able to get into the jam of the door to be able to do
5 that; is that correct?

6 A Yes, sir.

7 Q And so they would have to be the size small enough to
8 get in to pry the door out?

9 A Yes.

10 Q When you arrived on the scene that evening, just so I
11 am clear, who all was there?

12 A When I arrived on the scene I met with Detective
13 Jourdan, North Charleston.

14 Q Okay. And did -- was her role just to give you an idea
15 of what the case was about?

16 A Well, she was actually who requested us arrive at the
17 residence.

18 Q And so you talked to her about what she had known at
19 that point; is that correct?

20 A Yes, sir.

21 Q Now we talked about items that were missing inside the
22 home. We talked about a TV missing. Is that correct?

23 A Yes, sir.

24 Q There was also some talk about some jewelry missing; is
25 that correct?

1 A Yes, sir.

2 Q Were you told about some jewelry boxes that were
3 missing as well?

4 A I don't recall.

5 Q You don't recall anything about the jewelry boxes
6 themselves?

7 A I recall the jewelry box that was out on the chair.
8 That's about it.

9 Q You don't recall any other jewelry -- anybody telling
10 you that another jewelry box was missing?

11 A I don't recall.

12 Q Do you recall anybody telling you that a cell phone was
13 missing?

14 A No, sir.

15 Q When you met with Ms. Callier that evening you found
16 out that she was Marvin Porcher's girlfriend; is that
17 correct?

18 A Yes.

19 Q And she told you where Marvin worked; do you remember
20 that?

21 A I don't know.

22 Q Did she tell you where they lived in relation to Ms.
23 Wohlford's ---

24 A Yes, sir.

25 Q --- house? And at some point you asked her if you

- 1 could go into the trailer, into her trailer; is that
2 correct?
- 3 A Yes, sir.
- 4 Q And she gave you permission to go in?
- 5 A Uh-huh.
- 6 Q And she actually handed over her keys to you, didn't
7 she?
- 8 A I believe so. I'm not certain.
- 9 Q But in any event, she did not go in with you; you went
10 in alone?
- 11 A Yes, sir.
- 12 Q Was any other deputy with you or any other police
13 officer?
- 14 A I don't recall.
- 15 Q So you go inside that trailer and you are doing a look
16 through the trailer; is that correct?
- 17 A Yes, sir.
- 18 Q And one of the things that you are looking for is is
19 there any other stolen items or things reported stolen from
20 this scene in that trailer?
- 21 A That's the only thing we are looking for.
- 22 Q And so you didn't look for -- you didn't take the time
23 to look to see if there were any tools there; is that
24 correct?
- 25 A No, sir.

1 Q Now at some point you all make a decision to call Crime
2 Scene out; is that correct?

3 A Yes, sir.

4 Q And was that your call to make?

5 A It is our supervisor.

6 Q Your supervisor. And so when Crime Scene came out you
7 asked them to go in and to photograph Ms. Wohlford's house;
8 is that correct?

9 A No, sir. When we are called into the scene they -- it
10 is their scene.

11 Q They kind of take it over at that point?

12 A Yes, sir.

13 Q Did you report to them having searched Mr. Porcher and
14 Ms. Callier's residence?

15 A I don't recall.

16 Q You are not aware of Crime Scene ever processing Mr.
17 Callier or Mr. Porcher's trailer?

18 A No, sir.

19 Q When you were in Mr. Porcher's trailer there was
20 nothing that you collected as far as evidence goes; is
21 that ---

22 A No, sir.

23 Q --- correct?

24 MR. SMITH: Beg the court's indulgence, Your Honor.

25 THE COURT: Uh-huh.

REDIRECT EXAMINATION BY MS. WHITAKER OF GILBERT BALDWIN 221

1 MR. SMITH: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MS. SHEALY: Just briefly, Your Honor.

4 THE COURT: You're welcome -- I mean you may proceed.
5 I'm sorry.

6 REDIRECT EXAMINATION BY MS. SHEALY OF GILBERT BALDWIN:

7 Q Were you the only sheriff's deputy on the scene that
8 night?

9 A No, ma'am.

10 Q Could you tell us who else was with you.

11 A Deputy Burke.

12 Q Okay. Tell us who -- Mr. Smith said that when you were
13 going through Ms. Callier and Mr. Porcher's residence you
14 didn't find a television set; is that correct?

15 A No, ma'am.

16 Q And you don't know what Mr. Porcher may have done with
17 the television set though, do you?

18 A No, ma'am, we -- when we actually did a walkthrough of
19 the residence we did not search, we did not open drawers, we
20 didn't look under beds. We just did an in plain sight
21 check.

22 Q No further questions.

23 THE COURT: Any objections to the witness being
24 excused, from the State?

25 MS. WHITAKER: No, Your Honor, no objection.

1 THE COURT: From the defense?

2 MR. SMITH: No, Your Honor.

3 THE COURT: Sir, you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You are welcome. Call your next witness.

6 MS. WHITAKER: Thank you, Your Honor. The State calls
7 Kathy Kjellman.

8 (WHEREUPON, the witness was duly sworn.)

9 THE CLERK: State your full name and spell your last
10 name.

11 MS. KJELLMAN: My first name is Kathy. Last name is
12 Kjellman. It is spelled K-J-E-L-L-M-A-N.

13 THE COURT: You may proceed.

14 (KATHY KJELLMAN, having first been
15 duly sworn, testified as follows:)

16 DIRECT EXAMINATION BY MS. SHEALY OF KATHY KJELLMAN:

17 Q Good afternoon. Could you tell us where you are
18 employed?

19 A Charleston County Sheriff's Office.

20 Q And can you tell us what your position is there?

21 A Forensic services investigator.

22 Q Okay. And can you tell me a little bit about what sort
23 of training you would have to obtain that position and to
24 maintain that position.

25 A There is some specialty classes that I have gone to.

1 And most of it is on-the-job training, firsthand.

2 Q Okay. And how long have you held that position?

3 A Eight years.

4 Q Eight years. Okay. What was your position in November
5 of 2011?

6 A It was forensic services investigator.

7 Q Can you describe a little bit of what your duties are
8 in that position?

9 A We go to several scenes and investigate traffic
10 accidents, burglaries, assaults, shootings. We pretty much
11 investigate everything.

12 Q Okay. Do you remember the early morning hours of
13 November 4th, 2011?

14 A Yes, ma'am.

15 Q Were you dispatched to [REDACTED]?

16 A Yes.

17 Q Could you describe the scene when you arrived; what did
18 you see?

19 A It was a single-wide trailer. It was apparently a
20 burglary that occurred at the trailer. And Deputy Burke and
21 Deputy Baldwin were on the scene.

22 Q What did you do when you arrived?

23 A I first spoke to the deputies on the scene and tried to
24 get an idea of the layout of the scene, the incidents that
25 happened prior to me arriving there.

1 Q Did you attempt to lift any fingerprints in the house?

2 A Yes, I did.

3 Q Okay. Actually lets back up a little bit. Can you
4 describe that process for us, you know, trying to lift
5 fingerprints; what actually goes into that; can you describe
6 it?

7 A Fingerprinting is a process we use to -- it's basically
8 a black powder and a small brush we use to apply to a
9 surface to lift the fingerprints.

10 Fingerprints which were left on a surface, mainly an
11 ideal surface is going to be a smooth, flat surface. The
12 fingerprints will be left by the oils in your skin as you
13 touch a certain surface.

14 Q Can you give us an idea of what sorts of surfaces are
15 conducive to it and some surfaces that for instance might
16 not be able to hold prints?

17 A The ideal surface for me it would be a smooth surface,
18 smooth, flat, without any kind of texturing. There's a lot
19 of the surfaces inside like electronics and everything are --
20 going to have a textured surface on it. A manufacturer does
21 that intentionally so the homeowner doesn't have to clean or
22 dust a lot. It hides the fingerprints.

23 Q Okay. And what about fabric; could you for instance
24 lift fingerprints off of something that was fabric?

25 A No.

1 Q Okay. Where in the house did you attempt to lift
2 prints?

3 A I attempted prints in the living room. There was a
4 dresser in the living room. And the front bedroom and the
5 back bedroom.

6 Q Okay. And why did you choose these locations?

7 A These locations were the areas that were identified by
8 me what I observed and from what the homeowner told me of
9 things that were disturbed inside the house.. So I
10 concentrated on those areas.

11 Q Okay. For instance, would it be any use to try to lift
12 prints, for instance, in her closet area where no door but
13 just a fabric drapery; would that be of any use?

14 A In this instance I think there was a jewelry box that
15 was inside the closet. And from what the homeowner had told
16 me the jewelry box was in a spot where they could just like
17 reach in and pull it out.

18 Q Okay.

19 A And there was no need to really touch anything else.
20 And everything else in that closet was some kind of fabric
21 material, whether it be the drapes that were hanging down or
22 the clothing inside.

23 Q Okay. Did you attempt to lift prints from the door
24 where entry was forced?

25 A No, I did not.

1 Q And why did you not do that?

2 A I did not attempt fingerprints on the outside of the
3 door because of the weather conditions at the time. When I
4 arrived it was raining. With condensation and I think it
5 was 84 percent humidity that night.

6 Q And would that -- how would impact fingerprints?

7 A Any kind of wet surface it's -- one, it was a wet
8 surface; and two, that back door was a textured surface. So
9 attempting to get fingerprints off of that would be very
10 difficult.

11 Q Okay. Did you attempt to lift fingerprints from the
12 dresser where the television had been located?

13 A Yes.

14 Q Okay. Did you succeed?

15 A Not on the dresser itself, no.

16 Q Do you have any idea why you might not have been able
17 to; was there anything about that surface that might not
18 make it conducive?

19 A There was a thin layer of dust that was on the dresser.
20 And I think there was cable locks, VCR or something sitting
21 there on the dresser too. A layer of dust on the dresser.
22 And that dresser was also kind of -- kind of poor condition
23 as far as the finish on it was very rough and chipped and
24 scratched.

25 Q And dust can impact fingerprints?

1 A Yes.

2 Q Let's see. We have already gone over why you didn't
3 attempt to lift from the closet. What do you do after you
4 have lifted the prints; where do you go; where do you take
5 them?

6 A If there are any prints I think are good quality I take
7 them over to the North Charleston Police Department and the
8 AFIS unit over there and enter that into their computer.

9 Q Okay. Did you do that in this case?

10 A Yes.

11 Q Were they tested?

12 A Yes.

13 Q And can you remind us which -- where -- where you
14 actually were able to lift some prints?

15 A I will check at my notes real quick. There were two
16 cards. One was from the space heater. And -- actually both
17 of them were from the space heater that was in front of the
18 dresser.

19 Q Okay. In front of dresser where the television had
20 been taken?

21 A Yes.

22 Q Can you tell me what the results of that test were?

23 A They were insufficient for identification.

24 Q Can you tell me what that means?

25 A Once the fingerprints are entered into the computer it

1 is run through -- it is scanned through multiple offenders
2 that have been printed before. And there was nothing that
3 matched those prints that I picked up.

4 Q Okay.

5 MS. SHEALY: Court's indulgence.

6 THE COURT: Uh-huh.

7 MS. SHEALY: Just a few more questions. Permission to
8 approach the witness?

9 THE COURT: You may.

10 BY MS. SHEALY:

11 Q Would it refresh your recollection at all to look at
12 Kelly Murphy's report?

13 (WHEREUPON, document presented to witness.)

14 Q And can we go over again exactly what the results of
15 the test were.

16 A It looks like one latent print card was insufficient
17 for identification.

18 Q Okay.

19 A And the other one was insufficient was S-C-A-F-I-S
20 identification.

21 Q Can you tell us what that S-C-A-I-F (sic) is?

22 A South Carolina Automated Fingerprint Identification
23 System.

24 Q So -- so -- so is that saying that it was insufficient
25 to be run through any sort of system?

1 A Yes, there wasn't enough ridge detail in that print to
2 be able to run a search.

3 Q Okay. And can you -- the first print, could you repeat
4 what that was.

5 A Insufficient for identification.

6 Q And what would that mean?

7 A There was ridge detail there, but there wasn't enough
8 to effect an ID.

9 Q Okay. And just a few more things. In your experience
10 as a crime scene analyst have you ever encountered
11 burglaries where individuals have worn gloves?

12 A Yes.

13 Q Okay. And would that prevent them from leaving any
14 fingerprints?

15 A Definitely.

16 Q Okay. And also did you have an opportunity in this
17 case to return the laptop and jewelry in question to the
18 victim, Nancy Wohlford?

19 A ... I don't recall if it was specifically me that returned
20 it. I know that that stuff was eventually returned to her.

21 Q By at one point it was in evidence in Charleston County
22 Sheriff's Office?

23 A Yes, ma'am.

24 Q And that -- and it is your understanding that it has
25 been returned to the rightful owner?

1 A Yes.

2 Q Okay.

3 MS. SHEALY: Your Honor, no further questions. Please
4 answer any questions defense has for you.

5 THE COURT: Any questions for the witness?

6 MR. SMITH: Yes, Your Honor.

7 THE COURT: You may proceed when you are ready.

8 CROSS-EXAMINATION BY MR. SMITH OF MS. KJELLMAN:

9 Q Good afternoon, investigator.

10 A Good afternoon.

11 Q I have a couple of questions for you regarding this
12 case. I believe according to your report that it was listed
13 as a laptop as being taken in this case; is that correct?

14 A Yes.

15 Q And as far as you know was the laptop ever processed
16 for fingerprints?

17 A Well, while it was in my custody, no, I did not process
18 it.

19 Q There was also an indication that some jewelry was
20 taken; is that correct?

21 A Yes.

22 Q Was the jewelry ever processed in any form or fashion?

23 A To my knowledge while it was in my possession, no.

24 Q Now one of the things that I wanted to ask you about
25 with regard to fingerprints is you say that traditionally

1 fingerprints are caused by the oils in your fingers; is that
2 correct?

3 A Yes.

4 Q Can things enhance those oils, like for example grease
5 or ink or another substance like that?

6 A The other substances can enhance it. It all depends on
7 that substance. Oil would probably hinder the fingerprint
8 more than help it.

9 Q And if there were those substances would it -- would
10 there maybe be more of a print on a fabric or a textured
11 surface?

12 A Fabric is very difficult to get a fingerprint off of
13 any kind of fabric.

14 Q Perhaps on a textured surface?

15 A Perhaps on a textured surface it is possible to get a
16 print. But the identifiable ridges in that print -- in that
17 print are going to be lacking.

18 MR. SMITH: Your Honor, may I approach the witness?

19 THE COURT: Uh-huh.

20 Q I would like to show you what has been marked as
21 State's Exhibit Number 9.

22 (WHEREUPON, document presented to the witness.)

23 Q And can you tell me what that is?

24 A That is the backdoor to the mobile home.

25 Q And is that the area that you process -- that you did

1 not process for fingerprints?

2 A Yes.

3 Q Okay. And is that an awning or porch over the back
4 area?

5 A Yes, it is.

6 Q Okay. And was the area around the window ever
7 processed in any form or fashion that you are aware of?

8 A No, there was no part of that door that I processed.

9 Q Okay. And so even the interior portions of the door
10 you never processed for any prints?

11 A I did not process the interior of the door because of
12 the textured surface. I did process around the frame in the
13 interior of the door.

14 Q And what about the handle, the actual -- or the door
15 knob itself, was that ever processed inside or out?

16 A No.

17 Q In addition, when you were out at the scene were you
18 ever told that Mr. Porcher lived in the trailer next door?

19 A I know he -- I was told that he lived nearby. Exactly
20 where, I am not sure.

21 Q Did -- you never did any processing at his place; is
22 that correct?

23 A No.

24 Q You got out on the scene about 3:00 a.m.; is that what
25 you remember?

- 1 A Yes.
- 2 Q And you were there for about an hour?
- 3 A About an hour and a half, yeah.
- 4 Q About an hour and a half?
- 5 A Yeah.
- 6 Q And so during that time you would have taken the photos
- 7 that we have seen in court today?
- 8 A Yes.
- 9 Q And in addition to that you would have taken the prints
- 10 that you -- the latent prints that you did find; is that
- 11 correct?
- 12 A Yes.
- 13 Q In addition to those there was no other type of
- 14 evidence you collected?
- 15 A No, the only evidence I collected was the fingerprint
- 16 cards themselves..
- 17 Q Did -- did you take the jewelry box that we saw in the
- 18 photo; was that taken into evidence?
- 19 A No.
- 20 Q And throughout the crime scene -- well, let me back up.
- 21 Can you tell us a little bit about what trace evidence is?
- 22 A Trace evidence in regards to ...?
- 23 Q Just in general. What are things that ---
- 24 A Trace evidence can refer to like fibers or hairs and
- 25 fibers that were left -- that would be left behind.

1 Q And those would be important perhaps for some type of
2 further testing if they were found; is that correct?

3 A Yes, if we had something to compare it to.

4 Q And one of the things that sometimes can be compared to
5 hair would be DNA, preparing for known DNA; is that correct?

6 A Yes.

7 Q In this particular case none of that evidence was
8 collected?

9 A No.

10 MR. SMITH: Beg the court's indulgence, Your Honor.

11 THE COURT: Uh-huh.

12 MR. SMITH: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MS. SHEALY: Just briefly, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION BY MS. SHEALY OF KATHY KJELLMAN:

17 Q Regarding the jewelry shown in Exhibit 24 ---

18 MS. SHEALY: Pull that up for me.

19 Q Just a second ---

20 A Okay.

21 Q --- while we get it on the screen. This is the jewelry
22 recovered in this case?

23 A Yes.

24 Q Could you tell the jury whether these substances would
25 they be good locations to find a fingerprint, to test for

1 fingerprints?

2 A No.

3 Q And could you tell them why?

4 A Similar to jewelry, the necklaces and the rings are the
5 surfaces are those just can be too textured and too small to
6 get enough ridge detail in that print.

7 And the long -- I think it is the lipstick thing I see
8 there, it looks to be like some kind of textured surface.
9 And I wouldn't even try that.

10 Q So it would probably be fruitless to attempt to do so?

11 A Yeah.

12 Q Okay. Just one other question. Regarding the results
13 of the fingerprint analysis when you lift a print does that
14 mean you will get a print that can be compared?

15 A When it says it lifted a print it's -- I have a print
16 that could be sufficient enough for it to effect an ID.

17 Q But it is not always sufficient enough?

18 A It's -- no.

19 Q Okay. And can you tell us why, what might be lacking?

20 A Like I said, the ridge detail and everything is what
21 actually will give you the positive identification on a
22 print. If it says -- if there's not enough ridge detail,
23 I'm going to get an ID on it.

24 Q And with the list here, in question, were they able to
25 be compared for analysis?

1 A Actually, no, I don't think either one of them were.

2 Q No further questions.

3 MS. SHEALY: Thank you, Your Honor.

4 THE COURT: You may -- is there any exception to the
5 witness being excused, from the State?

6 MS. SHEALY: None, Your Honor.

7 THE COURT: From the defense?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Ma'am, you are excused.

10 (WHEREUPON, witness steps down.)

11 THE COURT: The State may proceed.

12 MS. SHEALY: Your Honor, may we approach prior to
13 calling the next witness?

14 THE COURT: You may.

15 (WHEREUPON, bench conference was held.)

16 MS. SHEALY: The State calls Sarah Lippe.

17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: State your full name and spell your last
19 name.

20 MS. LIPPE: Sarah Lippe, L-I-P-P-E.

21 THE COURT: You may proceed.

22 (SARAH LIPPE, having first been
23 duly sworn, testified as follows:)

24 DIRECT EXAMINATION BY MS. SHEALY OF MS. SARAH LIPPE:

25 Q Good morning, Ms. Lippe.

1 A Good afternoon.

2 Q Could you tell us where you work.

3 A I work at the Clerk of Court's Office in General
4 Sessions.

5 Q Okay. And what does the Charleston County Clerk of
6 Court's Office do?

7 A We are responsible for record retention and maintenance
8 of criminal records heard in Charleston County.

9 Q What is your responsibility when it comes to criminal
10 convictions?

11 A We maintain any documents having to do with that
12 conviction.

13 Q What sorts of records would you keep that are related
14 to those convictions?

15 A Any orders, the indictment, sentencing sheets.

16 Q I am showing you what has been marked for
17 identification purposes only as State's Exhibit 25 and 26.
18 Do you know what these documents are?

19 A Yes, ma'am.

20 Q Is this a record that would be kept by the Clerk of
21 Court's office?

22 A Yes.

23 Q Is there any way to tell if this is an official copy of
24 the document the clerk keeps?

25 A Yes, they are attested as true copies.

1 Q Okay. And is this something that is kept in the
2 regular course of business for the Clerk's Office?

3 A Yes.

4 Q Would part of your job require that you maintain
5 records like this?

6 A Yes.

7 Q Okay.

8 MS. SHEALY: Your Honor, we would now like to move them
9 into evidence. My understanding, is it is without
10 objection.

11 MR. SMITH: No objection.

12 THE COURT: Marked and admitted with objection.

13 (State's Exhibit 25 was admitted into evidence.)

14 (State's Exhibit 27 was admitted into evidence.)

15 BY MS. SHEALY:

16 Q Could you tell us what it shows, Exhibit Number 25?

17 A Twenty-five is a sentencing plea for Marvin Porcher.

18 Q Okay. Signatures appear on the document?

19 A Signatures would include the judge's signature, have
20 the solicitor, the defendant and the attorney for the
21 defendant.

22 Q Okay. And what does it show a conviction for?

23 A It shows a conviction for a burglary-second.

24 MS. SHEALY: May I approach the witness?

25 THE COURT: Uh-huh.

1 Q Okay. Bear with me. Are you able to see that on your
2 screen?

3 A Yes, ma'am.

4 Q Okay. Okay. And can you tell us again what a -- what
5 is the conviction for.

6 A Burglary-second.

7 Q Okay. And does it show -- show the date of offense?

8 A It does. The day of offense is -- let's see. It looks
9 like November 5th through 6th. And I can't make out the
10 year.

11 Q Let's move that over for you a little bit there.

12 A 2005.

13 Q Okay. And can you also see the date of conviction?

14 A That would be at the bottom of the sentencing sheet
15 with the judge's signature.

16 Q We have ---

17 A May 24th, 2006.

18 Q Okay. Thank you. And now I will refer your attention
19 to Exhibit Number 26 (sic). Can you tell me whose
20 signatures appear on that document?

21 A Actually I have 27.

22 Q You have 27. I am sorry about that. Twenty-seven.

23 A The signatures on this document are the same. The
24 judge, defendant, defendant's attorney, and solicitor.

25 MS. SHEALY: May I approach?

1 THE COURT: Yes, you may.

2 Q And can you tell me what that conviction is for?

3 A This is for a burglary third-degree.

4 Q Okay. And I know we just went over this, but could you
5 tell me again whose signatures appear on the document?

6 A Yes, ma'am, it is the solicitor, the defendant, the
7 defendant's attorney, and the judge's signature at the
8 bottom.

9 Q And can you tell you -- can you tell me who is the
10 defendant in this case?

11 A Marvin Porcher.

12 Q Okay. And what is the date of the offense?

13 A It is November 24th through 25th, 2006.

14 Q And can you tell me the date of the sentence?

15 A May 24th, 2006.

16 Q Okay. And are these official records of the Clerk of
17 Court for Charleston County?

18 A Yes.

19 Q No further questions. Please answer anything that the
20 defense has for you.

21 THE COURT: Any questions for the witness?

22 MR. SMITH: Thank you, Your Honor. Very briefly.

23 THE COURT: You are welcome, sir. You may proceed when
24 you are ready.

25 CROSS-EXAMINATION BY MR. SMITH OF SARAH LIPPE:

1 Q Ms. Lippe, I am going to show you what has been marked
2 State's Exhibit 25, okay. At the top, under the warrant
3 information, there are two boxes that are there. It is a
4 plea in trial; is that correct?

5 A Yes.

6 Q And when someone enters a plea in a case, that box is
7 checked?

8 A Yes.

9 Q It's their plea; is that correct?

10 A Yes.

11 Q In the box, same plea was checked in this case; is that
12 correct?

13 A Yes.

14 Q If there had been a trial, the other box would have
15 been checked; is that correct?

16 A That is correct.

17 Q And sometimes in regard to trial there may not be all
18 those signatures on the sentencing sheet; is that correct?

19 A That is correct.

20 Q I am going to show you what's marked State's Exhibit 27
21 and direct your attention to the same two boxes. In this
22 case does it indicate that this was a plea?

23 A Yes.

24 MR. SMITH: No further questions, Your Honor.

25 THE COURT: Any redirect of the witness?

1 MS. SHEALY: Nothing, Your Honor.

2 THE COURT: Any objection to the witness being excused?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: From the defense?

5 MR. SMITH: No, Your Honor.

6 THE COURT: Ms. Lippe, you are excused.

7 THE WITNESS: Thank you.

8 THE COURT: You are welcome. The State may proceed.

9 You may proceed.

10 MS. WHITAKER: At this time, Your Honor, the State
11 would rest.

12 THE COURT: Madam forelady, ladies and gentlemen, the
13 State has rested their case. There are some matters of law
14 that I need to take up with the attorneys that should take a
15 few moments.

16 During this break please do not discuss the case and
17 please leave your notepads in your seats. We appreciate
18 your patience.

19 (WHEREUPON, jury exited courtroom 3:40 p.m.)

20 THE COURT: Are there any motions?

21 MR. SMITH: Yes, Your Honor. At this time we would
22 make a motion for a directed verdict. We believe that even
23 in looking at the evidence most favorable -- in the light
24 most favorable to this State that the State in this case
25 failed to prove the offense of burglary against Mr. Porcher.

1 There is no evidence that he entered the home. There
2 is no eyewitness accounts indicating that. There is no
3 forensic evidence indicating that.

4 In addition, Your Honor, Mr. Porcher the testimony has
5 been that he pled guilty to receiving stolen goods and a
6 false information. We believe that that is what this case
7 is and should have been resolved for.

8 And we don't believe that when you take a look at the
9 evidence in a totality since that they have met their burden
10 of proving beyond of where we are right now that they have
11 even established a burglary in any sense of the word.

12 THE COURT: Would the State like to respond?

13 MS. WHITAKER: Yes, Your Honor. We believe that we
14 have shown where there was entry and entry was made most
15 likely with a tool consistent with the ones found on his
16 person.

17 We would like to point out the proximity of time as
18 well as the short distance away he was located and the fact
19 that he had multiple goods from the home as well as the fact
20 that he had been on that laptop computer a mere 24 hours
21 prior.

22 THE COURT: Considering the evidence in the light most
23 favorable to the State and all inferences in their favor the
24 court is concerned with the existence or nonexistence of
25 evidence and not its weight.

1 The State's case does not have to -- the court does not
2 have to find that -- and actually I am in the middle of two
3 thoughts, and I apologize. I am trying to do too many
4 things at one time thinking ahead about lesser included
5 offenses and thinking about that analysis. And I apologize.
6 I'm trying to do too many things at once. So why don't we
7 start over.

8 The court is concerned with the existence or
9 nonexistence of evidence and not its weight. It is not for
10 the court to act as the fact finder. The court is not
11 required to find that the evidence infers guilt to the
12 exclusion of any other reasonable hypothesis.

13 While there is no direct testimony in this case such as
14 an eye-witness there is certainly substantial circumstantial
15 evidence reasonably tending to prove the defendant's guilt.

16 And in the interest of time I am not going to go back
17 through and re- -- and summarize all of that -- all of the
18 testimony.

19 But there is certainly sufficient evidence that the
20 defendant by some level of, not necessarily that it would
21 rise to the level of trickery or subterfuge or otherwise,
22 but he inquired of the victim as to whether she was going to
23 be home that night and then after she went out the home was
24 burglarized and then in close proximity to those events the
25 defendant was found in possession of the items that were

1 taken from the residence. So there is substantial
2 circumstantial evidence.

3 The arguments going to the weight of that evidence are
4 certainly appropriately made to the fact finder, not to the
5 court. It is not for me to parse out that and to weigh it.
6 It is for the fact finder to do that.

7 And certainly you can argue to them that you feel the
8 State has not met their burden of proof and that all he ever
9 had was possession of the items. Although receiving stolen
10 goods is not a lesser included offense of burglary in the
11 first-degree.

12 Now would counsel approach for me for a moment.

13 (WHEREUPON, bench conference was held.)

14 THE COURT: Sir, I will remind you that you are still
15 under oath. We have now reached the stage of the -- state
16 your name for me, please.

17 MR. PORCHER: Marvin Xavier Porcher.

18 THE COURT: Sir, we have now reached the stage of the
19 trial where you may present your defense, so I am going to
20 explain certain of your rights to you. If you do not
21 understand anything I say, please let me know. If you need
22 me to repeat anything I say, let me know. Do you
23 understand?

24 MR. PORCHER: Yes, ma'am.

25 THE COURT: Sir, you have the right to testify in this

1 case. But you also have the right to claim the protections
2 given to you by the Fifth Amendment of the Constitution of
3 the United States which states in part that no person shall
4 be compelled in any criminal case to be a witness against
5 himself.

6 This mean that you cannot be required to testify in
7 this case. You have the right to testify; however, this is
8 a personal right and no one can decide or make that choice
9 for you and no one else can waive that right except you.

10 If you decide to testify you will be subject to the
11 same rules that govern other witnesses and you may be
12 examined or cross-examined on any relevant issue in this
13 case including if you have any convictions involving
14 dishonesty or false statement or for crimes punishable by
15 imprisonment for more than one year and this court
16 determines that the probative value of admitting this
17 evidence outweighs its prejudicial effect to you.

18 And I will tell you so that -- and the solicitor would
19 be able to attack -- use your record to attack your
20 credibility.

21 I will tell you that under the law in South Carolina
22 anything that is ten years or older that they did not give
23 you written notice of, they cannot use to impeach you.

24 However, anything that is ten years old or less they
25 can -- anything that involves theft, dishonesty, or bears on

1 your moral turpitude basically or your veracity, they will
2 be able to question you.

3 And under our case law anything that involves a
4 burglary, a false statement, breaking and entering a motor
5 vehicle, false information, all of that comes in.

6 The court doesn't balance that. Because the -- our
7 case law says it comes in irregardless of punishment and
8 they have the right to question you on it. So I wanted to
9 make you aware of that before you talked with your lawyer.

10 So the burglary-third, burglary-second that were
11 committed in '06, would come in; the breaking and entering a
12 motor vehicle in 2010; the false information to police in
13 2011; would all come in.

14 I think your New York offenses are all over ten years
15 old, so none of those would come in unless Mr. Smith
16 received written notice of the State's desire to use those
17 convictions to impeach you. Do you understand?

18 MR. PORCHER: Yes, ma'am.

19 THE COURT: Sir, if you decide to testify, this
20 decision on your part must be made freely, voluntarily and
21 intelligently with knowledge of the protections given to you
22 by the Fifth Amendment and the consequences of your decision
23 to testify.

24 If you decide not to testify, I will instruct the jury
25 that they cannot give any consideration whatsoever to the

1 fact that you did not testify, that there is to be
2 absolutely no prejudice to you because you did not testify,
3 and that it is not to be discussed in any manner whatsoever
4 in the jury room during deliberations, that you have no
5 burden of proof and the burden of proof remains on the State
6 to prove each element of the offenses you are charged
7 with -- the offense you are charged with, beyond a
8 reasonable doubt.

9 Whether or not you testify is left entirely up to you.
10 You may speak with your family, your friends, your attorney
11 or anyone else. But the final decision is yours.

12 Do you understand your rights that I have just
13 explained to you?

14 MR. PORCHER: Yes, ma'am.

15 THE COURT: Do you have any questions about what I have
16 just explained to you?

17 MR. PORCHER: No, ma'am.

18 THE COURT: Have you discussed with your lawyer whether
19 you should or should not testify?

20 MR. PORCHER: Yes, ma'am.

21 THE COURT: Do you wish to speak with him anymore at
22 this time?

23 MR. PORCHER: Yes, ma'am.

24 THE COURT: Okay. How long do you need to talk to him,
25 Mr. Smith?

1 MR. SMITH: Judge, if we could have about ten minutes.

2 THE COURT: Okay. That will be fine. I tell you what
3 we can do as -- well, if he decides to testify, I need to
4 keep my jury. So go ahead and do that. And then let me
5 know when you are done ---

6 MR. SMITH: Thank you.

7 THE COURT: --- so that he can listen. And we will be
8 at ease for ten minutes.

9 (WHEREUPON, break taken 3:56 p.m.)

10 (WHEREUPON, resumed 4:09 p.m.)

11 THE COURT: So is there something we need to take up,
12 or are y'all talking, or are y'all done talking?

13 MS. WHITAKER: Okay, we are just ready to go forward.

14 THE COURT: Okey doke.

15 Sir, please stand for me. I will remind you you are
16 still under oath. Have you had an adequate opportunity to
17 discuss with your lawyers whether you should or should not
18 testify?

19 MR. PORCHER: (Inaudible.)

20 THE COURT: I can't hear you, sir.

21 MR. PORCHER: Say that again.

22 THE COURT: Have you had an adequate opportunity to
23 discuss with your lawyers whether you should or should not
24 testify?

25 MR. PORCHER: Yes.

1 THE COURT: Do you need to speak with them any further
2 at this time?

3 MR. PORCHER: No, ma'am.

4 THE COURT: Sir, do you wish to testify?

5 MR. PORCHER: No, ma'am.

6 THE COURT: You may take your seat. What I suggest we
7 do is excuse the jury -- the jury, have charge conference,
8 and then charge and close in the morning. Any exception
9 from the State?

10 MS. WHITAKER: No, Your Honor.

11 THE COURT: Any exception from the defense?

12 MR. SMITH: No, Your Honor. We probably need to rest
13 in the presence of the jury.

14 THE COURT: Oh, yeah, that goes without saying. Yeah,
15 I will allow you to do that. Because I assume you didn't
16 have any witnesses because you indicated you could not
17 locate -- well, that she had not -- you had spoken to her
18 but she didn't -- you didn't have any indication that she
19 planned to be here today, Ms. Carissa -- let me make.
20 sure ---

21 MR. SMITH: Cassie.

22 THE COURT: Cassie Natasha Callier.

23 MR. SMITH: That is correct, Your Honor.

24 THE COURT: And I think we are going to - not think -
25 we are going to have to go ahead and dismiss or excuse -- I

1 wish she had told us at the beginning when I was qualifying
2 the jury on Monday because I could have protected her for
3 Friday.

4 But we are going to have to let Ms. Parker, Number 201,
5 we are going to have to excuse her because she has to be at
6 work in the morning at eight o'clock and seat the alternate,
7 Number 62. Is there any exception from the State?

8 MS. WHITAKER: None from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. SMITH: Your Honor, just -- I just want to review
11 my notes.

12 THE COURT: Sure.

13 (Pause.)

14 MR. SMITH: No exceptions, Your Honor.

15 THE COURT: Please bring in the jury, Mr. Lewis.

16 THE CLERK: All jurors are present, Your Honor.

17 (WHEREUPON, jury enters courtroom 4:21 p.m.)

18 THE CLERK: All jurors are present, Your Honor.

19 THE COURT: Thank you. Ladies and gentlemen, we
20 appreciate your patience. The defense may proceed.

21 MR. SMITH: Your Honor, at this time the defense rests.

22 THE COURT: Madam forelady, both the State and the
23 defense have rested their cases. The next part of the
24 process is closing arguments and the court's instructions.

25 But that will take us beyond five o'clock because I

1 still have other matters of law that I need to deal with
2 with the attorneys that will probably take us to until 5:00
3 before we would be ready to begin that process.

4 So I am going to excuse you all for the remainder of
5 the day. We will resume in the morning at 9:30 for closing
6 argument and instruction.

7 Ms. Parker do you still need to go to work in the
8 morning?

9 MS. PARKER: Yes, ma'am.

10 THE COURT: Okay. We are going to -- with the consent
11 of the attorneys we are going to excuse you for the
12 remainder of this trial so that you will be able to go to
13 work and we will seat the alternate.

14 So ma'am, you are now a seated member of the panel as
15 part of the main panel.

16 During this break, ladies and gentlemen, please do not
17 discuss the case in any manner whatsoever. While you have
18 heard all of the evidence you have not heard the arguments
19 or the court's instructions.

20 Please do not watch, read, or listen to any media
21 accounts about this case. And also please don't do any
22 independent research, word searches, or other type of
23 searches on the internet to seek information.

24 As the fact finders in this case you are bound by your
25 oath to make a decision based on the testimony that you have

1. heard from the witnesses as well as the evidence that has
2. been introduced.

3. Also please do not make any comments regarding your
4. jury service on any social networking site such as Facebook,
5. Instagram. I have lost track. It is what, 500 of those
6. things now. I don't know.

7. I am just -- we were laughing at the break with my law
8. clerks. I am really just learning how to use my Smart Phone
9. and really am not particularly enamored to learn too much
10. about it.

11. I have no apps. I have no idea really except how to
12. make a phone call. And I am good with that. So I am -- my
13. knowledge of some of these sites is very limited. But I
14. know that there are a plethora of them. I would ask that
15. you not make any comments on them, even anything just as
16. passing as I have jury duty this week.

17. You would be amazed how many busy bodies are on the
18. internet and call our jury coordinator, people who are not
19. even on jury duty to tell them that jurors have made
20. comments on these Facebook pages or Instragram about their
21. jury service.

22. It is true that the world is only -- each person is
23. only separated by four other people. So the world gets
24. smaller and smaller and smaller especially with technology.

25. You all have been incredibly patient with us, and we

1 appreciate your time. If you would leave your notepads in
2 your seats we will resume in the morning at 9:30. You will
3 come directly to your jury room and at that time we will
4 have closing argument and instruction.

5 Have a wonderful evening and we will see you at 9:30.
6 (WHEREUPON, the jury exits courtroom 4:27 p.m.)

7 THE COURT: Okay. And the defense has rested. Are
8 there any motions?

9 MR. SMITH: Your Honor, we would just renew our motion
10 for directive verdict, same grounds as stated before.

11 THE COURT: Okay. Would the State have anything in
12 response?

13 MS. WHITAKER: Your Honor, we would just renew our
14 argument of the last time.

15 THE COURT: The court will stand on its previous
16 ruling. If you give me one moment we will begin charge
17 conference.

18 I will give the jury a general instruction regarding
19 their responsibility and my responsibility, how they are to
20 judge witness credibility and believability.

21 I will give them a general instruction on direct and
22 circumstantial evidence as well as the charge, the arrest,
23 and the indictment not being evidence as well as the
24 presumption of innocence.

25 I will charge Victor versus Nebraska on reasonable

1 doubt. I will then instruct the elements of burglary in the
2 first-degree which is 1611-311.

3 The only portions of that statute that are applicable
4 are that the offense occurred in the nighttime and that the
5 defendant has a prior record of two or more convictions for
6 burglary and/or house breaking.

7 And of course the usual language would be in there
8 regarding the fact that the only purpose for which they can
9 use that is to satisfy the elements of the offense but for
10 no other purpose.

11 I will give a general instruction on the -- well, there
12 haven't been any ID -- well, yeah. I am going to instruct
13 on identification. I just don't know how I'm going to
14 tailor -- I don't know if this actually would be applicable.
15 I need to think about that a little bit.

16 I will instruct on failure of the defendant to testify
17 as well as the form of the verdict. Are there any
18 exceptions to the charges proposed, from the State?

19 MS. WHITAKER: No, Your Honor. Could we get a copy of
20 the circumstantial evidence charge?

21 THE COURT: It is right from the State versus
22 Grippon.

23 MS. WHITAKER: Okay. Thank you.

24 THE COURT: Anything from the defense?

25 MR. SMITH: No, Your Honor.

1 THE COURT: And I assume there really is no need to
2 charge identity, identification. Normally that instruction
3 is from when you have an eyewitness or an identification
4 witness that is actually identifying the person either from
5 a lineup or actually seeing them at the scene.

6 But since we don't have any testimony regarding that I
7 don't know that factually it really is necessary in this
8 case. Any exception from the State?

9 MS. WHITAKER: No, Your Honor.

10 THE COURT: From the defense?

11 MR. SMITH: No, Your Honor.

12 THE COURT: And I assume the defense is going to
13 maintain last argument?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: All righty. Please go through the
16 evidence. Make sure everything is in place for the court
17 reporter. And also approach to look at the verdict form.
18 (Counselors approached bench to review verdict form.)

19 THE COURT: Any exception to the form of the verdict,
20 from the State?

21 MS. WHITAKER: No, Your Honor.

22 THE COURT: From the defense?

23 MR. SMITH: No, Your Honor.

24 THE COURT: And if you all would go through the
25 evidence for me so we make sure everything is in order.

1 (WHEREUPON, counselors approached to review exhibits.)

2 MS. SHEALY: With ID those marked as ID can we keep
3 them right now or can we take those back?

4 THE COURT: No, ID has to stay in the record. ID --
5 because you referred to them now. So on appeal they have to
6 be a part of the record. Unless you didn't refer to them.

7 MS. SHEALY: I did refer to them. But in that it is
8 her computer and her jewelry can we take photographs of that
9 to substitute?

10 THE COURT: Y'all would have to agree to it.
11 (Counselors confer.)

12 MS. SHEALY: Okay. We will substitute that.

13 THE COURT: Yeah, after trial because the jury has a
14 right to look at it.

15 MS. SHEALY: They have a right to look at the ID
16 stuff?

17 THE COURT: Oh, you didn't mark her computer?

18 MS. SHEALY: Just I am just talking about the ID items
19 right now.

20 THE COURT: I knew that you had marked it for ID. I
21 thought you were waiting for her to identify it before you
22 moved it into evidence.

23 MS. SHEALY: No, ---

24 THE COURT: You didn't.

25 MS. SHEALY: --- I didn't because I ---

1 THE COURT: So you never intended to?

2 MS. SHEALY: Right. I wanted her to be able ---

3 THE COURT: Oh, okay.

4 MS. SHEALY: --- to get them back.

5 THE COURT: Okay. Well, then -- yeah, we -- well, no,
6 the jury won't look at them. But we still have to hold onto
7 them until they are substituted in the record for the
8 pictures.

9 MS. SHEALY: Okay.

10 THE COURT: All right. Is there anything else we need
11 to take -- is all the evidence in place?

12 MS. SHEALY: It is, Your Honor.

13 THE COURT: From the defense?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: Is there anything else we need to take up
16 before we adjourn for the evening, from the State?

17 MS. WHITAKER: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SMITH: No, Your Honor.

20 THE COURT: All right. Y'all have a good evening. I
21 will see you at 9:30.

22 (WHEREUPON, court recessed for the day July 18, 2013,
23 4:29 p.m.)

24 (July 19, 2013, 9:40 a.m.)

25 THE COURT: There wasn't anything that we needed to

1 take up before argument, do we, from the State?

2 MS. SHEALY: No, Your Honor.

3 THE COURT: From the defense?

4 MR. SMITH: No, Your Honor.

5 THE COURT: Okay. We will just -- hopefully she will
6 get here soon and we can get started.

7 (WHEREUPON, break taken July 19, 2013, 9:50 a.m.)

8 (WHEREUPON, July 19, 2013, resumed 10:03 a.m.)

9 THE COURT: We checked on our juror to make sure she is
10 feeling well enough to go forward. And she is.

11 All right. Is the State ready to proceed?

12 MS. SHEALY: Yes, Your Honor.

13 THE COURT: Defense ready to proceed?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: All righty. Bring in the jury, please.

16 (WHEREUPON, jurors enters courtroom July 19, 2013,
17 10:04 a.m.)

18 THE COURT: Good morning, ladies and gentlemen. I hope
19 that you all had a pleasant evening. We have now reached
20 the stage of the trial where we will hear closing arguments
21 and the court's instruction. I would ask that you give the
22 attorneys your undivided attention.

23 We have also taken your lunch orders, and lunch will
24 arrive around noon o'clock -- around noon today. So that I
25 just wanted you to know that for preparation purposes. The

1 State may proceed.

2 MS. SHEALY: May it please the court?

3 THE COURT: Yes, ma'am.

4 MS. SHEALY: Mr. Smith. Mr. King.

5 CLOSING BY MS. SHEALY:

6 Good morning. Marvin Porcher, he didn't make three
7 poor decisions that night. He made one big mistake. He
8 burglarized the home of his neighbor, the neighbor who had
9 fed him the night before, the neighbor who had hired him and
10 paid him for some handyman jobs, the neighbor he had asked
11 earlier in that day are y'all going to be home tonight.

12 Mr. Porcher, he knew that house was going to be empty.
13 And he knew the home. He had been there to take down part
14 of a carport. He had been there on the outside to put up a
15 handrail. And he had worked along the roofline of her
16 mobile home. He knew where the cameras were. They were in
17 front. He went in the back door.

18 He knew her laptop was there. She was generous enough
19 the night before to let him get on Facebook while they took
20 a break from tattooing.

21 He that evening took his tools and he pried his way,
22 pried his way into her home. He pried his way into the
23 place that she worked three jobs to maintain working to
24 secure other people's property and cleaning houses.

25 He took the things that she spent money that she had

CLOSING BY MS. SHEALY

261

1 earned. And he took jewelry that didn't have a lot of
2 monetary value. It was simple jewelry, but it had a lot of
3 sentimental value to her.

4 I tell you, Marvin Porcher never thought he was going
5 to get caught. But thank goodness for Mr. Salgado. Mr.
6 Salgado told you that he was a resource officer, a community
7 resource officer.

8 He wanted to keep that neighborhood safe. That was his
9 duty. And on that evening when he passed Marvin Porcher
10 dressed in dark clothing on a bicycle that very difficult to
11 see because it didn't have a blinking light or reflector Mr.
12 Salgado thought enough of his safety to turn around and tell
13 him: Whoo.. You need to get something. You are hard to
14 see.

15 And he was concerned about the safety of other people
16 as well, riding down the road and not being able to see a
17 bicycle.

18 What did Mr. Porcher do between the time that Mr.
19 Salgado passed and came back? He ditched that bike. Why
20 did he ditch the bicycle? Remember that he told Mr. Salgado
21 that he dropped it off at his girlfriend's house. Well,
22 Cassie didn't live off Stall Road. There was no
23 girlfriend's house that he ditched the bicycle at.

24 What is the next thing that Mr. Porcher does? He lies.
25 He lies. Mr. Salgado, what is your name? Marvin Swinton.

1 Can't find my ID in South Carolina. I am from New York.

2 Why does he give a fake name? He knew his goose was
3 cooked. He is the one with the incentive that evening to be
4 deceitful.

5 The judge has instructed you and may instruct you again
6 that the evidence that each of you are to consider in this
7 case comes from here (pointing), the witness testimony, and
8 comes from here (pointing), the items into evidence. That
9 is what you need to make your decision.

10 Don't base this on opening statements. There is
11 nothing in this record to support the hypothesis Mr. Smith
12 told you during opening statements. Flies in the face of
13 common sense.

14 And that is why our county selects juries to make
15 decisions. You are to use your common sense in deciding
16 this case.

17 There is no street with glistening jewelry in this
18 case. Pick up the glistening jewelry. Pick up the
19 glistening jewelry.

20 Mr. Porcher was found approximately one mile from the
21 home of Nancy Wohlford. And what does he have on her -- on
22 himself? He has her laptop, her jewelry. Ladies and
23 gentlemen, that evening when Mr. Salgado approached Mr.
24 Porcher he was wearing the burglary.

25 Black sweatshirt, black sweatpants, gray hat, jeans.

CLOSING BY MS. SHEALY

263

1 And what were in these jeans? In the back his wallet would
2 be right ID, Marvin Porcher; not Marvin Swinton.

3 And in the front, right pocket at 12:04 a.m. a razor
4 knife, an Allen wrench, another wrench. Who needs those
5 tools at 12:04 a.m.? Those were the burglary tools.

6 Also in the back pocket was that cylinder and some
7 jewelry. And his jacket, the jacket under which he hid the
8 laptop, jewelry in the pockets.

9 He didn't get them going down this fancy road with
10 glistening jewelry. He was snatching them when he invaded
11 her house that night and sticking things in pockets.

12 What else do his personal items tell you? You will
13 have those back there too. And we had those stipulations if
14 you need to refresh your memory.

15 He had one penny to his name. The other thing he had
16 was a Visa from the Plasma Center. You heard Detective
17 Evans yesterday talking about the receipts that were also
18 found on Mr. Porcher. They are back there. You can take a
19 look at them.

20 That morning he purchased on his plasma card it says
21 tobacco. It must have been cigarettes. He was not flush
22 with cash.

23 Mr. Smith pointed out that oh don't people go down in
24 that area to buy things. And remember I asked, don't they
25 go down there to sell things.

1 That is what was on Mr. Porcher's mind, selling stuff.
2 But he got cut short. I don't know where the TV is. And I
3 don't know where the other items of jewelry or the jewelry
4 box that Ms. Wohlford is still missing. I don't know where
5 they are. But I tell you who does. Marvin Porcher knows
6 where he stashed it.

7 Remember when Mr. Salgado asked Mr. Porcher why do you
8 have a laptop on you. Mr. Porcher said oh I am going to my
9 friend's house on Stall Road to use his internet. That is
10 what he told Mr. Salgado.

11 When he was taken to Detective Evans at the North
12 Charleston Police Department he said I bought it over in
13 Midland Park. But it was from a nameless man with no
14 description and no exact location. He didn't even bother to
15 tell Detective Evans anything about the jewelry.

16 Remember what Detected Evans testified to and Nancy
17 Wohlford testified to. When you opened that computer and
18 you powered it up, it had a very distinctive screensaver.
19 Marvin Porcher knew he had Nancy Wohlford's computer because
20 he stole Nancy Wohlford's computer.

21 You have heard some testimony that when he was arrested
22 for false information for lying and for possessing stolen
23 goods that he pled guilty.

24 Do not forget what Detected Evans told you and Mr.
25 Salgado told you. That is down in Traffic Court in North

CLOSING BY MS. SHEALY

265

1 Charleston. That's not what we are here about today. Those
2 charges don't come to this courthouse. We are here about
3 the burglary.

4 The defense in talking with and questioning Kathy
5 Kjellman made a big deal about the fact that there are no
6 fingerprints in this case and that there is no DNA.

7 As I said before: Porcher, he is wearing the burglary.
8 He is the one who lived next door to her. He is the one who
9 knew she would not be home that night. He's the one who
10 knew she had a laptop.

11 There are plenty of burglaries that involve people
12 wearing gloves. Kathy Kjellman told you that. Just because
13 there's not a fingerprint doesn't mean there is not a
14 burglary.

15 This trial is not an episode of CSI or some of those
16 other crime scene shows. This, ladies and gentlemen, is a
17 real burglary with real people.

18 Frankly, Nancy Wohlford, she didn't deserve this. And
19 he doesn't deserve to get away with it. Judge Jefferson
20 after Mr. Smith gives his closing argument will instruct you
21 what the law is, what a burglary is, what we have to have
22 proven to you regarding a burglary.

23 Marvin Porcher, he entered his neighbor's house that
24 night. He entered it, with the intent to steal. It was
25 nighttime. And he has two prior convictions for burglary.

1 We could prove just the nighttime or just that he had
2 two prior burglary. But we have got both. He is guilty of
3 burglary-first.

4 I tell you what is very telling to me. Cassie, his
5 girlfriend who lived with him who went out with Nancy
6 sometimes on Thursday nights to go to a bar and go to
7 dinner, Cassie who knew, who knew Mr. Porcher best, what did
8 Officer Baldwin tell you about her reaction when she heard
9 that Marvin Porcher had Nancy's laptop? She was extremely
10 upset. But what is more telling is what does she do the
11 next day. She packs her bags and leaves. She who knew him
12 best.

13 Ladies and gentlemen, the evidence of guilt in this
14 case is overwhelming. And we ask that you return a verdict
15 of guilty. Thank you very much.

16 THE COURT: Mr. Smith, you may proceed.

17 MR. SMITH: May it please the court?

18 THE COURT: Yes, sir.

19 MR. SMITH: Ms. Shealy and Ms. Whitaker.

20 CLOSING BY MR. SMITH:

21 When I was a young boy my mother bought a glass-top
22 table. She was proud of that table, and she put it right in
23 her kitchen. She showed that table off all the time.

24 My brother and I what we thought of the table was that
25 table is a menace in the kitchen. And the reason why it was

CLOSING BY MR. SMITH

267

1 a menace in the kitchen is because every time someone passed
2 by, touched it, got near it, there were smudges on it. And
3 one of our chores was to turn up and to get the Windex out
4 and clean that table. And so our battle cry became get the
5 Windex. We knew there were going to be prints on it.

6 One day there was a lot of activity in the house. My
7 brother had friends over. I had had friends over. We were
8 going to and from sports practices. And low and behold,
9 something bad happened and there was a chip in that glass
10 table.

11 My mother was angry about it. She was very upset about
12 it. And but she never punished us for it. And the reason
13 that she didn't punish us for it is because she couldn't
14 tell who had done what. But she suspected me. She
15 suspected my brother. Why? Because we were the convenient
16 suspects.

17 Marvin Porcher is a convenient suspect in this case.
18 Why? Because of where he was. He was out riding his bike
19 in North Charleston at night without a blinking red light.
20 That is convenient. Because of when he did it. It was
21 late. It was late. So automatically if he is out late, he
22 is riding around in his clothes, it's raining, he's got a
23 jacket on, he must be up to no good.

24 And finally he is convenient because of who he is. He
25 has got a prior burglary. You heard about it. It was

1 yesterday. He is the convenient, the convenient choice in
2 this case. But lucky for Mr. Porcher convenience doesn't
3 mean he is the correct suspect.

4 Marvin Porcher did not commit this burglary because he
5 owns up to what he has done. He owned up to the prior
6 burglaries. He pled guilty to those. He owned up to the
7 false information charge in this case. He owned up to the
8 receiving stolen goods charge in this case, all without a
9 jury trial.

10 Now let's talk about Detective Evans for just a moment.
11 Because what a burglar doesn't do in a case, a shifty
12 burglar that has got this big burglary planned out, is he
13 doesn't sit down and he doesn't talk to the officer in the
14 case without a lawyer. That is not what a shifty, crafty
15 burglar does. He didn't have to do that.

16 You heard Detective Evans talk about the advise of
17 rights. He went through each and every one of those rights
18 with Mr. Porcher. Mr. Porcher initialed them. He signed
19 the form. And even after he signed it, he sat there and
20 talked to Detective Evans.

21 And he did all of that knowing that this was a serious
22 case. And he did so without calling for me or asking for
23 any other lawyer.

24 Let's talk for a minute a little more about Detective
25 Evans. It must be nice to be him. He is a little bit like

CLOSING BY MR. SMITH

269

1 the Wizard of Oz. He hears someone's statement and he
2 decides what is important. He decides what he wants to
3 memorialize. He decides what he wants to bring to court.
4 He decides what Marvin Porcher said was important enough to
5 follow up on.

6 You don't get to decide that. You don't get to even
7 hear that statement. The recording is not here. They can't
8 find it. We don't even know -- I have never even had the
9 chance to hear that recording to know what exactly was on
10 it.

11 Now when you choose a house as a burglar to break into,
12 a house that you would be familiar with, you would not
13 choose one with cameras.

14 You're going to have a chance to look at the photos in
15 this case. And you will remember Ms. Wohlford's testimony.
16 She will talk about -- she talked about where those cameras
17 were pointing.

18 One of those cameras was pointed at the front door.
19 One of them was pointed out towards the car. And one was
20 pointed at the back towards the shed.

21 Guess what? Those cameras fanned out like this
22 (pointing) from her front door, and they were pointed right
23 in the direction of Marvin Porcher's trailer.

24 If he was going to come out of that trailer and come
25 across that yard, he would have never taken a chance like

1 that. If he wanted to commit that burglary he would have
2 never come across that yard.

3 He didn't know those surveillance cameras were not
4 working. Nobody knew it. Nobody knew it until she told the
5 police that night.

6 Now let's talk a little bit about what is also not
7 available for you to see today. The tools that the
8 solicitor talked about, tools that could have been used in
9 this crime. You don't get a chance to see them. If you
10 had a chance to see them you could evaluate their size.
11 You could evaluate what they are and how they could have
12 been used. Think for a moment from your own experience
13 about a razor knife, a box cutter, could that blade have
14 been used.

15 Deputy Baldwin says a trailer door is generally pretty
16 sturdy. And it would have had to have been something that
17 would have fit between the door jam and the lock to pry it
18 out.

19 The size of the wrench matters. Think about a wrench
20 with a big handle. Is it a crescent wrench. Is it a
21 crescent wrench. Is it a regular wrench. Think about an
22 Allen wrench. An Allen wrench goes from a very microscopic
23 size all the way up to a very big size.

24 If you were able to see those things it might be
25 something you could consider. I haven't been able to see

CLOSING BY MR. SMITH

271

1 those things. They weren't important enough to keep. They
2 were destroyed. And you're going to see a stipulation to
3 that effect.

4 The other thing that is important about the tools is if
5 they had been used -- and you will see the pictures of how
6 the door was pried out and moved out from its original spot.

7 You would be able to see if those tools were marked up
8 in any way if they had evidence that they had been used in
9 that form or fashion. But you are not going to be able to
10 do that.

11 Before you can make a decision about whether Marvin
12 Porcher went into that house or used those tools you should
13 at least be able to know about that. But you are not going
14 to be able to.

15 Now when Detective Salgado approached Marvin he didn't
16 do what a normal burglar would do. Detective Salgado said
17 Marvin saw me pass; I'm pretty sure that he saw me pass. He
18 didn't -- he didn't go wherever he supposedly ditched the
19 bike. The bike was never found. Officer Salgado never
20 looked for the bike.

21 The easy thing for Marvin to have done would have been
22 to turn around on that bike and ridden the other way. That
23 is not what he did.

24 He got off the bike. He continued to walk. And then
25 he did talk to Detec- -- or to Officer Salgado. He gave him

1 the wrong name.

2 Think about this: He is out late. He has purchased a
3 computer that he knows or should have known was stolen. And
4 he decides, you know what, I am probably going to jail.

5 So he does give a false name. There is no question
6 about that. But he does -- he doesn't try to get away. He
7 doesn't try to put up a fight. He stays right there and he
8 does talk with Detective Salgado. Once he is placed under
9 arrest he is cooperative and he goes down and he talks to
10 Detective Evans.

11 Now let's talk for a moment about the things that
12 Marvin did do with regard to Officer Salgado. Officer
13 Salgado got from him the name of the person where he was
14 going to look and use the internet. Officer Salgado never
15 checked up on that. You know, he gave him an address. He
16 gave him a location to go to. And that just wasn't done.

17 Now let's think for a moment about Ms. Wohlford's
18 testimony about going to Marvin's work the day this
19 occurred.

20 Burglars unfortunately they don't usually go out and
21 burglarize a place on a day they are receiving money or
22 getting paid.

23 Ms. Wohlford went to Marvin's work that day. She paid
24 him some money. She paid him some money for some work that
25 she anticipated him doing.

CLOSING BY MR. SMITH

273

1 He turned around and gave that money to Cassie. If he
2 had needed money that day the easy thing for him to do would
3 have been to have stuck that money in his pocket and to have
4 kept it with him that day. But that is not what he did.

5 Now Ms. Shealy talked about the clothes in the case.
6 She said he was wearing the burglary. It is November.
7 Charleston, that (displaying) is probably a coat I would
8 wear out.

9 These jeans (displaying) were on Mr. Porcher. They are
10 not dark jeans. They are not black jeans. There are not
11 only the sweatpants that were here. All he had on was the
12 sweatshirt with the sweatpants over the other jeans.

13 Think about the shoes. The shoes are light. They are
14 not black. They are not ones that you would be running
15 around in or worried about getting mud on your shoes. There
16 was testimony that it was raining out there. He wouldn't
17 have worn those shoes if that were the case.

18 But think for a minute what you don't see in this box.
19 Every good burglar needs a pair of gloves according to Ms.
20 Shealy. If he was out there and it was right after this
21 occurred there would have been gloves in that box. But
22 there wasn't.

23 The other thing that is missing is money. There was no
24 money on Marvin. He had a penny, one cent. If he had sold
25 the TV, if he had sold the other jewelry, if he had done

1 something and sold the other jewelry boxes he would have had
2 cash on him. What he had was one single penny.

3 Let's talk about the physical evidence in this case.
4 And you will have a chance to look at the pictures. The
5 burglar in this case went in through the back door, the back
6 door where there were plenty of smooth surfaces. There were
7 door jams on the side. There were handles where you would
8 be able to see -- or doorknobs you would be able to see
9 pictures of those.

10 You'll also be able to see pictures of a diamond-shaped
11 window on the door. Think about this. That burglar didn't
12 go through one room. They didn't go through two rooms.
13 They didn't even go through three rooms in this house. They
14 went through three rooms total. Think about all the
15 surfaces that were in that house that they could have looked
16 for and found prints and they just didn't.

17 Now why did I ask the questions about DNA? Because
18 that can be an important part of the case. The reason that
19 I asked that question is because there was some testimony
20 about when Officer Salgado caught up to Marvin he was
21 sweating. What could be found in that sweater? DNA. They
22 didn't bother to look.

23 There are lots of things in this case that make Marvin
24 Porcher a convenient choice, an easy choice, the usual
25 suspect.

CLOSING BY MR. SMITH

275

1 But what I submit to you is that the evidence in this
2 case says Marvin Porcher is not the correct choice. I ask
3 that you find Marvin Porcher not guilty.

4 THE COURT: During this trial, ladies and gentlemen,
5 you and I have certain duties to perform. As the trial
6 judge it is my responsibility to preside over the trial of
7 this case.

8 I also have the duty to rule upon or pass upon the
9 admissibility of evidence offered during this trial. You
10 are to consider only the competent evidence before you. You
11 are to consider only the testimony which has been presented
12 from the witness stand together with any exhibits which
13 have -- which have been made a part of the record in this
14 case as well as any stipulations of counsel made for the
15 record.

16 I instruct you, ladies and gentlemen, that a
17 stipulation is a legal term meaning agreement. And a
18 stipulation is an agreement entered into between the
19 attorneys and it requires no further proof.

20 I have the additional duty to charge or instruct you on
21 the law applicable to this case. As the presiding judge I
22 am the sole judge of the law of this case. And it is your
23 duty as jurors to accept and apply the law as I now state it
24 to you.

25 If you have a preconceived idea as to what the law is

1 or what the law ought to be in a case or in this case and it
2 should not agree with what I know tell you the law is, you
3 are obligated under the oath which you have taken to abandon
4 this preconception on your part because you are sworn to
5 accept the law and apply the law precisely as I now state it
6 to you.

7 In every case tried in this court before a jury the
8 jury becomes the sole and exclusive judges of the facts in a
9 case. You, the jury, are the judges of the facts in this
10 case. This court is the judge of the law.

11 The constitution of our state has declared that a trial
12 judge shall not state, intimate, or comment or make any
13 statement to a trial jury about the facts in a case.

14 Since you the jury are the sole judges of the facts in
15 this case you are not to infer anything from what I have
16 said during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise that I have any -- or
18 anything that I now say to you during the course of this
19 instruction that I have any opinion about the facts. The
20 law does not allow me to have an opinion about the facts.
21 This is a matter solely for you the jury to determine.

22 As jurors then it is your duty as I have instructed you
23 to determine the effect, the value, the weight, and the
24 truth of the evidence presented during this trial.

25 Necessarily you must assess the credibility of

1 witnesses who have testified in this case. Credibility is
2 simply a legalistic term which means believability. It
3 becomes your duty as jurors to analyze and to evaluate the
4 evidence and determine that evidence which convinces you of
5 its truth.

6 Some of the things you may consider as you decide
7 whether or not to believe a witness's testimony about a
8 particular matter include what was the manner and appearance
9 of the witness who testified, was he or she straightforward
10 or hesitant in answering, was the testimony of the witness
11 consistent or inconsistent, how did the witness come to know
12 the facts that he or she testified to or what was his or her
13 ability to know these facts, is there some reason a witness
14 would want to give testimony which would help or hurt one
15 side or the other; in other words, was the witness biased or
16 prejudiced; and was the testimony of a witness strengthened
17 or weakened by other testimony or evidence.

18 You can believe as much or as little of each witness's
19 testimony as you think proper. You may believe the
20 testimony of a witness in its entirety. And you may reject
21 the testimony of a witness in its entirety.

22 I further instruct you, ladies and gentlemen, that in
23 determining the question of the credibility or believability
24 of witnesses who have testified in this case you may believe
25 one witness against several witnesses or several witnesses

1 as against one witness.

2 You may believe a part of the testimony of a witness
3 and reject the remaining part of the testimony of that same
4 witness.

5 If you have a good and sound reason you may believe the
6 testimony of a witness in its entirety or reject the
7 testimony of a witness in its entirety.

8 You may consider the demeanor of the witness, that is
9 the appearance and manner of the witness from the witness
10 stand.

11 You can believe as much or as little of each witness's
12 testimony as you think appropriate.

13 Of course, ladies and gentlemen, throughout this
14 process you have but one objective, to seek the truth
15 regardless of its source.

16 I further instruct you, ladies and gentlemen, that
17 there are two types of evidence which are presented during a
18 trial, direct evidence and circumstantial evidence.

19 Direct evidence is the testimony of a person who
20 asserts or claims to have actual knowledge of a fact such as
21 an eyewitness. Circumstantial evidence is proof of a chain
22 of facts and circumstances indicating the existence of a
23 fact.

24 The law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of direct
3 evidence.

4 You should weigh all of the evidence in this case.
5 After weighing all of the evidence if you are not convinced
6 of the guilt of the defendant beyond a reasonable doubt you
7 must find the defendant not guilty.

8 Conversely, if you are convinced of the guilt of the
9 defendant beyond a reasonable doubt then you must find him
10 guilty.

11 I instruct you that the fact that the defendant was
12 arrested, charged, and indicted in this case is not evidence
13 in this case and cannot be considered by you as evidence of
14 guilt in this case, nor does it create any presumption or
15 inference of guilt.

16 This documentation is simply the formal instrument
17 which contains the charge against a defendant. It serves as
18 the formal documentation by which the case is processed or
19 brought into this court.

20 The defendant has pled not guilty to the indictment.
21 And that plea casts the burden on the State to prove the
22 defendant guilty. Because a person charged with committing
23 a criminal offense in South Carolina is never required to
24 prove himself innocent.

25 I instruct you, madam forelady, ladies and gentlemen of

1 the jury, that it is a cardinal and important rule of the
2 law of evidence that the defendant in a criminal trial no
3 matter what the seriousness of the charge made against him
4 may be will always be presumed to be innocent of the crime
5 for which he is indicted unless his guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 This presumption of innocent does not cease when you
9 retire to deliberate but it accompanies the defendant from
10 the time of his appearance throughout the trial until you
11 reach a verdict.

12 Our Supreme Court has said that the presumption of
13 innocence is like a robe of righteousness placed about the
14 shoulders of the defendant and it remains with him and
15 assigns him to that class, the innocent, until that
16 presumptive robe of righteousness has been stripped from his
17 person by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 Madam forelady, ladies and gentlemen, the presumption
20 of innocence is not mere legal theory. It is not just a
21 legal phrase. It is a substantial right to which every
22 defendant is entitled unless you the jury are satisfied from
23 the evidence of his guilt beyond a reasonable doubt.

24 The State has the burden of proving the defendant
25 guilty beyond a reasonable doubt. Some of you may have

1 served as jurors in civil cases where you were told that it
2 is only necessary to prove that a fact is more likely true
3 than not true, such as by the greater weight or the
4 preponderance of the evidence.

5 In criminal cases the State's proof must be more
6 powerful than that. It must be beyond a reasonable doubt.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt.

9 There are very few things in this world that we know
10 with absolute certainty, and in criminal cases the law does
11 not require proof that overcomes every possible doubt.

12 If based on your consideration of the evidence you are
13 firmly convinced that the defendant is guilty of the crime
14 charged you must find the defendant guilty.

15 If on the other hand you think there is a real
16 possibility that the defendant is not guilty you must give
17 the defendant the benefit of that doubt and find him not
18 guilty.

19 Ladies and gentlemen, the defendant is charged with
20 first-degree burglary. The State must first prove beyond a
21 reasonable doubt that the defendant entered a dwelling
22 without consent.

23 A dwelling is any building or portion of a building in
24 which a person ordinarily sleeps. A building constructed as
25 a dwelling or that has never been occupied cannot be

1 considered a dwelling for purposes of burglary. But a
2 building is a dwelling even if the residents are temporarily
3 absent from the building.

4 In order to prove that the defendant entered the
5 dwelling the State does not have to show that the
6 defendant's entire body entered the dwelling. The smallest
7 entry is sufficient. It may be any part of the body such as
8 a hand or foot or even an instrument such as a hook or other
9 instrument.

10 In addition, the State does not have to prove that
11 force was used to gain entry. If a person enters a building
12 by using deception, artifice, trick, or misrepresentation to
13 get consent to enter, this is an entry without consent.

14 Next the State must prove beyond a reasonable doubt
15 that the defendant intended to commit a crime, either a
16 felony or a misdemeanor, at the time of entry.

17 The mere entry into a dwelling without consent is not
18 burglary. If the intent to commit a crime is formed after
19 the entry it is not burglary.

20 On the other hand, if the defendant intended to commit
21 a crime at the time of the entry it is a burglary even if
22 the intent was abandoned after the entry. It does not
23 matter than the intended crime was not completed.

24 Intent may be shown by act and conduct of the defendant
25 and other circumstances from which you may naturally and

1 reasonably infer intent.

2 Finally, the State must prove beyond a reasonable doubt
3 that the defendant entered or remained in the dwelling in
4 the nighttime - nighttime is the period between sunset and
5 sunrise during which there is not enough daylight to
6 recognize a person's face except by artificial light or moon
7 light - or the defendant has a prior record of two or more
8 convictions for burglary and/or housebreaking.

9 Evidence of prior offenses committed by the defendant
10 was not offered to prove the defendant has a bad character
11 or to prove that the defendant committed the burglary on
12 this occasion.

13 The prior convictions may be considered by you only for
14 the purpose of determining whether or not it satisfies that
15 element of the offense that makes it first-degree burglary,
16 if you enter a dwelling without consent to commit a crime
17 and you have two prior convictions for burglary and/or
18 housebreaking.

19 Before you can even consider the evidence of the
20 defendant's prior burglary and/or housebreaking convictions
21 you must first find that the State has proven beyond a
22 reasonable doubt that a burglary was committed by the
23 defendant,

24 If you find beyond a reasonable doubt that the burglary
25 was committed then you may consider the evidence of the

1 prior convictions as evidence of one of the circumstances
2 which would make the burglary first-degree burglary.

3 If you do not find beyond a reasonable doubt that the
4 defendant committed these alleged prior offenses then you
5 cannot return a verdict of first-degree burglary.

6 I instruct you and emphasize that the fact that the
7 defendant did not testify is not a factor to be considered
8 by you in any way in your deliberations and in your
9 consideration on the question of the guilt or innocence of
10 the defendant. It must not be considered by you in any
11 manner whatsoever.

12 A defendant has the constitutional right to remain
13 silent. And the assertion of this right must not be
14 considered by you in your deliberations.

15 I repeat, under your oath you are to draw no conclusion
16 whatsoever from the fact that the defendant in this case did
17 not testify.

18 The fact that this defendant did not testify should not
19 even be discussed in the jury room in any manner whatsoever
20 during your deliberations.

21 The burden of proof as I have stated to you is on the
22 State. The defendant is not required to prove his
23 innocence. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt.

25 Ladies and gentlemen, there are two possible verdicts

1 in this case. And you don't have to try to write this down,
2 because the jury form goes into the jury room with you.

3 And there is no significance whatsoever to the order in
4 which I state these potential verdicts. It is simply that
5 one must be stated first. And they are as follows:

6 As to Indictment Number 2013-GS-10-4867 we the jury by
7 unanimous consent find the defendant guilty of burglary in
8 the first degree or not guilty.

9 Again, there is no significance whatsoever to the order
10 in which I have stated these potential verdicts. It is
11 simply that one must be stated first.

12 Ladies and gentlemen, your verdict must be a unanimous
13 one which means that all twelve of you must agree in order
14 to reach a verdict.

15 Madam forelady, when the jury has agreed upon a verdict
16 it is your responsibility to fill out the verdict form and
17 to sign and date the form. And it is also your
18 responsibility to knock on the door and advise the bailiffs
19 that the jury has reached a verdict.

20 Also, if the jury has any questions during
21 deliberations it is your responsibility to write those
22 questions out and follow the same procedure by notifying the
23 bailiffs that the jury has a question.

24 Ladies and gentlemen, if you have any questions during
25 deliberations please know that there will be a delay in our

1 response. It does not mean that we are ignoring you. It is
2 simply that there is a procedure that we must follow in
3 answering any questions.

4 So know if you have a question, there will be a brief
5 delay because we have to follow that procedure before we
6 answer you.

7 I am going to ask now that you return to your jury
8 room. But do not yet begin your deliberations. And please
9 leave your notepads in your seats. There are some matters
10 of law that I need to take up with the attorneys that may
11 require a further instruction or clarification of an
12 instruction.

13 However, if there is no further instruction we will
14 send in the evidence along with your notepads and the
15 verdict form and at that time you will be allowed to begin
16 your deliberations. And your lunch will arrive at twelve
17 noon. If you would go with the bailiffs, please.

18 (WHEREUPON, jury exits courtroom 10:46 a.m.)

19 THE COURT: Any exceptions from the State?

20 MS. SHEALY: Your Honor, we would ask that you
21 reinstruct them about opening statements not being evidence.

22 THE COURT: I have already done that in my opening
23 instruction. I think to do that at this point would draw
24 undue attention to it. It will almost be a comment on the
25 facts of the case, and I don't think it would be

1 appropriate.

2 I find that jurors take their responsibility very
3 seriously. And unlike us because we hear it all the time,
4 we are almost numb to it.

5 But you have to remember this is almost an experience
6 of first impression for them, so they listen very carefully.
7 And I think they take the court's instructions very
8 seriously. And I have already instructed them that argument
9 is not evidence.

10 And I think within the context of the entire
11 instruction, because at the very beginning of the
12 instruction I tell them that in making their decision the
13 only thing they are to rely on is the testimony they have
14 heard from the sworn witnesses, any stipulations, and the
15 evidence. So I think it is clear.

16 MS. SHEALY: Okay. Thank you, Your Honor.

17 THE COURT: You are welcome. Anything further?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: Anything from the defense?

20 MR. SMITH: No, Your Honor.

21 THE COURT: All righty. Could y'all just one more time
22 make sure everything -- all the evidence is there that needs
23 to be sent in. And I don't know if those clothes need to be
24 put back in a bag or ---

25 MS. SHEALY: I will put them back.

1 THE COURT: If you could do that for me, that would be
2 great.

3 MS. SHEALY: And Judge, we do have photographs to
4 substitute ---

5 THE COURT: Those are court's -- those were ID only,
6 right?

7 MS. SHEALY: Right.

8 THE COURT: And defense had no exception to that
9 correct?

10 MR. SMITH: No -- no exception.

11 THE COURT: Okay. Yeah, just go ahead with the court
12 reporter -- once we get the jury situated we will take care
13 of that.

14 MS. SHEALY: Okay.

15 (WHEREUPON, review of evidence by counselors.)

16 MS. SHEALY: Okay. Your Honor, it appears that all the
17 evidence is with the court reporter.

18 THE COURT: Okey doke.

19 (WHEREUPON, break to collect evidence for jury.)

20 THE COURT: The record should reflect that the jury is
21 beginning its deliberations at 10:50. And let's deal
22 with -- what did we need to do now to substitute this
23 evidence?

24 MS. SHEALY: We took photographs, Your Honor, of the
25 laptop, the bag, and the charger which were all included as

1 State's Exhibit 29 for ID purposes. If we could just -- if
2 we could then just substitute this photograph for Item 29
3 for ID purposes only.

4 THE COURT: You don't need to -- it is not the bag?
5 Just the computer and the ---

6 MS. SHEALY: I can leave the bag in.

7 THE COURT: Yeah.

8 MS. SHEALY: And just stick the photograph in the bag?

9 THE COURT: You don't need to stick it in there. It
10 will just be separate pieces of evidence. But the pictures
11 of what, the laptop and the ---

12 MS. SHEALY: Of what had been in this bag?

13 THE COURT: Yeah.

14 MS. SHEALY: Which was the laptop and the charger.

15 THE COURT: Yeah, you can just leave them together.
16 She can just -- I am going to let the court reporter decide
17 how she wants to do it.

18 Any exception from the defense?

19 MR. SMITH: No, Your Honor.

20 THE COURT: Okey doke. We will ---

21 MS. SHEALY: We had one other thing. In evidence is a
22 photograph of the jewelry, and I don't know if we could
23 double label it. It came in ---

24 THE COURT: What are you trying to accomplish?

25 MS. SHEALY: Giving her back her jewelry.

1 THE COURT: Okay. So what do we need to do to do that?

2 MS. SHEALY: It is marked as ID 28. I guess what we
3 really probably should do just to make it easier is run a
4 duplicate of that photograph and mark it 28 ---

5 THE COURT: I think what you need to do is you need to
6 take the contents out of that envelope, put it on this table
7 and lay the envelope next to it. Take a picture of it ---

8 MS. SHEALY: Okay.

9 THE COURT: --- and substitute that for what is in the
10 envelope. And leave the envelope with the record and then
11 give her back her ---

12 MS. SHEALY: Okay.

13 THE COURT: Is there any exception to that from the
14 defense?

15 MR. SMITH: No, Your Honor.

16 THE COURT: Okay.

17 (WHEREUPON, a break was taken July 19, 2013, 10:53 a.m.)

18 (WHEREUPON, resumed July 19, 2013, 11:53.)

19 THE COURT: We have a verdict. Is there anything
20 further from -- before we bring in the jury, from the State?

21 MS. WHITAKER: Nothing from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Thank you. They are coming down the hall
25 right behind me so.

1 (WHEREUPON, jury enters courtroom 11:53 p.m.)

2 THE CLERK: All present.

3 THE COURT: Thank you, Mr. Julius. Madam forelady, has
4 the jury reached a verdict?

5 MADAM FORELADY: Yes, they have.

6 THE COURT: If you would give the jury form to the
7 bailiff for me, please.

8 (Complied.)

9 THE COURT: Thank you, sir. Sir, if you stand while
10 the clerk publishes the verdict.

11 THE CLERK: Case Number 2013-GS-10-4867, the State of
12 South Carolina versus Marvin Xavier Porcher, as to
13 Indictment 2013-GS-10-4867 we the jury by unanimous consent
14 find the defendant guilty of burglary in the first-degree.
15 Signed foreperson, Linda Brown.

16 Madam forelady, ladies and gentlemen of the jury, if
17 this is your verdict, please raise your right hand.
18 (Jurors complied.)

19 THE CLERK: Thank you.

20 THE COURT: Is there any request to poll the jury, from
21 the State?

22 MS. WHITAKER: None from the State, Your Honor.

23 THE COURT: From the defense?

24 MR. SMITH: Yes, Your Honor.

25 THE COURT: Ladies and gentlemen, if you would listen

1 to the questions that the clerk is going to ask you and
2 answer accordingly. You may proceed.

3 THE CLERK: Ladies and gentlemen, when I call your name
4 and juror number if you would please raise your hand and
5 respond to both of my questions.

6 Starting with the forelady, Juror Number 28, Linda
7 Brown. Is this your verdict?

8 JUROR: Yes, it is.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: Juror Number 286, Kenneth Wesley.

12 THE COURT: You all can take your seats.

13 THE CLERK: Is this your verdict?

14 JUROR: Yes, ma'am.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Juror Number 283, Isaac Washington. Is
18 this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Juror Number 17, Jessica Bishop. Is this
23 your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Juror Number 151, Kim Kolgaklis. Is this
3 your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Juror Number 165, Kelly Maloney. Is this
8 your verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror Number 246, Venus Silva. Is this
13 your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Juror Number 236, Robert Roll. Is this
18 your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Juror Number 21, Samantha Botel. Is this
23 your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Juror Number 108, Forrest Hammond. Is this
3 your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Juror Number 139, Evelyn Kabine. Is this
8 your verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror Number 62, Kelcy Davis. Is this your
13 verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Your Honor, the jury has been polled.

18 THE COURT: Madam forelady, ladies and gentlemen, we
19 thank you for your time and your attention to this case.

20 I hope that jury service has been educational for you.
21 I hope that you have learned that it is nothing like what
22 you watch on television.

23 Our system is the only system where 12 ordinary
24 citizens listen to cases, determine what the facts are,
25 apply the law to those facts and render verdicts.

1 We had a -- you all probably didn't notice. We had a
2 young woman here this week who is a lawyer and mediator from
3 Israel. She is a student at the Einstein University. And
4 she has been here for a couple weeks observing our process.
5 And she was completely enamored with our system.

6 She said it was just absolutely amazing to her that
7 they had attempted jury trials in her native part of the
8 world and it just didn't work.

9 And she said everything they have is non jury. So she
10 said a case like this could have taken months to try -- or
11 the case that we had before you, the case you all tried may
12 have taken months to reach a resolution being heard in the
13 fashion that they hear cases. And of course it was very
14 enlightening to me.

15 But our system really is the envy of the system in the
16 world. Again, it is the only one of its kind. And I think
17 mainly because people understand just the fairness of our
18 system and the fact that ordinary people have access to it
19 and participate in it.

20 So I hope that it has been enlightening for you.
21 I hope it has been educational. And I hope it has
22 re-instilled your faith in the system and that the system
23 works because of your willingness really to donate your time
24 to us.

25 And on behalf of the State as well as the defendant and

1 defense counsel we thank you for your time and your
2 attention to this case.

3 You are welcome to discuss this case if you would like.
4 Often times lawyers or their paralegals or their staff will
5 contact you because they want to get feedback and just on
6 their performance everybody wants to know how to do
7 something better. And sometimes they just want to be
8 enlightened as to the jury's thought processes in reaching a
9 verdict.

10 So it is possible that someone may contact you to talk
11 about the case. You are welcome to discuss the case. By
12 the same token, you don't have to discuss the case.

13 And if someone should persist and it makes you
14 uncomfortable please do not hesitate to contact the Clerk's
15 Office so we can take the appropriate action to protect your
16 privacy.

17 Your lunch is here. And you are welcome to stay and
18 eat it if you would like. We will get you situated in the
19 jury room. Or you are welcome to take it with you and leave
20 if you would like.

21 We are going to immediately proceed with post-trial
22 motions and sentencing. If anybody would like to remain for
23 that as well, you are welcome to. Just let the bailiffs
24 know and you can remain in the jury box for that process as
25 well.

1 If you need a work excuse before we mail those, those
2 will be mailed out today or Monday some time, your work
3 excuse as well as your check.

4 But if you need one today you can get it on the first
5 floor on the Circuit Court side of the courthouse. And any
6 of the deputy clerks at any of those windows can give you a
7 work excuse for today if you need one.

8 You are excused with the court's profound thanks. If
9 you would like to stay, just let Mr. Julius or Mr. Robinson
10 know. And then Mr. Brown is putting your lunch in the jury
11 room for you now as we are talking.

12 We will be at ease for just one moment and then we will
13 hear post-trial motions in a minute.

14 (WHEREUPON, jury exits courtroom July 17, 2013, 11:57 a.m.)

15 THE COURT: Are there any post-trial motions, from the
16 State?

17 MS. WHITAKER: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SMITH: Your Honor, we would just make a motion for
20 a new trial based on the grounds that have already been
21 stated and note the directed verdict.

22 THE COURT: Any response from the State?

23 MS. WHITAKER: Your Honor -- Your Honor, our response
24 is the previous argument we have made.

25 THE COURT: Okay. The court would adopt its previous

1 rulings and make that a part of its ruling regarding the
2 motion for new trial.

3 In addition, I would further find that there is
4 substantial circumstantial evidence in the record to support
5 the jury's verdict, and the motion for a new trial is
6 denied.

7 Now as soon as the -- is there anything from the State
8 on sentencing?

9 MS. WHITAKER: Yes, Your Honor, there is. Your Honor,
10 we are also -- I had spoken with Mr. Smith earlier. We
11 would like to wrap up these two other cases we have
12 pending ---

13 THE COURT: Does he want to plead on these other two
14 cases, Mr. Smith, the breaking and entering motor vehicle?

15 MR. SMITH: I don't -- I would have to talk to him
16 about the options.

17 THE COURT: Why don't you go ahead and talk to him
18 about it. Because it really doesn't make sense for him to
19 be languishing. Even if he appeals it, it is going to take
20 three years and so -- at a minimum. At least two to three
21 years.

22 What you all told me at the beginning that he was
23 willing to plead on those. And frankly, those are 65
24 percent offenses. He would probably max those out by the
25 time his appeal is heard.

1 But of course I don't calculate time. I am not in the
2 business of that. But certainly if he -- it would seem to
3 me to make more sense than waiting to come back here and be
4 tried individually on each of those charges and not be given
5 credit for any of those indictments. But it up to him.
6 That is solely within his prerogative. That is his
7 decision.

8 (WHEREUPON, Mr. Porcher confers with counsel.)

9 THE COURT: Now we have that he has 2013-411 which is
10 B&E motor vehicle, 2012-1111 which is burglary first-degree,
11 and 2012-1910 which is B&E motor vehicle. What is the State
12 doing with the 2012-1111 indictment?

13 MS. WHITAKER: Your Honor, that one is being dismissed.

14 THE COURT: Okay. And so the only two then that are
15 pending is the 1910 and the 411?

16 MS. WHITAKER: Yes, Your Honor.

17 THE COURT: Mr. Smith, is he going to enter a plea on
18 the B&E motor vehicles?

19 MR. SMITH: Yes, ma'am.

20 THE COURT: Okay. And that plea would be guilty; is
21 that correct?

22 MR. SMITH: That is correct, Your Honor.

23 THE COURT: Have you fully explained to him the charges
24 contained in the indictment, the possible punishment, and
25 his constitutional rights?

1 MR. SMITH: I have, Your Honor.

2 THE COURT: Do you believe he understands the charges,
3 the punishment, and his rights?

4 MR. SMITH: I do, Your Honor.

5 THE COURT: Does he wish to plead guilty or not guilty?

6 MR. SMITH: Guilty, Your Honor.

7 THE COURT: Do you agree with that decision?

8 MR. SMITH: I do, Your Honor.

9 THE COURT: To your knowledge has he ever had to be
10 evaluated to determine his competency?

11 MR. SMITH: No, Your Honor.

12 THE COURT: Sir, raise your right hand to be sworn.

13 (WHEREUPON, the witness was duly sworn.)

14 THE COURT: You can put your right hand down. Sir,
15 state your full name for the record.

16 MR. PORCHE: Marvin Xavier Porcher.

17 THE COURT: Mr. Porcher, how old are you?

18 MR. PORCHE: Forty-seven.

19 THE COURT: How far have you gone in school?

20 MR. PORCHE: High school.

21 THE COURT: Graduated?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: What type of work did you do for a living?

24 MR. PORCHE: Auto body work. Paint and body work.

25 THE COURT: Are you married?

1 MR. PORCHE: Separated -- divorced.

2 THE COURT: Do you have any children?

3 MR. PORCHE: Four.

4 THE COURT: What are their ages?

5 MR. PORCHE: Twenty-eight, twenty-four, eighteen and
6 ten.

7 THE COURT: Are you currently on probation or parole?

8 MR. PORCHE: Probation.

9 THE COURT: What are you on probation for?

10 MR. PORCHE: Restitution for the burglary in 2005.

11 They put me back on it for -- I had finished. They put me
12 back on it to pay off the restitution. I was on parole and
13 I made parole. Completed the parole ---

14 THE COURT: You mean you are on community supervision?

15 MR. PORCHE: Yeah. And I had to pay off the
16 restitution. I had six months left.

17 THE COURT: Okay. And when was that supposed to
18 terminate?

19 MR. PORCHE: They still have a hold on me.

20 THE COURT: Okay. Do you understand that as a result
21 of this plea your community supervision could likewise be
22 revoked on that earlier charge?

23 MR. PORCHE: Yes, ma'am.

24 THE COURT: Okay. Have you ever been treated for the
25 abuse of alcohol, drugs, or mental illness?

1 MR. PORCHE: No, ma'am, just depression.

2 THE COURT: Okay. When were you treated for
3 depression?

4 MR. PORCHE: I am still being treated for depression.

5 THE COURT: Okay. Are you taking any medications for
6 that?

7 MR. PORCHE: Yes, ma'am.

8 THE COURT: And what are those medications?

9 MR. PORCHE: Rimron. Rimron.

10 THE COURT: Can you spell that for me?

11 MR. PORCHE: R-I-M-R-O-N.

12 THE COURT: Have you taken that in the last 72 hours?

13 MR. PORCHE: Yes, ma'am.

14 THE COURT: Does that in any way affect your ability to
15 understand where you are or what you are doing?

16 MR. PORCHE: No, ma'am.

17 THE COURT: Have you had any other drugs, alcohol, or
18 medication in the last 72 hours?

19 MR. PORCHE: High blood -- I take ---

20 THE COURT: For high blood pressure?

21 MR. PORCHE: Yes, ma'am.

22 THE COURT: Does that affect your ability to understand
23 where you are or what you are doing?

24 MR. PORCHE: No, ma'am.

25 THE COURT: Are you aware of any physical, emotional,

1 or nervous problem that would keep you from understanding
2 where you are right now or what you are doing?

3 MR. PORCHE: No, ma'am.

4 THE COURT: Sir, on Indictment 2012-1910 which is
5 breaking and entering a motor vehicle how do you plead?

6 MR. PORCHE: Guilty.

7 THE COURT: Do you understand that that carries a
8 maximum penalty of five years and/or maximum fine of \$1,000?

9 MR. PORCHE: Yes, ma'am.

10 THE COURT: And on Indictment 2013-411 -- 411, breaking
11 and entering a motor vehicle how do you plead?

12 MR. PORCHE: Guilty.

13 THE COURT: Do you understand that likewise that
14 carries a maximum penalty of five years and/or a maximum
15 fine of \$1,000?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: And for the record, both indictments have
18 been true billed. And Indictment 2012-GS-10-1111 burglary
19 first-degree is being null processed by the solicitor's
20 office. Sir, I want you to listen carefully to the facts.

21 Ms.

22 MS. WHITAKER: Thank you, Your Honor.

23 THE COURT: I always want to call you Ms. Shackity
24 instead of Ms. Whitaker. I apologize.

25 MS. WHITAKER: Oh, that is fine, Your Honor.

1 On August 9th, 2011, the victim contacted the North
2 Charleston Police Department to report that his vehicle had
3 been broken into.

4 The victim reported that his car radio was missing from
5 the dash of the vehicle. Crime Scene came out and was able
6 to lift a print from the vehicle. And those were found to
7 match Mr. Porcher's.

8 As far as the second incident, between the dates of
9 February 5th, 2011, and the morning of September 6th,
10 2011 ---

11 THE COURT: The indictment says November 5th, 2011.

12 MS. WHITAKER: I'm -- November -- the ---

13 THE COURT: It says No- -- it says September 5th, 2011,
14 which is Indictment 2013-411.

15 MS. WHITAKER: Yes, Your Honor, September 5th, 2011,
16 the victim's vehicle was parked at the Quality Inn on
17 Northside Drive.

18 The victim was staying there at that establishment.
19 And he noticed that his vehicle had been broken into.
20 There was visible blood on the driver's side door. And that
21 was -- that was taken and that ended up being a match to Mr.
22 Porcher's DNA.

23 As far as what had been taken from the vehicle: one
24 Magellan GPS unit, one HP printer, a pair of prescription
25 eye glasses, a cellular-phone vehicle charger, LG backpack,

1 souvenir mug, and other various items including cigarettes
2 and shirts and personal items.

3 The total monetary loss to the victim totaled \$1,073,
4 Your Honor.

5 THE COURT: Is there any restitution?

6 MS. WHITAKER: Your Honor, I do not believe any of
7 those goods were ever recovered. But I understand that he
8 will certainly be incarcerated for a while on the other one,
9 so that is not possible to be attached we understand.

10 THE COURT: Have the victims in this case -- each of
11 these cases been notified?

12 MS. WHITAKER: Your Honor, they have been notified.

13 THE COURT: And they are not present, correct?

14 MS. WHITAKER: They are not present.

15 THE COURT: Sir, do you agree or disagree with the
16 facts?

17 MR. PORCHE: I agree.

18 THE COURT: Do you feel anything needs to be changed or
19 added to the facts?

20 MR. PORCHE: No.

21 THE COURT: Are you pleading guilty, sir, because you
22 are guilty?

23 MR. PORCHE: Yes, ma'am.

24 THE COURT: Listen carefully. When you plead guilty
25 you give up certain important constitutional rights. Those

1 rights include your right to a jury trial.

2 At a jury trial you are entitled to a presumption that
3 you are innocent. The State has the burden of proving your
4 guilt beyond a reasonable doubt. You would have the right
5 to confront and cross-examine the State's witnesses, call
6 your own witnesses and present any defenses that you may
7 have.

8 If you have made any statement you would have the right
9 to challenge those statements. You would also have the
10 right to remain silent. And if you were silent your silence
11 could never be used against you. Do you understand your
12 rights?

13 MR. PORCHE: Yes, ma'am.

14 THE COURT: Do you understand you are giving up each
15 and every one of those rights?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: There have been no plea negotiations made,
18 correct?

19 MS. WHITAKER: No, Your Honor, there have not been.

20 THE COURT: Sir, have you been satisfied with your
21 lawyer's services?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: Has he answered all of your questions?

24 MR. PORCHE: Yes, ma'am.

25 THE COURT: Done everything you have asked or expected

1 in representing you?

2 MR. PORCHE: Yes, ma'am.

3 THE COURT: Have any complaints about his services?

4 MR. PORCHE: No, ma'am.

5 THE COURT: Has anyone promised you anything or held
6 out any hope of a reward to cause you to plead guilty?

7 MR. PORCHE: No, ma'am.

8 THE COURT: Has anyone used threats, coercion, force,
9 pressure, intimidation or duress to cause you to plead
10 guilty?

11 MR. PORCHE: No, ma'am.

12 THE COURT: Are you pleading guilty freely and
13 voluntarily and of your own will?

14 MR. PORCHE: Yes, ma'am.

15 THE COURT: Sir, have you understood my questions?

16 MR. PORCHE: Yes, ma'am.

17 THE COURT: Do you need to ask me about anything we
18 have been over?

19 MR. PORCHE: No, ma'am.

20 THE COURT: Have you been absolutely truthful in each
21 and every answer that you have given to the court?

22 MR. PORCHE: Yes, ma'am.

23 THE COURT: Do you understand that you have the right
24 to appeal this guilty plea and sentence of the court but
25 that you must do so in writing within ten days of today?

1 MR. PORCHE: Yes, ma'am.

2 THE COURT: Do you understand that if you cannot afford
3 an attorney for that process that one will be appointed to
4 you at no cost?

5 MR. PORCHE: Yes, ma'am.

6 THE COURT: I find there is a substantial factual basis
7 for each plea, that the defendant has entered the pleas
8 freely, voluntarily, knowingly, and intelligently; that he
9 has had the advice and assistance of counsel with whom he
10 has indicated to the court he is satisfied. And I will
11 accept each plea.

12 Do you have the sentence sheet for the trial?

13 MS. WHITAKER: Yes, Your Honor. May I approach?

14 THE COURT: Uh-huh.

15 (WHEREUPON, document presented to the court.)

16 THE COURT: Thank you, ma'am.

17 MS. WHITAKER: Thank you.

18 THE COURT: Anything further from the State regarding
19 sentencing on the case we just tried as well as the breaking
20 and entering motor vehicles?

21 MS. WHITAKER: Yes, Your Honor. Would you care for me
22 to publish his record?

23 THE COURT: We did that at the beginning ---

24 MS. WHITAKER: Okay.

25 THE COURT: --- of trial.

1 MS. WHITAKER: I would like to point out the victim is
2 here. She has been here the entire time. She is not
3 interested in speaking. But she has been very involved and
4 very accommodating to our office, always making herself
5 available in spite of a very busy work schedule..

6 And I would also like to point out that she has been
7 very much impacted by this burglary. She has since moved
8 residences because she felt unsafe.

9 Your Honor, and we would like to point out that the
10 defendant here has a long criminal history going back to
11 1988 without really any substantial breaks in time to the
12 present day. And, Your Honor, he was also on probation at
13 the time of these offenses.

14 THE COURT: I think he was on community supervision is
15 what it sounds like. It sounds like he -- well, I don't
16 know. What did he get for this burglary-second? Because I
17 have on my notes ten years suspended to five years
18 probation.

19 He said something about them putting him back on -- I
20 don't under ---

21 MS. WHITAKER: Your Honor ---

22 MR. PORCHE: I understand it is ten years suspended
23 service to five years, five years probation. I can serve
24 the five years ---

25 THE COURT: Ten suspended to five and five years

1 probation.

2 MR. PORCHE: I ---

3 THE COURT: Uh-huh.

4 MR. PORCHE: --- made parole. Went out on parole. I
5 completed the parole. After I completed the parole about
6 four or five months down the line they called me back and
7 said I had restitution to pay off, for me to come back and I
8 would pay up the restitution and have to pay -- didn't pay
9 any supervision fee, just pay off the restitution.

10 THE COURT: So this is a violation of probation, not --
11 well; sort of a violation of both because you still had time
12 hanging over your head. So they probably had you on
13 community supervision as well as probation.

14 MS. WHITAKER: Your Honor ---

15 THE COURT: So we need probation actually.

16 MR. SMITH: We have got ---

17 MS. WHITAKER: We have the paperwork from Dorchester if
18 that would be helpful, Your Honor.

19 THE COURT: Oh, it was a Dorchester County probation
20 case?

21 MS. WHITAKER: Yes, Your Honor. And we have that
22 printed out if it would be helpful for Your Honor.

23 THE COURT: Unless they agree to have it heard here, he
24 is going to have to go to Dorchester to have it heard.

25 MS. WHITAKER: I think, Judge -- and maybe I can step

1 out or somebody can help us with probation. I think
2 Dorchester sent the paperwork here to the probation office.

3 THE COURT: Okay. We need probation then to see what
4 the situation is or they will still have him on a hold and
5 that wouldn't -- that will -- that would be a problem.

6 MS. WHITAKER: Do you want me to go see if I can find
7 somebody?

8 THE COURT: No, somebody went to go get them.

9 MS. WHITAKER: Oh, okay.

10 THE COURT: Anything further from the State?

11 MS. WHITAKER: No, Your Honor.

12 THE COURT: I would be glad to hear from you, Mr.
13 Smith.

14 MR. SMITH: Thank you, Judge.

15 THE COURT: You are welcome.

16 MR. SMITH: As Marvin indicated to you, he did complete
17 high school. He is proud of that accomplishment.

18 He has done most of his work has been in the area of
19 auto body and mechanic type work. He has worked for a
20 couple of places, most recently for Kings Auto Body here in
21 Charleston. Also at Absolute Auto Sales.

22 He has been in Charleston pretty much his entire live,
23 more steadily since 1999. He does have brothers. He does
24 have children that are out there and that he was supporting
25 at the time this occurred.

1 Your Honor, obviously we understand the seriousness of
2 this case. But we do believe when you look at Mr. Porcher's
3 prior record that the minimum sentence of 15 years in this
4 case would be appropriate. It would be the most significant
5 amount of time he's spent in prison. It would send that
6 message.

7 He will also come away from this situation having two
8 strikes on his record knowing that if he were to ever get
9 out and this were to occur again it would result in life
10 without parole.

11 We would ask you to consider the minimum sentence on
12 this charge and consider the breaking and entering motor
13 vehicle charges to run concurrent with this.

14 THE COURT: How much free-time detention has he served?

15 MR. SMITH: Your Honor, he has been in jail since he
16 was arrested on this charge on November 4th, 2011.

17 THE COURT: There was something else. Oh, I needed to
18 correct on the burglary-first. It is a most serious
19 offense, not serious.

20 MS. WHITAKER: Yes, Your Honor. I am sorry. I must
21 have ---

22 THE COURT: That is okay.

23 MS. WHITAKER: --- marked that here.

24 THE COURT: I just wanted you all to be aware I
25 corrected it.

1 Sir, is there anything you would like to state for the
2 record on your own behalf?

3 MR. PORCHE: No, ma'am.

4 THE COURT: Okay. Anything further from the State?

5 MS. WHITAKER: Nothing from the State, Your Honor.

6 THE COURT: Okay. If you all will just bear with me
7 for a moment because I need to have probation here so that
8 we can deal with this other matter.

9 PROBATION: Your Honor, we are here.

10 THE COURT: Thank you.

11 Mr. Smith has a copy of the paperwork. It is from
12 Dorchester County.

13 MS. WHITAKER: Your Honor, may I approach.

14 (WHEREUPON, document presented to the court.)

15 THE COURT: Thank you. Mr. Smith, does Mr. Porcher
16 want to have his probation revocation dealt with now, or
17 does he want to deal with it in Dorchester County?

18 (WHEREUPON, defendant confers with counsel.)

19 MR. SMITH: Judge, he says he would like to deal with
20 that today.

21 THE COURT: Okay. His restitution was 2,675. It looks
22 like he is in arrears in his supervision fees and other
23 costs as well.

24 He was previously before Judge Hughston on 1/29/10 a
25 partial revocation of three years, reinstate on probation,

1 credit for time served to five months, failure to pay
2 supervision fees, fines and restitution.

3 And then on 4/16/09, Supervisor Talley, pay supervision
4 fees current within seven days; have all accounts current
5 within 60 days of signature. It looks like that was dealt
6 with administratively.

7 He is on probation for the offenses 2006-GS-10-4208,
8 2010-GS-10-4204, 4205, and 4207 which is burglary-second.
9 All burglary-second non-violence.

10 He was sentenced on 10/27/08 by Judge Goode. Actually
11 it was May 24th, 2006. His probation was to start 10/27/08.
12 He was sentenced to ten years suspended upon the service of
13 five years and five years probation.

14 How much time does he have left on this sentence?

15 PROBATION: Did he do a partial?

16 THE COURT: Yeah, well, he has ten years suspended to
17 five and five year's probation. So he did that five and
18 came out. Then Judge Hughston revoked three years.

19 PROBATION: So he has got two.

20 THE COURT: And reinstated ---

21 PROBATION: It sounds like two.

22 THE COURT: Yeah, so he has two years left. And the
23 violations would be, let's see, this conviction of -- in
24 general sessions court the trial we just completed and the
25 failure to report, the failure to pay supervision fees,

1 fines, surcharges, and restitution.

2 Mr. Smith, I guess the simple, straightforward way to
3 handle this probably would be just to revoke whatever
4 remaining time he has, terminate the probation, and reduce
5 everything to civil judgments. Does your client have any
6 objection to that?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. So what we will do then is pursuant
9 to agreement.

10 And sir, do you agree that you have willfully violated
11 the terms and conditions of your probation by being
12 convicted on the offense of burglary-first on the indictment
13 that was just -- that we just tried today to verdict which
14 is 2011 -- 2013-GS-10-4867?

15 MR. PORCHE: Yes.

16 THE COURT: Okay. What we will do then is by his --
17 with his consent we will revoke whatever is remaining, give
18 him credit for any time he is entitled to, and reduce all of
19 his financial obligations to civil judgments and then
20 terminate the probation. And the report will be made a part
21 of his court file.

22 (WHEREUPON, bench conference with probation officer off the
23 record.)

24 THE COURT: Considering the record before the court and
25 everything that has been presented by counsel, sir, if you

1 would stand for sentencing.

2 On both breaking and entering motor vehicles you are
3 sentenced to five years in the State Department of
4 Corrections.

5 On the burglary in the first-degree you are sentenced
6 to 15 years in the State Department of Corrections.

7 These sentences will run concurrent with one another.
8 You will get credit for any time that you have served to
9 be calculated and applied by the Department pursuant to
10 24-1340.

11 I have ordered the ATU if it is available. And these
12 will also be concurrent to your probation revocations.

13 MR. SMITH: Thank you, Your Honor.

14 THE COURT: You are welcome. Thank you all very much.
15 It was a very pleasant trial. Hope you all have a good
16 weekend.

17 MS. WHITAKER: Thank you, Your Honor.

18 THE COURT: You are welcome.

19 PROBATION: Thank you, Judge.

20 THE COURT: Thank you, sir. I appreciate you coming
21 over.

22 PROBATION: Thanks for waiting.

23 STATE ATTY: Judge, may Mr. Cooper approach with his
24 form?

25 THE COURT: Sure.

1 (WHEREUPON, document presented to the court.)

2 THE COURT: And then make his probation revocation
3 concurrent to these as well.

4 MR. DAVIS: I will.

5 (WHEREUPON, the trial concluded July 19, 2013, 12:27 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, 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 of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 15th, 18th and 19th of 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: _____

Certified Transcript Provided For: _____

Certification Reference # _____

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN XAVIER PORCHER,

APPELLANT

APPELLATE CASE NO. 2013-001620

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	9
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	10
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	9
<u>State v. Green</u> , 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014).....	10
<u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013).....	9
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	9, 10, 11

Statutes

S.C. Code Section 16-11-311(A)	9

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in not granting Appellant Porcher's directed verdict motion when the state did not prove he committed burglary by entering the home of Nancy Wohlberg without her permission when there was no forensic evidence he had been in the home, no eyewitness, and Porcher claimed he obtained the victim's laptop computer from someone on the street?

STATEMENT OF THE CASE

On July 8, 2013, the Charleston County Grand Jury indicted Marvin Xavier Porcher on the charge of burglary first degree. On July 18-19, 2013, Porcher proceeded to trial before the Honorable Deadra L. Jefferson and a jury. Porcher was represented by William Ted Smith and Jason King. The state was represented by Tyler Whitaker and Jennifer Shealy. The jury returned a verdict of guilty as indicted. Judge Jefferson sentenced Porcher to the minimum sentence of fifteen years. Porcher's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

Nancy Wohlberg was a neighbor of Marvin Porcher and his girlfriend, Cassie, as they lived next door to each other in a mobile home development. Nancy and Cassie also worked together as security guards. On November 2, 2011, Cassie and Porcher ate dinner with Nancy and her friend, Kenny, as Porcher was going to give Nancy a tattoo at her request. During that time, Nancy recalled that Porcher asked to use her laptop computer to check his Facebook account which he did. The next night, November 3, 2013, Nancy and Cassie decide to go out. Nancy paid Porcher for some repair work he did on her home, and he promptly gave the money to Cassie before they left. R. 23, ll. 12 – R. 33, ll. 3; R. 74, ll. 1 – 25; R. 76, ll. 1-25; R. 78, ll. 1-25; R. 80, ll. 1 – R. 85, ll. 25.

While they were out, Nancy received a phone call from the North Charleston police who asked if she had reported a burglary as they had her laptop computer. Nancy said she left her laptop on her bed. She met the police at her home, and discovered that her roommate's television was missing as well as some jewelry boxes which included some of her grandmother's jewelry. When the police told her they found the laptop and jewelry on Porcher, she and Cassie were shocked. R. 86, ll. 2 – R. 97, ll. 7.

Officer Fernando Salgado was working from five p.m. to one a.m. on November 3-4, 2011, patrolling an area around Stall Street in North Charleston. R. 34, ll. 1 – R. 36, ll. 12. He saw a person on a bicycle and noticed the bicycle did not have a rear blinking light. He turned around and stopped the bicyclist to tell him he needed a rear light. R. 37, ll. 1 – R. 40, ll. 25.

Officer Salgado recognized the man who told his name was Marvin Swinton. Officer Salgado knew this was wrong so he asked for the man's ID who did not give it to

him. When the officer called in and checked, there was nothing under the name Marvin Swinton in South Carolina or New York as Porcher told him he was from New York. Officer Salgado noticed a bulge in the man's jacket and the man appeared sweaty and nervous. Officer Salgado then asked for consent to search and the man consented. The officer found a laptop on the man as well as the man's wallet with his ID which had the name Marvin Porcher. Jewelry including a pearl necklace which Nancy Wohlberg had described were found in Porcher's pocket. According to the officer, Porcher told him he was going to a friend's house to get on the internet. Also found on Porcher were tools including a razor knife, a wrench, an Allen wrench, and a zip tie. Because he had given the officer a false name, Porcher was arrested for providing false information to the police. R. 41, ll. 1 – R. 48, ll. 14.

When they arrived at city hall in the detective unit, Detective Mark Evans came to talk to Porcher. Porcher was also arrested for possession of stolen property. R. 48, ll. 1 – R. 50, ll. 16. Porcher pled guilty to the two charges of providing false information to police and possession of stolen property in municipal court. R. 53, ll. 1 – R. 55, ll. 13.

Detective Mark Evans interviewed Porcher who said he wanted to talk to the detective. Porcher told Detective Evans that Porcher purchased the laptop from a man on the street—Remount Road. He did not provide a name or description of the man. The detective opened the computer and learned it belonged to Nancy Wohlberg. He then called her. Porcher denied any involvement in the theft of any of the property. The detective recorded the interview but it could not be found. R. 56, ll. 22 – R. 68, ll. 24.

Detective Evans admitted on cross examination that he did not follow up in any way on the information that Porcher provided to him. R. 69, ll. 14 – R. 72, ll. 24.

Deputy Gilbert Baldwin of the Charleston County Sheriff's Department, was dispatched to the home of Nancy Wohlberg on November 4, 2011. He and a police officer were the first to enter the home. He discovered that the rear door had been pried open from the outside which was the point of entry. He testified that many different metal items that were small enough to fit in the door of the jam could be used to pry open such a door. They determined that the missing items were the television from the roommate's room, jewelry boxes and items of jewelry, and the laptop computer. He also searched the next door home of Porcher and Cassie but found nothing. R. 109, ll. 17 – R. 122, ll. 9.

Kathy Kjellman worked as a forensic services investigator with the Charleston County Sheriff's Office, and was dispatched to the home of Nancy Wohlberg on November 4, 2011 to search for forensic evidence. She found two finger prints from a space heater that was in front of the dresser where the television had been. However, these prints were insufficient for identification. The other print was insufficient for SCAPIS which was the South Carolina Automated Fingerprint Identification System. R. 123, ll. 14 – R. 130, ll. 25.

On cross examination, Deputy Kjellman admitted that she did not process the laptop for fingerprints. She found no trace evidence, no DNA; she found only the two prints on the heater. R. 131, ll. 8 – R. 135, ll. 15.

Sarah Lippe, of the Clerk of Court's Office, testified to the two previous convictions for burglary for Porcher. Both were guilty pleas. One was burglary second degree from November 2005 with a conviction date of May 24, 2006. The second one was for a burglary third degree from November 2005 with a conviction date of May 24, 2006. R. 136, ll. 24 – R. 141, ll. 25.

At the close of the state's case, defense counsel moved for a directed verdict on the basis that the state failed to prove Porcher committed burglary because there was no evidence that he entered the home. There were no eyewitnesses, and no forensic evidence. Counsel argued that Porcher had pled guilty to receiving stolen goods and providing false information. Counsel said; "We believe that that is what this case is and should have been resolved for." Counsel argued that the state did not meet their burden of proof for burglary. R. 142, ll. 10 – R. 143, ll. 11.

The state argued that they had proven entry which was most likely made with a tool "consistent with the ones found on his person," and the proximity of time and the short distance from the victim's home and the fact that he had the goods from the home on him. R. 143, ll. 12 – 21.

The judge denied the directed verdict motion by finding there was substantial circumstantial evidence reasonably tending to prove the defendant's guilt. R. 143, ll. 22 – R. 145, ll. 12.

Defense counsel moved again for a directed verdict on the same grounds at the close of the defense case although the defense presented no evidence. R. 146, ll. 7 – 17. After the verdict, defense moved for a new trial and directed verdict. The judge denied both. R. 177, ll. 12 – 178, ll. 6.

ARGUMENT

The trial court erred in not granting Appellant Porcher's directed verdict motion when the state did not prove he committed burglary by entering the home of Nancy Wohlberg without her permission when there was no forensic evidence he had been in the home, no eyewitness, and Porcher claimed he obtained the victim's laptop computer from someone on the street.

In State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004), the Supreme Court held that in cases where the state has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. Only if the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, then the Supreme Court must affirm the trial court's decision to submit the case to the jury. Id.

S.C. Code Section 16-11-311(A) provides: "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling."

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court reversed finding there was not substantial circumstantial evidence for a conviction and the trial court erred in refusing to direct the verdict. Odems was convicted of burglary first degree along with other charges. The evidence presented against Odems was circumstantial and consisted of: (1) less than 90 minutes after the burglary, police found Odems in the getaway car with the burglars and the stolen goods; (2) Odems fled from the police; (3) Odems asked an uniformed person to lie for him to the police. An eyewitness saw only two people at the

crime scene; fingerprints found at the scene did not match Odems; and a co-defendant said Odems did not participate.

Appellant Porcher's case is similar to Odems in that the stolen goods were found on Porcher; and Porcher lied to the police. No fingerprints were found that matched Porcher. Although he did not have a co-defendant testifying, Porcher had a reasonable explanation for having the stolen goods. However, Porcher's case is distinguished in that he did not run from the police but was willing to talk to them.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court again reversed the case by finding that the trial court erred in not directing a verdict because the state presented insufficient circumstantial evidence to submit the murder charge to the jury. The evidence against Bostick was: (1) the victim's personal items were found in a burn pile in a neighboring home owned by the defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified she did not use such accelerants; (3) a pattern of gasoline was found on the defendant's shoes and was used as an accelerant to start a fire in the victim's home after her assailant struck her; (4) blood found on the defendant's jeans and the DNA expert could exclude 99 percent of the population although she could not conclusively state the blood was the victim's.

In State v. Green, 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014), the Court of Appeals held that attempted first degree burglary was a lesser included charge of first degree burglary. Green was charged with first degree burglary, and the trial court held "there was no evidence in the record upon which the jury could convict Green of burglary first degree because the evidence was simply not there for a showing of entry which is one of the elements of the crime of burglary in the first degree." The trial court granted the directed

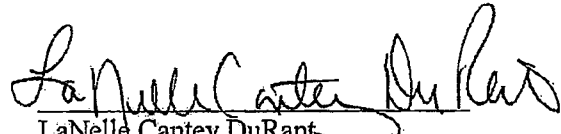
verdict on first degree burglary but submitted the case to the jury on attempted first degree burglary which did not require an entry. The Court of Appeals affirmed the trial court.

In Porcher's case, there was no evidence presented that Porcher entered the home of Nancy Wohlberg without her consent. There was no evidence of his entry. The officer checked the door for prints where the lock was broken, but no prints were found. There is less evidence against Porcher than in the case of Odems. The trial court should have directed the verdict of first degree burglary because the state did not prove the elements of the offense which required entry. The most the state could prove against Porcher was being in possession of stolen goods and providing false information to the police. Porcher's explanation that he bought the items from a man on the street was reasonable, and it was reasonable that he gave a false name if he thought the items may have been stolen.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for the entry of a directed verdict.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

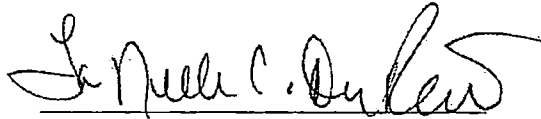
ATTORNEY FOR APPELLANT

This 31st day of July, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 31st, 2014

A handwritten signature in black ink, appearing to read "LaNelle C. DuRant", written over a horizontal line.

LaNelle C. DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

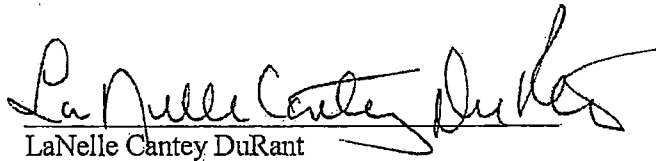
v.

MARVIN XAVIER PORCHER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, at this 31st day of July, 2014.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT	6
I. The trial court properly denied Appellant's motion for a directed verdict because there was substantial circumstantial evidence supporting sending the case to the jury.....	6
CONCLUSION.....	11

TABLE OF AUTHORITIES

Cases

<u>Barnes v. United States</u> , 412 U.S. 837 (1973)	9
<u>McNamara v. Henkel</u> , 226 U.S. 520 (1913)	9
<u>State v. Campbell</u> , 131 S.C. 357, 127 S.E. 439 (1925)	8, 9
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	6
<u>State v. Cooper</u> , 279 S.C. 301, 306 S.E.2d 598 (1983)	10
<u>State v. Kimbrough</u> , 212 S.C. 348, 46 S.E.2d 273 (1948)	9
<u>State v. Lyles</u> , 211 S.C. 334, 45 S.E.2d 181 (1947)	9
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	6
<u>State v. Shields</u> , 217 S.C. 496, 61 S.E.2d 56 (1950)	9
<u>State v. Vierck</u> , 23 S. D. 166, 120 N. W. 1098, 139 Am. St. Rep. 1040, 1043 (1909)	9
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	6

Statutes

S.C. Code Ann. § 16-11-311(A) (Supp. 2013)	7

STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's motion for a directed verdict because there was substantial circumstantial evidence supporting sending the case to the jury.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Mr. Salgado was a neighborhood resource officer for the North Charleston Police Department. (T.124-125; R. 34-35). Just after midnight on November 4, 2011, he was patrolling on shift when he passed a bicyclist wearing dark clothing and without a rear light. (T.128; R. 38). He made a U-turn and made contact with the bicyclist. Salgado recognized the bicyclist, but when asked for his name, the cyclist gave him a different name from the one Salgado knew. (T.130-131; R. 40-41). Appellant gave him the name Marvin Swinton and his date of birth and then told Salgado he was from New York. Salgado had the North Charleston Police run the name and birthdate through South Carolina and New York records and found no one with that combination. (T.131-133; R. 41-43).

Salgado testified Appellant appeared nervous and sweaty. He also indicated there was a bulge under Appellant's jacket. Salgado asked consent to search Appellant's person and Appellant gave consent. Salgado found a laptop and charger under Appellant's jacket, and his wallet with ID in his pant pocket. The ID contained Appellant's real name, Marvin Porcher. (T.133-134; R. 43-44). Salgado also found a pearl necklace in Appellant's jacket pocket and a cylinder, ultimately found to contain jewelry, in Appellant pant pocket. (T.135; R. 45). Appellant also had a razor knife, a wrench, an allen wrench, and a zip tie in his pocket. (T.137; R. 47). Appellant tried to explain the laptop indicating he was going to a friend's house to use the internet. (T.137; R. 47).

Salgado arrested Appellant for providing false information to a police officer. Appellant was taken to the North Charleston City Hall to meet with a detective. He met

with Detective Evans. (T.137-138; R. 47-48). Evans was a detective assigned to the persons crime unit. (T.149; R. 57). Evans met with Salgado and was given the laptop and charger taken off Appellant's person. Evans turned on the laptop and located information linking the laptop to the victim. He called the victim, provided his name and job title, and asked if she knew where her laptop was located. The victim responded it was at her residence. (T.151; R. 59). Evans asked her to return to her residence and meet someone from Charleston County Sheriff's Office and North Charleston Police Department. (T.152; R. 60).

Evans then interviewed Appellant. After reading Miranda warnings to Appellant, Evans discussed the laptop. Appellant indicated he bought it from someone on Remount Road. He did not provide any details about from whom he purchased the laptop, where exactly on Remount he purchased it, or "any other pertinent details." (T.157-158; R. 65-66). He did not provide the name of the person or even a description of the person that allegedly sold him the laptop. (T.158; R. 66).

The victim lived in a mobile home with a roommate. The home was near the residence of Appellant and his girlfriend. (T.169-171; R. 76-78). Appellant came to her house to do some exterior work several weeks before the burglary. (T.172-173; R. 79-80). On November 2, 2011, Appellant, his girlfriend, and another friend came over to the victim's home so Appellant could put a tattoo on the victim. While in the victim's home, Appellant used her laptop to go on Facebook. (T.175; R. 82).

On November 3, the victim and Appellant's girlfriend visited Appellant where he worked so the victim could give him a payment for the work he performed on her house. While there, he asked if the victim and his girlfriend were planning to go out that night.

(T.176-177; R. 83-84). At that time, the victim did not plan to go out, but later changed her mind and around 9:30 p.m. picked up Appellant's girlfriend at Appellant's house. (T.178; R. 85).

While out with Appellant's girlfriend, the victim received a phone call from a detective who asked if she reported a burglary and also if she owned an Acer laptop. The victim indicated the laptop was left on her bed on top of papers. (T.179; R. 86). The victim then met a county sheriff and someone from North Charleston Police at her home. (T.180; R. 87). Walking through her home with the officers, the victim indicated her laptop, some of her jewelry, and her roommate's television was missing. (T.182; R. 89). The victim later learned Appellant was found with her laptop. She was surprised he would have it. (T.188; R. 95). She also indicated she never gave him permission to be in her home or have her computer. (T.185; R. 92).

Deputy Baldwin was the Charleston County Deputy who met the victim at her residence. (T.206-207; R. 111-112). He indicated that upon entering the residence and making certain it was secure, he noticed the rear door was pried open from the outside. He testified the door frame was pried so the door could open. (T.208-209; R. 113-114). He explained many metal objects could be used to pry the door open, including some of the objects found on Appellant's person when he was arrested. (T.209; 215-216; R. 114; 120-121).

ARGUMENT

- I. The trial court properly denied Appellant's motion for a directed verdict because there was substantial circumstantial evidence supporting sending the case to the jury.**

Appellant contends the trial court erred in denying his motion for a directed verdict. He contends because there was no forensic evidence and no eyewitnesses showing he entered the victim's home and took the laptop and jewelry then he was entitled to a directed verdict. However, there is substantial circumstantial evidence supporting the denial of his motion for a directed verdict, including the fact he was found in possession of the victim's laptop and jewelry shortly after the burglary occurred. Accordingly, the trial court properly denied his motion for a directed verdict and allowed the jury to perform its function as fact finder.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Pursuant to section 16-11-311 of the South Carolina Code:

(A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

....

(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311(A) (Supp. 2013).

In the instant case, the State presented evidence demonstrating Appellant had prior convictions for burglary in the second degree and burglary in the third degree. (State's Exhibits 25 and 27; T. 238-240; R. 198, 199; 138-140). In the alternative, the burglary clearly occurred after the victim left her home to pick up Appellant's girlfriend. The victim picked her up at 9:30p.m. and they were out until after midnight when the victim received the call about her laptop and to return to her home. Accordingly, there is definitely evidence indicating the burglary occurred in the nighttime. The only issue remaining then is whether Appellant entered a dwelling without consent and with intent to commit a crime in the dwelling. The State provided substantial circumstantial evidence Appellant entered the victim's home and took her jewelry and computer without consent.

Appellant knew of and had used the laptop the day before the burglary. He was familiar with the victim's home having worked on its exterior and having been inside the day before to give the victim a tattoo. He also asked hours before the victim left home if she planned to go out with his girlfriend that night.

Most significantly, within hours of the victim leaving her home and before she could even return to find her laptop and jewelry stolen, Appellant is stopped with the items in his possession. He is carrying a laptop under his jacket and has the necklace in one pocket and other jewelry in a pant pocket. He tries to claim the laptop was purchased off Remount Road, but fails to provide any meaningful details to support his story, including no description of the person, no name, no location along the road, nor any other pertinent details. His possession of the laptop is left mostly unexplained, or at best with an unreasonable explanation. Additionally, his possession of the necklace and other jewelry identified by the victim is completely unexplained to the officers. (T.184-185; R. 91-92).

In State v. Campbell, 131 S.C. 357, 127 S.E. 439 (1925), the South Carolina Supreme Court recognized that recent possession of stolen goods was evidence from which the jury could infer the defendant's guilt of larceny or burglary. The Court explained the fact the defendant was found with property from a store which had been broken into and entered was evidence the weight and sufficiency of which was for the jury. The Court elucidated:

The recent possession of stolen property whether in larceny or in burglary, and whether such possession be 'explained' or 'unexplained,' is a circumstance—an evidentiary fact—which may have a greater or lesser weight as proof of guilt, when considered with, and strengthened or weakened by, all the other evidence in the case. If the evidence tends to show the possession to be an honest one, the probative force of the fact of recent possession may be greatly modified or entirely destroyed. If wholly unexplained, it may carry a conviction of guilt to the minds of the jury, but, whether explained or unexplained, it is competent and relevant evidence upon the issue of guilt or innocence.

Campbell, 127 S.E. at 440-441 (quoting State v. Vierck, 23 S. D. 166, 120 N. W. 1098, 139 Am. St. Rep. 1040, 1043 (1909)); see also, State v. Shields, 217 S.C. 496, 61 S.E.2d 56 (1950) (dispelling the contention possession of stolen goods may be some evidence of participation in larceny, it affords no support for a conclusion that appellant committed burglary and finding the Courts of this state have long held it evidence of burglary).

The United States Supreme Court has upheld similar inferences. In McNamara v. Henkel, 226 U.S. 520 (1913), the appellant challenged the inference that recent possession of stolen property provides evidence supporting a conviction for burglary as it did a larceny. The Court explained:

The permissible inference is not thus to be limited. The evidence pointed to the appellant as one having control of the car and engaged in the endeavor to secure the fruits of the burglarious entry. Possession in these circumstances tended to show guilty participation in the burglary. This is but to accord to the evidence, if unexplained, its natural probative force.

Id. at 525; see also Barnes v. United States, 412 U.S. 837, 845-846 (1973) (approving of a jury instruction allowing for the jury to infer the defendant's guilt from his unexplained possession of recently stolen property and recognizing common sense and experience support such an inference).

The courts of this State have continued to hold that evidence of a defendant's recent possession of stolen goods is evidence tending to show his guilt of the burglary or larceny. See State v. Lyles, 211 S.C. 334, 339, 45 S.E.2d 181, 183 (1947) (instructing that proof of a defendant's possession of recently-stolen property supports an inference that the defendant was the person who stole the property); State v. Kimbrough, 212 S.C. 348, 352, 46 S.E.2d 273, 275 (1948) ("If the jury found that he had possession of this

recently stolen property, this fact, with the other circumstances in the case, was sufficient to warrant an inference of guilt.”); State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (instructing that the inference to be drawn from recent possession of stolen property is an evidentiary fact as opposed to a rebuttable presumption and constitutes circumstantial evidence of guilt).

The State presented substantial circumstantial evidence, including Appellant’s knowledge and prior use of the laptop; his knowledge of the exterior of the victim’s mobile home; his interest in whether the victim would be out the night of the burglary; and most significantly, his being in possession of several of the items taken during the burglary without any reasonable explanation. Accordingly, this Court should affirm the decision of the trial court denying Appellant’s motion for a directed verdict.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 

William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 29, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case Tracking No. 2013-001620

The State,

Respondent,

vs.

Marvin Xavier Porcher,

Appellant.

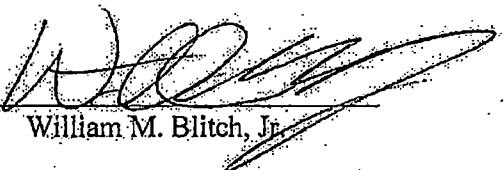
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY:


William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 29, 2014

STATE OF SOUTH CAROLINA

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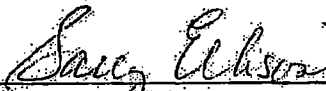
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. DuRant, Esquire
 S.C. Commission on Indigent Defense
 Division of Appellate Defense
 Post Office Box 11589
 Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
 This 29th day of July, 2014.


 SALLY ELLISON
 Legal Assistant

Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3727

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marvin Xavier Porcher, Appellant.

Appellate Case No. 2013-001620

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2015-UP-124
Submitted January 1, 2015 – Filed March 11, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blitch, Jr., both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004)

("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [the appellate court] must find the case was properly submitted to the jury.").

AFFIRMED.¹

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



CLOSING LETTER SENT

ON 03.12.15

Attorney initials _____

The South Carolina Court of Appeals *24*

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
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April 03, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Marvin Xavier Porcher
Lower Court Case No. 2012GS1001910, 2013GS1000411
Appellate Case No. 2013-001620

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

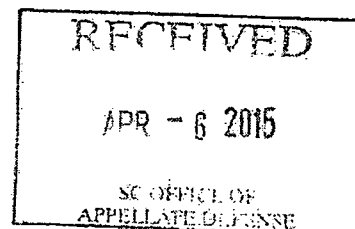
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
LaNelle Cantey DuRant, Esquire



William M. Blitch, Jr., Esquire
Scarlett Anne Wilson, Esquire

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonMarvin Xavier PORCHERFull name and prison number (if any) of Applicant.
#315900,

v.

State of South Carolina

2015-CP-10-2045

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2015 APR 10 AM 1:16
JULIE J. HARRIS
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McDougall Corn Test (S.C. Dept. of Corrections)
2. Name and location of Court which imposed sentence Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-10-4867, 2013 GS-10-0411,
 - (b) 2012 GS-10-1910, 2012 GS-10-111R
 - (c) Burglary, B&E-Motor vehicle (1910 Dismissed)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 19, 2013
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty 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. Appellate Case # 2013-001620.
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Submitted January 1, 2015, Filed 3-11-15.
- ii. Conviction: Affirmed.
- iii. (Initial Brief of Appellant.
- (c) the date of each such result:
- i. See Attachments.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See Attachments.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: N/A
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Ineffective Assistance of Counsel

- (a) Denial of Due Process and/or Equal Protection.
- (b) Insufficient Indictment.
- (c) False Imprisonment/Lack of Jurisdiction

12. Prior to this application have you filed with respect to this conviction: To Convict

- (a) any petition in a State Court under South Carolina Law? See Attachments.
- (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? See Attachments

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. Appeal —
- ii. _____
- iii. See Attachments
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. S.C. Court of Appeals.
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. See Attachments
- ii. and Relevant Arguments,
- iii. Including Pro Se Attachments.

- iv. _____
- (d) the date of each such disposition:
- i. See Attached Sheets
- 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: N/A

- (a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised: N/A

- 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: N/A

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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? yes.

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. Ted Smith & Jason King, Chas. Co. office of [P.D.]
- ii. La Nette Cantey Du Rant, Columbia, SC
- iii. S.C. office of Appellate Defense.
- (b) the proceedings at which each such attorney represented you:
- i. Trial.
- ii. Appeal.
- iii. /

19. State clearly the relief you seek in filing this application:

Conviction Vacated Based on a Lack of Evidence

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA

VERIFICATION

County of Charleston

I, Marvin Xavier PORCHER, SCDC # 315900,
 being duly sworn upon my oath, depose and say that I have subscribed to the foregoing
 application; that I know the contents thereof; that it includes every ground known to me for
 vacating, setting aside or correcting the conviction and sentence attacked in this application; and
 that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 7th
 day of Apr., 2015.

Lisa M. Cross (L.S.)
 Notary Public

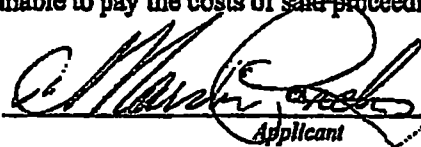
LISA M. CROSS
 Notary Public, State of South Carolina
 My Commission Expires 1/18/2024

My Commission Expires: Jan 16, 2024

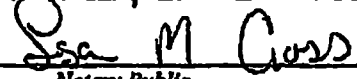
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Marvin Xavier PORCHER, # 315900,
hereby apply for leave to proceed in this action without prepayment of fees or costs or
security therefor. In support of my application I declare under penalty of perjury that the
following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
7th day of April, 2015.


Notary Public

LISA M. CROSS
Notary Public, State of South Carolina
My Commission Expires 1/16/2024

My Commission Expires: Jan 16, 2024

attachments

the applicant would Respectfully
 State that there were no Substantial-
 Circumstantial "Evidence" to warrant
 His Conviction for the offense of
 Burglary First Degree (16-11-311)
 and that Counsel was ineffective
 for Failure to Submit Motions to
 alleviate the indictment which
 was a "nullity"

the State had no evidence from the
 very beginning of its case that the
 applicant Marvin Xavier Ponchar
 was in the victims Residence let alone
 Removed any item from the said Residence.

there are "no witnesses" that the applicant
 committed the alleged "Crime or offense."
"no D.N.A. prints ect. the state and/or Charleston

Solicitors Office knew it lacked
Sufficient Evidence to indict
Defendant and/or applicant

Marvin Xavier Porcher on the Burglary offense.

it is applicants contention that he is
wrongfully and thus unlawfully convicted and
sentence for a crime the Evidence the State knew he
could not have committed and especially
considering the fact that there was "[another person
of interest]"

even without said person or party the
State could not establish by any Preponderance
of the Evidence that the applicant committed
the Burglary.

by the very Definition of Burglary there
was no Evidence of Entry.

(3)

the Applicant was alleged to have been in possession of Merchandise that came or allegedly was removed during the Burglary in Question.

Even if it can be established that a Defendant is in possession of Stolen Property that came from a Burglary that in itself does not establish by in any way form of Probation that the Defendant was the actual Party to the Burglary.

For the most part a Defendant in "possession" of Stolen Property "without more" can only legally be convicted of receiving Stolen goods or possession of Stolen property.

the Applicant contends further that the trial Court Judge lacked Jurisdiction to Convict or Sentence him for a crime the Evidence clearly demonstrated the Applicant

Simplif Did not Commit. the Applicants
Motion for a Directed verdict Should have
Been Granted and the Applicants
Burglary offense Dismissed.

A. Defendant is entitled to a Directed Verdict,
when the State fails to produce evidence of
the offense charged.

See State v. Weston. 367 S.C. 279, 292, 625, SE2d
641, 648 (2006). the law further states that if
there is "[any]" Direct or substantial
Circumstantial Evidence Reasonably tending
to prove Guilt of the accused, the appellate
Court must find the case was properly
Submitted to the jury.

However if no such evidence exists then
the Defendant must be acquitted of the
Crimes.

-5-

See: State-v-Mitchell, (S.C. Sup. Ct.)
(on Directed verdict)

Appeal Granted - Case: vacated

in State-v-Hepburn. 406 S.C. 416. 753 S.E. 2d
(2013) and Cherry. 361 S.C. 588. 593. 606 S.E. 2d 475
(2004) it was Ruled By the Supreme Court (S.C.)
that if the state fails to present or produce
Evidence a Defendant is entitled to a
Directed verdict of Dismissal of the offense
Charges.

Applicant - Marvin Kaurer Becker - Case is
very much "Synonymous" with State-v-Odoms,
395 S.C. 582. 720 S.E. 2d 48 (2011) and the following
other Cases where By the Defendant was
Acquitted - Based upon a "lack of Sufficient Evidence"
See State-v-Mitchell aforementioned to
include all Relevant ones so mentioned here in.

the applicant would respectfully
 Contend that he was Denied the Right
 to Due process of law and/or equal
 protection when the trial Court Convicted
 Him of the Crime of Burglary for which
 the state knew it lacked Evidence.

As a Direct and Proximate cause of an
unlawfully implemented indictment the
 Applicant was unlawfully Convicted of a Crime
 He did not Commit nor the state proved.
 there were: No. D.N.A. Evidence

No latent Prints

No witnesses

No Evidence of Burglary

this argument of insufficient Evidence was
 presented in South Carolina Court of appeals
 by applicant, Marvin Xavier Porcher Counsel.
 Interestingly, the alleged items Missing from
 the Residence included a television which
 Police "Did Not" find in the possession of
 Mr Porcher when he was Stopped and Detained.

that alone should have been left another "thorn" in the prosecutions case since it undoubtedly demonstrated that if he entered the residence to steal the other items he should have been in possession of the television as well.

Trial Counsel Moved for a Directed Verdict because the "evidence" even if viewed in light of the Solicitor demonstrated unequivocally that the State simply did not meet its burden of proof: that Applicant, Morris Reuben Porcher committed the crime of Burglary. His Appellate Attorney argued that the Lower Court Erred by Failing to Grant the Motion when the Judge knew the State lacked Substantial Circumstantial Evidence to convict Defendant (Applicant Porcher).

in spite of the facts the Court of appeals
Affirmed the Conviction and in light
of the Supreme Court Ruling in State-v-
Mitchell (Supra) . State-v- Odema.

395, SC. 582,720. S.E. 2d 48 (2011)

State-v- Green 406, S.C. 589,753. S.E. 2d 259
(Ct. App. 2014)

and State-v- Bostick 392 S.C 134.708. S.E. 2d
774 (2011)

The applicant wishes to Respectfully
State that Officer Kathy Gjallman,
was Dispatched to the Home of the
Alleged victim. Said investigator is a
Forensic investigator testified She "Did not
process the laptop" Computer Found.
allegedly on the applicant Maurice Xavier Perchar
she did not Conduct testing that could have
picked up a number of latent prints
identifying a number of individuals one
of whom could have been the Real perpetrator
on our client.

When police stopped the applicant
whatever item they found on him
isn't evidence of a Burglary no matter
the Reasonable Suspicion.

the law is [clear] in its Definition of
what Constitutes a Burglary Even if a
party is found to be in possession of
Stolen items from a Burglary about an
Hour after the offense occurred the Court
must take into consideration Relevant
Factors Such as the Proximity and time between
when an offense occurs and where and when a
Suspect was stopped and detained by Police.
it should not have been far-fetched that the
applicant could of have purchased the Computer
from someone on the street and find on the ground
some article at Juvabuy. and it doesn't mean i know
the person by name. it is Common for individuals
involved in Crime and preferably thieves to
peddle Stolen property lifted from Department
Stores Businesses, in Garages or even from a
Burglary on the streets. the fact that he couldn't
give a name of who he brought the items from isn't
evidence of a Burglary

But at most is only evidence of receiving
 stolen goods or being in possession of such
 and nothing more. it didn't matter that
Mr. Marvin Xavier Parker knew the victim personally
 nor that he had asked to use her computer.
 it should matter that he had allegedly
 asked for it she and his girlfriend was going
 out the night of the burglary.
 while it may raise "reasonable" suspicion
 it is simply not any evidence of a burglary being
 committed by the applicant "Marvin Xavier Parker"
 and his motion for directed verdict should have
 been granted based on the relevant facts or
factual contentions raised. the state position is
 definitely not based on substantial - circumstantial
 evidence but only "circumstantial" evidence
 centered on reasonable suspicion which should
 not have been enough to defeat a properly
 presented and argued motion for a directed
 verdict at the close of the prosecution's case.

in spite of trial Counsel Moving for a Directed verdict or Dismissal it is the applicants Contention that Counsel (Both. William Ted Smith and Jason King) were ineffective as trial Counsel for properly not preparing for trial or Moving to alleviate the indictment from the very Beginning.

See Edwards-v- State. 392, SC 449, 456, 710, S.E. 2d 60 (2011) (stating trial Counsel performance must shown to be deficient when judged under the Standard of Reasonableness.

See Strickland-v- Washington 466 U.S. 668

Speaks-v- State 377 S.C. 396, 399, 660 S.E. 2d 512

(2008) and please See Draughton-v- Elvett. 312. SC 4-430- S.E. 2d 517 (1993).

See also and-v- Carter 372 S.C. 318, 642 SE 2d 590

(2007) where Counsel for the Defendant was found very inadequate in his Representation see also

Hill-v- Lockhart. 474 U.S. 52 (1985) applying the

Strickland Standard. in State (S.C.) v. Williams.

564 SE 2d 688 (2002) and State-v- Fuller 225 SE 2d

866 the law was clear when it indicated the factors that "must" be considered when a Defendant is found to be in possession of stolen property that may have come from a Burglary or other

establishment when it referenced all of the relevant factors that in itself can free or vindicate a defendant of a crime connected to another where in a defendant "found in possession of stolen property" cannot be convicted of the predicate and an original offense.

The court stated in various cases involving directed verdicts and the denial of such that the trial court is required to view the evidence and also the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion.

See Galliard-V-DOE 570 SE.2d 545, 351, S.C. 497 where certiorari was granted and case reversed. The state relied on the encounter between the applicant and the officer Salgado, a community resource officer. One comment made by the solicitor that was highly prejudicial involved was amongst other allegations about his far fetched theory of Mr. Maurice Xavier Percher knowing the house would be empty as if the Real burglar couldn't have known this as well.

the Solicitor made another allegation about Mr. Martin Xavier Pereira (knowing where the cameras (video or surveillance) were since he worked on the roof of the Residence and also mentioned repeatedly about the victim letting him use her computer to get on Facebook and this decided to steal her computer so if these allegations were facts which the Record presented before the court proved it wasn't!!

See "transcript" (trial transcript)

page 260 lines 12-24 Closing arguments by Solicitor "Shealy" Solicitor Shealy even went further to demonstrate that because the applicant supposedly had given the officer a false last name that it should be considered evidence of guilt linking him to the burglary. Such a statement falls on its face in light of the fact that a person can give police a falsified name to avoid being arrested for traffic ticket warrants or those involving failure to pay child support or for a number of unrelated reasons
See Trans. pg. 262 lines 2-13.

it is the applicants contention
that the Solicitors Comments could
have possibly infected with "unfairness"
to make the conviction a "Denial of Due process"

Please See *Butler-v-State* 2014 WL-2968919
and *State-v-Carr* 12 WL-18906591 SC(2012)
and *State-v-Bolin* 378 S.C. 96, 662 SE 2d 38
(S.C.) with regard to pushing an invalid or
insufficient indictment

Rest with leave to [Amend]...

Attachment

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN XAVIER PORCHER,

APPELLANT

APPELLATE CASE NO. 2013-001620

INITIAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	9
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	10
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	9
<u>State v. Green</u> , 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014).....	10
<u>State v. Hepburn</u> , 406 S.C. 416, 753 S.E.2d 402 (2013).....	9
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011)	9, 10, 11

Statutes

S.C. Code Section 16-11-311(A)	9

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in not granting Appellant Porcher's directed verdict motion when the state did not prove he committed burglary by entering the home of Nancy Wohlberg without her permission when there was no forensic evidence he had been in the home, no eyewitness, and Porcher claimed he obtained the victim's laptop computer from someone on the street?

STATEMENT OF THE CASE

On July 8, 2013, the Charleston County Grand Jury indicted Marvin Xavier Porcher on the charge of burglary first degree. On July 18-19, 2013, Porcher proceeded to trial before the Honorable Deadra L. Jefferson and a jury. Porcher was represented by William Ted Smith and Jason King. The state was represented by Tyler Whitaker and Jennifer Shealy. The jury returned a verdict of guilty as indicted. Judge Jefferson sentenced Porcher to the minimum sentence of fifteen years. Porcher's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

Nancy Wohlberg was a neighbor of Marvin Porcher and his girlfriend, Cassie, as they lived next door to each other in a mobile home development. Nancy and Cassie also worked together as security guards. On November 2, 2011, Cassie and Porcher ate dinner with Nancy and her friend, Kenny, as Porcher was going to give Nancy a tattoo at her request. During that time, Nancy recalled that Porcher asked to use her laptop computer to check his Facebook account which he did. The next night, November 3, 2013, Nancy and Cassie decide to go out. Nancy paid Porcher for some repair work he did on her home, and he promptly gave the money to Cassie before they left. Tr. 113, ll. 12 – Tr. 123, ll. 3; Tr. 167, ll. 1 – 25; Tr. 169, ll. 1-25; Tr. 171, ll. 1-25; Tr. 173, ll. 1 – Tr. 178, ll. 25.

While they were out, Nancy received a phone call from the North Charleston police who asked if she had reported a burglary as they had her laptop computer. Nancy said she left her laptop on her bed. She met the police at her home, and discovered that her roommate's television was missing as well as some jewelry boxes which included some of her grandmother's jewelry. When the police told her they found the laptop and jewelry on Porcher, she and Cassie were shocked. Tr. 179, ll. 2 – Tr. 190, ll. 7.

Officer Fernando Salgado was working from five p.m. to one a.m. on November 3-4, 2011 patrolling an area around Stall Street in North Charleston. Tr. 124, ll. 1 – Tr. 126, ll. 12. He saw a person on a bicycle and noticed the bicycle did not have a rear blinking light. He turned around and stopped the bicyclist to tell him he needed a rear light. Tr. 127, ll. 1 – Tr. 130, ll. 25.

Officer Salgado recognized the man who told his name was Marvin Swinton. Officer Salgado knew this was wrong so he asked for the man's ID who did not give it to

him. When the officer called in and checked, there was nothing under the name Marvin Swinton in South Carolina or New York as Porcher told him he was from New York. Officer Salgado noticed a bulge in the man's jacket and the man appeared sweaty and nervous. Officer Salgado then asked for consent to search and the man consented. The officer found a laptop on the man as well as the man's wallet with his ID which had the name Marvin Porcher. Jewelry including a pearl necklace which Nancy Wohlberg had described were found in Porcher's pocket. According to the officer, Porcher told him he was going to a friend's house to get on the internet. Also found on Porcher were tools including a razor knife, a wrench, an Allen wrench, and a zip tie. Because he had given the officer a false name, Porcher was arrested for providing false information to the police. Tr. Tr. 131, ll. 1 - Tr. 138, ll. 14.

When they arrived at city hall in the detective unit, Detective Mark Evans came to talk to Porcher. Porcher was also arrested for possession of stolen property. Tr. 138, ll. 1 - Tr. 140, ll. 16. Porcher pled guilty to the two charges of providing false information to police and possession of stolen property in municipal court. Tr. 145, ll. 1 - Tr. 147, ll. 13.

Detective Mark Evans interviewed Porcher who said he wanted to talk to the detective. Porcher told Detective Evans that Porcher purchased the laptop from a man on the street--Remount Road. He did not provide a name or description of the man. The detective opened the computer and learned it belonged to Nancy Wohlberg. He then called her. Porcher denied any involvement in the theft of any of the property. The detective recorded the interview but it could not be found. Tr. 148, ll. 22 - Tr. 160, ll. 24.

Detective Evans admitted on cross examination that he did not follow up in any way on the information that Porcher provided to him. Tr. 162, ll. 14 - Tr. 165, ll. 24.

Deputy Gilbert Baldwin of the Charleston County Sheriff's Department, was dispatched to the home of Nancy Wohlberg on November 4, 2011. He and a police officer were the first to enter the home. He discovered that the rear door had been pried open from the outside which was the point of entry. He testified that many different metal items that were small enough to fit in the door of the jam could be used to pry open such a door. They determined that the missing items were the television from the roommate's room, jewelry boxes and items of jewelry, and the laptop computer. He also searched the next door home of Porcher and Cassie but found nothing. Tr. 204, ll. 17 - Tr. 217, ll. 9.

Kathy Kjellman worked as a forensic services investigator with the Charleston County Sheriff's Office, and was dispatched to the home of Nancy Wohlberg on November 4, 2011 to search for forensic evidence. She found two finger prints from a space heater that was in front of the dresser where the television had been. However, these prints were insufficient for identification. The other print was insufficient for SCAFIS which was the South Carolina Automated Fingerprint Identification System. Tr. 222, ll. 14 - Tr. 229, ll. 25.

On cross examination, Deputy Kjellman admitted that she did not process the laptop for fingerprints. She found no trace evidence, no DNA; she found only the two prints on the heater. Tr. 230, ll. 8 - Tr. 234, ll. 15.

Sarah Lippe, of the Clerk of Court's Office, testified to the two previous convictions for burglary for Porcher. Both were guilty pleas. One was burglary second degree from November 2005 with a conviction date of May 24, 2006. The second one was for a burglary third degree from November 2005 with a conviction date of May 24, 2006. Tr. 236, ll. 24 - Tr. 241, ll. 25.

At the close of the state's case, defense counsel moved for a directed verdict on the basis that the state failed to prove Porcher committed burglary because there was no evidence that he entered the home. There were no eyewitnesses, and no forensic evidence. Counsel argued that Porcher had pled guilty to receiving stolen goods and providing false information. Counsel said; "We believe that that is what this case is and should have been resolved for." Counsel argued that the state did not meet their burden of proof for burglary. Tr. 242, ll. 10 - Tr. 243, ll. 11.

The state argued that they had proven entry which was most likely made with a tool "consistent with the ones found on his person," and the proximity of time and the short distance from the victim's home and the fact that he had the goods from the home on him. Tr. 243, ll. 12 - 21.

The judge denied the directed verdict motion by finding there was substantial circumstantial evidence reasonably tending to prove the defendant's guilt. Tr. 243, ll. 22 - Tr. 245, ll. 12.

Defense counsel moved again for a directed verdict on the same grounds at the close of the defense case although the defense presented no evidence. Tr. 254, ll. 7 - 17. After the verdict, defense moved for a new trial and directed verdict. The judge denied both. Tr. 297, ll. 12 - 298, ll. 6.

ARGUMENT

The trial court erred in not granting Appellant Porcher's directed verdict motion when the state did not prove he committed burglary by entering the home of Nancy Wohlberg without her permission when there was no forensic evidence he had been in the home, no eyewitness, and Porcher claimed he obtained the victim's laptop computer from someone on the street.

In State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013), citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004), the Supreme Court held that in cases where the state has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. Only if the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, then the Supreme Court must affirm the trial court's decision to submit the case to the jury. *Id.*

S.C. Code Section 16-11-311(A) provides: "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling."

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court reversed finding there was not substantial circumstantial evidence for a conviction and the trial court erred in refusing to direct the verdict. Odems was convicted of burglary first degree along with other charges. The evidence presented against Odems was circumstantial and consisted of: (1) less than 90 minutes after the burglary, police found Odems in the getaway car with the burglars and the stolen goods; (2) Odems fled from the police; (3) Odems asked an uniformed person to lie for him to the police. An eyewitness saw only two people at the

crime scene; fingerprints found at the scene did not match Odems; and a co-defendant said Odems did not participate.

Appellant Porcher's case is similar to Odems in that the stolen goods were found on Porcher; and Porcher lied to the police. No fingerprints were found that matched Porcher. Although he did not have a co-defendant testifying, Porcher had a reasonable explanation for having the stolen goods. However, Porcher's case is distinguished in that he did not run from the police but was willing to talk to them.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court again reversed the case by finding that the trial court erred in not directing a verdict because the state presented insufficient circumstantial evidence to submit the murder charge to the jury. The evidence against Bostick was: (1) the victim's personal items were found in a burn pile in a neighboring home owned by the defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified she did not use such accelerants; (3) a pattern of gasoline was found on the defendant's shoes and was used as an accelerant to start a fire in the victim's home after her assailant struck her; (4) blood found on the defendant's jeans and the DNA expert could exclude 99 percent of the population although she could not conclusively state the blood was the victim's.

In State v. Green, 406 S.C. 589, 753 S.E.2d 259 (Ct. App. 2014), the Court of Appeals held that attempted first degree burglary was a lesser included charge of first degree burglary. Green was charged with first degree burglary, and the trial court held "there was no evidence in the record upon which the jury could convict Green of burglary first degree because the evidence was simply not there for a showing of entry which is one of the elements of the crime of burglary in the first degree." The trial court granted the directed

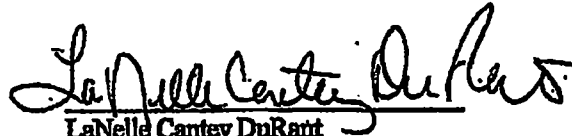
verdict on first degree burglary but submitted the case to the jury on attempted first degree burglary which did not require an entry. The Court of Appeals affirmed the trial court.

In Porcher's case, there was no evidence presented that Porcher entered the home of Nancy Wohlberg without her consent. There was no evidence of his entry. The officer checked the door for prints where the lock was broken, but no prints were found. There is less evidence against Porcher than in the case of Odems. The trial court should have directed the verdict of first degree burglary because the state did not prove the elements of the offense which required entry. The most the state could prove against Porcher was being in possession of stolen goods and providing false information to the police. Porcher's explanation that he bought the items from a man on the street was reasonable, and it was reasonable that he gave a false name if he thought the items may have been stolen.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for the entry of a directed verdict.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of April, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARVIN XAVIER PORCHER,

APPELLANT

APPELLATE CASE NO. 2013-001620

DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial Transcript Pages 1-5, 76 - 92, 113-140, 145-160, 162-165, 167, 169, 171, 173-190, 204-217, 222-234, 236 - 245, 254, 260 - 287, 290 - 291, 297 - 317. *

I certify that this designation contains no matter which is irrelevant to this appeal.

April 15th, 2014


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attachment

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marvin Xavier Porcher, Appellant.

Appellate Case No. 2013-001620

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2015-UP-124
Submitted January 1, 2015 – Filed March 11, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004)

("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [the appellate court] must find the case was properly submitted to the jury.").

AFFIRMED.¹

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Marvin Xavier Porcher

AKA:

Race: BLACK Sex: M Age: 47DOB: 1966 SS#: Address: City, State, Zip: Summerville, SC 29483DL#: SID#: SC01330906*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Breaking & Entering a Motor Vehicle

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1000411A/W#: M728037Date of Offense: 9/5/2011S.C. Code §: 16-13-0160(1)(2), (B)CDR Code #: 0258

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-13-0160(1)(2), (B) of the S.C. Code of Laws, bearing CDR Code # 0258☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Whitaker, Tyler S. 749066 W. Ted Brute 70744

Whitaker, Tyler S.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-1910; 2013-GS-10-4867☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Concurrent to probation☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. revisions of 7/19/12

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-23-63 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: Att if available☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Whitaker, Tyler S.Court Reporter: Phyllis H. H.Presiding Judge W. Ted BruteJudge Code: 2128Sentence Date: 7.19.13

TAS20120705172

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011033140

ARREST WARRANT NUMBER

M728037

DATE OF ARREST

June 23, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JAN 09 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1000411

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

VS.

MARVIN XAVIER PORCHER

DOB: 1966- [REDACTED]

B/M

Indictment for

Breaking And Entering A Motor Vehicle

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on January 8, 2013 the Grand Jurors of Charleston County present upon their oath:

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about September 5, 2011, the Defendant, MARVIN XAVIER PORCHER, did break or attempt to break into a motor vehicle belonging to Russell Boyd, at [REDACTED] North Charleston, South Carolina, with intent to steal the same or anything of value therefrom; in violation of Section 16-13-160 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TYLER S. WHITAKER
ASSISTANT SOLICITOR

ARREST WARRANT

M-728037

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2011033140

THE STATE

against

Marvin Xavier Porcher

Address: 108 Alexis Ct

Summerville, SC 29486

Phone: SSN:
 Sex: M Race: B Height: 5 7 Weight: 180DL State: SC DL #:
 DOB: 966 Agency ORI #:
 Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Rebecca Bailey #306

Offense: Breaking and Entering a Motor Vehicle 16-13-160

Offense Code: 00258

Code/Ordinance Sec: 16-13-160

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Date:

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant MARVIN XAIVER PORCHER
on 6-27-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2500 City Hall Lane
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Personally appeared before me the affiant Rebecca Bailey #306

who

being duly sworn deposes and says that defendant Marvin Xavier Porcher

did within this county and state on 09/05/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of North Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Breaking and Entering a Motor Vehicle 16-13-160

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

OCA #: 2011033140

LEB

RECEIVED
JUN 22 2012
BY: Signature of Affiant

ORIGINAL

SCC IN 6/22/12

OPR 858

NCIC 6/22/12

OPR 858

NCIC #835 291375

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Affiant's Address 2500 City Hall Lane

North Charleston, SC 29406-

Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

(I appearing from the above affidavit that there are reasonable grounds to believe that

on 09/05/2011 defendant Marvin Xavier Porcher

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of North Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Breaking and Entering a Motor Vehicle 16-13-160

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/22/2012

Thad J. Dougherty (L.S.)

Signature of Issuing Judge

Judge Code:

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Form Approved by
U.S. Attorney General
Apr 21, 2009
SCCA 013

RAIL set by
Judge Lombard
on 7-13-12
Type and Amount 10,000
Name of Surety: _____

PRELIMINARY HEARING held by
Judge 1003
on 7-13-12
Defendant Attorney: _____
Decision: _____
150

DISPOSITION before
Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, not pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

FILED
2012 JUL 17 PM 2:15
JULIE J. ARMSTRONG
CLERK OF COURT

M728037

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

ORIGINAL

OCA# 2011033140

Det. R. Bailey

Personally appeared before me, a magistrate of this County, one, Det. R. Bailey, who first being duly sworn, deposes and says that

MARVIN PORCHER

did within this County and State between the dates of September 5, 2011 and September 6, 2011 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE**BREAKING AND ENTERING A MOTOR VEHICLE**

16-13-160

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

Between the dates of September 5, 2011 at 2230 hours and September 6, 2011 at 0654 hours, while at [REDACTED] which is located in the City of North Charleston, County of Charleston, State of South Carolina, the defendant, **MARVIN PORCHER**, did commit the offense of **BREAKING AND ENTERING A MOTOR VEHICLE**, in violation of South Carolina 16-13-160. In that the defendant did willfully and unlawfully break and enter a 2004 Jeep Grand Cherokee, bearing Florida plate [REDACTED] and VIN# [REDACTED], that was parked at this location, and took and carried away several items belonging to the victim which are listed below.

Facts to establish the aforesaid are that between September 5, 2011 at 2230 hours and September 6, 2011 at 0654 hours, the victim's vehicle was parked at [REDACTED] as the victim was a guest at this establishment. On September 6, 2011 at 0654 hours, the victim observed his vehicle's driver's side window broken. He notified North Charleston Police Department who responded, and then NCPD Crime Scene was dispatched as well due to visible blood on the driver's side door just underneath the broken window, which was the point of entry. Crime Scene responded, processed the vehicle and collected the blood on the door. This was sent to SLED for analysis. The results read as follows: The short Tandem Repeat (STR) PCR DNA profile developed from item 1 was compared to the Combined DNA Index System (CODIS). This profile matches the STR PCR DNA profile developed from DNA Database Offender Marvin Porcher, South Carolina SID# SC01330906. The following items were stolen from the victim's vehicle: one Magellan GPS unit valued at \$250.00, one HP Printer valued at \$40.00, one pair of prescription eye glasses valued at \$200.00, one cellular phone vehicle charger valued at \$15.00, one LG Cosmos cellular phone valued at \$100.00, one Canon Sureshot digital camera valued at \$200.00, one backpack valued at \$20.00, one souvenir mug valued at \$35.00, one pair of diabetic socks valued at \$25.00, one Dr. Scholls massager valued at \$30.00, six shirts valued at \$120.00, and one carton of Newport cigarettes valued at \$43.00. The total monetary loss to the victim totals \$1073.00.

This information is based on an investigation of Detective R. Bailey and witnesses to be named in the court at a later date are witnesses to prove the same. All done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 2nd day of June
2012.

Thad J. Dougherty
Signature of Judge

[Signature]
(AFFIANT)

Address: 2500 City Hall Lane
N. Charleston SC, 29406
Phone: 843-740-5873

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE OF VS.Marvin Xavier Porcher

AKA:

Race: BLACK Sex: M Age: 47DOB: 1966 SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483DL#: [REDACTED] SID#: SC01330906*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Breaking & Entering a Motor Vehicle

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1001910A/W#: M613172Date of Offense: 8/9/2011S.C. Code § : 16-13-0160(1)(2), (B)CDR Code #: 0258

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-13-0160(1)(2), (B) of the S.C. Code of Laws, bearing CDR Code # 0258☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Glen S. Whitaker 74906 [Signature] W. Ted Smith 70744

Whitaker, Tyler S.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-10-411; 4867☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Concurrent & probation restrictions of☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 7/19/13Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2993 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(3) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

none if available☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128Sentence Date: 7-19-13

TAS20110805683

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011029488

ARREST WARRANT NUMBER

M613172

DATE OF ARREST

August 23, 2011

ACTION OF GRAND JURY

JURY

Foreperson of Grand Jury

Date: APR 10 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1001910

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

MARVIN XAVIER PORCHER

DOB: 1966-

B/M

Indictment for

Breaking And Entering A Motor Vehicle

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Breaking And Entering A Motor Vehicle

That in Charleston County, South Carolina, on or about August 9, 2011, the Defendant, MARVIN XAVIER PORCHER, did break or attempt to break into a motor vehicle belonging to James Wilson, at [REDACTED] North Charleston, South Carolina, with intent to steal the same or anything of value therefrom; in violation of Section 16-13-160 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TYLER S. WHITAKER
ASSISTANT SOLICITOR

ARREST WARRANT

M-613172

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Marvin Xavier Porcher

Address: 108 Alex Court

Summerville, SC 29483-

Phone: (000)000-0000

SSN: [REDACTED]

Sex: M Race: B Height: 5 7 Weight: 150

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] 1966

Agency ORI #: SC0100800

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Sean Reiter - 0336

Offense: Larceny / Breaking into motor vehicle or tanks,
pumps, where fuel, lubricants stored

Offense Code: 0258

Code/Ordinance Sec: 16-13-0160(1)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Marvin Xavier Porcher

on 05-23-2011

#147

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Personally appeared before me the affiant Sean Reiter who

being duly sworn deposes and says that defendant Marvin Xavier Porcher

did within this county and state on or about 8/16/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Charleston)

In the following particulars:

DESCRIPTION OF OFFENSE: Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lubricants stored

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 2500 City Hall Lane

North Charleston, SC 29406-

Affiant's Telephone (843)554-5700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/16/2011

defendant Marvin Xavier Porcher

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lubricants stored

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8/16/2011

Signature of Issuing Judge

Alvin Earl Bligen

Judge Code: 5536

Judge's Address 3870 Leeds Avenue, Suite 106

North Charleston, SC 29405-7469

Judge's Telephone (843)746-9822

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
U.S. Attorney General
April 21, 2003
GSA 015



FILED
2011 AUG 25 PM 12:47
JOHN C. ARMSTRONG
CLERK OF COURT
BY _____

WITNESSES

Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____

CODEFENDANTS

Judge set by 8:24.11
on 8/24/11
Type and Amount \$ 500.00
Name of Surety _____

PRELIMINARY HEARING held by

Judge _____	_____
on _____	_____
Defendant Attorney _____	_____
Decision _____	_____
Judge _____	_____
on _____	_____

DISPOSITION before

Judge _____	_____
on _____	_____

by _____ (indicate jury trial, bench trial, plea, not plea, etc.)

Disposition: _____

Sentence: _____

JURORS

_____	_____
_____	_____
_____	_____

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON

OCA# 2011029488

Personally appeared before me, a magistrate of this County, one Det. Rector who first being duly sworn, deposes and says that:

MARVIN XAVIER PORCHER

did within this County and State on the 9th day of AUGUST 2011 did violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
BREAKING AND ENTERING A MOTOR VEHICLE
VIOLATION OF SECTION 16-13-160

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on August 9, 2011 between 12:00 a.m. and 3:30 p.m., while at [REDACTED], which is located in the City of North Charleston, County of Charleston and the State of South Carolina, the defendant, **MARVIN XAVIER PORCHER** did commit the offense of **BREAKING AND ENTERING OF A MOTOR VEHICLE**, which is in violation of section 16-13-160 of the South Carolina Code of Laws of 1976 as amended. In that the defendant did willfully, unlawfully, and feloniously enter and carry away an Alpine cd player valued at \$150.00 and a Kicker Solo Baric subwoofer valued at \$100.00 from a silver in color 1995 Toyota Four Runner. The vehicle displays a South Carolina license tag of [REDACTED] and has a vehicle identification number of [REDACTED].

On the aforementioned date and time, the victim reported to the North Charleston Police Department that an unknown person entered the vehicle through the driver side window that was slightly open. Upon making entry, the defendant removed the Alpine radio from the dash and the Kicker Solo Baric subwoofer. Officer Brown processed the driver side window and obtained several prints on the inside and outside of the vehicle window. The prints discovered on the window were then released to crime scene for further analysis. The prints were verified through AFIS by CST K. Murphy and returned to that of the defendant. Prints discovered on the window were verified to be from the left ring finger, left middle finger, and left index finger, thenar/hyphenar regions of the right palm, and thenar/hyphenar regions of the left palm of the defendant. The prints discovered were then compared to known prints of the defendant and a match was confirmed. The victims provided a written statement stating that they did not give the defendant permission to enter the vehicle nor was permission given to the defendant to carry any item away from the vehicle.

The aforesaid is based on the investigation of Detective Aiken, Officer Brown, CST Murphy, and witnesses to be named in the court at a later date. These are witnesses and are witnesses to prove the same. All this done against the form of the Statute, the peace of the city, and the dignity of the State of South Carolina.

Sworn to and Subscribed before me
This 16th day of August 2011.

Signature of Judge

(AFFIANT)

Address: 2500 City Hall Lane
N. Charleston, SC 29406
Phone: (843) 740-2575

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
MARVIN XAIVER PORCHER

AKA:

Race: BLACK Sex: M Age: 47
 DOB: 966 SS#:

Address:

City, State, Zip:

DL#: SID#: SC01330906*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1004867A/W#: DIRIND1963Date of Offense: 11/3/2011S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Whitaker, Tyler S.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1.5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-1910; 2013-GS-10-411☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. of 7/9/13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

ATM if available

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128Sentence Date: 7-19-13

404

TAS20111107543

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011018795B

ARREST WARRANT NUMBER

DIRIND1963

DATE OF ARREST

July 8, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury -- JUL - 9 2013
Date:

VERDICT

Guilty

Linda J. Brown 7-19-13

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1004867

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2013

THE STATE

vs.

MARVIN XAIVER PORCHER

DOB: 1966- [REDACTED]

B/M

Indictment for

Burglary First Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on July 8, 2013 the Grand Jurors of Charleston County present upon their oath:

Burglary First Degree

That in Charleston County, South Carolina, on or about November 3, 2011, the Defendant MARVIN XAVIER PORCHER, did enter the dwelling of Susan Rutledge and Nancy Wohlford, located at [REDACTED] Charleston, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night and/or defendant was convicted of two or more housebreakings; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TYLER S. WHITAKER
ASSISTANT SOLICITOR

**OFFICE OF THE SOLICITOR
NINTH JUDICIAL CIRCUIT**

FILED INDICTMENT/WARRANT STATUS CHANGE FORM
(One Defendant and One Warrant/Indictment per Form)

Name: 20131111XavierBorgher

Indictment #: 2012GS1001111

Race: B JULIA J. HARTSTRONG Sex: M
CLERK OF COURT

Case Number: 20111107543

BY PM

SSN: [REDACTED]

Date of Birth: 1966-01-01

Warrant Number: M614613

Disposition (Check One)

Reason (Optional):

4A ☐ Dismissed

Reason: _____

4B ☒ Nolle Prosequi.

Reason: case was re-indicted (defendant found guilty at trial)

7 ☐ Remanded

Charge: _____

Municipal Court:

Magistrate Court:

Judge: _____

8B ☐ No Bill

9 ☐ Failure to Appear

Date Bench Warrant Issued:

Trial/Plea Docket Week: _____ **Case Pre-filed with** _____ **Grand Jury.**

Authorized by: Elyse S. Whitaker
Tylor S. Whitaker

Date: 7/27/13

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: _____
	DATE: _____

Defense Attorney: Smith, Ted

TAS20111107543

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011018795B

ARREST WARRANT NUMBER

M614613

DATE OF ARREST

November 4, 2011

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

MAR 3 5 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1001111

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2012

THE STATE

vs.

MARVIN XAVIER PORCHER

DOB: 1966-
B/M

Indictment for

Burglary 1st Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary 1st Degree

That in Charleston County, South Carolina, on or about November 3, 2011, the Defendant MARVIN XAVIER PORCHER, did enter the dwelling of Susan Rutledge and Nancy Wohlford, located at [REDACTED] during the nighttime without consent and with the intent to commit a crime therein; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TYLER S. WHITAKER
ASSISTANT SOLICITOR

General Sessions

CASE HISTORY FOR CASE M614613

The State of South Carolina VS Marvin Xavier Porcher

LED DATE: 11/5/2011

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: Charleston County Sheriff

ASE PARTIES:

Defendant Porcher, Marvin Xavier

[REDACTED] Charleston, SC 29406

Officer Baldwin, G.

3505 Pinehaven Drive, Charleston, SC 29405-7789

Victim Rutledge, Susan

[REDACTED], Charleston, SC 29406

Victim Wohlford, Nancy

[REDACTED], Charleston, SC 29406

Defendant Attorney Smith, William Ted Jr

O.T. Wallace Bldg., 101 Meeting St., 5Th Floor, Charleston, SC 29401

ASE HISTORY FOR CASE M614613

Porcher, Marvin Xavier

Age: 48

DOB: [REDACTED] 1966

DL# [REDACTED]

SSN: [REDACTED]

Charleston, SC 29406

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0079 Burglary / Burglary (After June 20, 1985) - First degree	11/4/2011	Nolle Prosequi	7/23/2013

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Burglary / Burglary (After June 20, 1985) - First degree				
Fine to State 44%	\$0.00	\$0.00	\$0.00	999
Fine to General Fund	0.00	0.00	0.00	999
Victim Services Asm 38.0013% / 5.78%	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	0.00	0.00	0.00	999
Law Enforcement Funding Surcharge \$	0.00	0.00	0.00	999
SC Criminal Justice Academy Training	0.00	0.00	0.00	999
State Assessment	0.00	0.00	0.00	999
Total:	\$0.00	\$0.00	\$0.00	

Print Date: 04/10/2016

Print Time: 11:12:28AM

Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

General Sessions

CASE HISTORY FOR CASE M613172

The State of South Carolina VS Marvin Xavier Porcher

LED DATE: 8/24/2011

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: North Charleston Police Department

ASE PARTIES:

Defendant Porcher, Marvin Xavier

Summerville, SC 29483

Victim Wilson, James Michael

North Charleston, SC 29408

Officer Aiken, Officer

2500 City Hall Lane, Post Office Box 190016, North Charleston, SC 29406

Bond Entity Around The Clock/W Holliday/Palmetto Surety Corporation

3844-B Leeds Avenue, North Charleston, SC 29405

Solicitor Whitaker, Tyler Schachte

O.T. Wallace Bldg., 101 Meeting Street, Charleston, SC 29401

Defendant Attorney Smith, William Ted Jr.

O.T. Wallace Bldg., 101 Meeting St., 5Th Floor, Charleston, SC 29401

Court Reporter Norton, Phyllis H.

100 Broad Street, Suite 236, Charleston, SC 29401

ASE HISTORY FOR CASE M613172

Porcher, Marvin Xavier

Age: 48

DOB: 1986

DL#: [REDACTED]

SSN: [REDACTED]

Summerville, SC 29483

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0258 Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lubricants stored	8/16/2011	Pled Guilty	7/19/2013

SENTENCING

Sentenced - 5 YEARS

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lub				
Fine to State 44%	\$0.00	\$0.00	\$0.00	999
Fine to General Fund	0.00	0.00	0.00	999
Victim Services Asm 38.0013% / 5.78%	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	100.00	100.00	0.00	999

Int Date: 04/10/2016

Int Time: 11:11:51AM

Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

General Sessions

CASE HISTORY FOR CASE M728037

The State of South Carolina VS Marvin Xavier Porcher

LED DATE: 7/13/2012

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C.P., G.S. And Family Court

ARRESTING AGENCY: North Charleston Police Department

ASE PARTIES:

Defendant Porcher, Marvin Xavier

[REDACTED], Summerville, SC 29483

Officer Bailey, Rebecca

2500 City Hall Lane, Post Office Box 190016, North Charleston, SC 29406

Victim Boyd, Russell

[REDACTED], Clearwater, FL 33760

Defendant Attorney Smith, William Ted Jr.

O.T. Wallace Bldg., 101 Meeting St., 5th Floor, Charleston, SC 29401

Solicitor Whitaker, Tyler Schachte

O.T. Wallace Bldg., 101 Meeting Street, Charleston, SC 29401

Court Reporter Norton, Phyllis H.

100 Broad Street, Suite 238, Charleston, SC 29401

ASE HISTORY FOR CASE M728037

Porcher, Marvin Xavier

Age: 48

DOB: [REDACTED]

DL#: [REDACTED]

SSN: [REDACTED]

Summerville, SC 29483

CHARGE	VIOLENT DATE	DISPOSITION	DISP. DATE
0258 Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lubricants stored	6/23/2012	Pled Guilty	7/19/2013
SENTENCING			
Sentenced - 5 YEARS			

POST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Larceny / Breaking into motor vehicle or tanks, pumps, where fuel, lub				
Fine to State 44%	\$0.00	\$0.00	\$0.00	999
Fine to General Fund	0.00	0.00	0.00	999
Victim Services Asm 38.0013% / 5.78%	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	100.00	100.00	0.00	999
Law Enforcement Funding Surcharge \$	25.00	25.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	0.00	0.00	0.00	999

Int Date: 04/10/2015

Int Time: 11:11:24AM

Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

General Sessions

CASE HISTORY FOR CASE 2013GS1004867

The State of South Carolina VS Marvin Xavier Porcher

LED DATE: 7/15/2013

CASE TYPE: GS

STATUS: Disposed

JUDGE: Clerk Of Court C P, G S, And Family Court

ARRESTING AGENCY: Charleston County Sheriff

CASE PARTIES:

Defendant: Porcher, Marvin Xavier

[REDACTED], Summerville, SC 29483

Solicitor: Whitaker, Tyler Schachte

O.T. Wallace Bldg., 101 Meeting Street, Charleston, SC 29401

Court Reporter Norton, Phyllis H.

100 Broad Street, Suite 236, Charleston, SC 29401

CASE HISTORY FOR CASE 2013GS1004867

Porcher, Marvin Xavier

Age: 48

DOB: [REDACTED] 1966

DL#: [REDACTED]

SSN: [REDACTED]

Summerville, SC 29483

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0079 Burglary / Burglary (After June 20, 1985) - First degree	11/3/2011	Trial Guilty	7/19/2013
SENTENCING			
Sentenced - 15 YEARS			

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Burglary / Burglary (After June 20, 1985) - First degree				
Fine to State 44%	\$0.00	\$0.00	\$0.00	999
Fine to General Fund	0.00	0.00	0.00	999
Victim Services Asm 38.0013% / 5.78%	0.00	0.00	0.00	999
Victim Conviction Surcharge \$100 / \$2	100.00	100.00	0.00	999
Law Enforcement Funding Surcharge \$	25.00	25.00	0.00	999
SC Criminal Justice Academy Training	5.00	5.00	0.00	999
State Assessment	0.00	0.00	0.00	999
Collection Fee 3%	3.90	3.90	0.00	3
Total:	\$133.90	\$133.90	\$0.00	

DATE	TIME	EVENT DESCRIPTION
15/2013	2:02 PM	Filing recorded: Notice/Affidavit of Service
19/2013	12:47 PM	Filing recorded: Active - Non Probation
19/2013	12:48 PM	Filing recorded: Sentence/TG

Int Date: 04/10/2015
 Int Time: 11:10:59AM
 Requested By: COCBLC

CaseHistory.rpt

Page 1 of 2

10:04:00 Tuesday, May 05, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/05/15
 OMCOMITA RELEASE DATE SCREEN C056368
 SCDC# > 315900 LOC: MACDOUGALL C
 PORCHER, MARVIN XAVIER SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
 SEXUAL PREDATOR... NOT APP
 DNA STATUS..... COMPLETED
 GPS REQUIREMENT... N
 PREA DECISION....
 CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ... N
 015-00-000 CURRENT SENT START DATE: 11/04/2011
 PROJECTED COMPLETION DATES
 MAXOUT DATE 07/31/2024 CURRENT EWC .. 3 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC .. B7
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ... 000300 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS 000180 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS .. 000 SUPERVISED REENTRY DATE... 00/00/00
 TOTAL SERVICE TIME EARNED ... 001261 ISS.....

 PFKEYS: 5:HISTORY OF DATE CHANGES

Date: Tuesday, May 5, 2015

5/5/2015

Classing Summary Reports - Report View

Page 2 of 4

BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/04/2011 N	3	06GS104205
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/04/2011 N	3	06GS104204
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/04/2011 N	3	06GS104207
BURGLARY-1ST DEGREE	15	0	0	CHARLESTON	11/04/2011 V	4	13GS1004867
BREAKING INTO MOTOR VEH	5	0	0	CHARLESTON	11/04/2011 N	2	13GS1000411
BREAKING INTO MOTOR VEH	5	0	0	CHARLESTON	10/26/2011 N	2	12GS1001910
BURGLARY-2ND DEG/NON-VIO	3	0	0	CHARLESTON	08/30/2009 N	3	06GS104208

COMPLETED OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE		
					START	V/NV CAT	INDICT
BREAKING INTO MOTOR VEH	3	0	0	CHARLESTON	08/30/2009 N	2	09GS10-06831
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	08/30/2009 N	3	06GS104207
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	08/30/2009 N	3	06GS104205
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	08/30/2009 N	3	06GS104204
BURGLARY-3RD DEGREE	5	0	0	CHARLESTON	11/27/2005 N	2	06GS10-4206
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/27/2005 N	3	06GS10-4208
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/27/2005 N	3	06GS10-4207
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/27/2005 N	3	06GS10-4205
BURGLARY-2ND DEG/NON-VIO	5	0	0	CHARLESTON	11/27/2005 N	3	06GS10-4204

PRIOR COMMITMENTS OVER 90 DAYS:

04/24/1993	BURGLARY-2ND DEGREE
03/13/1991	PETIT LARCENY
10/23/1989	UNAUTHORIZED USE-VEHICLE
06/03/1987	NARC-NEC

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINEES (HOLD,WANTED,NOTIFY):

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

02/23/2015	POSSESSION OF CONTRABAND	DISMISSED	OTHER ACTION TAKEN/INFORM

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

03/23/2015	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE
03/23/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
01/28/2015	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE

01/28/2015	KIRKLAND	INCARCERATED	MEDICAL
12/23/2014	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE
12/22/2014	KIRKLAND	INCARCERATED	MEDICAL
10/02/2014	MACDOUGALL CORR INST	INCARCERATED	ADMINISTRATIVE
10/01/2014	LIEBER	INCARCERATED	ADMINISTRATIVE
10/01/2014	KIRKLAND	INCARCERATED	MEDICAL
10/03/2013	LIEBER	INCARCERATED	ADMINISTRATIVE
07/22/2013	KIRKLAND	INCARCERATED	R&E PROCESSING
07/22/2013	LIEBER	INCARCERATED	PROBATION VIOLATOR
04/01/2011	CHARLESTON CO	PROBATION	RELEASED TO PROBATION
10/18/2010	MANNING	INCARCERATED	ADMINISTRATIVE
03/23/2010	RIDGELAND	INCARCERATED	ADMINISTRATIVE
02/01/2010	KIRKLAND	INCARCERATED	R&E PROCESSING
02/01/2010	LIEBER	INCARCERATED	PROBATION VIOLATOR
10/27/2008	DORCHESTER CO	PROBATION	PAROLE SATISFIED
03/06/2008	DORCHESTER CO	PAROLE	PAROLE BOARD ACTION
01/03/2008	LIEBER	INCARCERATED	ADMINISTRATIVE
11/28/2007	MANNING	INCARCERATED	ADMINISTRATIVE
11/28/2007	BROAD RIVER	INCARCERATED	COURT/PAROLE HEARING VIA
11/13/2007	MANNING	INCARCERATED	ADMINISTRATIVE
11/13/2007	CENTRAL OFFICE ANNEX	INCARCERATED	MEDICAL
10/10/2006	MANNING	INCARCERATED	ADMINISTRATIVE
07/10/2006	RIDGELAND	INCARCERATED	ADMINISTRATIVE
06/13/2006	KIRKLAND	INCARCERATED	R&E PROCESSING
06/13/2006	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
RECREATION AIDE	03/31/2015	-		3F5
FOOD SERVICE AIDE	01/22/2015	03/30/2015	INMATE REQUEST	3F5
CUSTODIAL WORKER	12/18/2014	01/21/2015	INMATE REQUEST	3F5
FOOD SERVICE AIDE	10/07/2014	12/17/2014	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	11/15/2013	10/02/2014	INSTIT TRANSFER	3F5
GENERAL WORKER	10/20/2010	04/01/2011	RELEASED/PAROLED	2F5
BARBER	05/20/2010	10/18/2010	INSTIT TRANSFER	2F5
WARDKEEPER	03/25/2010	05/19/2010	LATERAL TRANSFER	2F5
SPICE PROGRAM	01/04/2008	03/06/2008	RELEASED/PAROLED	2F5
BARBER	09/07/2007	01/03/2008	INSTIT TRANSFER	2F5
IND. GROUP/SECTION LEAD	02/05/2007	09/06/2007	INMATE REQUEST	2F5
LITTER CONTROL PROGRAM	10/12/2006	02/04/2007	INMATE REQUEST	2F5
SR DINING ROOM OPERATOR	07/27/2006	10/10/2006	INSTIT TRANSFER	2F7
FOOD SERVICE AIDE	07/13/2006	07/26/2006	PROMOTION	2F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	12/18/2014	-	
BONUS 4-7 HRS/WK	11/03/2010	11/17/2010	INMATE REQUEST
BONUS 4-7 HRS/WK	11/28/2006	07/05/2007	INMATE REQUEST

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 09:51:54 AM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Charleston
STATE VS.

FILED

Indictment Number: 10-4207Probation CWRs: W-13-11-0107AKA: Porter, MarvinRace: BSex: MDOB: [REDACTED]SSN: [REDACTED]SID#: 1330406JULIE J. ARMSTRONG
CLERK OF COURTName of Original Offense: Page 28Original CWR#: K068124Date of Original Offense: 11-27-2005Conviction S.C. Code §: 16-11-312Conviction CDR Code #: 001810Original Sentence: 10 years 25 years 5 years

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 5/24/06 in the Court of General Sessions of Charleston County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4/10/09, 1/24/10, as set forth in the attached veranda or citation(s) dated 10/12/11. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
4, 1, 2, 11, and 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 10 years months/years the remainder of the original sentence, and/or pay \$.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve months/years of the original sentence and/or pay \$ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Financial Obligations: Order satisfies: ☐ Department fees (arrearage) Civil Judgment: ☐ Department fees
☐ Fines and other fees (arrearage/balance) ☒ Fines and other fees
☐ Restitution (and 20%) (arrearage/balance) ☒ Restitution (and 20%)
- ☒ Additional Conditions ordered by the Court:

Credit from 11/4/2011CC with new number

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 5 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 19th day of July, 2013
Charleston, SCAL J. [Signature]
Presiding Judge Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature Marvin PorterWitnessed by [Signature]Signed this 19th day of July, 2013

Month

Year

City

SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of Charleston
STATE VS.

FILED

Indictment Number: 06-GS-10-4205Probation C/W#: W-18-11-0102#
315900
07-31-2024

KF

Porcher, Marvin JUL 19 PM 2
AKA: JULIE J. ARMSTRONG
Race: B Sex: M
DOB: 6-6-66
SSN: [REDACTED]
SID#: 1330906

Number Original Offense: BURG 2nd
Original A/W#: K068119
Date of Original Offense: NOV-6, 2005
Conviction S.C. Code #: 16-11-312
Conviction CDR Code #: 0101810
Original Sentence: 10 YRS 55 Wks 3 YRS + 5 YRS
PRBB.
ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 5/24/10 in the Court of General Sessions of Charleston County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4/10/10 as set forth in the attached warrant(s) or citation(s) dated 10/13/14. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit)
7, 11, 14, 15

Therefore, IT IS ORDERED that:

☒ the suspended sentence be revoked and the above named defendant be required to serve 10 Yrs months/years, the remainder of the original sentence, and/or pay \$_____.

☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$_____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.

☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.

☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).

Financial Obligations: Order satisfies:

☐ Department fees (arrearage)
☐ Fines and other fees (arrearage/balance)
☐ Restitution (and 20%) (arrearage/balance)

Civil Judgment:

☐ Department fees
☐ Fines and other fees
☐ Restitution (and 20%)

Additional Conditions ordered by the Court:

Credit from 11/4/11 CC-writer
cc-renew calendar

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 5 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 19th day of July 2013
Chas. SC

OR Presiding Judge
Smith Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, this order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

mobile & [unclear]

Witnessed by

[Signature]

Signed this 19th day of July 2013 at Chas.

City

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP, SS & PD
By [Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA

County of Charleston

STATE

VS.

Porcher, Marvin

AKA:

Race: BSex: MDOB: [REDACTED]SSN: [REDACTED]SID#: 1380906

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 4204Probation C/W#s: W-18-11-0102Name of Original Offense: Burg 2ndOriginal A/W#: K068115Date of Original Offense: 8/5-6/05Conviction S.C. Code §: 16-11-347Conviction CDR Code #: 0101810Original Sentence: 10 yrs 55 yrs 45 yrs 45 yrs

ORDER

prob.

The above named defendant has been charged with violating the conditions of probation ordered on 5/24/06 in the Court of General Sessions of Charleston County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 4/10/04 and 1/29/10, as set forth in the attached warrant or citation(s) dated 8/12/11. After hearing the evidence and being duly advised, in the presence (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (1) by number or indicate special conditions as provided in the affidavit)

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 10 years the remainder of the original sentence, and/or pay \$ 0.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve months/years of the original sentence and/or pay \$ 0; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on the date 8/12/11.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Financial Obligations: Order satisfies: ☐ Department fees (arrange/balance) Civil Judgment: ☐ Department fees
- ☐ Fines and other fees (arrange/balance) ☒ Fines and other fees
- ☐ Restitution (and 20%) (arrange/balance) ☒ Restitution (and 20%)
- ☒ Additional Conditions ordered by the Court:

Credit from 11/4/2011CC after new arrest

- ☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 5 months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This

19th day of July2013chas.

SC

Presiding Judge

ninth

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature: [Signature]Witnessed by: [Signature]

Signed (this)

19th day of July2013 at chas.

SC

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
MARVIN XAIVER PORCHER

AKA: _____

Race: BLACK Sex: M Age: 47DOB: 1966 SS#:

Address: _____

City, State, Zip: _____

DL#: _____ SID#: SC01330906*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1004867A/W#: DIRIND1963Date of Offense: 11/3/2011S.C. Code §: 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: John S. Nichols 74906

Whitaker, Tyler S.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-95-10-1910, 2013-95-10-411☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. concurrent to probation reverts☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. of 7/1/13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

ATU if available
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

Presiding Judge Al JesterJudge Code: 2128Sentence Date: 7-19-13

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Charleston

VS.

Marvin Xavier Porcher

AKA:

Race: BLACK Sex: M Age: 47

DOB: 1966 SS#: [REDACTED]

Address:

City, State, Zip: Summerville, SC 29483

DL#: [REDACTED] SID#: SC01330906

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Breaking & Entering a Motor Vehicle

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1000411

A/W#: M728037

Date of Offense: 9/5/2011

S.C. Code §: 16-13-0160(1)(2), (B)

CDR Code #: 0258

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-0160(1)(2), (B) of the S.C. Code of Laws, bearing CDR Code # 0258

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Whitaker, Tyler S.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-1910; 2013-GS-10-4867☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Concurrent to probation☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. *retracted
on 7/19/12*
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (If paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

if available

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2128

Sentence Date: 7.19.13

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)



The South Carolina Court of Appeals.

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11828
COLUMBIA, SOUTH CAROLINA 28211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 28201
TELEPHONE (803) 734-1880
FAX (803) 734-1838
WWW.SCCOURTS.ORG

April 03, 2015

APR 06 2015

RECEIVED
WJ
ATTORNEY GENERALS
OFFICE

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Marvin Xavier Porcher
Lower Court Case No. 2012GS1001910, 2013GS1000411
Appellate Case No. 2013-001620

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
LaNelle Cantey DuRant, Esquire

William M. Blich, Jr., Esquire
Scarlett Anne Wilson, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marvin Xavier Porcher, Appellant.

Appellate Case No. 2013-001620

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2015-UP-124
Submitted January 1, 2015 – Filed March 11, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004)

("When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight."); *State v. McKnight*, 352 S.C. 635, 642, 576 S.E.2d 168, 172 (2003) ("On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State."); *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [the appellate court] must find the case was properly submitted to the jury.").

AFFIRMED.¹

HUFF, SHORT, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Marvin Xavier Porcher, #315900,

2015-CP-10-2045

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 10, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2012 term of the Charleston County Grand Jury for Breaking and Entering a Motor Vehicle (2012-GS-10-1910). The Applicant was also indicted by the January 2013 term of the Charleston County Grand Jury for Breaking and Entering a Motor Vehicle (2013-GS-10-0411). Applicant was further indicted at the July 2013 term of the Charleston County Grand Jury for Burglary, 1st degree (2013-GS-10-4867). Ted Smith, Esquire, represented him. The Applicant proceeded to a jury trial pursuant to which he was found guilty of Burglary, 1st degree. He also pled guilty to both counts of Breaking and Entering a Motor Vehicle. On July 19, 2013, the Honorable Deadra L. Jefferson sentenced the Applicant to confinement for fifteen (15) years for Burglary, 1st degree and five (5) years for each count of Breaking and Entering a Motor Vehicle, with the sentences set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South

Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Porcher, 2015-UP-124 (filed on January 8, 2014). The remittitur was issued April 30, 2015.

II.

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Denial of Due Process and/or Equal Protection"
3. "Insufficient Indictment"
4. "False Imprisonment/Lack of Jurisdiction to convict"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript and the South Carolina Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCF, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCF, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

IV.

Respondent construes Applicant's remaining allegations as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to

undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

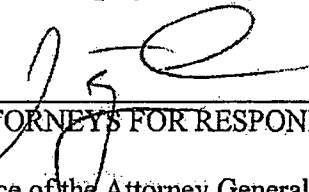
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 27, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
MARVIN XAVIER PORCHER, #315900	)	2015-CP-10-2045
	)	
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:

Christopher L. Murphy, Esq.
Murphy Law Offices, LLC
PO Box 2008
Mt. Pleasant, SC 29465

DATED this 24th day of November, 2015.


 Elizabeth McFellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-02045

MARVIN PORCHER,	)	
Applicant,	)	TRANSCRIPT OF RECORD
-vs-	)	September 15, 2016
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	Charleston, South Carolina

B E F O R E:

The Honorable Jean Toal, Judge.

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

Christopher L. Murphy, Esquire
Attorney for Applicant

James Rutledge Johnson, Esquire
Attorney for Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Marvin Porcher	6	27	53	54
4	Ted Smith	33	39	--	--
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1 (September 15, 2016.)

2 THE COURT: All right. The first matter for
3 hearing this morning is the application for Marvin Xavier
4 Porcher. It's 2015-CP-10-02045. Mr. Porcher is present
5 in the courtroom. Welcome, Mr. Porcher.

6 THE APPLICANT: Thank you.

7 THE COURT: The State is represented by
8 Mr. Rutledge Johnson, who is present in the courtroom,
9 and Mr. Porcher is represented by Mr. Christopher Murphy
10 who's at counsel table.

11 Counsel, you may proceed.

12 MR. JOHNSON: May it please the Court, Your
13 Honor: This is Mr. Porcher. He was indicted in the
14 April 2012 term by the Charleston grand jury for breaking
15 and entering a motor vehicle; also indicted January 13,
16 2013, another count of breaking and entering a motor
17 vehicle. He was further indicted July 20, 2013 by the
18 Charleston County grand jury for burglary, first degree.
19 Ted Smith represented him, proceeded to trial, during
20 which he was found guilty of burglary first degree.

21 He then pled after the matter to both counts
22 of breaking and entering a motor vehicle and, I think,
23 received five years on the B&Es, but on the burglary
24 first degree, Judge Jefferson sentenced him to
25 confinement for burglary of the first degree, which is

1 the minimum. Notice of appeal was filed on his behalf,
2 and the Court of Appeals affirmed his sentence. Remitter
3 was April 30, 2015.

4 This immediate action was timely filed April
5 10th, 2015, and the State filed its return on November
6 24th, 2015, and he is represented today by
7 Mr. Christopher Murphy.

8 THE COURT: Mr. Murphy?

9 MR. MURPHY: Thank you, Your Honor. May it
10 please the Court: Before I call my first witness, I
11 would just like the Court to note that Mr. Porcher did
12 receive the lowest sentence possible here. I have talked
13 to him many times and advised him that if he was
14 convicted again, if he succeeds, he could possibly
15 receive a sentence higher than that. He understands the
16 risks and wants to proceed with this application, Your
17 Honor.

18 THE COURT: Very good.

19 MR. MURPHY: We would call Mr. Porcher, Your
20 Honor.

21 MARVIN PORCHER,
22 having been first duly sworn,
23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MURPHY:

MARVIN PORCHER - DIRECT EXAMINATION

1 Q. Now, Mr. Porcher, you were convicted of burglary
2 first, correct?

3 A. Yes, sir.

4 Q. And you were represented Ted Smith and Jason King
5 at trial?

6 A. Yes, sir.

7 Q. And prior to going to trial -- and right now
8 you've maintained your innocence, correct?

9 A. Yes, sir.

10 Q. And you've also been convicted of other crimes
11 prior to this charge, right?

12 A. Yes, sir.

13 Q. And in those instances, you pled guilty, correct?

14 A. Yes, sir.

15 Q. And why was it that you pled guilty to those other
16 charges and not this one?

17 A. Because I was guilty of those other charges, and
18 this one I wasn't guilty of.

19 Q. And you've also had time since this conviction to
20 look up court records and study the evidence against you?

21 A. Yes, sir.

22 Q. Okay. Now, let's talk about when you were first
23 arrested. Did you make bond at all?

24 A. No, sir.

25 Q. Okay. So you were in the detention center the

MARVIN PORCHER - DIRECT EXAMINATION

1 entire time before trial, correct?

2 A. Yes, sir.

3 Q. And about how long was that?

4 A. Two years.

5 Q. During those two years, how many times did you
6 meet with your attorneys?

7 A. Four times.

8 Q. And let me ask you this: Who was the lead
9 attorney? Who was your main attorney in this case?

10 A. Ted Smith.

11 Q. And did you meet with Ted Smith four times?

12 A. Yes, sir.

13 Q. And what about Jason King? How many times did you
14 meet with him?

15 A. Never. Just once at trial.

16 Q. He was assisting you at trial?

17 A. Yes, sir.

18 Q. Let's talk about the times you met Mr. Smith. You
19 met him four times. How long did those visits last?

20 A. Maybe 15 minutes, 15 to 30 minutes.

21 Q. When you met with him, was there a glass partition
22 between you, or was it on the phone or did you actually
23 meet in a conference room where you could be in closer
24 contact?

25 A. No, sir, it was on video.

1 Q. On each of those times, was there a phone
2 conference for each of those times?

3 A. Yes, sir.

4 Q. And in terms of the evidence against you, I would
5 think it would be pretty hard to go over evidence against
6 you via video conference, correct?

7 A. Yes, sir.

8 Q. Did you actually go over the evidence with
9 Mr. Smith against you?

10 A. No.

11 Q. Okay. Did he ever show you the evidence or the
12 paperwork of the charges that the State had?

13 A. No, sir.

14 Q. And in terms of the elements of burg first, did
15 you understand what those elements were prior to trial?

16 A. Prior to trial by me researching it.

17 Q. Let's talk about -- I know you did some research
18 afterwards, so you probably have a good handle now, but
19 before trial, did you understand the elements the State
20 had to prove?

21 A. Yes, sir.

22 Q. And did you understand the potential sentence?

23 A. Yes, sir.

24 Q. And that possible sentence was life, correct?

25 A. Yes, sir.

MARVIN PORCHER - DIRECT EXAMINATION

1 Q. And, obviously, you took that pretty seriously?

2 A. Yes, sir.

3 Q. Now, prior to trial, was there any type of plea
4 negotiations or attempts by Mr. Smith to work out a deal
5 for you?

6 A. No, sir.

7 Q. Okay. And did he ever come to you beforehand
8 about an offer to plea for the State?

9 MR. JOHNSON: I'm going to object. That's
10 not an answer in this case, and I would ask that
11 testimony be stricken from the record.

12 THE COURT: Overruled.

13 MR. JOHNSON: Thank you, Your Honor.

14 BY MR. MURPHY:

15 Q. Mr. Porcher, do you ever recall having an offer
16 from the State to plead to a lesser included charge, or
17 lesser charge?

18 A. Three weeks before trial.

19 Q. All right. And three weeks before trial, you met
20 with Mr. Smith about this offer?

21 A. Yes, sir.

22 Q. And what was the offer that you recall?

23 A. Ten years, ten to fifteen years, burglary second.

24 Q. And obviously, then, what was your reaction, or
25 what did you do?

MARVIN PORCHER - DIRECT EXAMINATION

1 A. I said no.

2 Q. And why did you say no?

3 A. Because I wasn't guilty.

4 Q. All right. Now, after that, the next step would
5 have been you were going to trial, correct?

6 A. Yes, sir.

7 Q. And did you have any discussions about specific
8 strategies or defenses at trial?

9 A. No, sir.

10 Q. And did that seem odd to you at the time?

11 A. Yes, sir.

12 Q. And did you ask your attorney about that at any
13 point?

14 A. Yes, sir.

15 Q. And how did you do that? Did you do that through
16 letter or telephone calls or --

17 A. Verbally.

18 Q. Was it face to face?

19 A. This time it was face to face. It was at the
20 courthouse when he came and offered me the ten to
21 fifteen, and I asked him, shouldn't we have a pretrial
22 strategy? He told me no. He said this doesn't consist
23 of needing a pretrial strategy in this case, and that
24 sounded kind of funny, but because this is a capital
25 offense that holds a life sentence and why wouldn't we

MARVIN PORCHER - DIRECT EXAMINATION

1 have a pretrial strategy of what they were showing of
2 what would be our defense.

3 Q. Did you talk about any evidentiary issues pretrial
4 at all?

5 A. Yes, I did.

6 Q. And what was that?

7 A. About the tools, the alleged tools.

8 Q. We're going to get more into the tools, but what
9 conversations did you have about pretrial issues with
10 regard to the tools of the crime? What was your
11 conversation with Mr. Smith about these tools?

12 A. He -- I was asking him -- I filed a motion to
13 compel and I did it myself.

14 Q. Okay.

15 A. And when I filed it with the Clerk of Court to get
16 whatever evidence or what was attachable that the
17 prosecutor was going to use against me as far as
18 evidence, a lot of evidence was missing.

19 Q. Okay. Now, you knew before trial that there was
20 evidence missing against you, right?

21 A. Yes.

22 Q. Okay. What evidence did you know was missing
23 before trial?

24 A. No, I didn't know evidence was missing before
25 trial. I knew the evidence was missing at the end of the

1 trial.

2 Q. We're going to get through that, okay, but I'm
3 just talking about before trial right now for a timeline
4 for the Court, all right?

5 A. Only thing I was missing that I didn't get to see
6 was the photographs and the crime scene and none of that.

7 Q. You didn't see any evidence or any paperwork
8 before trial; is that correct?

9 A. No. Only thing I seen was the insufficient for
10 the prints.

11 Q. Okay. Now, we're jumping around a little bit. I
12 just want to try to keep you focused. You're talking
13 about prints on the computer, right?

14 A. Yes, sir.

15 Q. Let's just focus on pretrial conversations with
16 your attorney about any evidentiary issues. Did you see
17 any paperwork about any -- about the charges against you
18 or the evidence against you?

19 A. No, sir.

20 Q. Okay. Now, you started at trial, right?

21 A. Yes, sir.

22 Q. And the first thing you do at trial is jury
23 selection, right?

24 A. Yes, sir.

25 Q. And you were sitting there, you were present for

MARVIN PORCHER - DIRECT EXAMINATION

1 jury selection, right?

2 A. Yes, sir.

3 Q. And were there any issues that you alleged your
4 attorney did improper with regard to jury selection?

5 A. Yes, sir.

6 Q. And what do you allege that he did wrong?

7 A. He didn't strike a juror that knew the victim.

8 Q. Okay. There was a juror that stated she knew the
9 victim?

10 A. Yes, sir.

11 Q. And there was no striking her?

12 A. No, sir.

13 Q. Did you have any conversations about why you would
14 not strike her?

15 A. No, sir.

16 Q. Was there any other issues with regard to jury
17 selection?

18 A. Mental health patient said he couldn't predict
19 what he was going to do at the trial.

20 Q. Okay. And he would have been questioned by the
21 Court about whether or not he would know what he would
22 do, correct?

23 A. Yes, sir.

24 Q. And his response, as you recall, he didn't know?

25 A. He didn't know what he was going to predict he was

1 going to do.

2 Q. And did they strike him? Did your attorney
3 strike --

4 A. No, sir. They sat that juror.

5 Q. And I believe you alleged that was an error,
6 correct?

7 A. Yes, sir.

8 Q. And I don't believe there's anything else, but is
9 there any other issues that you alleged your attorneys
10 committed -- or errors you alleged your attorney
11 committed with regard to jury selection?

12 A. No, sir.

13 Q. Okay. Now we get into the trial. We already --
14 let's talk about pretrial. There weren't any pretrial
15 motions, correct?

16 A. Yes, sir.

17 Q. And that's because you stated your attorney didn't
18 believe this case warranted any, correct?

19 A. Yes, sir.

20 Q. So you started off with trial, correct?

21 A. Yes, sir.

22 Q. And the State would have called certain witnesses,
23 correct?

24 A. Yes, sir.

25 Q. Now, the State had to establish jurisdiction in

MARVIN PORCHER - DIRECT EXAMINATION

1 this case, correct?

2 A. Yes, sir.

3 Q. And they would have done that through one of the
4 witnesses, through the detectives, right?

5 A. Yes, sir.

6 Q. And do you allege any errors with regard to the
7 jurisdiction, establishing jurisdiction?

8 A. Yes, sir.

9 Q. And what error do you allege?

10 A. That they said that Charleston County was the
11 jurisdiction where I live.

12 Q. In the record there were some questions about
13 whether North Charleston or Charleston County had
14 jurisdiction, correct?

15 A. Yes, and the solicitor asked Serrudo what
16 jurisdiction is North Charleston over, and Serrudo stated
17 in trial that North Charleston had jurisdiction over
18 where I live.

19 Q. Okay.

20 A. And she led --

21 Q. I'm sorry.

22 A. She led the witness by telling him at her
23 rebuttal. After testimony, she led the witness.

24 Q. You're talking about the solicitor was leading the
25 witness?

MARVIN PORCHER - DIRECT EXAMINATION

1 A. Leading the witness.

2 Q. And were there any objections to these leading
3 questions?

4 A. No, sir.

5 Q. And you alleged that was an error?

6 A. Correct.

7 Q. Now, we also get into the facts of this case,
8 where you were alleged to have broken into a mobile home,
9 correct?

10 A. Yes, sir.

11 Q. Now, in terms of the -- and let's talk about the
12 tools. You never saw pictures of the door where it was
13 broken into prior to trial, correct?

14 A. No, sir.

15 Q. And also it was argued that you had -- some tools
16 of the crime were found on you, or burglary tools, that
17 could have been used to break into that door, correct?

18 A. Yes, sir.

19 Q. And tell the Court what those tools were that
20 found on you.

21 A. An Allen wrench, a zip tie, and a plastic ratchet.

22 Q. And at trial, were those tools brought up and
23 admitted into evidence through testimony.

24 A. No, sir.

25 Q. Were they discussed at trial?

MARVIN PORCHER - DIRECT EXAMINATION

1 A. It was discussed.

2 Q. But when you say they weren't admitted, were the
3 actual tools admitted into evidence?

4 A. No, sir.

5 Q. Why not?

6 A. Because they destroyed them.

7 Q. When you say they destroyed them, who are you
8 talking about?

9 A. Ted Smith said that they destroyed the tools.

10 Q. That the State did?

11 A. I don't know who destroyed them.

12 Q. Well, in any event, that evidence was missing at
13 trial?

14 A. Right.

15 Q. And did you ever discuss a spoliation charge with
16 Mr. Smith?

17 A. No, sir.

18 Q. Do you know what a spoliation charge is?

19 A. No, sir.

20 Q. Let's talk about the computer. It was alleged
21 that a computer was found on you at the time, correct?

22 A. Yes.

23 Q. And that was admitted into evidence, correct?

24 A. Yes, sir.

25 Q. What errors do you allege occurred with regard to

1 the computer?

2 A. They didn't test it for fingerprints.

3 Q. The State didn't test it for prints, right?

4 A. Yes, sir.

5 Q. Did your attorney have anybody test it for prints?

6 A. No, sir.

7 Q. Do you believe that was an error?

8 A. Yes, sir.

9 Q. Now, let's talk about -- there was also a
10 television that was missing from the residence, correct?

11 A. Yes, sir.

12 Q. And was a television found on you when you were
13 arrested?

14 A. No, sir.

15 Q. Was that brought up in cross-examination at all?

16 A. The TV was brought up by the solicitor.

17 Q. And in terms of -- did you and your attorney talk
18 about this lack of a television being found on you prior
19 to trial?

20 A. No, sir.

21 Q. And do you believe that was an important piece of
22 information in your case?

23 A. Yes, sir.

24 Q. Now, the State also admitted your prior record in
25 terms of a prior burglary charge, correct?

MARVIN PORCHER - DIRECT EXAMINATION

1 A. Yes, sir.

2 Q. And did you talk to Mr. Smith about that aspect of
3 the case?

4 A. Yes, sir.

5 Q. And what was your conversations with him about
6 that?

7 A. I was told if I didn't take the stand they
8 wouldn't bring up my prior history in the court at trial.

9 Q. That's right. And you actually -- that's what
10 your attorneys told you?

11 A. Yes, sir.

12 Q. And you actually had a conference with the judge
13 prior to -- when the State rested about your prior record
14 coming in and you taking the stand, correct?

15 A. Yes, sir.

16 Q. And the record states that if you take the stand
17 they can question you about your prior record, correct?

18 A. Yes, sir.

19 Q. And your understanding was if you did not take the
20 stand what would happen?

21 A. If I didn't take the stand they wouldn't bring up
22 my prior history.

23 Q. And you decided not to take the stand?

24 A. I decided not to take the stand.

25 Q. And was your prior history brought up?

1 A. Yes, sir.

2 Q. And did you talk to your attorneys about your
3 prior history being brought up whether or not you took
4 the stand?

5 A. No, sir.

6 Q. Did you talk about in terms of trial strategy the
7 strengths and weaknesses of you taking the stand?

8 A. Yes, sir.

9 Q. And you had a conversation with your attorney
10 about that?

11 A. Yes, sir.

12 Q. And how did that go?

13 A. It didn't go well at all because pretrial strategy
14 wouldn't be -- it's not for this trial. It's not for
15 this type of charge.

16 Q. And then when you talk about -- did you explain to
17 the Court -- in your defense, you maintained you were
18 innocent and you had nothing to do with this crime. Can
19 you tell me why you would not take the stand and explain
20 your innocence to the jury?

21 A. I wouldn't take the stand because I know my past
22 history. If you bring up my prior history, it's going to
23 tell you that I'm guilty of a crime, that I was guilty of
24 a crime that I pleaded guilty to, so if I'm guilty of
25 that crime -- if you bring up my past history, it's going

MARVIN PORCHER - DIRECT EXAMINATION

1 to say I was guilty of this crime too. This is the
2 reason why I didn't take the stand, because if I didn't
3 take the stand, I felt they would have to prove that I
4 did this charge, which they would not have been able to
5 prove that I did this charge.

6 Q. Mr. Porcher, if you could just slow down, we can
7 take all the time we need, and I know you're nervous and
8 you want to talk fast, so just try to slow down, okay,
9 sir? If I understand, you did not take the stand because
10 you did not want them to cross-examine you about your
11 prior history, correct?

12 A. Yes, sir.

13 Q. But you didn't know that they were going to argue
14 your prior history at closing as well, correct?

15 A. I didn't know they were going to do it at closing.

16 Q. All right. Now, also in this case there was a
17 fellow named John Hudson, correct?

18 A. Yes.

19 Q. And John Hudson, could you tell the Court who that
20 was?

21 A. I don't even know him.

22 Q. Was he questioned about the burglary that night?

23 A. An affidavit -- the affidavits the officer did an
24 investigation on me and John Hudson as being the
25 suspects.

MARVIN PORCHER - DIRECT EXAMINATION

1 Q. Did your attorney know about John Hudson?

2 A. I do believe he did.

3 Q. Okay. And did you know if he did any
4 investigation to try and get John Hudson up for trial or
5 anything like that?

6 A. No.

7 Q. Do you believe that was an error?

8 A. Yes, sir.

9 Q. Now, you also pled guilty to receiving stolen
10 goods related to this charge, correct?

11 A. Yes, sir.

12 Q. And that was a magistrate offense, correct?

13 A. Yes, sir.

14 Q. But it was intertwined with this burglary,
15 correct?

16 A. Yes, sir.

17 Q. And tell the Court about how you decided to plead
18 guilty for receiving stolen goods.

19 A. I pled guilty to the laptop because I, in fact,
20 received it. I bought the laptop off of somebody, and I
21 received it. When I find it was stolen, I took the
22 responsibility of being guilty for the charge, and they
23 gave me 30 days for the charge.

24 Q. Okay.

25 A. Along with that, it was a false information charge

MARVIN PORCHER - DIRECT EXAMINATION

1 with it because I gave them a false name, and they gave
2 me another additional 30 days with the charge, making it
3 60.

4 Q. So you first pled guilty to receiving stolen
5 goods, which included the laptop, correct?

6 A. Yes, sir.

7 Q. And then in the second charge, you were charged
8 with burglarizing, of actually taking the same evidence,
9 that laptop?

10 A. Yes, sir.

11 Q. And you believe that's a legal error, correct?

12 A. Yes, sir.

13 Q. I think we've gone over everything, but let me ask
14 you this: After your conviction, did you -- you filed an
15 appeal, correct?

16 A. Yes, sir.

17 Q. And it went before the appellate court, correct?

18 A. Yes, sir.

19 Q. And you had appellate defense counsel, correct?

20 A. Yes, sir.

21 Q. And did you talk with your appellate defense
22 counsel?

23 A. I talked with her over the phone once.

24 Q. And after the appeal was affirmed by the appellate
25 court, did you have any discussions with your appellate

1 counsel?

2 A. No.

3 MR. JOHNSON: Your Honor, I will object.
4 There is no allegation of ineffective assistance of
5 counsel in this case.

6 THE COURT: I understand that, and I'm going
7 to give them some leeway, so overruled.

8 MR. MURPHY: Thank you, Your Honor.

9 BY MR. MURPHY:

10 Q. Did you have any conversations after the appeal
11 was affirmed?

12 A. No, sir.

13 Q. And that would have been the end of your case once
14 the request for assert -- or asking the Supreme Court
15 could hear this case, that would have been the end of
16 your case, correct?

17 A. Yes, sir.

18 Q. And then you went and filed this PCR application?

19 A. Yes, sir.

20 Q. Do we have any other errors of your trial counsel,
21 either Mr. King or Mr. Smith, that we did not address
22 today?

23 A. We didn't address the part where I even asked
24 Jason King --

25 Q. Let me ask you this, and I do recall -- you're

MARVIN PORCHER - DIRECT EXAMINATION

1 right. During the trial when you were -- the State was
2 putting on its case against you, did you attempt to give
3 information to your attorneys, either Mr. King or
4 Mr. Smith?

5 A. Yes, sir.

6 Q. And what types of information were you trying to
7 give them?

8 A. That I was trying to tell Jason King to talk with
9 Ted Smith about what the victim was saying because she
10 was standing up -- she was clearly telling a story that
11 was a total lie.

12 MR. JOHNSON: Objection, Your Honor. That
13 would be hearsay. Anything the victim said.

14 THE COURT: Rephrase.

15 BY MR. MURPHY:

16 Q. All right. You were trying to give your attorneys
17 information that you thought would be helpful to your
18 case, correct?

19 A. Yes, sir.

20 Q. And what did your attorneys do with that
21 information? How did they treat you when you would do
22 that?

23 A. Nothing. They would shut it off like everything
24 is all right. We got this.

25 Q. And after -- when you took a break or when you had

MARVIN PORCHER - DIRECT EXAMINATION

1 a chance to talk when you were at ease, did you talk to
2 your attorneys about this evidence that was against you
3 or stuff you thought could help you out?

4 A. Yes, sir.

5 Q. And what was their reaction?

6 A. Everything is going fine the way it's going, it
7 should be going.

8 Q. And did you think everything was going fine?

9 A. No.

10 Q. Now, is there any other errors that you allege by
11 either Mr. Smith or Mr. King?

12 A. That I feel my lawyer should have did an intensive
13 investigation.

14 Q. Okay.

15 A. Which he did not.

16 Q. And, specifically, we already talked about they
17 didn't have any analysis of the prints for the computer,
18 correct?

19 A. No.

20 Q. And they did not locate the tools of the crime
21 that was brought up, correct?

22 A. No.

23 Q. And is there anything else that you believe they
24 should have done? They didn't have an expert analyze the
25 damage to the door, correct?

~~MARVIN PORCHER - CROSS-EXAMINATION~~

1 A. No. They didn't have the expert analyzing the
2 damage to the door. They should have followed up -- they
3 should have followed up on the incident. They had
4 somebody go back out there, test it after the fact. They
5 said they couldn't raise the prints. They should have
6 gone back out there the following day.

7 Q. And that would have been fingerprints on the
8 doorway, correct?

9 A. Fingerprints on the doorway.

10 Q. Is there anything else you believe was in error?

11 A. No.

12 Q. That's pretty thorough, what we went over?

13 A. Yes, sir.

14 MR. MURPHY: Thank you, sir. Your Honor, we
15 have no further questions.

16 THE COURT: All right. Mr. Johnson,
17 cross-examination?

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

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q. Mr. Porcher, one of your allegations is that your
23 counsel did not hire an expert to analyze the damage on
24 the door, correct?

25 A. Yes, sir.

MARVIN PORCHER - CROSS-EXAMINATION

1 Q. Do you have an expert here today to show anything
2 that counsel would have found out about that?

3 A. No, sir.

4 Q. You also say that they should have had
5 fingerprints tested on the computer, correct?

6 A. Yes, sir.

7 Q. Do you have any evidence that you had the
8 fingerprints tested on that computer?

9 A. No, sir.

10 Q. And you say your prior history shouldn't have been
11 brought up; isn't that correct?

12 A. Yes, sir.

13 Q. You realize you were indicted for burglary first
14 degree based on two prior burglaries that you had been
15 convicted of?

16 A. Yes, sir.

17 Q. And you realize that's an element of that crime?

18 A. Yes, sir.

19 Q. And that in order to prove their case, the State
20 must prove that you had two prior burglaries as elements
21 of burglary first degree. Are you aware of that?

22 A. Yes, sir.

23 Q. You also say there was a lot of evidence missing,
24 and that's why you filed a motion to compel, correct?

25 A. Yes.

MARVIN PORCHER - CROSS-EXAMINATION

1 Q. You realize a lot of evidence was given back to
2 the victim?

3 A. No, sir.

4 Q. You also said the jurisdiction was in North
5 Charleston.

6 A. Yes, sir.

7 Q. That's Charleston County, correct?

8 A. I don't understand what you mean.

9 Q. North Charleston is located in Charleston County?

10 A. Yes, sir.

11 Q. And you also admit that the victim, Ms. Wofford,
12 testified that you were in her home the night before,
13 correct?

14 A. Yes, sir.

15 Q. To give her a tattoo, right?

16 A. Yes, sir.

17 Q. And then after that, you did not have any other
18 permission to be in the home.

19 A. Yes, sir.

20 Q. And that she never gave you a computer?

21 A. No, sir.

22 Q. And that's the testimony that was elicited at
23 trial, correct?

24 A. Somewhat, yes, sir.

25 Q. That's what the jury heard?

~~MARVIN PORCHER - CROSS-EXAMINATION~~

1 A. Yes, sir.

2 MR. JOHNSON: Your Honor, I have no further
3 questions at this time.

4 MR. MURPHY: Nothing further, Your Honor.

5 THE COURT: Mr. Porcher, you brought up a lot
6 of different points about the errors that you contend
7 counsel committed. The bottom line is, you don't feel
8 that the State had enough admissible evidence to convict
9 you of burglary one; is that fair?

10 THE APPLICANT: Yes, ma'am.

11 THE COURT: All right. You are aware that
12 there is direct evidence and circumstantial evidence?

13 THE APPLICANT: Yes, ma'am.

14 THE COURT: And, of course, what the State
15 was attempting here was to use a combination of those
16 things to prove the charges. Do you understand that?

17 THE APPLICANT: Yes, ma'am.

18 THE COURT: What is your contention with
19 respect to the circumstantial evidence of the break-in
20 itself, of your visit the previous evening and the use of
21 the computer at that time and then the later finding of
22 that same computer in your possession, along with other
23 items? What is your opinion about whether that
24 constitutes enough of a combination of direct and
25 circumstantial evidence to have submitted this case to a

MARVIN PORCHER - CROSS-EXAMINATION

1 jury?

2 THE APPLICANT: I understand that the
3 elements of what's found on me and the laptop and the
4 little pieces of jewelry I did find outside. As I was
5 walking, I found these things, and the laptop computer is
6 what I purchased, and when they stated -- when the
7 solicitor stated that I couldn't have possibly bought
8 this laptop, stated that I had a plasma card on me and
9 one penny, but if they would have looked at the records
10 in the Charleston County Detention Center, they would
11 have seen when I was admitted into the Charleston County
12 Detention Center I had \$20 left in my pocket.

13 It was shown clearly to the State that they
14 inventory everything on you. I had money on me when I
15 was arrested. I had \$80 on me, and I paid \$60 for the
16 laptop, not knowing it was hers because I was on my way
17 to the store, and this is when I got stopped.

18 THE COURT: And was that piece of evidence
19 ever presented to the jury?

20 THE APPLICANT: Which evidence?

21 THE COURT: The evidence you just described
22 to me, the evidence that you actually had funds in your
23 possession.

24 THE APPLICANT: No. They did not -- only
25 thing they say I had was -- they has one penny in my

~~MARVIN PORCHER - CROSS-EXAMINATION~~

1 pocket because they went and subpoenaed my clothes.

2 THE COURT: Did your lawyer ever put in
3 evidence any information about what you actually had in
4 funds when you went to the jail?

5 THE APPLICANT: No, ma'am.

6 THE COURT: Did you discuss that with your
7 attorney?

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: All right. No further questions.
10 Mr. Murphy?

11 MR. MURPHY: No, Your Honor.

12 THE COURT: Mr. Johnson? 123412 two
13 follow-ups, Your Honor.

14 BY MR. JOHNSON:

15 Q. Mr. Porcher, you said you found the jewelry while
16 walking?

17 A. I was on a bicycle.

18 Q. And that you bought that computer, right?

19 A. Yes, sir.

20 Q. And you you've also pled guilty to lying to the
21 resource officer, haven't you?

22 A. Giving a false name.

23 Q. Correct. That's lying, isn't it?

24 A. Yes, sir.

25 MR. JOHNSON: No further questions, Your

~~TED SMITH - DIRECT EXAMINATION~~

1 Honor.

2 MR. MURPHY: Nothing, Your Honor.

3 THE COURT: Mr. Murphy, Mr. Johnson --
4 Mr. Porcher, you may come down. Thank you, sir.

5 MR. MURPHY: We would rest at this point.

6 MR. JOHNSON: I call Ted Smith to the stand.

7 THE COURT: Very good.

8 TED SMITH,

9 having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q. Good morning, Mr. Smith.

14 A. Good morning.

15 Q. Can you tell the Court how you became involved in
16 this case.

17 A. I was appointed to Mr. Mr. Porcher's case on
18 11/17/2011.

19 Q. And how long have you been in the public
20 defender's office?

21 A. I have been there a little over 13 years.

22 Q. And have you handled cases of burglary and B&E of
23 a motor vehicle before?

24 A. I have.

25 Q. And about how many times did you meet with

~~TED SMITH - DIRECT EXAMINATION~~

1 Mr. Porcher?

2 A. We met about seven times leading up to the trial
3 and several times during the weeks just preceding trial.

4 Q. So over ten times, you would say?

5 A. Yes.

6 Q. And did you file Rule 5 Brady motions?

7 A. We did.

8 Q. And did you discuss that with Mr. Porcher?

9 A. I did. I automatically send those files to anyone
10 at the jail unless we've had discussions where they do
11 not want that information.

12 Q. And what all would be contained in that
13 information?

14 A. It would be everything I have from the solicitor's
15 office, excluding -- they generally black out victim
16 information and addresses and that type of thing.

17 Q. But it would be statements?

18 A. Statements, police incident reports. We received
19 a CD of pictures. We can't send the specific pictures
20 over, but I do have those run off at Kinko's or Fed Ex
21 and have them at trial.

22 Q. Did you ever show those pictures to Mr. Porcher?

23 A. We discussed the pictures, and I think probably
24 the most important thing from the pictures was just the
25 damage to the door.

~~TED SMITH - DIRECT EXAMINATION~~

1 Q. And did you hire an investigator in this case?

2 A. We have an investigator that works on site with
3 us. Specifically in this case, he mainly did service of
4 subpoenas.

5 Q. And did you discuss Mr. Porcher's version of the
6 facts with him?

7 A. I did.

8 Q. And what did he tell you?

9 A. His version was much of what he said today, that
10 he was out riding his bicycle that evening on the way --
11 I think either to the store or to a friend's house, that
12 he found bits of jewelry on the ground, which he
13 collected, and then purchased a laptop.

14 Q. So he maintained his innocence throughout the
15 entire case?

16 A. He did.

17 Q. And based on that, what type of trial strategy, if
18 any, did you formulate?

19 A. Basically, our strategy -- the case consisted
20 primarily of circumstantial evidence and so, primarily,
21 it was to talk about the lack of any fingerprints that
22 could tie him directly to the scene and the lack of any
23 forensic evidence to tie him directly to the scene that
24 night.

25 Q. In fact, that's what you argued in your closing?

TED SMITH - DIRECT EXAMINATION

1 A. It was.

2 Q. And you also raised directed verdict motions on
3 his behalf?

4 A. I did.

5 Q. Saying there was not enough evidence to take this
6 case to a jury?

7 A. That's correct.

8 Q. And are you aware that that is the exact issue
9 that was on appeal?

10 A. Yes.

11 Q. And -- Court's indulgence, Your Honor. And did
12 you feel that Mr. Porcher was prepared to go to trial?

13 A. I did.

14 Q. And you felt Mr. Porcher was prepared to go to
15 trial?

16 A. I did.

17 Q. And you fully prepared him to go to trial?

18 A. Yes.

19 Q. And he fully understood the charges and the
20 elements of the charges in this case?

21 A. He did.

22 Q. And the fact that -- the reason that the two prior
23 burglaries were brought up were that that was part of the
24 State's case to prove?

25 A. Yes. We discussed, obviously, about prior record,

~~TED SMITH - DIRECT EXAMINATION~~

1 about what else might potentially come in, though under
2 State v. Hamilton, I think the two prior burglaries would
3 have come in anyway.

4 Q. As a matter of fact, he was indicted for that?

5 A. He was.

6 Q. And later indicted for nighttime, which I think
7 they later dismissed?

8 A. That's correct.

9 Q. He brought up an issue about not striking a juror
10 that knew the victim. Do you have any recollection of
11 that?

12 A. I have no recollection of that.

13 Q. If a juror was related or knew the victim, would
14 you strike them, in your typical practice?

15 A. In typical practice, yes, though, like I said, I
16 don't recall that, but --

17 Q. Would that stand out?

18 A. It would. The potential could exist that no
19 strikes were left and we couldn't use that.

20 Q. And you would have used -- in that hypothetical,
21 you would use those other strikes to take people off the
22 jury, or keep people off the jury, that you thought would
23 be harmful to your client?

24 A. That's correct.

25 Q. He also brought up an allegation you didn't

~~TED SMITH - DIRECT EXAMINATION~~

1 discuss a spoliation charge. Can you discuss that
2 further with the Court.

3 A. I don't remember discussing any type of spoliation
4 charge. I believe, if I remember correctly, that the
5 tools of the burglary were destroyed but were
6 photographed before they were, and I don't know that
7 there was any specific allegation that those were the
8 tools used, though people could certainly infer that.

9 Q. Would there have been a reason to discuss that
10 with your client?

11 A. I don't -- thinking back in time, I don't think so
12 because the pictures existed, but --

13 Q. He also stated you should have further
14 investigated damage to the door and tools of the
15 break-in. Did you investigate that at all?

16 A. We didn't investigate that any further. He said
17 he was not involved in that, and there was certainly no
18 physical evidence or any type of trace evidence that
19 could tie him to breaking into the house.

20 Q. So if he claims he did not commit this crime there
21 is no point in further investigating, right?

22 A. That's correct.

23 MR. JOHNSON: I think that's all the
24 questions I have. Thank you, Mr. Smith.

25 THE COURT: All right. Mr. Murphy?

~~TED SMITH - CROSS-EXAMINATION~~

1 MR. MURPHY: Yes. Thank you, Your Honor.

2 May it please the Court:

3 CROSS-EXAMINATION

4 BY MR. MURPHY:

5 Q. Mr. Smith, you've been doing criminal defense for
6 a long time?

7 A. I have.

8 Q. And how many years has it been?

9 A. A little more than 13.

10 Q. Flies by. And Mr. Porcher maintained his
11 innocence throughout this case, correct?

12 A. He did.

13 Q. And that kind of, correct me if I'm wrong, puts it
14 in a different category. You have some cases you know
15 are pleas and some you know are trials, correct?

16 A. Yes, sir.

17 Q. And in this case, you knew it was a trial from the
18 get-go?

19 A. He was very clear at the beginning that he was not
20 going to plead guilty to the burglary. We did have some
21 discussion about whether he would plead to a lesser
22 charge.

23 Q. And you were the main attorney in this case?

24 A. I was.

25 Q. What was Mr. King's role?

TED SMITH - CROSS-EXAMINATION

1 A. He was basically my second chair.

2 Q. And he was brought in to assist you?

3 A. That's correct.

4 Q. But you were the one that really went over all the
5 evidence?

6 A. I was.

7 Q. And Mr. King would have had very little to do with
8 that?

9 A. That's correct.

10 Q. That's what I just want to make sure. Now, we
11 talked about -- let's talk about the tools of the crime
12 that was mentioned at trial. You said you can't remember
13 if the photo was there or --

14 A. I don't remember that.

15 Q. And that's fair enough. If, in fact, a photo was
16 not there -- you would know what a spoliation charge is,
17 correct?

18 A. I do.

19 Q. And you would have asked for one, you believe?

20 A. Probably. That's hard to recreate.

21 Q. All right. I understand. Fair enough. Now,
22 there was damage to the door, correct?

23 A. There was.

24 Q. Do you recall -- there was a picture of that, I
25 assume, as well?

TED SMITH - CROSS-EXAMINATION

1 A. Yes.

2 Q. Do you recall that picture of the damage to the
3 door?

4 A. I do.

5 Q. Do you have any opinion or do you know if the
6 tools that were found on Mr. Porcher could have caused
7 that damage or --

8 A. I don't -- I'm not sure. I mean, I just honestly
9 don't know. The area near the lock was slightly pried
10 out and the lock was popped.

11 Q. And in terms of Mr. Porcher taking the stand, you
12 mentioned the State v. Hamilton case?

13 A. That's correct.

14 Q. And it's been a while since I tried one of these
15 cases. Did you talk to him about stipulating to his
16 prior record and not presenting it to the jury at all?

17 A. Yes. I talked to Ms. Shealy. She is the one who,
18 in that instance, would not stipulate. This was Ms.
19 Whitaker's case. Ms. Shealy tried the majority of it.
20 Ms. Shealy would not stipulate to that. Obviously, I
21 think, that's for strategic reasons.

22 Q. I don't disagree, and that conversation would have
23 taken place off the record; is that fair to say?

24 A. That's correct.

25 Q. Now, you were also familiar with a fellow named

1 John Hudson, correct?

2 A. That's correct.

3 Q. And what was Mr. Hudson's involvement in this
4 case, or how did you become familiar with him?

5 A. I believe that as police were investigating,
6 Mr. Hudson's name came up. They were investigating him
7 as potentially working with Mr. Porcher, or being with
8 Mr. Porcher in the car that day.

9 Q. Did you make any attempts to contact Mr. Hudson in
10 this case?

11 A. I did not.

12 Q. Now, in terms of -- let's back up. I'm kind of
13 skipping around a little bit, but in the State vs.
14 Hamilton case, with the prior burgs coming into evidence,
15 did you talk to Mr. Porcher about taking the stand in his
16 defense?

17 A. Yes. That's a discussion I always have.

18 Q. Okay. And the Court had that discussion with
19 Mr. Hamilton {sic} as well on the record, right?

20 A. They did.

21 Q. And you heard Mr. Porcher's testimony that he was
22 concerned about his prior record coming into evidence?

23 A. That's correct.

24 Q. And the fact it was already admitted into
25 evidence, could you explain why you would advise him

—TED SMITH - CROSS-EXAMINATION—

1 whether to take the stand or not in this case?

2 A. Ultimately, I never advise anybody. I will give
3 them my opinion about whether they should take the stand
4 or not and what would come in, ultimately that's their
5 decision to make.

6 Q. Did you give Mr. Porcher your opinion about
7 whether he should take the stand?

8 A. What we specifically talked about is that in
9 addition to the two burglaries that would automatically
10 come in, there were potentially some other things on his
11 record, crimes of dishonesty, other burglaries that would
12 potentially come in.

13 Q. And is it your thought, and I don't want to put
14 words in your mouth, that those additional crimes would
15 have further hurt his credibility?

16 A. It certainly could have.

17 Q. And did you have any -- what are your thoughts,
18 sir, if he maintained his innocence and had pled guilty
19 to the past crimes he was guilty of but was fighting
20 this, could you explain whether or not you believe he
21 should have taken the stand?

22 A. I thought that -- I mean, ultimately, that was
23 kind of his decision to make. You know, I've had it work
24 both ways in trial, and I tried to get at that a little
25 bit in my questioning the Clerk of Court, indicating that

1 on his prior -- at least the two prior burglaries, that
2 both those sentencing sheets were marked as pleading
3 guilty, so I tried to get to that without his testimony.

4 Q. And in terms of the -- you were questioned about
5 this juror issue, which you don't recall, correct?

6 A. That's correct.

7 Q. And you mentioned, I believe, that if a juror said
8 she knew the victim, you would have struck her, as your
9 normal procedure?

10 A. As my normal procedure, part of that probably
11 depends on how well and what the nature of knowing the
12 person would be.

13 Q. Right. And the hypothetical was given if you had
14 run out of strikes, obviously, you wouldn't be able to
15 strike her, correct?

16 A. That's correct.

17 Q. But you could also move to strike for cause,
18 correct?

19 A. That's true.

20 Q. And if you believed that that would have been
21 appropriate, I'm sure you would have made that strike for
22 cause?

23 A. Yes.

24 Q. You also mentioned or realized that he pled guilty
25 to receiving stolen goods, correct?

~~TED SMITH - CROSS-EXAMINATION~~

1 A. That's correct.

2 Q. And that was magistrate offense, correct?

3 A. Yes.

4 Q. And that was receiving stolen goods that he was
5 alleged to have taken from the house, right?

6 A. That's correct.

7 Q. And did you research or look into the legal
8 inconsistency as to whether or not one can be convicted
9 of burglary for certain stolen goods and convicted of
10 also receiving those same stolen goods?

11 A. Yes. I think with the fact the burglary -- there
12 were further allegations other than just the laptop.
13 There was jewelry and other alleged things from the
14 house, so I think the burglary charge was appropriate
15 after looking at that.

16 MR. MURPHY: One moment, Your Honor.

17 BY MR. MURPHY:

18 Q. I'm going to hand you something that was sent
19 pursuant to your Rule 5 requests. Do you recognize that?

20 A. I do.

21 Q. And those -- there's a Bates stamp at the bottom,
22 correct? It says TS, I believe.

23 A. TAS.

24 Q. And what is that TAS -- is it 124?

25 A. It's 49.

1 Q. 49. What does that stand for?

2 A. That was Ms. Whitaker's initials at the time,
3 Tyler A. Schachte, which was her name at the time.

4 Q. And that would have been evidence you would have
5 received pursuant to your Rule 5 request, correct?

6 A. That's correct.

7 Q. And in that evidence -- we talked about
8 Mr. Hudson. If you could look, it shows that prints were
9 compared that were taken off the computer or were
10 compared to Mr. Hudson; is that correct? And if I point
11 it to you.

12 A. It says an e-mail will be sent to crime scene in
13 reference to comparing Mr. Porcher and Mr. Hudson's
14 prints to cases in the Charleston Farms neighborhood.
15 They were concerned about -- there had been a string of a
16 number of burglaries, and they suspected both Mr. Porcher
17 and, I guess, potentially Mr. Hudson.

18 Q. And did you do any follow-up on that issue?

19 A. I did not.

20 Q. And I think you said, about tools of the crime,
21 you don't recall whether or not there was photographs of
22 those actual tools that were taken?

23 A. I don't. I remember the solicitor saying that
24 they were photographed, but I don't remember.

25 Q. Thank you.

1 MR. MURPHY: That's all I have, Your Honor.

2 MR. JOHNSON: No further questions, Your
3 Honor.

4 THE COURT: All right.

5 Mr. Smith, if Mr. Porcher did not testify,
6 how were -- or how did you get before the jury
7 Mr. Porcher's version of what happened, which is that he
8 found the jewelry and bought the computer from someone
9 else? How did that get placed in front of the jury?

10 THE WITNESS: Your Honor, we addressed that
11 briefly in opening.

12 THE COURT: Yes, I know you opened and
13 discussed that.

14 THE WITNESS: I did.

15 THE COURT: And the State opened and
16 discounted that.

17 THE WITNESS: That's correct.

18 THE COURT: Now, how did it get before the
19 jury as an evidentiary matter?

20 THE WITNESS: It did not. Mr. Porcher chose
21 not to testify, which is something we had talked about
22 previously, about whether he would or would not testify.
23 My belief was that he was going to, which is why I opened
24 on it.

25 THE COURT: Well, I noticed that when Judge

1 Jefferson examined Mr. Porcher about taking the stand,
2 she indicated that the burg third and the burg second
3 would come in, the breaking and entering and the false
4 information to police would come in. I think your New
5 York offenses are all over ten years. None of them would
6 come in, unless Mr. Smith received written notice of the
7 State's desire to use these to impeach you, which wasn't
8 the case.

9 THE WITNESS: That's correct.

10 THE COURT: So basically what she's saying is
11 these will come in if you take the stand, as I understand
12 it.

13 THE WITNESS: That's correct.

14 THE COURT: But the burg third and the burg
15 second were going to come in in any event, correct?

16 THE WITNESS: They were. There were multiple
17 counts of burglary second, so she limited it to the two.

18 THE COURT: Right. But they were going to
19 come in anyway as an aspect of proving the burg one,
20 correct?

21 THE WITNESS: That's correct.

22 THE COURT: All right. Did you discuss with
23 Mr. Porcher the fact that if he didn't testify, his
24 version of the incident would not be placed in evidence
25 before the jury?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: When did you talk to him about
3 that?

4 THE WITNESS: We talked about that at our
5 meetings leading up to the trial and specifically what we
6 would be able to present or not present. Obviously, we
7 discussed the lack of physical evidence, but we also
8 discussed the fact that in order for him to give his
9 version about purchasing the laptop, he would have to
10 testify in order to get that out.

11 THE COURT: Well, now, you indicate that you
12 opened with his version.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: So does that mean that when you
15 discussed it pretrial he had made the decision to
16 testify?

17 THE WITNESS: He was fairly confident at that
18 point that he wanted to get up and tell his story.

19 THE COURT: All right, sir. So he knew
20 pretrial from your discussion with him that the burg
21 third and the burg second were going to come in anyway.

22 THE WITNESS: That's correct.

23 THE COURT: And he nevertheless decided
24 pretrial he was going to testify.

25 THE WITNESS: That's correct.

1 THE COURT: Well, then what happened during
2 the trial of the case that changed his mind?

3 THE WITNESS: I don't know that, Your Honor.
4 I always have a discussion again before he's ready to
5 testify. At that point he said he was not interested in
6 testifying.

7 THE COURT: All right, sir. All right. With
8 respect to the print evidence and the exhibit I think
9 that Mr. Murphy gave you -- have you put that in
10 evidence, Mr. Murphy?

11 MR. MURPHY: I have not, but we could make
12 that a Court's exhibit, Your Honor.

13 THE COURT: I want to take a look at it, if I
14 might. Madame Clerk, why don't you mark that as Court's
15 Exhibit 1. Objection?

16 MR. JOHNSON: No, ma'am.

17 (Court's Exhibit No. 1 was marked for
18 identification.)

19 THE COURT: I'm handing Court's Exhibit 1 to
20 the court reporter so you can look at that, Mr. Smith.

21 Why did you not follow up in the information
22 there about whether or not fingerprints had been taken
23 that could be compared to Mr. Hudson and Mr. Porcher?

24 THE WITNESS: These related not to this
25 specific incident but to other --

1 THE COURT: I'm aware.

2 THE WITNESS: And I did not follow up on
3 that, frankly, because I didn't think it was relevant in
4 this case, but, further, you know, there was the
5 potential that other charges would be forthcoming as a
6 result of that, and the solicitor's office was fine with
7 resolving all these cases with these two.

8 THE COURT: So you were concerned that
9 digging into this issue, which involved other unsolved
10 breaking and entering crimes and comparison of
11 fingerprints from those crimes to Mr. Porcher's and
12 Mr. Hudson's, you were concerned that if you dug into
13 that it might not be to Mr. Porcher's advantage?

14 THE WITNESS: That's correct, Your Honor. I
15 think there was a number of burglaries. I don't recall
16 exactly how many, but it was in the double digits that
17 they were talking about.

18 THE COURT: Mr. Porcher indicates in his
19 testimony that when he was admitted to the jail facility
20 in Charleston County, he had on him cash money in the
21 amount of \$20. Were you aware of that?

22 THE WITNESS: I was not, Your Honor.

23 THE COURT: Did you check into that at all,
24 to see whether what the police said they found on him
25 tallied up with what was disclosed when he was sent to

1 the jail?

2 THE WITNESS: I don't believe I did any
3 further checking other than what we received in the
4 booking form.

5 THE COURT: Right. And, of course, today as
6 we sit here, we have the testimony of Mr. Porcher, but we
7 don't have a submission of anything from the jail about
8 that.

9 THE WITNESS: That's correct, Your Honor.

10 THE COURT: With respect to the tools, this
11 would have been a rather significant piece of information
12 relative to the photographs of the door itself to see
13 whether these tools could have possibly effectuated the
14 damage on the door that the photographs reveal.

15 Explain to me again what happened with your
16 investigation of these tools.

17 THE WITNESS: Your Honor, the tools, as I
18 understood it, they were taken from Mr. Porcher. They
19 were held in evidence for some period of time, and then
20 they were photographed and destroyed. Why they were
21 destroyed, I don't know, but the solicitor did disclose
22 that.

23 THE COURT: Well, did you have photographs of
24 the tools themselves?

25 THE WITNESS: There was a photograph at one

MARVIN PORCHER - REBUTTAL

1 point that the solicitor had. I don't remember if I -- I
2 don't remember if I had that or not. I'll be happy to
3 look through my file and see if that exists.

4 THE COURT: Well, did you make any attempt to
5 put forward that photograph or to compare it with the
6 damage on the door?

7 THE WITNESS: I did not, Your Honor.

8 THE COURT: All right, sir.

9 No further questions, Mr. Smith. Thank you
10 so much. You can step down.

11 MR. MURPHY: And, Your Honor, we'd just call
12 one rebuttal witness, very briefly, Mr. Porcher.

13 MR. JOHNSON: The State has no further
14 witnesses.

15 THE COURT: Very good.

16 All right. Mr. Porcher, you may come around,
17 sir, and you're reminded that as you come around, you're
18 still under oath.

19 Thank you, sir.

20 MARVIN PORCHER,
21 having been previously duly sworn,
22 was examined and testified as follows:

23 REDIRECT EXAMINATION

24 BY MR. MURPHY:

25 Q. Mr. Porcher, there's been some talk about -- there

MARVIN PORCHER - REBUTTAL

1 were a number of photographs entered as evidence in your
2 case. Do you recall any photographs of these tools that
3 have been at issue that we've discussed today being
4 entered into evidence?

5 A. No, sir.

6 Q. Was there a photograph of the tools, as you
7 recall?

8 A. No, sir.

9 Q. Are you sure of that?

10 A. I'm positive.

11 MR. MURPHY: That's all I have, Your Honor.

12 MR. JOHNSON: Just one follow-up, Your Honor.

13 THE COURT: Quite certainly.

14 RECROSS EXAMINATION

15 BY MR. JOHNSON:

16 Q. You've already admitted today you lied to the
17 police officers, correct?

18 A. Yes, sir.

19 MR. JOHNSON: No further questions.

20 THE COURT: Thank you, Mr. Porcher. You may
21 step down.

22 Counsel and Mr. Porcher, thank you very much
23 for a very solid presentation of this matter. It's the
24 first one I'm taking under advisement this week, but I am
25 going to take it under advisement. I want to study this

1 a little bit more thoroughly and do a little bit more
2 research on a couple of issues that have arisen. I will
3 notify you two gentlemen within the week as to my
4 decision about this matter, and if needs be ask for
5 preparations of orders. I'm not confident yet as to what
6 the ruling of the Court will be, but I will notify you
7 gentlemen within the week.

8 MR. MURPHY: Thank you, Your Honor.

9 THE COURT: Thank you so much. Thank you,
10 Mr. Porcher.

11 - - -

12 (Whereupon, the proceedings were concluded.)

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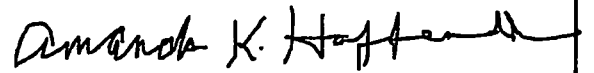
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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 15th of September 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 12, 2017

A handwritten signature in black ink, reading "Amanda K. Haffenden", written over a horizontal line.

Circuit Court Reporter

Entered By: MICHAEL WAYNE AIKEN, On: 11/4/2011 11:31:49 AM
Edited By: MICHAEL WAYNE AIKEN, On: 1/10/2012 11:41:11 PM

Title: CASE NOTES M. AIKEN #208 2011041175

November 4, 2011

On the above date information was received that Marvin Porcher and John Hudson worked at the same location on Remount Road (King Auto). A field interview was completed by Detective Jourdan during a special assignment. Detective Ware and I attempted to make contact with Mr. Hudson at his residence which is [REDACTED]. Upon arrival to the residence no one answered. Detective Ware was able to make contact with Mr. Hudson via telephone and he stated that he does not reside at this location any longer. Mr. Hudson stated that he now lives on College Park Road. During the conversation, Mr. Hudson stated that his ex wife now resides at [REDACTED] with the kids. He also explained that there is a lot of activity going on at the residence. Detective Ware asked Mr. Hudson if he was able to meet and he stated he was driving to Florida at the time. Mr. Hudson stated he would be back later at night on the above date.

I was able to make contact with Mario at King Auto and he informed me that Marvin did in fact work part time at the business. He stated to me that Marvin works part time because he only knows mechanic work and not auto body.

While searching the jail computer it was discovered that Mr. Porcher was charged with Burglary 1st in reference to the incident in Charleston County (Case 2011018795).

An email will be sent to crime scene in reference to comparing Mr. Porcher's and Mr. Hudson's prints to cases in the Charleston Farms neighborhood.

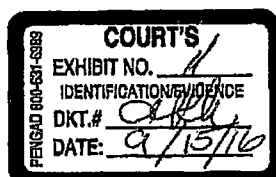
There is no further information to report at this time.

January 10, 2012

Mr. Porcher is currently lodged at the Al Cannon Detention Center for Burglary 1st Degree. Due to Charleston County charging Mr. Porcher with Burglary 1st Degree this case will be administratively closed. Mr. Porcher was found guilty for the possession of stolen goods and false information.

Witness Statements were placed into the scan file and the receipts for Exxon was placed into evidence.

There is no further information to report at this time.



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Marvin Porcher, SCDC # 315900,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-2045

ORDER OF DISMISSAL

FILED
2018 APR -9 PM 3:13
JULIE T. ARISTON
CLERK OF COURT
BY

#1
[Signature]

This matter comes before the Court by way of an application for post-conviction relief filed April 10, 2015, by Marvin Porcher (Applicant). Respondent made its Return on November 24, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened September 15, 2016, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Assistant Deputy Attorney General James Rutledge Johnson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Charleston County Grand Jury indicted Applicant for two counts of breaking and entering a motor vehicle (2012-GS-10-1910 & 2013-GS-10-0411) and first-degree burglary (2013-GS-10-4867). He was represented by William T. (Ted) Smith, Esquire, and Jason T. King,

Esquire, of the Charleston County Public Defender's Office represented Applicant. Assistant Solicitors Tyler S. Whitaker and Jennifer Shealy prosecuted the case on behalf of the State.

On July 18, 2013, the State called Applicant to trial on the first-degree burglary indictment in the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge. On July 19, 2013, the jury convicted Applicant as indicted of first-degree burglary. After his conviction for the burglary indictment, Applicant pled guilty to the two counts of breaking and entering a motor vehicle. Judge Jefferson sentenced Applicant to the minimum sentence of fifteen years imprisonment for first-degree burglary and five years imprisonment for each count of breaking and entering a motor vehicle, with all sentences to be served concurrently.¹

#2
JST
Applicant filed a timely notice of appeal challenging only his burglary conviction and was represented by Appellate Defender Lanelle C. Durant, of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Marvin Porcher, Op. No. 2015-UP-124 (Ct. App. filed March 11, 2015). The Remittitur was issued on April 3, 2015

FACTUAL HISTORY

Facts from which the First-Degree Burglary Conviction Arose

Mr. Salgado was a neighborhood resource officer for the North Charleston Police Department. (T.124-125). Just after midnight on November 4, 2011, he was patrolling on shift when he passed a bicyclist wearing dark clothing and without a rear light. (T.128). He made a U-turn and made contact with the bicyclist. Salgado recognized the bicyclist, but when asked for

¹ An unrelated additional breaking and entering a motor vehicle indictment (2012-GS-10-1111) was dismissed pursuant to his plea.

his name, the cyclist gave him a different name from the one Salgado knew. (T.130-131). Applicant gave him the name Marvin Swinton and his date of birth and then told Salgado he was from New York. Salgado had the North Charleston Police run the name and birthdate through South Carolina and New York records and found no one with that combination. (T.131-133).

Salgado testified Applicant appeared nervous and sweaty. He also indicated there was a bulge under Applicant's jacket. Salgado asked consent to search Applicant's person and Applicant gave consent. Salgado found a laptop and charger under Applicant's jacket, and his wallet with ID in his pant pocket. The ID contained Applicant's real name, Marvin Porcher. (T.133-134). Salgado also found a pearl necklace in Applicant's jacket pocket and a cylinder, ultimately found to contain jewelry, in Applicant pant pocket. (T.135). Applicant also had a razor knife, a wrench, an allen wrench, and a zip tie in his pocket. (T.137). Applicant tried to explain the laptop indicating he was going to a friend's house to use the internet. (T.137).

Salgado arrested Applicant for providing false information to a police officer. Applicant was taken to the North Charleston City Hall to meet with a detective. He met with Detective Evans. (T.137-138). Evans was a detective assigned to the persons crime unit. (T.149). Evans met with Salgado and was given the laptop and charger taken off Applicant's person. Evans turned on the laptop and located information linking the laptop to the victim. He called the victim, provided his name and job title, and asked if she knew where her laptop was located. The victim responded it was at her residence. (T.151). Evans asked her to return to her residence and meet someone from Charleston County Sheriff's Office and North Charleston Police Department. (T.152).

Evans then interviewed Applicant. After reading Miranda warnings to Applicant, Evans discussed the laptop. Applicant indicated he bought it from someone on Remount Road. He did not provide any details about from whom he purchased the laptop, where exactly on Remount he purchased it, or "any other pertinent details." (T.157-158). He did not provide the name of the person or even a description of the person that allegedly sold him the laptop. (T.158).

The victim lived in a mobile home with a roommate. The home was near the residence of Applicant and his girlfriend. (T.169-171). Applicant came to her house to do some exterior work several weeks before the burglary. (T.172-173). On November 2, 2011, Applicant, his girlfriend, and another friend came over to the victim's home so Applicant could put a tattoo on the victim. While in the victim's home, Applicant used her laptop to go on Facebook. (T.175).

#4
JST
On November 3, the victim and Applicant's girlfriend visited Applicant where he worked so the victim could give him a payment for the work he performed on her house. While there, he asked if the victim and his girlfriend were planning to go out that night. (T.176-177). At that time, the victim did not plan to go out, but later changed her mind and around 9:30 p.m. picked up Applicant's girlfriend at Applicant's house. (T.178).

While out with Applicant's girlfriend, the victim received a phone call from a detective who asked if she reported a burglary and if she owned an Acer laptop. The victim indicated the laptop was left on her bed on top of papers. (T.179). The victim then met a county sheriff and someone from North Charleston Police at her home. (T.180). Walking through her home with the officers, the victim indicated her laptop, some of her jewelry, and her roommate's television was missing. (T.182). The victim later learned Applicant was found with her laptop. She was

surprised he would have it. (T.188). She also indicated she never gave him permission to be in her home or have her computer. (T.185).

Deputy Baldwin was the Charleston County Deputy who met the victim at her residence. (T.206-207). He indicated that upon entering the residence and making certain it was secure, he noticed the rear door was pried open from the outside. He testified the door frame was pried so the door could open. (T.208-209). He explained many metal objects could be used to pry the door open, including some of the objects found on Applicant's person when he was arrested. (T.209; 215-216).

Facts from which the Breaking and Entering a Motor Vehicle Convictions Arose

#5
JBT As to the first breaking and entering a motor vehicle charge, on August 9, 2011, the victim contacted the North Charleston Police Department to report that his vehicle had been broken into and his car radio was missing. Crime scene technicians were able to lift a fingerprint from the vehicle which was identified as a match to Applicant. (T.304).

As to the second breaking and entering a motor vehicle charge, on September 5, 2011, the victim reported his vehicle was broken into while parked at a Quality Inn and items valued at over a thousand dollars were taken. Blood was found inside the vehicle and DNA testing revealed the blood matched Applicant. (T.304).

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. Ineffective Assistance of Counsel "for failure to submit motions to alleviate the indictment which was a 'nullity' "
2. "Denial of Due Process and/or Equal Protection"

3. "Insufficient Indictment"
4. "False Imprisonment/Lack of Jurisdiction to convict"

At the evidentiary hearing, Applicant proceeded forward on allegations that counsel was ineffective for failing to investigate, failing to hire experts to analyze the fingerprints on the door and computer, failing to hire a crime scene expert to analyze the door damage, failure to strike a juror who knew the victim, and failure to address the destroyed tools or request a spoliation charge. These are the only allegations upon which Applicant proceeded forward.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

#6
JST
At the evidentiary hearing, Applicant testified on his own behalf. He testified he pled guilty to the breaking and entering a motor vehicle charges because he was guilty of them, but proceeded to trial on the first-degree burglary charge because he was not guilty. Applicant testified he was incarcerated for approximately two years prior to his trial and that he met with his attorney four times prior to trial. He testified these conversations were via video teleconference and lasted between fifteen to thirty minutes each. He testified Ted Smith was his primary counsel and Jason King only assisted with the trial. He testified he did not review discovery with his attorneys prior to trial. He testified he was aware of the elements and potential sentences for first-degree burglary prior to trial. Applicant testified the State presented him with a plea offer three weeks prior to trial to the lesser-included offense of second-degree burglary for a ten to fifteen year term of imprisonment. He testified he turned this offer down because he was not guilty. He testified counsel did not have a pre-trial strategy, which alarmed him. Applicant testified he filed a *pro se* motion to compel the State to turn over the alleged burglary tools

before he learned the tools were missing. He testified he did not learn the tools were missing until the end of trial.

Applicant testified counsel failed to strike a juror who knew the victim. He testified counsel also failed to strike a "mental health patient said he couldn't predict what he was going to do at the trial." Applicant testified counsel failed to make any pre-trial motions. Applicant also testified there was some confusion over the jurisdiction where the crime occurred and the solicitor improperly asked the witness leading questions to get this information into the record. However, he acknowledged North Charleston is in Charleston County.

#7
8/11
Applicant testified the State alleged he broke into a mobile home by breaking into a door with burglary tools, including an allen wrench, zip ties, and a plastic ratchet. He testified these tools were discussed by witnesses, but were not introduced into evidence because they were destroyed. He testified he does not know who destroyed them. He testified counsel did not request a spoliation charge. Applicant also testified the stolen laptop was admitted into evidence, but the State did not test it for fingerprints. He testified a television was also taken from the residence but was not found on his person when he was arrested. He testified he attempted to speak with counsel during trial to tell them the victim was lying on the stand, but his attorneys refused to listen to him. Applicant testified he was in the victim's home the evening before the robbery to give her a tattoo, but did not have any other permission to be in the home or to have her laptop.

Applicant testified the State admitted his prior burglary conviction into the record at trial, which was contrary to what counsel had advised him. He elaborated that counsel had advised him that if he did not testify, the State would not be able to introduce his prior record into

evidence. He testified he elected not to testify on his own behalf because he did not want his prior criminal record to be introduced. However, he acknowledged on cross-examination that he was charged with first-degree burglary based on his prior burglary convictions and is aware that his prior burglaries are elements of the offense that the State must prove.

#8
8/15
Applicant testified officers also investigated a "John Hudson" as a suspect who was involved in the burglary but that he does not know anyone named John Hudson. He testified counsel failed to investigate this or present John Hudson to testify at trial. He testified he generally thinks counsel should have done a more intensive investigation. He also alleged counsel should have retained a fingerprint analyst to test the laptop and door and a crime scene analyst to review the damage to the door frame. He acknowledged he did not hire any such experts in advance of the evidentiary hearing.

Applicant testified he pled guilty to a receiving stolen goods charge stemming from the stolen laptop because he bought it off of somebody. He testified he received a thirty day sentence for this charge. He testified he also pled guilty to giving false information to police because he gave law enforcement a fake name and received an additional thirty day sentence. However, he testified he had the jewelry because he found it outside the victim's home.

Applicant testified he filed an appeal following his trial and spoke with appellate counsel once by phone. He testified he did not speak with appellate counsel after the Court of Appeals affirmed his conviction. He testified he elected to file a post-conviction relief application thereafter.

Trial counsel Ted Smith testified next. Smith testified he was appointed to represent Applicant on November 17, 2011 while at the public defender's office. He testified he had been

at the public defender's office for thirteen years at the time of appointment. Counsel testified he met with Applicant over ten times, including several times the week immediately before his trial. He testified he asked fellow public defender Jason King to act as a second-chair and assist during trial. Counsel testified he filed discovery motions and sent all materials to Applicant. He testified he specifically recalled discussing the damage to the victim's door with Applicant. He testified he used the public defender's office investigator, who mainly served subpoenas for this case. He testified Applicant told him that he found the jewelry outside the victim's home and had purchased the laptop from someone else.

HM
JM
Counsel testified that because this was a circumstantial evidence case, his trial strategy was to highlight the lack of direct evidence tying him to the crime scene, including a lack of any fingerprint evidence. He testified he argued the lack of direct evidence in his closing argument and raised a direct verdict motion on this ground. He testified he had fully prepared Applicant for trial. He testified he had explained to Applicant that his prior burglary convictions would be introduced at trial as an element of the offense. Counsel testified he asked the solicitor to stipulate to Applicant's prior convictions but the solicitor refused. Counsel testified he discussed Applicant testifying in his own defense and the possibility that other crimes of dishonesty could be used to impeach him if he decided to testify. He testified it was ultimately Applicant's decision whether he wanted to testify and Applicant decided not to testify. He testified Applicant had previously indicated he wanted to testify to tell his story to the jury, and because of this, Counsel reference this in his opening statement.

#10
8/18/17

Counsel testified he had no recollection of a juror that knew the victim, and if he had knowledge of that, he would have struck the juror. Counsel testified he thinks the burglary tools were destroyed prior to trial, but they were all photographed prior. He testified he does not believe there was any specific reference to Applicant having used those tools, but that was certainly inferred. He testified he did not further investigate whether these tools had been used to break into the victim's home because Applicant alleged he did not commit the crime. He testified he was aware law enforcement was also investigating a man named John Hudson as a possible co-conspirator who worked with Applicant, but he did not investigate him. He identified an email he received in discovery indicating there had been a string of burglaries in the area and that Applicant and Mr. Hudson's fingerprints were being compared to the various scenes. He testified there were numerous other burglaries and he did not significantly investigate this because he was afraid it would not have been to Applicant's advantage. He testified Applicant was adamant the entire course of his representation that he did not commit the burglary and wanted to go to trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or